

15.07.21

# Submission to the Judicial Planning Working Group



Women's  Aid

## Introduction

Women's Aid is a leading national organisation that has been working in Ireland to stop domestic violence and abuse 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 experiencing domestic violence. More information on Women's Aid is provided in Appendix 1.

Women's Aid is pleased to respond to the Judicial Planning Working Group consultation call. Over the years, Women's Aid has supported many thousands of women experiencing domestic violence and abuse<sup>1</sup> We have noted the many critical issues and gaps in the response of both the family and criminal justice system to victims/survivors of domestic violence, including coercive control, rape and sexual assault, and stalking by current and former-partners.

As part of our Direct Services, Women's Aid supports women attending court in relation to:

- applications for orders under the Domestic Violence Act 2018
- matters related to children (custody, access, guardianship and maintenance) in the context of domestic violence and abuse
- criminal matters, where a range of offences have been perpetrated against the woman (and at times the children) in the context of an abusive relationship -these offences can be severe and are often repeated

In all these situations, women report to us that there are huge issues with both process and outcomes, as outlined in previous submissions and reports<sup>2</sup>

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<sup>1</sup> 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 behaviours perpetrated by current or former intimate partners (including emotional, physical, sexual and economic abuse – all of which involve coercive control).

<sup>2</sup> For the most recent information on issues in the Family Law Court, see [the Women's Aid Annual Impact Report 2020](#) and Women's Aid [submission to the Family Justice Oversight Group 2021](#) for information on

The following observations and recommendations are based on our day-to-day work with women as well as on consultations Women's Aid carried out with women in 2018 on their experiences with the criminal justice system<sup>3</sup>.

We will focus below on the issues and recommendations of relevance to the **Terms of Reference 1, 3, 4, 7 and 8.**

**1. To consider the number of and type of judges required to ensure the efficient administration of justice over the next five years in the first instance, but also with a view to the longer term.**

While we are unable to suggest a specific number for judges for either the Family or the Criminal Courts, we know that at the moment the number is not sufficient in either. In particular, in the Family Law Courts, both in Dolphin House and across the country, waiting times for a hearing are very long, so that it is not possible to have matters heard and finalised within a reasonable time frame. We are aware that the current waiting time between ex-parte application and full hearing is six months or more.

Moreover, Family Court lists are exceedingly long. Very long lists mean that many cases are adjourned because there is not enough time to hear them, and those that are heard are often not afforded enough time. When a woman seeks a safety or barring order, it is important that the matter is heard and adjudicated as soon as possible. Delays may put the woman, and often her

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the criminal justice system and domestic abuse see Women's Aid [submission to the Criminal Justice Sectoral Strategy, August 2020](#) and [Women's Aid, Unheard and Uncounted - Women, Domestic Abuse and the Irish Criminal Justice System Full Report](#)

<sup>3</sup> Women's Aid, Unheard and Uncounted: Women, Domestic Abuse and the Irish Criminal Justice System, 2019. op cit.

children, at risk of further violence or of homelessness, should she be unable to stay in the home while waiting for her application to be heard.

Similarly, it is very important that matters to do with custody, access and maintenance within the context of domestic violence are heard and finalised speedily, so as to give women and children a sense of stability, avoid precarious financial situations. This is imperative in order for them to begin the process of building a violence-free life. In our experience, judges have very little time to make informed and considerate decisions that have huge impacts on the lives of women and children.

The Covid-19 emergency has compounded the aforementioned issues (see point 4). Sufficient judges need to be appointed to reduce waiting times and limit the list to a reasonable number. Judges should be provided with specific training as outlined in point 8.

Finally, S24 of the Domestic Violence Act 2018 provides for Special Sitting of the District Court, by which a Garda not below the rank of Sergeant can request the court service to arrange a special sitting of the District Court for the purpose of applying for an order out-of-hours. Judicial availability out of hours for this to happen in practice should also be part of the overall considerations on the number of judges needed.

#### **Recommendations**

- A sufficient number of judges need to be appointed to the Family Law Court so that they can hear and finalise cases in a reasonable timeframe and are able to dedicated adequate time and consideration to each.
- Availability of judges for out-of-hours' special sittings of the Family Court, as per S24 of the Domestic Violence Act 2018 needs to be included.

**3. To consider, having regard to existing systems, the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice.**

Women's Aid believe that better case management of cases where there is domestic violence in the Family Court and the Criminal Court would improve efficiency within the court and increase access to justice and satisfaction for service users.

For a victim of domestic violence, a number of proceedings may be in progress concurrently in both the Family Law Court and the Criminal Law Court. For example, she may be applying for an order under the Domestic Violence Act 2018 and applying for maintenance while also being a respondent in an access case in the Family Law Courts. At the same time, she may be a witness in the Criminal Law Courts in relation to one or more trials for separate offences which are at different stages (bail/hearing/appeal). New offences may trigger further criminal actions and contested child-related matters, legal separations and divorces may go on for years. Abusers often create delays and adjournments on purpose as well as initiating vexatious applications.

Women have often reported to us how difficult it is to have a different judge for different hearings. For example, in the Family Law Courts there may be one judge for domestic violence order applications, another one for custody and access cases and in the Criminal Law Courts there may be a different judge for each breach or incident.

The women we support also report that the Family and Criminal Court are disconnected so that criminal behavior is not taken into account in the Family Law Court, even where there is a conviction. The abuser often plays proceedings in one court to gain advantages in the other. In these situations, it is extremely difficult for the woman to keep track of all the hearings in different courts with different judges. She must source the emotional, practical and logistical resources to

attend and she must repeat her story again and again to different practitioners in different settings.

**The judge, who hears only one or some of these hearings, will not have a complete and accurate picture of the situation or dynamic within the family and of the risk the perpetrator poses to the woman and any children.**

In the Family Law Court, this may result in unsafe custody and access arrangements that put women and children at risk of continuing or escalating abuse. The lack of affordable and adequate legal representation compounds these issues. Currently, there are not sufficient legal aid practitioners operating in the Family Law courts. As a result, women often feel that the person that should be their advocate, does not have a full understanding of their case and is literally running between one court and another when courts are in session. This is a big problem in Dolphin House. It not only leaves women feeling that they are represented by solicitors who are not fully briefed on their case, it can also contribute to delays as the solicitors do not have time to prepare fully.

In the Criminal Court the lack of a complete picture of the abuse perpetrated against the woman and children may result in sentences that do not reflect the severity of the crime. Moreover, the lack of an overall picture of a perpetrator's behaviours means that the woman's safety risk is not always understood and therefore mitigated. For example, bail may be granted when it is not safe or there may be no measures taken upon the offender's release to protect her and the children.

Women's Aid believes that judge continuity in family law cases could ameliorate this situation.

Where the family is also involved in parallel criminal proceedings, there should be links developed between the two courts, so that they work together to maximise the safety of women and children experiencing domestic violence.

Case management is also needed to

- ensure that all relevant information is provided to the court (including any information on domestic abuse and coercive control)
- minimise delays and adjournments
- link the woman with external support
- ensure affordable access to and availability of legal representation
- ensure that the safety needs of the victim/survivor on the court premises are met

The Dublin Rape Crisis Centre's submission on the Development of a Long Term Strategy for Court Services references a number of technological initiatives such as video conferencing that would help to stream-line the process and protect victim-witnesses from re-traumatisation in court<sup>4</sup>. These innovations could help victims/survivors of domestic violence and abuse as well as victims/survivors of sexual violence (including survivors of sexual violence by intimate partners).

#### Recommendations

- In so far as it is possible, there should be judge continuity in Family Law cases where there is domestic violence, with the same judge for all matters, including orders under the Domestic Violence Act 2018 and child-related proceedings.
- Explicit linkages should be established between the Family Law Court and the Criminal Law Court, so that they work together to maximise the safety of women and children subjected to domestic violence and abuse.
- The Criminal Procedure Act 2021 should be commenced without delay.

<sup>4</sup> See the DRCC submission [here](#).

**4. To evaluate the estimated impact of the Covid-19 pandemic on court caseloads in the short, medium, and long term and strategies for reducing waiting times to significantly improve on pre-Covid levels.**

Domestic violence and abuse has increased during the Covid-19 Pandemic, with both domestic violence services and An Garda Síochána showing a significant increase in demand.

For example

- Women's Aid has recorded a 43% increase in contacts with our Direct Services last year, when compared with 2019<sup>5</sup>.
- An Garda Síochána has recorded an 18% increase in calls for assistance in respect of domestic violence related issues between 2019 and 2020, as well as an increase of 14.7% in detection of breaches of orders under the Domestic Violence Act 2018 <sup>6</sup>.

The increase in domestic violence and the fact that the courts had to severely restrict access during the worst of the pandemic means that there is a considerable backlog of cases that will continue for the foreseeable future, both in the Family and in the Criminal Courts.

The Family Law Court response to the Covid-19 emergency has included innovative action to move 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.

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<sup>5</sup> [Women's Aid Annual Impact Report, 2020](#)

<sup>6</sup> See the stats from An Garda Síochána [here](#).



- Remote hearings for divorce and separation, including online legal representation, have taken place in some Circuits Courts.

Even before the pandemic, waiting times in the Family Law Court were too long. Moreover, 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 court premises can be unsafe as they risk coming into contact with the abuser in the waiting areas or while entering or exiting the court.

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. This progress 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 also 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 the courts remotely includes mechanisms to reach and include marginalised women.

### Recommendations

- Implement as a matter of urgency, the pilot providing for remote hearings of ex-parte applications for orders under the Domestic Violence Act 2018.
- 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.
- A pilot should be considered for remote hearings for custody and access cases where domestic violence is a feature of the relationship.
- 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.

## **7. To review the forthcoming and proposed policy and legislative reforms that may impact on the requirement for judge numbers.**

A number of initiatives that are already in train may impact on the number of judges required and need to be considered including:

### **Family Justice Reform**

The Family Court Bill importantly includes the establishment of dedicated Family Law Courts. We warmly welcome this development. In Women's Aid's opinion, these courts would benefit from the appointment of dedicated judges, ideally with full training (see point 8) and a Family Law background.

Women's Aid recommend that the Family Justice Reform include increasing and resourcing GAL and other professionals to provide support to judges in relation to hearing the voice of the child and assessing child risk and welfare. The number of judges required in the new Family Law Court

cannot be determined without reference to other expert supports that should be provided, including GAL and expert child reporters.

### **Development of a Victim Informed Criminal Justice System**

Women's Aid is encouraged by the response to the O'Malley report and the development of *Supporting a Victim's Journey: A plan to help victims and vulnerable witnesses in sexual violence cases*. We would like to see a similar victim-centred approach extended to domestic abuse victims/survivors.

The Criminal Justice Sectoral Strategy, which is being developed, is a great opportunity to ensure the Criminal Justice System is victim-centered and that all actors in criminal justice proceedings are fully aware of the dynamics surrounding domestic abuse and violence, and in particular coercive control. Specialised training should be provided to all criminal justice agencies, including the judiciary, as outlined in point 8.

Women's Aid has recommended that the Criminal Justice Sectoral Strategy identify domestic abuse as a key priority for the Criminal Justice System, and that the criminal justice sector is adequately resourced to address it<sup>7</sup>.

### **8.To make recommendations for developing judicial skills**

The need for training of all court actors, including judges, in domestic violence and coercive control has been apparent to Women's Aid for many decades.

### **The Family Law Court**

In our day-to-day experience supporting women accessing the Family Law Court for applications for orders under the Domestic Violence Act or for custody, access and maintenance orders we

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<sup>7</sup> For more information, see [Women's Aid submission to the Criminal Justice Sectoral Strategy 2020](#)

have noted a great inconsistency in judges (and other Family Law Court professionals) understanding of domestic abuse, its impact on the victim/survivor and importantly its impact on children.

In custody and access proceedings we have noted an excessive focus on the abuser's rights, that trumps the child's and protective parent's rights to safety, even when there is evidence of serious violence - such as recent assaults against the mother. This can result in custody and access arrangements that put women and children at risk of further abuse. It also means that at times the abuser's tactics to prolong and delay proceedings, which are used as a way to continue abuse through the court process, are not recognised.

Moreover, notwithstanding the enactment of the Children and Family Relations Act 2015, it is our experience that the voice of the child is not always heard or properly considered in relevant proceedings, such as custody and access. This is due to a number of factors, including lack of training for the judiciary (and court appointed assessors) on hearing children directly.

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 such 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 population<sup>8</sup>.
- 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 parent<sup>9</sup> (emphasis added).

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<sup>8</sup> Minister of Justice, 2020, Assessing Risk of Harm to Children and Parents in Private Law Children Cases

<sup>9</sup> Australian Law Reform Commission, March 2019, Family Law for the Future — An Inquiry into the Family Law System Final report

- 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 conviction<sup>10</sup>.

Additionally, the Family Law Court also deals with applications for orders under the Domestic Violence Act 2018, the number of which has been continuously increasing in the last few years<sup>11</sup>. It is therefore essential that domestic abuse is seen as a **primary issue and a core area of work** for the Family Law Courts and that judges are adequately trained on the issue. Moreover, judges in the Family Law Court should also be provided with training on hearing the voice of the child.

### **The Criminal Court**

Unfortunately, we do not have data on the number of cases in the Criminal Law Court that are domestic violence related. We do know however, that a number of serious crimes are committed against women by their partner and ex-partners, including assault, threats to kill, rape, false imprisonment, sexual assault, trespassing, firearms offences, abduction of a child and attempted murder.

Moreover, domestic violence has a very high rate of repeat victimisation, and many women tell us that the crimes against them take many forms as well as being repeated many times.

Notwithstanding the huge number and range of crimes committed in abusive relationships, the Criminal Justice System is not designed with victims of domestic violence in mind, whereby crimes are committed repeatedly against the same victim who has significant emotional, family and financial ties with the perpetrator.

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<sup>10</sup> RCNI, [Submission to the Joint Oireachtas Committee on Justice and Equality](#), February 20th 2019

<sup>11</sup> [Courts Service Annual Report 2019](#), page 63-64

Women have told us that some judges in the Criminal Courts do not understand the nature of domestic violence as a **pattern** of behaviours to exercise control over the victim. In particular, sexual violence within intimate relationships is poorly understood. Many women felt unheard or that they were the ones on trial and that the court did not understand how scared they were of the perpetrator. This included being intimidated about court proceedings. In our Unheard and Uncounted research <sup>12</sup> the majority of the women felt that the final sentence did not reflect the severity of the abuse the women experienced.

For example, it takes repeated breaches of an order for a perpetrator to be charged and sent to trial. In our experience, even with repeated, serious breaches, the sentence is very lenient, often a suspended sentence or a very short custodial sentence, which is rarely served in full. Most participants in the Women's Aid consultation felt that the Criminal Justice System did not provide adequate justice nor increase their feelings of safety.

Women told us they felt they had to prove themselves all the time and felt judged by how they behaved in court (too emotional, not emotional enough etc.). **Irrespective of whether there was a conviction or not, most of the women interviewed by Women's Aid for the Unheard and Uncounted report said that they wouldn't, or were unsure if they would, go through the process again.**

This dissatisfaction with the Criminal Court was due to many factors, most relevant here is the lack of awareness by some judges of the dynamics and impacts of domestic abuse. Women's Aid believe that judges in the Criminal Court should be provided with training on domestic abuse that is centered around the concept of coercive control, and on how domestic abuse and fear of the perpetrator impact on the victim's ability to give evidence in court.

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<sup>12</sup> [Unheard and Uncounted - Women, Domestic Abuse and the Irish Criminal Justice System Full Report](#), op. cit.

We note that the Judicial Council anticipate that training for the judiciary on sexual violence will be completed in 2021<sup>13</sup> and we recommend that this training includes the specific needs and experiences of victims of sexual violence by a partner or ex-partner.

### Recommendations

- Family court judges should be provided with extensive training on domestic abuse and coercive control, including the dynamics and impact of domestic abuse post-separation abuse, how children experience domestic abuse and its impact on the ability of victims to confidently participate in legal proceedings. This training should be mandatory and a requisite for appointment to the Family Law Court.
- Additionally, training on hearing the voice of the child and different methods to do so according to the child's age, capabilities and wishes should be provided to family court judges.
- Criminal court judges should similarly be provided with appropriate training on domestic abuse and coercive control. Training on sexual violence should include the specific experiences and needs of women who are victims of sexual violence in intimate relationships. Training should include the impact of the abuse on woman being able to give evidence in court.

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<sup>13</sup> Department of Justice and Equality, Supporting a Victim's Journey – A plan to help victims and vulnerable witnesses in sexual violence cases, page 9

## **24hr National Freephone Helpline 1800 341 900**

Our 24hr National Freephone Helpline provides a listening ear, emotional support and practical information to women subjected to violence and abuse from their current or former partners. It is the only free, national, domestic violence and abuse helpline with specialised trained Support Workers, fully accredited and quality assured by The Helplines Partnership.

— **The Language Line – Women’s Aid Telephone Interpretation Service** The 24hr National Freephone Helpline has a Telephone Interpretation Service facility covering 170 languages for callers needing support in their own language. Interpreters are available on the Language Line from 8am–8pm, 7 days a week.

### **— Instant Messaging Support Service (IMSS)**

The Women’s Aid IMSS is a free, confidential and secure service where women can seek support and advice from fully trained Helpline Support Workers through instant messaging. The service is open daily and can be accessed through [womensaid.ie](http://womensaid.ie) or [toointoyou.ie](http://toointoyou.ie). The service is more easily accessible to women who feel they are at risk of being overheard by their abuser.

### **— Text Service for Deaf and Hard of Hearing Women**

The Women’s Aid 24hr National Freephone Helpline offers support to deaf or hard of hearing women through our text service. The service is available on 087 959 7980 from 8am–8pm, 7 days a week. All of the services operated by the Helpline Team are a gateway into our Dublin based face-to-face and services and to all other local, independent domestic violence and abuse support services and refuges around the country

## **Face-to-Face Services in the Greater Dublin Area**

### **— One-to-One Support Service**

The Women’s Aid One-to-One Support Service provides in-depth information and support



to women who have been subjected to domestic violence and abuse throughout Dublin City and County. This ongoing face-to-face and phone support can include court, accompaniment, safety planning, advocacy and referral support to external organisations. Our advocacy and referral work includes accompaniment to the local Gardaí to make statements; assistance with legal aid applications; support with immigration status within the context of domestic violence and abuse; advocating to Housing Authorities for women who are no longer safe in their homes or support in accessing local refuges. Court accompaniment includes emotional support, both before, during and after the court proceedings, clarify legal terminology and explore further options. We support women with applications and hearings in the context of domestic violence orders as well as access, custody, maintenance, divorce and separation cases where domestic violence and abuse is present.

— **Domestic Abuse Information and Support (D.A.I.S.) - A Drop-In Service for Women in Dolphin House Family Law Court<sup>14</sup>**

Based in the Dolphin House Family Law Court in Dublin, the Domestic Abuse Information and Support Service (D.A.I.S.) is a free and confidential drop-in service for women who are subjected to domestic violence and abuse. The service is available Monday to Friday 9.30am–4.30pm and provides support and information on legal options, safety planning and links women in with domestic violence and abuse 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 a high-risk of ongoing violence, abuse and homicide from their ex-partners and ex-spouses. Women's Aid works with An Garda Síochána and local domestic violence services to deliver a coordinated, rapid response system for women and their families, which is generously supported by the Vodafone Foundation and the Department of Justice.

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<sup>14</sup> Formerly known as the Dolphin House Family Law Court Support and Referral Service.

#### — Women's Aid Law Clinic

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

### Working for Social Change

#### — Specialised Training

Women's Aid Training and Development Department has a proven track record of designing and delivering specialist domestic violence and abuse training to local and national organisations throughout Ireland. We support organisations in the statutory sector, the community and voluntary sector and corporate bodies to enhance and improve responses to women who are subjected to domestic violence and abuse. All Women's Aid training is informed and guided by our decades of experience of direct work supporting women and by models of best practice.

#### — Public Awareness and Campaigns

Women's Aid leads the way in raising awareness and providing information on domestic violence and abuse to victims and survivors, their families and friends, their communities and wider society. Our annual public awareness campaigns and communications activities are a vital way to highlight the prevalence, nature and impact of domestic violence and abuse, 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 victims and survivors to tell their stories in a safe way to create better awareness and promote change for women in similar situations.

#### — Influencing Government and Policy



Women's Aid provides solution-based recommendations on improving preventions, legal responses, policies and protections to support women and children subjected to domestic violence and abuse and we bring their concerns to a number of national and local fora. We make submissions and meet with Government ministers, policymakers and members of the Oireachtas to discuss a range of issues and collaborate with other agencies and organisations to bring about social and political change