



## **Response to Domestic Abuse Act statutory guidance consultation**

**September 2021**

### **About Rights of Women**

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women’s vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women’s understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

### **Rights of Women’s consultation response**

Before answering the specific questions asked in the consultation we would point out that as a women’s legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

**1. Are you responding as an individual or as an individual on behalf of, or as part of, an organisation?**

An individual on behalf of an organisation

**2. If you are responding on behalf of or as part of an organisation, what is the type of organisation?**

Services for forms of violence against women and girls including any specialist domestic abuse services (this will include services serving men and boys)

**3. What is the name of the organisation?**

Rights of Women

**4. From the list below, where are you or your organisation based?**

National (England and Wales)

**5. Do you have any comments on Chapter 1 ('Objectives') in terms of content or clarity?**

The introduction states that the measures in the 2021 Act seek to:

*“transform the justice response - including by helping victims to give their best evidence in the criminal courts through the use of video evidence, screens and other special measures, and ensuring that victims of abuse do not suffer further trauma in family court proceedings by being cross-examined by their abuser...”*

These measures have been available and implemented in the criminal courts for a long time and, whilst it is helpful to give them a statutory footing, it is inaccurate to describe these provisions as transformative within the context of the Domestic Abuse Act 2021 (the 2021 Act).

**6. Do you have any comments on Chapter 2 ('Understanding Domestic Abuse') in terms of content or clarity?**

**Paragraph 4:** *“Women are disproportionately the victims of domestic abuse.”*

We welcome this inclusion however for full clarity the sentence should also include that the perpetrators are disproportionately men. The statistics cited after should include the available statistics the Government has on perpetrators of domestic abuse. This is a significant omission and without it the guidance fails to provide an informed picture and falls short of its objectives as stated in Chapter 1.

**Paragraph 4:** *“Domestic abuse perpetrated on men by women and on victims in LGBT relationships is often due to the need of the perpetrator to exert power and control over their victim.”*

We assume this should read “on women by men” rather than “on men by women” and requires correction. Furthermore, we believe that citing the examples of ‘on men by women’ and on ‘victims in LGBT relationships’ in this sentence is unnecessary and detracts from the main message which is about the importance of understanding the power and control exerted by a perpetrator of abuse.

**Paragraph 17:** It is common for women to be abused, harassed, subject to coercive control behaviours by the same perpetrator years after the relationship has ended, particularly (but not exclusively) when they have children together. We believe it would be helpful if this was made explicit in this paragraph.

**Paragraph 20:** The references to teenagers in this paragraph and to children under 16 is confusing. In particular, this sentence: *“These can include a wide range of incidents or patterns of incidents of controlling or coercive behaviour, violence or abuse between teenagers (and may involve children younger than 13) who are, or have been, in an intimate relationship.”* This suggests that children under 13 may have been in an ‘intimate relationship’. We are not denying that sexual activity goes on between children as young as this but to classify it as an ‘intimate relationship’ is not appropriate. This paragraph needs to be re-worded to ensure that is not the suggestion being made. It may be helpful to make reference to the various policies and child abuse frameworks that would apply in cases for children under 16 instead of simply saying it is classed as child abuse.

**Paragraph 30:** It would be helpful for the guidance to set out the definition of ‘relative’ in s63(1) of the Family Law Act 1996 for clarity and ease of reference. A common area of confusion is the extent to which people who are related to the victim through their spouse, civil partner, or intimate partner (i.e. ‘in-laws’) are included in the definition and some guidance on this would be helpful.

**Paragraph 57: inclusion of alienating behaviours in the list of examples of coercive control**

*Alienating behaviours, including invidious drip feeding of negative views to a child by one parent about the other parent, or any attempt by one parent to frustrate or limit the child’s contact with the other parent, other than for reasons based on concern about the risk to that child;*

*Footnote: Whilst there is no single definition of alienating behaviours (sometimes referred to as ‘parental alienation’), the Children and Family Courts Advisory and Support Service (Cafcass) defines parental alienation as when a child’s resistance or hostility towards one parent is not justified and is the result of psychological manipulation by the other parent.*

- The inclusion of ‘alienating behaviours’ is an endorsement of the controversial theory of ‘parental alienation’ (PA).
- PA is a disputed theory with no agreed definition, assessment framework or robust research to enable an appropriate and consistent approach to be taken by professionals working with families.

- The guidance includes behaviours that victims of abuse would pursue in order to protect themselves and their children, leaving perpetrators of abuse able to manipulate the guidance to suggest the victim of abuse is, in fact, the abusive party.
- The use of PA theory in the family court can oversimplify and obscure complex dynamics and lead to children's voices not being heard, contrary to the Government's stated intentions in relation to the implementation of recommendations from the Harm Panel Report.

During the passage of the Domestic Abuse Act through the House of Lords, amendments requesting the inclusion of 'parental alienation' from Philip Davies MP<sup>1</sup> and Baroness Meyer<sup>2</sup> were replaced with a call for 'alienating behaviours' to be included instead after domestic abuse support services raised concerns about the inclusion of PA. However, it is very clear not only from the history of the debates but also within the guidance at present that what is being included in the definition of coercive control is 'parental alienation'. The inclusion of 'alienating behaviours' within the guidance endorses the view that parental alienation is a form of domestic abuse. This is a view that is not only opposed by all of the major women's organisations that work with victims of domestic abuse but it is also not a commonly held view amongst proponents of the theory, many of whom distinguish parental alienation from domestic abuse.

PA is a disputed theory with no agreed definition or assessment framework. CAF/CASS' acceptance of the theory<sup>3</sup> is questionable in its origin and is not justified by research. This is exemplified by the fact that CAF/CASS Cymru's approach<sup>4</sup> is much more cautious and based on research<sup>5</sup>. CAF/CASS Cymru's assessment framework recommends caution against being drawn into unhelpful labelling that obscures the reality for the children. The fact that these two bodies recommend different approaches to this issue demonstrates that it is certainly not a settled view that PA theories, as they are presented by proponents of the theory should be accepted in family courts. Furthermore, both CAF/CASS and CAF/CASS Cymru draw clear distinctions between domestic abuse and PA and use different frameworks to assess and manage allegations of either. It is not accepted, nor even suggested, by either body that PA is a form of coercive control.

There is not an agreed approach to the definition and assessment of PA even amongst proponents of the theory and many of those who encourage the use of PA theories also draw a distinction between PA and domestic abuse demonstrating how confusing the theory is. It appears to have only been very recently that certain groups have started to map PA into the framework of 'family violence'. This is not an accepted position even amongst those who advocate for the use of PA theories in the family court nor is it supported by empirical research.

Many of the behaviours that proponents say are examples of PA are behaviours that victims of abuse use to protect themselves and/or their children from abusive

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<sup>1</sup> HC Deb 28 April 2020, vol 675, col 257

<sup>2</sup> HL Deb 5 January 2021, vol 809, col 66 and HL Deb 8 March 2021, vol 810, col 1334

<sup>3</sup> <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/what-to-expect-from-cafcass/parental-alienation/>

<sup>4</sup> [Children's Resistance Or Refusal To Spend Time With A Parent: Practice Guidance](#)

<sup>5</sup> [Doughty, J., Maxwell, N., Slater, T. Review of research and case law on parental alienation, April 2018](#)

behaviour such as contacting social services and refusing contact. Even fleeing to a refuge with their children can be interpreted as alienating in this context. As this issue is one that impacts, almost exclusively, within the family court, the lack of clarity about what PA is, what it looks like and how to assess it means that victims of abuse in the family courts can often find themselves in a catch-22 where everything they do is interpreted as alienating behaviour.

The Harm Panel Report concluded that allegations of PA were being used as a way to silence victims of abuse with some being advised by their lawyers not to raise the domestic abuse because they may be accused of alienation. The report concluded that PA can also have the impact of silencing children as their views become unreliable and not their own<sup>6</sup>.

The family court manages private contact cases everyday with often complex and subtle drivers behind why the family has ended up in court proceedings rather than being able to agree contact arrangements between them. PA theory oversimplifies what can be complex reasons why children express a desire not to see their non-resident parent and places the responsibility for the child's view on the resident parent. At Rights of Women we have seen cases where a parent has been encouraging contact and trying to ensure the child goes and that the court accepts this is the case but experts have still assessed this as parental alienation. These conclusions can lead the court to the worrying position of ignoring children's independently held views about their non-resident parent and removes any requirement for that parent to reflect on how they may have contributed to the child feeling that way.

We request the removal of references to alienating behaviours from the guidance for the reasons set out above. If they are not removed, we believe there is a significant risk that victims of abuse will have the guidance used against them when trying to protect themselves from abusive behaviour.

#### **Paragraph 57: example of coercive control – immigration status**

- *'threatening precarious immigration status'*

The meaning of 'precarious' is unclear and requires clarity. Please clarify whether precarious has been given its ordinary meaning of uncertain/unclear/insecure rather than its legal meaning. The Supreme Court in the case of *Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58* held that a "precarious" immigration status is any status short of Indefinite Leave to Remain.

Many women that utilise our services are residing in the UK lawfully, with limited leave to remain. In accordance with the definition in *Rhuppiah* these women will be deemed to have 'precarious' immigration status prior to their relationship breaking down. We believe the intention is to include these women as their immigration status may be used a weapon to control victims of abuse. This should be made clearer.

#### **Paragraph 60:**

- *Turning children and friends against the victim (which may have a subsequent impact on children) including falsely and without justification telling a child that the other parent abandoned them, never loved them, or never wanted them;*

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<sup>6</sup> [Assessing Risk of Harm to Children and Parents in Private law children cases](#), June 2020

- *Distorting a child's memories about the victim parent, including telling a child the other parent will pick them/meet them, when that was not true, falsely telling medical/school staff they have sole custody of a child so that no information is provided to the other parent, painting the other parent in a negative light to the child, including mocking their personality characteristics, job, friends, family and belittling them (including in front of the child);*

Following on from the points made above in relation to ‘alienating behaviours’, we are concerned that PA is, again, being legitimised by inclusion of these examples and our significant concerns about this apply to these examples as well. At Rights of Women we give legal advice to women who are going through family court proceedings in relation to contact arrangements. Many of those women worry about raising domestic abuse in the case and, as explained above, some are even advised by their lawyers against raising it in case they face a back-lash from the court and are criticised for failing to encourage the child’s relationship with the non-resident parent. Some of the behaviours identified above may include comments made to other adults that a child may overhear or even comments made to a child (perhaps unwisely) but that are, none the less, true. Once it is possible to accuse a victim of abuse of saying these things, perhaps even inadvertently, allegations of PA closely follow with all of the problems identified above.

**Paragraph 63:** The first four examples are not specific enough to give clear guidance on what type of behaviours would be included. We suggest they are amended to give more specific examples.

**Paragraph 65:** *“Religious marriages from faith communities other than Christianity are not recognised in British law. A couple need to register their religious marriage for them to access their legal rights and obligations under British law.”* This is confusing. Firstly, there is no such thing as “British law”. In England and Wales, religious marriages that take place in other countries, in accordance with the law of that country will be recognised in the UK. It is certain religious marriages that take place in the UK, without registration, that are not recognised. This needs to be clarified to ensure women who do have all of the rights of a wife are not advised otherwise.

**Paragraph 78:** In relation to the examples of economic abuse, we suggest the following additions:

- Not paying maintenance for children, or paying irregularly
- Insisting that maintenance payments will only be made if access is given to the children

We would also suggest the example, *“deliberately forcing a victim to go to the family courts so they incur additional legal fees”* is amended as this is a very vague and ill-defined example. We suggest *“deliberately prolonging proceedings or conducting proceedings unreasonably with the intention of increasing legal fees”*

**Paragraph 87:** There is reference to CPS guidance but it does not state what guidance – the domestic abuse guidance or the restraining order guidance or other guidance altogether. The reference to restraining orders feels a little odd here. It is not clear why restraining orders have been raised. If the intention is to state that children under 18 are able to obtain protection, such as restraining orders and non-molestation orders

and age will be considered in relation to the perpetrator, then this should be set out. At present it is not clear what the intention of this paragraph is.

### **Paragraphs 115-117: Race**

This section refers to migrant victims not reporting domestic abuse or seeking help due to 'concerns about racism'. Using this phrase is problematic and undermines an individual's experience of racism. For this reason omit 'concerns about' and refer to racism only.

It should also be acknowledged that reluctance to report and or seek help can also be attributed to previous experiences of discrimination at the hands of the police and/or other statutory agencies.

### **Paragraphs 118-135: Immigration status and migrant victims**

This section requires an introduction to set the context and include other forms of abuse frequently experienced by migrant women.

We suggest that the following paragraphs be inserted to set the context to Paragraph 118:

*Migrant women are disproportionately impacted by certain forms of VAWG, including forced marriage, so called honour-based violence, FGM, transnational marriage abandonment and dowry related abuse.*

*This section sets out how migrant women may experience domestic abuse differently from non-migrant victims of abuse and forms of abuse which are exclusively experienced by migrant women.*

*It is important to note that paragraphs 118-135, of this guidance are not stand-alone provisions and other parts of the guidance may also apply to migrant women.*

*The following paragraphs are of particular relevance and should be read in conjunction with paragraphs 118-135:*

*Paragraph 14 - Definition of domestic abuse*

*Paragraph 53-57 Coercive Control*

*Paragraph 80-86 - Intersectionality,*

*Paragraph 76-79 - Economic abuse*

*Paragraph 115-117 - Race*

*Paragraph 158-161 - Forced marriage*

*Paragraph 162 - FGM*

*Paragraph 163-166 – Modern slavery*

*Paragraph 32-33 – Honour based violence*

*Paragraph 169 - Perpetrator tactics*

The examples of how perpetrators exert control over migrant victims of domestic abuse should be amended and expanded as follows:-

- *Threatening to inform immigration and police*
- *Withholding immigration documents and passports*

- *Deliberately making incorrect applications to keep the victim's status precarious*
- *Failing to apply for an extension of leave resulting in the victim becoming an overstayer. The perpetrator may have lied to the victim informing her that a further period of leave would be applied for giving her a false sense of security or not telling her anything at all about her status.*
- *Forcing the victim to sign documents which she has not been given the opportunity to read and understand often including false information or representations within the application.*
- *Very often victims do not wish their partners who abuse them to be prosecuted due to feelings of shame and guilt. A perpetrator plays on this which can form part of coercive controlling behaviour.*
- *A perpetrator will often contact the Home Office to say that they have been abandoned/ abused/ or mistreated by the partner who has left them. The Home Office often use such information when refusing applications for ILR.*
- *Deliberately abandoning the victim overseas and asking the Home Office to curtail or revoke her leave due to relationship breakdown.*

We would like the guidance to expressly state that a unilateral declaration of relationship breakdown, to the Home Office, by the perpetrator of violence is a form of controlling and coercive behaviour because it is an attempt to control the immigration status of their partner or ex-partner.

This could be added to paragraphs 118-135 or alternatively under paragraphs 167-171 titled 'Perpetrator tactics' as this is a common tactic used by the perpetrator.

See suggested text below:

*Unilateral Declaration of relationship breakdown by the perpetrator*

*It is well documented by the women's VAWG sector that the Home Office will usually take steps to curtail or revoke the immigration status of migrant victims of domestic abuse following a unilateral declaration by the perpetrator of violence that their relationship with their partner has broken down.*

*Although the curtailment itself does not constitute abuse, the unilateral declaration by the perpetrator of violence is a deliberate action and is made by the perpetrator in full knowledge of the consequences upon the victim. This is an act carried out with the sole purpose of controlling the victim's immigration status and can have a devastating impact on the well-being of the victims of Domestic Abuse with an additional stress of finding lawyers to advise on their options to remain in the UK.'*

Other forms of CCB which have surprisingly been omitted from the guidance are dowry related abuse and transnational marriage abandonment. The women's VAWG sector has been highlighting these forms of domestic abuse to the Home Office in recent years as being of particular prevalence in migrant communities hence the reason for proposing inclusion in the statutory guidance.

See suggested text below with a case study to illustrate Transnational Marriage Abandonment (TMA):



### Transnational Marriage Abandonment (TMA) also referred to as stranded spouses

The Family Procedure Rules, Practice Direction 12J (Child arrangements and contact orders) provides a definition:

*‘Abandonment refers to a practice whereby a husband in England and Wales deliberately abandons or strands his foreign national spouse abroad, usually without financial resources to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother’.*

#### Case Study: Fatima

*Fatima entered the UK on a spousal visa about 18 months ago. She was 6 months pregnant when she arrived. She subsequently gave birth to a boy. From the outset her husband was verbally and financially abusive. He controlled the finances and didn't allow her to leave the house without him or a member of his family. She had to beg him to allow her to access antenatal care. She felt isolated, having no family nor friends in the UK. She was also too scared to report the abuse to the police. In the summer Fatima's husband told her that they were going on a family holiday to Pakistan for 2 weeks. After a few days in Pakistan, he told her that he was returning to England without her and the child confiscating her Pakistani passport, her biometric residence card and her child's British passport, leaving her stranded with his family. His family have been abusing her, confining her to the house and not allowing her to have contact with her own family in Pakistan. Fatima feels trapped in the relationship as she has no means of supporting herself and her child and would not be able to manage financially without her husband and his family. Her concerns and fears are having a detrimental impact on her mental health. Fatima would like to return to the UK with her son but doesn't know about the process involved to enable her to do this and neither does she have any money to pay for flight tickets and visas.*

### Dowry Related Abuse

#### Definition of dowry

*‘Dowry’ is a practice referring to money, property, or gifts that are typically transferred by a woman's family to her husband upon marriage. This practice is culturally specific and is prevalent in some parts of the Indian subcontinent.*

#### Dowry Related Abuse

*Any act of coercion, violence or harassment associated with the giving or receiving of dowry at any time before, during or after marriage is a form of abuse. Dowry related abuse commonly involves claims that dowry was not paid and coercive demands for further money or gifts from a woman and her extended family.*

*[Definition of dowry related abuse taken from Australian Government, Dept of Social Services factsheet]<sup>7</sup>*

**Paragraph 121:** The section states that there are a range of support mechanisms in place for migrant victims of domestic abuse. This is not strictly correct. The section

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<sup>7</sup> [Dowry Abuse Factsheet](#), Australian Government, Feb 2019

should be edited to state that there is support for some victims of domestic abuse and not all victims and an individual's immigration status will determine whether or not a person is able to access public funds and therefore eligible for benefits and access to a refuge.

**Paragraph 122 and 135:** This section describes the Support for Migrant Victim's Scheme as if it is a panacea to funding bed spaces and financial support for victims of domestic abuse. This is not the case as the scheme, although anticipated to benefit some migrants, has limitations and cannot address all gaps in provision of support for migrant victims. The pilot is currently funded until the end of March 2022 and is limited to supporting a maximum of 500 victims for a period of 12 weeks. There are many victims of domestic abuse who will sadly not be able to access any support either under the scheme or otherwise. This should be made clear.

**Paragraph 124:** This section should be amended as it is legally incorrect. It is correct that only certain categories of individuals are eligible to apply for the DDVC and or for settlement under the domestic violence rule but there are other immigration rule categories which lead to settlement and individuals on those routes do have a clear legitimate expectation of settlement. The text should be edited to reflect the law. We made representations on this point in our response to the 'Migrant Review Findings' which frustratingly have been ignored.<sup>8</sup>

**Paragraph 125:** We agree that many victims do not report domestic abuse due to the fear of data sharing by the police and other statutory services with the Home Office for the purposes of immigration control. We propose that reference is made to the fact that the Home Office has an obligation to conduct a review of data sharing processes following the findings of SBS' and Liberty's super complaint and that the review process has commenced. We would further propose that the Secretary of State summarise the findings of the review which concluded that data sharing can constitute significant harm to migrant victims of domestic abuse and that in light of these findings there ought to be safe reporting mechanisms for migrant women reporting a crime

**Paragraph 127:** This paragraph is of concern as it does not represent the harsh reality faced by asylum seekers and is misleading. It is well publicised by charities supporting asylum seekers and asylum seekers themselves that it is a struggle to live on asylum support and accommodation which is very basic in nature with no choice of where to live.

We propose the paragraph be amended as follows:

*'Asylum seekers and their dependants who would otherwise be destitute are provided with asylum support and accommodation under section 95 of the Immigration and Asylum Act (the 1999 act) which is deemed adequate to meet their basic needs. It is well documented from organisations supporting asylum seekers and from asylum seekers themselves that it is a struggle to meet their daily living needs on the minimal level of support that is provided. This includes asylum seekers who are victims of domestic abuse. An asylum seeker is destitute if they lack adequate accommodation or the*

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<sup>8</sup> [Response to the Migrant Women Review](#), Rights of Women, Nov 2020

*means of obtaining it. The Asylum Support Regulations 2000 make clear that accommodation is not adequate if remaining in it exposes the individual to risk of domestic violence’.*

**Paragraph 128:** This paragraph references the policy enabling asylum seekers experiencing abuse who are based in Home Office accommodation to seek support and safe accommodation but the link to the policy has been omitted. The policy also lacks information on the funding mechanism for refugees to claim accommodation costs. The link to the policy should be inserted into the guidance and details of the funding mechanism should also be inserted into the policy or published elsewhere on the Government website.

### **Paragraph 149-157: Stalking and harassment**

It does not state anywhere in these paragraphs that stalking and harassment are specific criminal offences that can be prosecuted and that the police should investigate and consider prosecution in any case where stalking or harassment is present. It needs to be made clear that stalking and harassment can be high risk behaviours and too often the response is to give a warning to stop the behaviour. This response is not sufficient.

**Paragraph 167:** *“As we cannot fully determine in many cases why an individual becomes an abuser, there remains a limited understanding of perpetrators, and their motivation therefore should not be limited to the reasons listed above.”* The wording of this sentence is clumsy. As it follows on from statistics in relation to the prevalence of issues such as substance misuse and mental ill-health within a group of perpetrators engaging with services, it suggests that mental ill-health is a *motivation* for domestic abuse. We suggest it is reworded to ensure it does not suggest that the factors mentioned earlier in the paragraph are causes of domestic abuse but rather that the links between these vulnerabilities and perpetration of domestic abuse are not well understood yet.

**Paragraphs 167-169:** There is reference in these sections as to how perpetrator’s use a victim’s immigration status to exert control over them. In addition to this we recommend adding that ‘Perpetrators make threats to contact the Home Office in order to have a victim removed as well as threatening to report the victim to the police’. The section should be amended accordingly.

Please also refer to our comments above on unilateral declaration of relationship breakdown by the perpetrator resulting in curtailment of the victims leave to remain. It could be inserted into this section as this is a common perpetrator tactic.

## **7. Do you have any comments on Chapter 3 (‘Impact on Victims’) in terms of content or clarity?**

**Paragraph 182:** It is not appropriate to include reference to s. 31 of the Children Act 1989 in this paragraph. The primary basis on which professionals should work with victims of abuse should be to keep children at home with the victim of abuse. The inclusion of s. 31 suggests authorities will immediately be considering removal of the child from the parent’s care which is not appropriate. If it is going to be included, it is not clear why it is relevant as many readers will not know what s. 31 does.

**Paragraph 193:** While we appreciate the inclusion of this paragraph and the reference to Family Rights Group work in relation to victims of domestic abuse earlier in this section, we believe there should be more focus on the importance of professionals working to keep children and adult victims safe and together not only on support post separation.

## **8. Do you have any comments on Chapter 4 ('Agency Response to Domestic Abuse') in terms of content or clarity?**

### **Multi-agency approach**

We believe it is particularly important that a multi-agency approach is embedded within statutory services and this chapter does not do this sufficiently despite setting out many of the different 'tools' that work best when part of a multi-agency approach to domestic abuse. For example, prior to the introduction of domestic violence protection notices and domestic violence protection orders (DVPN/O) recommendations were clear that for them to be effective, they must form part of a multi-agency response to domestic abuse<sup>9</sup>. The areas where orders are more effectively used are areas that have positive multi-agency working practices.

Similarly, the statutory guidance for FGM protection orders (FGMPO) and forced marriage protection orders (FMPO) is clear that the approach to be taken should be a multi-agency approach and the guidance<sup>10</sup> prioritises this approach.

The draft has a chapter on multi-agency working (chapter 5) which we believe is largely good. However, in terms of framing and priority, we would prefer to see that chapter moved earlier in the guidance and within this chapter, much more importance placed on multi-agency working and cross-referencing to chapter 5.

### **Victims' views**

There is nothing in this chapter on how victim's should be part of decision-making processes. Victim consent and the victim's views are different things but go hand in hand. Victims' views must always be sought and be central to decision making. Victims' views on what looks like safety for them should be the starting point for all agencies and not an afterthought.

### **Paragraph 223-248 Children's Social Care:**

There should be significantly more emphasis placed on the importance of social workers holding perpetrators to account for their behaviour and *not* expecting the non-abusive parent to account for the children's protection. There are many reasons why a victim of abuse may not feel it is safe to take steps to flee the relationship; social workers should try to understand these and offer support and guidance including referral to other organisations to assist the non-abusive parent to take any necessary steps to protect themselves and the children. A focus on where responsibility lies for the abuse is an important part of building trust with the non-abusive parent.

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<sup>9</sup> For example, see [Crime and Security Bill PBC 28 January 2010 c95](#)

<sup>10</sup> [Forced Marriage \(Civil Protection\) Act 2007 Guidance for local authorities as relevant third party and information relevant to multi-agency partnership working](#) Oct 2009. The guidance in relation to FGMPOs followed the same structure.

The guidance should highlight that although children are now viewed as victims of domestic abuse in their own right under s. 3 of the Act, social workers must not use this as an excuse to remove children from a victim of abuse. The children and non-abusive parent should be supported to remain together in way that is safe for all.

We also suggest the guidance should be clear that a victim will need ongoing support after she has taken steps to separate from the abusive parent to deal with issues such as contact between the children and the abusive parent (even if an application for a child arrangements order has been made to the family court). We sometimes hear from women who find that children services withdraw any type of help after she has taken steps to separate from the abuser, at a time when she desperately needs support.

### **Criminal Justice System – Police**

We do not believe the way in which this section, in particular the focus on simply listing protective measures is helpful or sufficient. As we have stated above, there should be much greater focus on ways of working and approaches to decision making such as the reference to the DABPF later in this chapter.

The list of protective orders, some of which are not available to the police is unhelpful. There is no reference to, or explanation of, how the police should deal with breaches of protective orders. We recommend a section addressing the issues with breach of orders with an emphasis on the importance of viewing breach not as something 'new' but as a continuation of the abuse which the order was intended to prevent.

**Paragraph 306:** We suggest the following be added to the list: "Be aware that delay in progressing investigations has an impact on the victim's safety, her ability to receive counselling and therapy, and her ability to move on with her life."

**Paragraph 308:** We do not believe the limited list of examples in this paragraph is helpful as it risks becoming too narrow as so many offences may result from a victim's experience of abuse. If examples are to be given, we suggest using broad categories instead of specific offences such as: theft-related offences, drug offences, public order, offences against the person and offences involving children.

**Paragraph 310-311:** These paragraphs need to be significantly stronger in relation to released under investigation (RUI) and voluntary attendance interview (VAI). Neither of these options provide any form of ongoing protection to the victim of abuse and, therefore, are unlikely to be appropriate in domestic abuse cases. When considering how to respond, the safety and future protection of the victim should be prioritised. It needs to be made clear that the purpose of bail conditions is to protect the victim and to prevent the commission of further offences.

Breaches of bail should not be viewed as one-off incidents or not serious because the breach behaviour by itself was not serious, for example the breach may have been a text which, in isolation, may not appear to be serious. However, breaches should be viewed as a continuation of the abusive behaviour that has already been reported and in many cases may be an attempt to pervert the course of justice.

A suspect who breaches pre-charge bail conditions can also be arrested, charged (with the original offence) and brought before the court in custody.

In relation to post-charge bail, the guidance should state that if the perpetrator breaches bail, they should be arrested and appear before the court in custody which could subsequently result in remand of the perpetrator in custody until the conclusion of the case.

**Paragraph 313:** One of the purposes of a domestic violence protection notice (DVPN) and domestic violence protection order (DVPO) which is missing from this paragraph is to give the victim time to seek advice, consider her options, and seek safety if that is what she wants to do. Victims should be introduced to organisations that can provide support and advice and not simply given a telephone number. Multi-agency working within police forces must be encouraged so that response officers are able to easily explain to the victim of abuse who to contact and what to expect when they do so. If active introductions are possible and appropriate, this should be encouraged. If a DVPN/O is obtained the victim must be provided with a copy.

**Paragraph 315:** A restraining order is not, arguably, a ‘tool for the police’ (in relation to the title for this section). This paragraph does not make clear that these are orders that are made on application by the CPS in the Magistrates’ or Crown Court. The decision to make an order is for the Magistrates or judge.

The information in this paragraph is not sufficiently practical. The police must take steps to speak to the victim or their domestic abuse support worker if they have one to discuss what safety measures the victim requires. If an application for a restraining order is to be made, the police must ensure the information is given to the CPS about this including what conditions should be requested and why. If a restraining order is obtained, the victim must be provided with a copy. It is far too common for survivors not to receive a copy of the restraining order, which makes it extremely difficult for her to know whether the abuser has breached the order or to prove that the restraining order exists (to other agencies involved).

It should also be explained that applications can be made for the orders to be amended, extended or revoked.

It may be helpful to signpost to the CPS guidance on restraining orders.

**Paragraph 316:** If a Stalking Protection Order (SPO) is obtained it is important that the victim is provided with a copy.

**Paragraphs 319-321:** See our earlier comments about the importance of multi-agency working at the start of this section. It would be rarely appropriate for the police to apply for either an FGMPO or FMPO without input from other agencies. These sections are insufficient in their explanation of this. If this is not going to be explained, then at least include the signposting to the guidance in relation to these orders under the correct paragraph.

**Paragraph 322:** Non-molestation orders and occupation orders – it is confusing to have this paragraph in a section titled ‘tools available to the police’ when the police

having nothing to do with the application of non-molestation or occupation orders. If it is to be maintained, we suggest the purpose of the paragraph should be to highlight to the police that they should not avoid dealing with an investigation/complaint by directing a victim of abuse to obtain one of these orders and, as stated earlier in our comments in relation to Paragraphs 310-311, the issue of breaches should be dealt with more fully in relation to breaches of any order.

### **Criminal Justice System – Prosecution**

We suggest prosecutors should be reminded of best practice in relation to restraining orders and in particular, the importance of consultation with the victim to ascertain what conditions are required to keep them and their children safe. They should be signposted to the CPS guidance on restraining orders. The prosecutor should ensure that the victim receives a copy of the restraining order.

It should also be highlighted to prosecutors the devastating impact upon victims when there are delays, or when cases are discontinued due to administrative errors or poor case preparation by the CPS.

### **Criminal and Civil Justice System – Criminal, Civil, and Family Courts**

Some of the content in this section is odd and a little out of place. It is not clear what the purpose is or who the audience is. We are aware that the Secretary of State does not have the authority to issue guidance to a court or tribunal, so it is unclear who this section is aimed at. CAF/CASS do not have a section unlike the other public bodies who are to have regard to the guidance, if CAF/CASS is the audience, this should be made clear. We have set out some comments below in relation to specific paragraphs but would suggest a complete re-draft with a specific audience in mind.

**Paragraph 336-340:** The explanations of the role of the criminal and civil courts in these paragraphs is confusing. The criminal court's primary purpose is not to 'deal with offenders who have committed a criminal offence', it is to determine whether someone is guilty of a criminal offence and sentence them appropriately. Reference here to special measures is unhelpful unless there will be cross-referencing to the other section that specifically deals with special measures.

It is very unhelpful to use references to a 'category of offence' in relation to the civil courts. If it is necessary to explain what the civil courts do, a list of examples of the types of disputes they deal with is more helpful. As in the criminal court section, it is unhelpful to put information about special measures here when there is a separate section about special measures which should address special measures available in each court.

There is no overarching explanation of what the family court deals with which is at odds with the attempt to explain the criminal and civil courts above. The family court determines family law issues including divorce, dissolution, finances on divorce or dissolution and children cases. Domestic abuse is not only relevant in children cases so it should not be suggested that this is the case.

The statutory guidance is not aimed at judges so we question, again, who the audience is for this section of the guidance and once this is clear, the purpose will become

clearer. If CAFCASS is the audience, this should be made clear and amendments made accordingly.

**Paragraphs 340-351: Family courts**

It is unhelpful to only refer to children proceedings, domestic abuse may be a live issue in any form of family law proceedings and the court should have regard to it especially when considering issues such as special measures.

CAFCASS – as a public body that is to have regard to the statutory guidance, should have its own section that addresses the concerns raised by the Harm Panel Report and highlights the importance of CAFCASS workers properly identifying domestic abuse and responding to it appropriately. It should also include caution to CAFCASS workers not to promote the pro-contact culture identified in the Harm Panel Report and to prioritise the safety of victims of abuse including child victims.

We note that reference is made to s. 91(14) orders and injunctions in this section. If the audience is CAFCASS, there is significantly more information that should be included in relation to safety measures they can take. This should include the use of s. 16A Children Act 1989 when a CAFCASS officer is concerned about an order the court has made.

**Paragraph 343:** The Implementation Plan has nothing to do with the Civil Procedure Rules nor did it make any recommendations in relation to the Civil Procedure Rules. The Civil Procedure Rules govern procedure in the civil courts. The *Family Procedure Rules* govern procedure in the family court. This entire paragraph is not only misleading but also very unhelpful and we are deeply concerned by the apparent lack of knowledge of what the Harm Panel Report and the Implementation Plan actually do. We return to our comments earlier about this section lacking a clear purpose and audience and recommend revising it entirely.

**Paragraph 344:** If the intended audience for this part of the guidance is CAFCASS, then this paragraph is helpful but should include significantly more information about the ways in which perpetrators can use the family court to continue abuse. It would also be helpful to explain the changes to s. 91(14) orders introduced by the Act.

**Paragraph 345:** Simply stating that injunctions can be ordered without the abuser's knowledge may give a false impression to some readers. The guidance should clarify that if the order is made without the abuser's knowledge to start with there will be a further hearing, after the abuser has received the order and application documents, which the abuser will be asked to attend.

Again, the audience needs to be clarified to be able to determine what information is helpful. For example, if the audience is the police or social services, the guidance should set out that there are many barriers to victims of abuse being able to obtain a non-molestation or occupation order from the family court. As a result, telling a victim of abuse to get a non-molestation order as a solution to the risk is wholly unsatisfactory.



**Table of protective orders:**

The guidance states that injunctions under the Protection from Harassment Act 1997 are “To be used if victims are not legally associated to their abuser”. It may be worth noting that it is possible for victims who *are* associated to make an application under the Protection from Harassment Act 1997 as well as those who are not. This may be relevant for a victim who wishes to seek damages, which is available as a remedy under the Protection from Harassment Act 1997 but not the Family Law Act 1996.

In the table of protective orders the guidance states that non-molestation orders can be made “By a court of its own volition if a child involved otherwise on application” which is inaccurate. It should read “By a court of its own volition if the victim is a party to any other family proceedings, otherwise on application.” The guidance could add that “the order can be made to protect the victim and/or the child.”

**Paragraphs 353: Special measures**

This paragraph should place emphasis on the police or CPS making arrangements for the victim to discuss what special measures they would find most helpful. The last sentence is misleading and suggests the judge may decide not to grant special measures which is no longer an option for the judge.

**Paragraphs 354-355: Special measures in the civil and family courts**

Depending on the audience for this section of the guidance, it may be of assistance to explain the complicated rules that will now govern when a victim of abuse is automatically eligible for special measures and when they may have to rely on the court’s discretion. There should be signposting to the relevant procedure rules in the family and civil courts.

**Criminal Justice System – Domestic Abuse Best Practice Framework for Courts**

This section should have significantly more prominence and appear significantly earlier in the guidance. Our response to the draft DAPO guidance highlights the importance of this way of working and the agencies involved in the DABPF must have it highlighted to them early in the guidance the importance of adopting this framework. We would recommend it be a flagship part of the guidance that all areas are required to adopt this framework and work in the ways set out in in the framework.

**9. Do you have any comments on Chapter 5 (‘Working Together to Tackle Domestic Abuse’) in terms of content or clarity?**

No comment.

**10. Do you have any comments on Chapter 6 (‘Commissioning Response to Domestic Abuse’) in terms of content or clarity?**

No comment.

**11. Are there any overarching ways you think the guidance could be improved? Please provide comments.**

Some of the statistics included in the guidance are very old. We would prefer to see data this old removed and, if possible, up to date data found or replaced with other data that makes the same or a similar point.

Throughout the guidance there needs to be clarity when referring to victims of abuse who are 16-17 years old. In parts, they are included as adults such as in the CSEW statistics. The Act would include a 16-17 year old within the definition of domestic abuse in their own right and potentially also include them as a child as the Act defines 'child' as a person under the age of 18. There should be clarity in relation to this or at least explanation of the ways in which 16-17 years olds may fall into both categories and the guidance then needs to be checked for consistency in relation to this, in particular, paragraph 87 is confusing. In the section on teenage relationships, a distinction is drawn between 'adult relationships' and 'young people'. This may appear very confusing for some readers.

We suggest references to adults and adult relationships are removed altogether. We do not believe it is necessary to use this language and it makes the complex issues in relation to age more ambiguous. Where 16-17 year olds are referred to as adults, as in the CSEW statistics, this could be replaced with 'people' to prevent confusion and in other places, age brackets should be used to clarify who is being discussed. It should be made clear whether references to 'victims' of abuse are those aged 16 and over, or includes child victims as per section 3 of the Act.

**12. Do you think the case studies are helpful? If there are any case studies which you did not find helpful, please provide additional comments ensuring you refer to the case study to which your comment relates.**

We agree that having case studies is helpful, however, many of the case studies are unrealistic and give a false sense of the support that is available, failing to recognise the shortage of support available, the cost of legal advice and where it is free how limited the provision is. As a result they do not reflect the lived experiences of survivors. It may be more helpful to have case studies that have both bad practice and good practice.

**13. Is there anything missing in the guidance that you would like to see included?**

**Annex A**

Rights of Women and FLOWS should be added to the list of organisations at Annex A as follows:

[Rights of Women](#) a specialist legal rights charity providing free legal advice to women experiencing or at risk of all forms of Violence against Women and Girls. They advise on the law in England and Wales in relation to family law, criminal law, immigration and asylum law and employment law.

[FLOWS](#) (Finding Legal Options for Women Survivors) provides family law legal advice for both women survivors and frontline workers across England and Wales