



Submission to the Family Justice Oversight Group Consultation

February 2021





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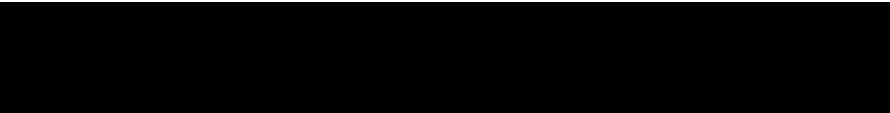
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Introduction

Women's Aid is a leading national organisation that has been working in Ireland to stop domestic violence¹ against women and children since 1974. In this time, the organisation has built up a huge body of experience and expertise on the issue, enabling us to best support women and share this knowledge with other agencies responding to women and children experiencing domestic violence. Women's Aid has long held grave concerns in relation to Family Law outcomes and processes for women and children separating from an abusive partner and welcomes this opportunity to be involved in the work of the Family Justice Oversight Group.

Women's Aid Services and Expertise

24hr National Freephone Helpline

The 24hr National Freephone Helpline provides a listening ear, emotional support and practical information to women experiencing abuse from their current or former male partners. It is the only free, national, domestic violence Helpline with specialised trained staff, fully accredited and quality assured by The Helplines Partnership. It has a Telephone Interpretation Service facility covering 170 languages for callers needing support in their own language. We also provide a text service for deaf and hard of hearing women. The Helpline is a gateway into our Dublin-based face-to-face and court support services and to other local independent support services and refuges around the country. The 24hr National Freephone Helpline also provides an Instant Messaging Support Service through womensaid.ie and toointoyou.ie.

¹ While recognising that the legal term in Ireland is 'domestic violence' we acknowledge that many victims/survivors identify more with the term 'domestic abuse' or 'intimate partner violence'. Women's Aid uses these terms interchangeably in this submission to refer to the same set of abusive behaviors perpetrated by current or former intimate partners (including emotional, physical, sexual and financial abuse and coercive control).



One to One Support Service and Court Accompaniment

We provide direct face-to-face support to women at safe, accessible outreach locations embedded in communities around Dublin City and county. We offer court accompaniment and court advocacy support to women who access our One to One Services and who are seeking legal redress in the courts regarding violence and abuse by a current or former spouse or partner.

Dolphin House Family Law Court Support and Referral Service

Based in the Dolphin House Family Law Court, the Support and Referral Service is a free and confidential drop-in service for women who are experiencing domestic abuse. This can include coercive control, emotional, physical, sexual or financial abuse. The service provides support and information on legal options, safety planning and links women in with domestic violence services for ongoing support. Women's Aid runs this service in partnership with the Inchicore Outreach Centre.

High Risk Support Project

The High Risk Support Project provides a multi-agency response to women at high risk of ongoing abuse and homicide from their ex-partners. Women's Aid partners with An Garda Síochána and local domestic abuse services to deliver a coordinated, rapid response system for women and families. This project is generously supported by the Vodafone Foundation and the Department of Justice Commission for the Support for Victims of Crime.

Women's Aid Law Clinic

Our confidential and free legal information and assistance clinic supports women experiencing domestic violence who are representing themselves in domestic violence and family law proceedings. The clinic is staffed by volunteer lawyers from McCann Fitzgerald whose services are provided free of charge.



Specialised Training

Women's Aid is a Centre of Excellence for Training and Development of professional and organisational responses to women and children experiencing domestic violence. We provide support to local and national organisations throughout Ireland, both statutory and non-statutory, to promote best practice responses to women and children experiencing domestic violence. All Women's Aid training is informed and guided by over 40 years of experience of direct work supporting women and by international models of best practice.

Public Awareness and Campaigns

Women's Aid leads the way in raising awareness and providing information on domestic violence to women experiencing abuse, their families and friends, their communities and the wider society. Our annual public awareness campaigns and communications activities are a vital way to highlight the prevalence, nature and impact of domestic violence, intimate relationship abuse and femicide. We also engage with the media to promote the 24hr National Freephone Helpline and our other support services. The Women's Voices testimony project encourages and facilitates survivors of domestic violence to tell their stories in a safe way to create better awareness and change for women in similar situations.

Influencing Government and Policy

Women's Aid provides solution-based recommendations on experiencing abuse to a number of national and local fora. We make submissions and meet with Government ministers, policy-makers and members of the Oireachtas to discuss a range of issues and collaborate with other agencies and organisations to bring about political, legislative and social change.



Domestic Abuse as Core Work of the Family Law Court

Domestic violence is a very pervasive issue. The EU Fundamental Rights Agency² survey on violence against women has found that in Ireland:

- 14% of women have experienced physical violence by a partner (current or ex)
- 6% of women have experienced sexual violence by a partner (current or ex)
- 31% of women have experienced psychological violence by a partner (current or ex)
- in Europe, 73% of women who have experienced physical or sexual violence by a current or a previous partner indicated that their children were aware of the violence.

Children are often the unseen victims of domestic abuse, whether they are directly targeted by the abuser or they are forced to witness the abuse of their mother, which is in itself a form of child emotional abuse. Domestic violence does not necessarily end with separation and in fact, at times it can be escalated by separation. It is our experience that often the abuse of the mother and the children continues after separation, and is enabled by custody and access arrangements that disregard the impact of domestic violence on children and overlook the risk of their direct abuse and/or exposure to domestic violence³.

After separation, children may be directly abused or neglected by the perpetrator during the time spent with them. Children are also emotionally abused when forced to witness the abuse of their mother and by the undermining of the relationship and bond with their mother, which is critical to their healing⁴. Moreover, abusers use non-payment or erratic

² European Union Agency for Fundamental Rights, 2014, Violence Against Women: an EU-wide survey Main results

³ Women's Aid, Child Custody and Access in the context of Domestic Violence: Women's Experiences and the Response of the Legal System", 2003.

⁴ See in particular Bancroft and Silverman, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics, 2002, Sage Publications



payment of maintenance to continue financial abuse and control after separation. Trying to enforce maintenance may compel women to be involved in ongoing and stressful legal proceedings with the abuser for protracted periods of time.

Research into post-separation child contact, carried out by Stephanie Holt in Ireland, confirms the findings of international literature on this topic. This research found that:

- there is a lack of understanding within the Family Law System that domestic abuse can and often does continue after separation
- the history of domestic abuse is often not identified when contact orders (custody and access) are being decided on
- even when domestic violence is identified, it is not considered relevant to the contact orders, leading to arrangements that the mothers and children participating in the research deemed inappropriate and unsafe⁵

Years of experience from our frontline work confirms these findings. Moreover, the **legal process** itself can be used to continue the abuse emotionally and financially.

While unfortunately there is no data in Ireland on the prevalence of domestic abuse in Family Law cases, evidence from other countries suggest a high prevalence of domestic abuse in Family Law cases. For example:

- A recent UK study found that allegations or findings of domestic abuse in samples of child arrangements/contact cases range from 49% to 62% indicating a much higher prevalence of domestic abuse than in the general population⁶.

⁵ Holt "A Case of Laying Down the Law: Post-Separation Child Contact and Domestic Abuse" Irish Journal of Family Law Vol. 14 No.4 Winter 2011

⁶ Minister of Justice, 2020, Assessing Risk of Harm to Children and Parents in Private Law Children Cases



- A recent Australian Law Reform Commission Report states that the majority of parents using the courts to resolve parenting arrangements report emotional and/or physical violence, **with 46% reporting safety concerns for themselves or their children** (or both) as a result of ongoing contact with the other parent⁷ (emphasis added).
- The Rape Crisis Network Ireland (RCNI) has suggested during the Joint Oireachtas Committee (JOC) Inquiry that a **significant proportion** of family separation and child custody cases going through our family courts, involve the rape and sexual abuse of children by family members in the absence of a parallel criminal conviction⁸.

Women's Experiences with the Family Law Court

Women's Aid has held serious concerns about Family Law **outcomes** and **processes** for many years. Women regularly tell us that custody and access arrangements are made which **are not safe for children and their mothers, and which allow the abuse to continue post separation**. They report that proceedings are biased against them, that many professionals, including judges and report experts, do not understand the issues faced by women separating from an abuser nor the impact of domestic abuse, including coercive control, on children.

Moreover, while in theory access to their parents should be the right of the child, in practice, it is exercised as the right of the parents, in this context specifically of the abusive father. There is a pro-contact assumption that often trumps considerations regarding the risk to the children and their mothers, as well as sometimes the stated wishes of children

⁷ Australian Law Reform Commission, March 2019, Family Law for the Future — An Inquiry into the Family Law System Final report

⁸ RCNI, Submission to the Joint Oireachtas Committee on Justice and Equality, February 20th 2019



not to be forced to go on access. As a result, custody and access orders can be dangerous and/or detrimental to the safety and the wellbeing of children and their mothers.

Additionally, proceedings in the Family Law Court are protracted and costly; the premises inadequate and there is a lack of support for women engaging with the Family Courts during and after proceedings.

In a consultation, Women's Aid conducted in October 2018⁹, women reported the following in relation to the Family Law Court process:

- Their fears about the physical safety and the psychological wellbeing of their children are often not heard. The safety of the woman herself is not considered at all in custody and access hearings.
- The Family and Criminal Courts work in silos. Women reported that criminal behavior is not taken into account in the Family Law Court even when the abuser has been convicted of serious offences (such as assault or sexual assault), against the mother or a sibling of the child, if the offence was not against the child for whom access is sought. This fails to acknowledge the impact of witnessing abuse against family members and the risk of further abuse.
- Similarly, protective orders issued under the Domestic Violence Act 2018 are not taken into account as domestic violence is considered a "separate issue".

⁹ Women's Aid, Unheard and Uncounted: Women, Domestic Abuse and the Irish Criminal Justice System, 2019. Available here: https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf
Note that women were not specifically asked about Family Law, however, issues relating to family law spontaneously and consistently came up during the consultation, demonstrating this is a very critical issues.



- Some S32 reporters are not adequately trained, do not understand domestic abuse, including coercive control, and its impact on children, and are easily manipulated by the abuser.
- Access is granted in cases where it puts the children and the non-abusing parent at risk and exposes them to abuse. Most of the time the access is unsupervised, regardless of the level of danger posed by the abuser.

In order to address the issues above, it is vital that the needs and experiences of women separating from an abuser are taken into account in any family reform Project. It is through this lens that we have responded to the call for submissions as below.

Answers to Specific Questions in the Submission Call

Optimising the Delivery of Family Justice

Questions:

Optimising the delivery of family justice via:

1. the use of modern technology
2. the provision of facilities and supports in the family justice locations

Use of Modern Technology

Women's Aid believe that modern technology can be of great assistance in optimising the delivery of family justice, by reducing the need for in-person appearances and by providing better communication and linkages between different parts of the court system.

Remote orders

The Family Court response to the Covid-19 emergency has included innovative responses moving towards online proceedings:



- Preliminary work is in train with the District Court, Safe Ireland and Women's Aid on setting up a pilot to provide for remote hearings of applications for ex-parte orders under the Domestic Violence Act 2018 (Interim Barring Orders and Protection Orders). The hearings would be held in a location remote from the court provided by a domestic violence service and with judges, court staff and any legal representatives (if applicable) attending online.
- Some District Courts have already issued ex-parte orders remotely.
- Remote hearings for divorce and separation, including online legal representation, have taken place in some Circuits Courts.

In our experience, even prior to Covid-19, access to the courts could be difficult for certain women due to disability, geographical isolation, lack of transport, childcare or lack of money. For many women escaping domestic violence the courts premises can be unsafe as they risk coming into contact with the abuser in the waiting areas or coming/leaving the Court.

Therefore, Women's Aid believes that online proceedings can provide a very valuable option for women for whom travelling to a court may be unsafe or unfeasible and should continue and be built upon even once the Covid- 19 emergency is over. If the District Court pilot for ex-parte orders is successful, it should later be extended to hearings for Safety and Barring orders.

While we are very supportive of domestic violence organisations hosting such remote hearings, we are keenly aware of the fact that such organisations are not available in all counties and that for some women travelling to a domestic violence organisation may not be possible or safe. Other trusted parties should therefore also be considered as possible hosts for remote hearings.



Lessons from remote hearings in the Circuit Court for separation and divorce, and other matters, can be used to expand remote hearings to custody and access cases, which similarly take place with legal representation. This option would be extremely useful in cases where there is domestic violence and accessing the court in person could be unsafe for the non-abusive party.

Women who may be marginalised or experience additional barriers or disadvantages could greatly benefit from remote hearings, as physical access to the court may be particularly difficult for them. It is vital that any initiative to access courts remotely includes mechanisms to reach them and include them.

Recommendations

1. Implement as a matter of urgency the pilot providing for remote hearings of ex parte applications for orders under the Domestic Act 2018.
2. Should the pilot prove to be successful, extend the process to full order hearings (safety and barring orders), as an additional option for victims/survivors exercising their right to access protection.
3. A pilot should be considered for remote hearings of custody and access cases where domestic violence is a feature of the relationship.
4. Mechanisms to effectively reach women who may be marginalised or experience additional barriers or disadvantages should be explored and put in place for all remote hearing initiatives.



Information sharing

In our experience, there is a very concerning lack of linkages between the Criminal and the Family Law Courts when dealing with the same family¹⁰. The lack of coordination and linkages between Criminal and Family Law Courts and the lack of consistency between, on the one hand orders under the Domestic Violence Act 2018, and on the other hand, child custody and access orders (especially interim ones) puts women and children at risk.

Women have told us that domestic violence orders and even **convictions** for violent offences against the mother are not taken into consideration in child access cases as they are not deemed "relevant". Addressing this issue requires ongoing training and awareness and the establishment of appropriate linkages between the different courts, however, modern technology can also play an important part in ensuring that all relevant information is before the court and can be taken into account when making an access or custody orders.

Recommendation

5. An IT solution should be provided to ensure that the Family Law Court dealing with a custody, access, maintenance, separation or divorce case would have all relevant information including any domestic violence orders and breaches thereof as well as information on charges and criminal convictions relating to offences against the children and the non-abusive partner.

¹⁰ Women's Aid, Unheard and Uncounted: Women, Domestic Abuse and the Irish Criminal Justice System, op cit.



Data Collection

As mentioned above, there is no data in Ireland in relation to how many families separate in the context of domestic violence or child abuse and whether allegations and findings of domestic abuse/child abuse are taken into account in determining custody, access and guardianship.

The lack of such data makes it impossible to estimate the prevalence of domestic abuse in access and custody cases before the courts. It also makes it difficult to evaluate the impact of policy and legislative changes, such as the requirement on the court to consider any family violence and its impact on the safety of the child and other family members introduced through the Children and Family Relationships Act 2015.

Recommendation

6. IT solutions should be developed to collect statistical and anonymised data on the prevalence of custody and access cases with allegations of domestic violence/child abuse in the Family Law Court and on the outcomes of such cases.

The Provision of Facilities and Supports in Family Justice Locations

It is imperative that women attending court who are afraid of their partner find themselves in a safe and private space where confidentiality can be maintained. Access to support is a pressing need for many women using the Family Law Courts, including information around understanding and preparing for court proceedings, practical and emotional support and referrals to long term specialist services.

As the voice of the child should be heard more often in relevant proceedings, facilities need to be planned for children to have as positive an experience as possible in the Family Law Courts. For any children who are being brought to court either to talk to the Judge or are obliged to attend as witnesses, it is essential that there are specific facilities available where



they can talk to the judge in an informal, safe and welcoming setting. As we hope that remote hearings will become a common option, there is also the need for the courts to have the necessary IT and broadband facilities to support them.

Recommendations

7. The following facilities and supports should be provided in family justice locations:

- separate and secure waiting rooms for women who are in court in relation to domestic violence applications or child matters/separation/divorce when there are allegations of domestic violence
- adequate number of private and safe consultation/interview rooms
- adequate IT and broadband facilities
- on-site childcare facilities with provision for children to be minded by qualified childcare staff, when their parents or carers are in court
- Special measures such as screens and video links for vulnerable parties in family law proceedings, consistent with measures in S19 of the Criminal Justice (Victims of Crime) Act 2017 and S25 of the Domestic Violence Act 2018 (should be offered as a norm where there are allegations of domestic violence between the parties in court)
- children's suites where children can be interviewed
- specialist domestic violence advocates to provide support, safety planning, risk assessment and referrals to long-term support as needed, as in the successful Dolphin House Family Law Court Support and Referral Service model
- legal aid
- interpretation services



- court premises that are fully accessible for disabled people

Another key and unmet need is the provision of Child Contact Centres to supervise contact with children. In our experience when supervised access is ordered there is usually no service available and women are left to provide supervision themselves or have to ask family and friends to supervise, which is dangerous and unsustainable.

While a Child Contact Centre does not need to be physically located within the court, it is necessary that the Family Justice Reform project also plans for a state resourced network of supervised Child Contact Centres that covers the country, so as to provide realistic options to the court when it assesses that the perpetrator should not be unsupervised with the children. Staff in these Centres need training in relation to domestic violence, including coercive control, and its impact on children.

Mediation in Family Justice

Questions

1. The desirability of using mediation to resolve family law issues
2. Maximising Family Court users' understanding of the role mediation can have in settling family disputes
3. Interdisciplinary training in mediation for family justice practitioners
4. Should mediation be a requisite to initiating or progressing family law proceedings with the court only being required in irresolvable cases or as the last step?



Women's Aid recognises that mediation and other Alternative Dispute Resolution (ADR) methods can provide effective and positive options to parties in Family Law disputes where there is **no** domestic abuse. However, mediation and ADR are based on parties being willing and able to engage in a spirit of cooperation to solve disputes. It is difficult to see how this spirit can be reconciled with forcing unwilling parties into mediation.

When there is domestic abuse, Women's Aid strongly believes that mediation is not appropriate, as it could put women at risk during the **process** of mediation and it could lead to unsafe and unfair **outcomes** for themselves and their children. This applies not only to proceedings under the Domestic Violence Act 2018, but also to **custody, access, maintenance, guardianship, judicial separation, and divorce proceedings**.

Mediation is predicated on the parties having an equal relationship and being able and willing to cooperate with each other. In an abusive relationship there is no equality. The abuser has no respect for the abused party and the abused party is often traumatised and fearful. It is extremely unlikely that a perpetrator of violence would cooperate with his victim in an honest and open way, or that this process would be able to reverse what may have been years of dominance and control.

It is therefore unrealistic to think that mediation would result in an appropriate and safe outcome for abused women and children. On the contrary, our experience is that women may not be able to freely articulate their fears and concerns in the presence of the abuser and end up agreeing to disadvantageous and dangerous arrangements.

For many women, leaving a violent relationship, separation is a particularly fraught time, with **increased risk** of intimidation and violence by the abuser. Participation in mediation



can put women in danger of further abuse and harassment through contact with the abuser on arrival, during the mediation session and on departure.

In recognition of these risks, **Article 48 of the Istanbul Convention** prohibits the mandatory use of mediation or other ADR methods in criminal or civil cases, including family law, where there is domestic violence or other forms of violence against women covered by the Convention. As a solution, sometimes compulsory mediation with an 'opt out' for domestic abuse is proposed. However, if mediation is effectively made compulsory by making it a requisite to initiating or progressing family law proceedings, it could be very difficult for victims of domestic violence to avoid it.

Exceptions to compulsory mediation for victims of abuse often do not work, as domestic abuse may be difficult to prove. In our experience, it is already difficult for women who are separating from an abuser to refuse mediation if they cannot "prove" the abuse by producing an order under the Domestic Violence Act 2018. Many women do not report domestic violence to the Garda or apply for a domestic violence order prior to separation. If they refuse mediation in the absence of such "evidence", this is held against them as they are deemed uncooperative or difficult. Women therefore may feel obliged to participate in mediation when it is not safe for them.

Recently, we have heard reports of women inappropriately pressured into mediation as a way to lessen the burden on the courts during the Covid-19 lockdown. It is essential that mediation remains **voluntary** for everybody and **genuinely so**. There should be no pressure to participate in mediation and there should be no penalty nor negative inference in family law proceedings for refusing to participate in mediation.



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. While a range of options may provide better and more tailored solutions, engagement in any ADR should always remain voluntary.

Recommendations

8. Women's Aid recommends that mediation should NOT be a requisite to initiating or progressing family law proceedings.
9. Promotion of mediation in family law proceedings needs to be explicit about it being inappropriate and unsafe for victims of domestic abuse.
10. Mediators should always be trained in identifying domestic violence, including coercive control, and referring appropriately.



Reimagining the Structure of Civil Legal Aid in Family Justice

Questions

1. Should a greater focus of the system of civil legal aid be on the promotion and use of non-court based solutions to family issues where these are possible?
2. In addition to mediation, is there scope within a civil legal aid system for utilising other ADR mechanisms including but not exclusively arbitration and collaborative law as a means of achieving family justice?
3. Legal aid in family justice - more than legal advice and representation!

Legal aid is crucial to providing legal representation in the Family Court to women escaping domestic violence, including in proceedings for domestic violence orders, separation/divorce and children matters. Many women have suffered financial abuse as part of their overall experience of domestic violence and may not be able to pay for legal advice and representation otherwise. It is therefore vital that legal aid is urgently and adequately resourced to provide legal representation in all relevant proceedings.

Women's Aid direct services report that access to legal aid is often problematic for women involved in separation/divorce proceedings or contesting access, custody and maintenance against an abusive partner.

The following issues remain unresolved:



- The income threshold is too low and has not increased in years. The disposable income threshold of €18,000, means that women are often denied legal aid, but cannot afford to pay for private legal representation. This restricts their access to justice in the family courts. We recently had cases at Women's Aid for example, where women on a Disability Pension were denied legal aid because their income exceeded the threshold.
- While the €130 fee for women applying for domestic violence orders was waived, this fee remains for representation for access, custody and maintenance hearings. Many women escaping domestic violence simply cannot afford this fee.
- If the abuser also has no representation, the woman may end up being cross-examined by her abuser in court in certain circumstances. This gives him plenty opportunity to continue abusing her.
- Women who are applying for civil legal aid for representation for judicial separations or divorces are currently facing waiting lists of up to a year. As a result, they may embark on these critical proceedings without legal representation.
- Women who are being financially abused may not have full details of all the household finances including assets and properties being held in their name. The requirement to submit all this information as part of the legal aid assessment hampers women's access to legal aid for separation and divorce proceedings.
- Women who have separated from an abusive partner may have to justifiably breach access or custody orders so as to keep themselves and/or their children safe. They need swift access to legal representation to defend their case, however Legal Aid is not granted to women **defending** a breach of an access/custody order as it is deemed a criminal matter. This frequently leaves women with no representation at all. This needs to be rectified to ensure the possibility of having legal aid provided in a **simple, swift and accessible manner**.



Recommendations

11. Remove the legal aid fee for child-related proceedings (such as access, custody and maintenance) involving domestic abuse.
12. Increase income the threshold for legal aid.
13. Resource legal aid properly to reduce waiting times.
14. Ban cross-examination in the Family Law Court by abusers in any family law matters.
15. Ensure swift and accessible recourse to legal aid certificates for women defending breaches of access orders to keep themselves and their children safe.

The Family Law Courts

Questions

- What issues should always be prioritised for hearing?
- What are the professional supports both privately funded, and in the case of eligible persons publicly funded, that most benefit the participants in the process or the court in dealing with family cases (examples include psychologists, social workers, family support services, anger management training etc.)?

Priority

Ex-parte domestic violence orders applications should clearly be first priority as they deal with emergency situations. Other urgent family law applications may be for example ex-parte orders to prevent a child being taken abroad. These ex-parte family law applications



should also have priority and if necessary should be heard by a Generalist District Court (when a Family Law Court is not available).

In Women's Aid's experience, family law cases where domestic violence or child abuse are alleged are often highly conflictual and can become very prolonged, as the perpetrator can abuse the court process with repeat adjournments and delays. As noted above, in many cases, custody and access orders are made which do not take into account the risk to children and their mothers of continuing contact with an abusive father. This is especially problematic in relation to **interim orders**, which are often made before any risk assessment or child specialist report to the court can be made.

It takes months or even years for orders to be finalised, particularly if reports are sought. In the meantime, children and their mothers may be at risk of continuing abuse if the interim orders disregard the impact of domestic violence on the child and the non-abusive parent, with children forced to see the perpetrator when it is not safe for them or they do not want to go. Moreover, the lack of final orders in relation to children, maintenance and property division prevents a woman leaving an abusive partner from moving on and rebuilding her life.

Recommendations

16. Ex-parte applications for orders under the Domestic Violence Act 2018 and some other urgent ex-parte Family Law applications should be first priority
17. Custody and access cases where domestic violence or child abuse are alleged should be prioritised in the Family Law Court.
18. In interim child orders proceedings where domestic violence is alleged or a domestic violence order is present:



- A. the case should be fast-tracked
- B. the order should be stayed until the allegations of domestic violence are solved/until the court is in a position to give full consideration to any risk the perpetrator of the violence may pose to the child, including emotional harm from exposure to domestic violence.

Screening and Support

It is vital that domestic violence cases are identified early and accurately in the proceedings so they can be prioritised. Where there is an order under the Domestic Violence Act 2018 or where there are relevant criminal proceedings these cases can and should be easily identified. However, a screening process is needed for the many cases where there are no orders or criminal charges. As mentioned above, a scheme to provide Family Law Courts with specialist domestic violence advocates should be established, to provide support, safety-planning, risk-assessment and referrals to long-term support as needed.

Recommendations

- 19. The Family Law Court should develop a screening tool to identify domestic violence and child abuse cases as early as possible and then fast-track and case manage them.
- 20. The Family Law Court in collaboration with specialist domestic violence services should devise, fund and implement a scheme to provide for domestic violence advocates in the Family Law Court.

Case Management

For women in court in relation to child orders (custody, access, maintenance, guardianship) where there is domestic violence/child abuse, it is vital that risk-assessment



and management is put in place as fast as possible, with the twin aims of ensuring a safe and fair **process** as well as safe and achievable **outcomes**. Once such cases are identified, there should be a risk assessment and management process, carried out by trained specialists, focusing on the safety of children and the non-abusive parent.

The risk assessment and management process should include the following elements:

- ensuring the safety of the non-abusive parent on the court premises by putting in place relevant measures
- redressing the power imbalance between the parties during proceedings by ensuring accessible legal representation and advice and exemption from mediation requirements
- addressing and preventing abuse of process by the perpetrator
- ensuring that the Family Law Court has all relevant information regarding other legal proceedings that may be in-train in relation to the family in both the Family and the Criminal Justice Systems (including domestic violence orders and charges as well as convictions in relation to criminal offences against the child and the non-abusive partner)
- assessing whether interim arrangements pose a risk to the child or the protective parent
- providing appropriate referrals to long-term support as needed

Child Safety and Welfare Assessment

Women's Aid strongly believes that in all guardianship, access and custody cases where domestic violence is present, the court should be provided, in a reasonable time-frame, with an expert assessment on the safety and welfare of the child, the risk the abuser may



pose in any arrangement that is being considered (including emotional abuse due to witnessing domestic violence) and the child's views.

In our research and day-to-day work, we note that women have reported to us that many S47 and S32 assessors do not presently have a good understanding of domestic violence and its impact on children and/or do not have the time and resources to properly interview women and children. The reform of the Family Law Court should include a review to ascertain whether the use of S47 and S32 reports is the best and most efficient way to assess and meet the best interests of the child.

In any case, regardless of the model adopted, it is essential that child assessors are trained to a high level and adequately resourced. They should also be regulated, so that it is clear their role is impartial and there should be no previous connection or partiality to either of the parties. Where reports include recommendations, there should be a mechanism to make sure that they are implemented. The cost of these reports should be covered by the court.

Recommendations

21. The reform of the Family Law Court should include a review of the efficacy of the system of the use of S47 and S32 reports to meet the best interests of the child.
22. The Family Law Court should have sufficient numbers of trained and regulated child assessors who are trained in the dynamics of domestic abuse and the impact on children of being directly targeted or exposed to domestic violence. They should also be trained on how to ascertain the views of the child and to provide free reports for cases where domestic violence or child abuse are present.



Anger Management Training

Women's Aid is concerned that 'anger management training' is mentioned as one of the suggested professional supports that the Family Law Court could provide. It has been long established that anger and "loss of control" are **not** a root cause of domestic violence. Domestic violence is based on one partner exercising power and control over the other using a variety of physical and non-physical abusive tactics. It is intentional and often carefully planned. This is reflected in the criminalisation of coercive control.

Anger management training is not a valid response to domestic abuse because it does not address the root cause of abusive behavior. Anger management training for perpetrators of domestic violence does not increase the safety of victims/survivors and it should not become a way for perpetrators of domestic abuse to avoid accountability.

Voice of the Child

Questions

1. How best to incorporate the voice of the child?
2. How can the proposed new system of family justice be made more child-friendly?
3. How can we keep children informed in the Family Law Court system?

Since the enacting of the Children and Family Relations Act 2015, the voice of the child has been heard more often in relevant proceedings such as custody and access proceedings. However, in our experience, the voice of the child is not always properly heard or considered. Children may not be consulted at all, for example due to their age, or if consulted their expressed wishes are not taken into account, especially when they state that they do not want to have access visits with an abusive father.



A recent UK report found a pattern of 'selective listening' whereby CAFCASS and courts react positively when children express a wish to spend time with a parent, but treat those who do not as problematic and obstructive, even when they expressed fear of their parent due to violence or abuse¹¹. This was particularly the case with younger children

In Women's Aid's experience, meaningful consideration of the voice of the child in custody and access proceedings where there is domestic abuse is hampered by the following issues:

- judges may be unwilling or untrained in hearing children directly
- current facilities do not provide for a positive experience for children attending court where they can talk to the judge in an informal, safe and welcoming setting
- when expert reports are ordered under S32, the courts rely on a limited number of assessors, who do not always have an adequate understanding of domestic violence and its impact on children, and who do not always actually talk and listen to the child
- a pro-contact culture that prioritises access over safety and excludes the voice of the child

The difficulties in ensuring that children are heard are shared by other jurisdictions. An innovative project in Scotland called Power Up/Power down, part of a bigger EU research project on Improving Justice in Child Contact (IJCC),¹² has collected the opinions of children and young people who have suffered domestic abuse on how they would like to be heard in custody and access cases.¹³

¹¹ Ministry of Justice, 2020, Assessing Risk of Harm to Children and Parents in Private Law Children Cases Final Report, page 72

¹² <https://www.ed.ac.uk/education/rke/centres-groups/childhood-and-youth-studies-research-group/research/ijcc/project-outputs>

¹³ See <https://womensaid.scot/project/power-up-power-down/>



The children and young people involved felt that most children were able to express their views, and that there should be a variety of options to have their voice heard, including for example in person, or through technology such as apps. Children should know who their views are being shared with and their right to privacy should be protected. The assessors should be highly trained both on domestic abuse and in communicating with children.

The language of any forms or hearing where the child is involved needs to be appropriate to their age and understanding. Crucially, a support person for the child needs to be available to support the child, prepare them for assessment and explain what is going on. Importantly, orders need to be monitored and reviewed, especially when they do not work for the children.

The Power Up/Power Down project in Scotland not only offers a number of suggestions on hearing children voices in Family law, but is in itself a promising model for consulting with children and young people in processes that involve them¹⁴. Consideration should be given to replicate this consultative process with children and young people in Ireland as part of the Family Law Reform project.

Recommendations

23. Provide judges with training on hearing the voice of the child.
24. The child should be able to express their views in a manner of their choosing and appropriate facilities should be provided for this within the court.

See also Young Expert Group (YELLO!) Response to Call for Views on the Children (Scotland) Bill available here <https://womensaid.scot/wp-content/uploads/2019/12/Yello-Response-to-Children-Scotland-Bill-call-for-views.pdf> and

¹⁴ See excellent videos about these project here: <https://womensaid.scot/project/power-up-power-down/>



25. Establish a scheme of regulated and trained experts to provide assessment on the safety and welfare of the child in custody and access cases where there is domestic violence or child abuse. The experts should have in-depth training on domestic abuse and its impact on children. The cost of these reports should be paid by the courts.
26. Children should be linked with specialist child advocates to assist them in relation to the child's involvement in relevant proceedings.
27. A consultation should be held with young children and young people who have experienced domestic abuse on how they would like the Family Law Court to hear their voices and more generally on custody and access proceedings in the context of domestic violence.

Interaction of the Family Law Court and the Criminal Law Court

As mentioned above, Women's Aid's 2019 consultation with women involved in Criminal Law Court proceedings against an abusive partner found that the same women were often also involved in proceedings in the Family Law Court, including applications for domestic violence orders and crucially, access, custody and maintenance. Some families are also involved with child protection.

The courts and matters of child protection seemed to proceed in their respective matters without linkages that would allow a better understanding of the abuse. They are currently not working together to increase the safety of women and children who have been victims of criminal offences by their partner/father.

In fact, at times the lack of a coordinated focus on safety between the Family and Criminal Courts had negative effects on the women and children. For example, in some cases, the perpetrator managed to use proceedings in one court to gain an advantage in the other, or in other cases, the length of criminal proceedings meant that access was allowed for their



duration, even when the perpetrator was charged with severe offences against the mother as access would not be changed without a conviction.

Recommendation

28. Linkages between the Family Law Court, the Criminal Law Court and child protection needs to be developed with the aim of identifying ways for them to collaborate to maximise the safety of children and the protective parent.

Training

Women's Aid believe that the current Family Law Reform project is a great opportunity to improve both the process and the outcomes for families that are separating in the context of domestic and child abuse. Training of all professionals, including the judiciary, solicitors, mediators, child assessors and court personnel is key for this reform to make a difference. Such training needs to include the dynamics of domestic violence, coercive control, post-separation abuse, risk-assessment and how children experience domestic abuse. Training should be co-delivered by specialist organisations Women's Aid.

In Camera Rule

In Women's Aid's experience, the in camera rule gives rise to great uncertainty for women about what they can say to whom in relation to family law proceedings. Moreover, it has had a chilling effect on research in the area of family law. While we support anonymity for Family Law Court users, there is a need for greater clarity in relation to what can be discussed and with whom as well as a need for researchers to access relevant information.

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