



**A response to**

**Review of Civil & Family Justice: the  
Review Group's Draft Report on Family  
Justice**

**28 October 2016**

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Women's Aid Federation Northern Ireland welcomes the publication of the draft Report on Family Justice, and the opportunity to comment on behalf of our nine local Women's Aid groups.

## 1. Problem-solving Domestic Violence Courts

- Women's Aid welcomes the recommendation for the establishment of a problem-solving domestic violence court in Northern Ireland.
- For the vast majority of victims, abuse is a continuum, not a single event. It doesn't necessarily end the day someone flees their home, nor does its impact. Domestic violence will affect multiple aspects of victims' lives: their health, safety, the lives of their children. For these reasons, the breadth of victims' reliance on courts for justice and protection is similarly wide, encompassing criminal, civil and family justice.
- In the course of supporting women over the last 40 years, Women's Aid have borne witness to victims' frustrations with the justice system in Northern Ireland. Women continue to feel let down by lack of communication, lack of consistency between courts, misunderstanding of the nature of domestic violence within the justice system, excessive delays and adjournments, and lenient sentencing.
- We are encouraged that this report recommends introducing a problem-solving domestic violence court to Northern Ireland. However we feel that the recommendation could go further than limiting the scope of the court to criminal proceedings, with the potential for civil proceedings to be potentially integrated in the future. For example, an integrated domestic violence court model, assigning one judge to a family for criminal, civil and family issues relating to domestic violence, could overcome many of the problems victims currently experienced in the courts.
- Under the current system, a victim of domestic abuse may be recognised as a victim in a criminal or civil context, only to go down the hallway to a family court where the facts pertaining to her abuse are disregarded or minimised. Hester describes this as the Three Planets Theory<sup>1</sup>, where three types of law and three sets of priorities are misaligned, ultimately to the detriment of victims and their children. On the first planet, the criminal and civil sphere, domestic violence is a crime and action is taken to protect the victim from the perpetrator. On the second planet, the child protection planet, the welfare of the child is paramount. Therefore the victim is told to remove herself and the children from the perpetrator, or be punished for failure to protect. Thus the focus shifts from perpetrator to victim. On the third planet, the child contact planet, the focus is on the child having two

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<sup>1</sup> See Hester, The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence; <http://www.bristol.ac.uk/news/2009/6703.html>

parents. An abusive father may be nonetheless deemed a 'good enough' father. So the mother who has tried to protect the child from his violent behaviour by calling in the police and supporting his prosecution on the domestic violence planet, and by leaving him as instructed on the child protection planet, is now ordered to allow contact between her violent partner and children, leaving her confused and fearing yet again for the safety of her children.

- It is only by reconciling these contradictions, and operating a justice model where criminal, civil and family courts have a thorough and unified understanding of domestic violence and its relationship to child protection and child contact, that we can resolve the issues faced by domestic violence victims in our justice system.
- We would also urge that other features of the integrated model are included in Northern Ireland's domestic violence court. This could include:
  - independent support advocates for victims throughout all court engagement,
  - improved measures to hold perpetrators to account (such as better enforcement of penalties, strict sanctions for breach of non-mols, bail decisions that reflect an understanding of DV),
  - ongoing training in domestic violence for staff, and
  - improved efficiency in court proceedings and shorter timeframes and delays for cases.

## 2. Specialist training

- As the pilot in Derry has shown, commitment and close partnership between judiciary, agencies and experts in the field are crucial to underpin successful reform. Of equal importance is a nuanced understanding of the nature of domestic violence, and the unpicking of the many myths that pervade in popular thinking about domestic violence. Significant leadership has been shown by Judge McElholm in educating and informing the court and local agencies about domestic violence, its impact and the barriers to justice which many victims fail to overcome. Similar creativity and problem-solving is evident throughout the profession; examples of good practice such as District Judge Meehan's application of stringent bail conditions to domestic violence perpetrators, and view that instigating Article 8 Children Order proceedings to engage a victim in litigation can be construed as a breach of bail, are very encouraging. However anecdotal evidence persists of court hearings where stereotypical or victim-blaming attitudes continue to be espoused. Examples include cases where an abuser was acquitted because the judge did not believe the victim as she had resumed the relationship after a previous assault, and cases where victims are blamed for 'having drink taken'. This highlights inconsistency in understanding domestic violence across the Northern Ireland judiciary.

- To that end, training of professionals engaging with domestic violence cases is crucial. Good practice dictates that the delivery of a specialist domestic violence court should include expert training of judges and prosecutors on an ongoing basis. Women’s Aid believes that this training should come from experts in the field, who are best placed to deliver it.
- We are also of the view that such training should extend to all professionals working closely with domestic violence victims, such as social workers, Court Children’s Officers, solicitors and so forth. In our professional experience supporting women through the court process, we note that women frequently report issues with CCOs, including lack of understanding about domestic violence and lack of understanding or knowledge of their case and the relevance of domestic violence to it. Training, coupled with efforts to better align the three ‘planets’ with which domestic violence victims engage, would be very welcome.

### 3. Private Law Proceedings

- It is disappointing that this section does not consider separate reforms to private law proceedings where domestic violence is a factor in the case. We note that “anger management” is listed at 6.3. We would stress that anger management is not a substitute for a full domestic violence perpetrator programme, with all the safeguards for victims that these entail.
- Women’s Aid is also concerned that the presumption of contact in private law cases including domestic violence cases is resulting in the re-victimisation of both victims and their children through the courts. We frequently observe instances where perpetrators deliberately use contact as a means to perpetrate further abuse and gain access to victims. Women report not only having to comply with what they fear is unsafe contact, but having the responsibility to convince the child to see the other parent even if the child indicates that they are afraid.
- We do not believe that it is always in the best interests of the child to have contact with both parents, especially if one of those parents is abusive. The assumption that the father who abuses the mother but is still a “good enough dad” fundamentally misunderstands the nature of domestic abuse and how it negatively impacts upon entire households, including children.

*“Domestic violence involves a very serious and significant failure in parenting – failure to protect the child’s carer and failure to protect the child emotionally (and in some cases physically – which meets any definition of child abuse).”<sup>2</sup>*

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<sup>2</sup> Sturge, C. and Glaser, D., ‘Contact and Domestic Violence – The Experts’ Court Report’, 30 Family Law, 615-629 (2000), p. 624

- In our current reality, the presumption of contact can result in situations where children are forced to see an abusive parent even if they are afraid, and victims of domestic violence are treated as ‘hostile’ or ‘uncooperative’ if they are opposed to their abuser being granted contact with children, who may also have been deeply affected by abuse.
- Women’s Aid believes that a cultural shift within the family justice system is necessary to protect both adult and child victims of domestic abuse. It is incumbent upon the justice system to realign the understanding of an adult being a victim of abuse with the best interests of the child regarding contact with the abusive parent.
- A system that understands domestic violence should also be flexible enough to be able to more swiftly re-analyse a contact order if it transpires that a perpetrator’s behaviour is placing the victim or children in danger. Having a more agile system in this manner would be better able to act in the best interests of the child and address welfare concerns which arise after a contact order has been granted.

#### 4. Resolutions Outside Court

- Expert research has confirmed time and again that mediation or other forms of Alternative Dispute Resolution (ADR) are “unlikely to redress the unequal power balance between abuser and victim and may lead to unworkable agreements that place women and children in further danger.”<sup>3</sup> Poignantly, mediation has been described as “just another arena to be bullied in”<sup>4</sup> in research.
- Similar issues have been raised about other forms of alternative dispute resolution where participants must be in the same room, such as collaborative law, and regarding shuttle mediation where participants are in different rooms. In their response to the Access to Justice Review 2, the Bar Council that *“Shuttle mediation’ whereby the parties sit in separate rooms and mediator goes between both parties may not work in cases of domestic violence as the mediator will not have the time to uncover and rectify years of abuse and gain the victim’s trust. The system has let them down and it has let them down again by making them engage in mediation with their abuser.”*

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<sup>3</sup> Hester, Pearson & Radford, Family court welfare and voluntary sector mediation in relation to domestic violence, Social Policy Research 117, June 1997.

<sup>4</sup>[https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/pdfs/Mapping\\_Paths\\_to\\_Family\\_Justice\\_Briefing\\_Paper\\_23\\_06\\_14.pdf](https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/lawimages/familyregulationandsociety/pdfs/Mapping_Paths_to_Family_Justice_Briefing_Paper_23_06_14.pdf)

- Women’s Aid believes that there should be an exception to mediation in domestic violence cases, and we welcome that domestic violence has been identified as a contra indicator to mediation at 7.7.
- We have concerns about the language used at 7.7. The review states that “proven domestic abuse” would indicate unsuitability for mediation. We would question why domestic abuse is the only contra-indicator that necessitates the word “proven” to be affixed, and what standard of proof would be required. It is well known that domestic abuse and other forms of violence against women are under-reported. Many women are reluctant to go to the police, or even confide in their own families, about the abuse they are enduring. This can be the consequence of a number of factors: love, loyalty to the abuser, fear of not being believed, being isolated by the perpetrator from support networks, fear of having children removed if abuse is disclosed, fear of being attacked if abuse is disclosed, mistrust or suspicion of police and statutory agencies for whatever reason. A requirement to provide proof to a standard that is not in line with the reality of domestic violence could force victims of domestic violence into unsuitable mediation.
- If mediation is to be used on a wider basis in family law, there must be a robust system for ensuring that domestic violence victims are exempt, not just in theory but in practice. This requires effective screening out of abuse cases at pre-mediation stage.<sup>5</sup> That is not necessarily easily achieved - domestic violence practitioners in jurisdictions where mediation is established cite a number of ways in which domestic violence victims are being failed. These include lack of expertise among those screening to identify domestic violence; lack of understanding of judges, solicitors and other justice agents that mediation isn’t appropriate where domestic violence exists in a relationship; absence of other options where there is no legal aid available; failure to create an environment where a victim is comfortable enough to disclose abuse before mediation; and professional mediators being pre-disposed to ‘sell’ mediation over other forms of dispute resolution<sup>6</sup> at assessment stage. These pitfalls must be overcome to ensure that domestic violence victims are exempt from mediation in practice. There must also be clear guidelines that exempt victims from mediation even if the abuse was not physical, and even if there is no evidence from police or medical staff about that abuse.
- If the system is not robust, victims will be failed. The Mapping Paths to Family Justice report gives several pertinent real-life examples of how this can happen:

*Sara went to a solicitor for divorce and a DV injunction but was told an injunction was not possible because the abuse was not physical. Her solicitor sent her to mediation ‘to save costs’ but*

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<sup>5</sup> Hester et al 1997; Piper & Kaganas 1997

<sup>6</sup> Mapping Paths to Family Justice, p 5.

*told her to ask for separate rooms. At the intake session her ex-husband arrived first and insisted they be seen together; "I was so scared I just said yes".<sup>7</sup>*

*Tilda, whose partner had been violent and recently threatened her with a car jack, was referred to a solicitor by a domestic violence service. The solicitor then referred her to mediation, where she had a joint intake where she felt unable to disclose the violence.<sup>8</sup>*

*Iris had refused mediation due to physical violence during the relationship. At a review hearing at court, the judge ordered the couple to attend mediation to sort out their financial dispute.<sup>9</sup>*

- Under recommendation 3 at 7.44, we recommend that mediators should also have experience in domestic violence. We have supported women who report being forced into inappropriate domestic violence situations by mediators without the requisite understanding of the dynamics of domestic violence. In one such case in one case a perpetrator threatened violence during one of the sessions, yet the mediator persisted with mediation appointments. Such situations should be effectively guarded against to avoid placing victims in further abusive and dangerous situations.
- We welcome that victims of domestic violence are exempt from joint parenting programme referrals under recommendation 6.

## 5. Divorce and Ancillary Relief

- We welcome proposals to conduct more court business online, for example in cases of divorce.
- We would urge that the suggestion of the “contractualisation of marriage” at 1.23 requires further thought. Without safeguards for financial abuse and coercive control, a partner may find themselves in a situation where they are bound by a prenuptial agreement which waives their entitlement to an equitable financial settlement on divorce, and find themselves at the mercy of an abusive marriage with the alternative of destitution upon divorce.<sup>10</sup>
- There are also wider issues relating to financial abuse to consider. For example women who have kept the home and as such do not have pensions or financial savings to rely on when trying to leave abuse. Or disadvantaged rural women who cannot gain access to their

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<sup>7</sup> Case study cited in Mapping Paths to Family Justice from 2010

<sup>8</sup> Case study from 2012, Mapping Paths to Family Justice report

<sup>9</sup> Case study from 2010, Mapping Paths to Family Justice report

<sup>10</sup> See Thompson, Sharon, *Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice*, Bloombury 2015.

equitable share of assets as money is hidden or withheld, or is an unknown quantity due to local traditions of cash-in-hand payment.

- We welcome the proposal that courts could have power to address violent behaviour in course of divorce proceedings.

## 6. Secure Accommodation Orders

- For all the reasons set out in this section, neither video link nor having a young person travelling to court are desirable options. We suggest that a judge could be assigned to Lakewood. Use could be made of a deputy district judge to take the judge's regular court, thus providing continuity at Lakewood. This option would also provide a saving to the public purse as Guardians ad Litem, social workers and Lakewood staff would no longer have to travel.

## 7. Child Abduction

- Regarding Hague Convention cases where domestic violence is a factor, it is disappointing that no review of the adequacy of current Good Practice Guide has been recommended.

## 8. Online / Paperless Courts

- We welcome the proposals for online applications, appointment systems, and better use of available technology to foster a more efficient and user-friendly court culture. (1.13).
- At 14.38, we note that lay members do access files before court hearing and they can be voluminous – especially public law cases. Whilst not insurmountable, it needs to be borne in mind that not all lay members will have reliable internet access at home to peruse papers before hearings.
- We would welcome the extension of the idea of Virtual Reality Courts to include ex parte applications in the FPC and Domestic Proceedings Court. It would alleviate some stress and anxiety for victims of domestic violence if they did not have to travel to and wait at court for a short ex parte hearing at such a difficult time. (14.51)
- We agree that video and telephone conferencing could be an efficient alternative to in person trips to court. This could also serve to reduce the number of circumstances in which victims of domestic abuse are forced to be in the same courtroom as their abuser, or be in the same building with all the safety concerns that attend this. (14.53)

## 9. Voice of the Child & Vulnerable Adults

- We support the working group recommendations that children and parties to family proceedings should be entitled to assistance to help them improve the quality of their evidence and participate fully in proceedings, including on grounds of fear or distress. Victims of domestic violence are vulnerable due to the abuse they suffer, and are vulnerable to intimidation by their abuser in the court setting. While they may not be “vulnerable adults” in a permanent sense, they have a transitory vulnerability that is shaped by the abuse they experience. Just as special measures are necessary in the criminal court setting to assist vulnerable victims, they would also be valuable in the family context. (16.34)

## 10. Open Justice

- Although family and domestic court proceedings are held in private and the privacy of participants is protected, consideration should be given to safeguard better children’s anonymity in related criminal proceedings. One concerning example involved an application for bail on behalf of a perpetrator of domestic violence which was reported in the local press. The perpetrator’s name and address was reported and reference was made to his partner and their children residing in a Women’s Aid refuge, causing embarrassment and distress to the eldest son, who did not wish his friends to know that he had moved with his mother and siblings to safe accommodation. The family name was a particularly distinctive so he was easily identifiable. (18.39)

## 11. Personal Litigants

- We urge that further steps are taken to curb vexatious personal litigants, such as domestic violence perpetrators using the courts as an opportunity to have access to, and abuse, their victim. The justice system should take an active role in protecting vulnerable victims, such as women who have experienced abuse and violence, from personal litigants who use family and domestic proceedings litigation to further abuse.

## 12. Further Comments

- Transport: Fewer, centralised family & civil justice centres may work for better court administration. However the proposal brings with it the problem of access to justice in the most literal sense. Women from rural areas whom we support already have to overcome numerous challenges to get to their designated court. These challenges include lack of public

transport to enable them to reach court by the designated time, and competing needs such as childcare and dropping children to and from school, which would need to be overcome. (Chapter 5)

- When considering appropriate court buildings, it is also important to consider how well the venue lends itself to safety of victims, for example through the provision of separate entrances and waiting areas. (5.9-5.11)
- Women's Aid supports measures to reduce the amount of time that victims should have to wait in court buildings for their case to be heard. Many of the women we support are mothers with child caring responsibilities, many of them understandably without co-parenting support if that other parent is their abuser. It is difficult for them to drop children to school and arrange for childcare in the event that they will be at court all day, particularly if they are reliant on public transport or live in a rural area. Longer waiting times also equate to a longer opportunity for a perpetrator to intimidate a victim in the court building. This causes significant stress and anxiety to domestic violence victims. We recommend more efficient scheduling of cases to give attendees a more accurate idea of when their case will be heard.

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