



## **Rights of Women evidence to the Family Justice Panel**

### **About Rights of Women**

Rights of Women (RoW) specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. 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 enabling them to live free from violence and make informed, safe, choices about their own and their families' lives. Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Rights of Women is pleased to provide evidence to the Family Justice Panel (FJP) in relation to the experiences of the women we speak to on our family law advice line. We will address the topics the FJP has been asked to report on below but wish to raise a number of wider points about problems with the Family Justice System.

### **Legal Aid**

Cuts to legal aid introduced under the Legal Aid Sentencing and Punishment of Offenders Act 1012 (LASPO) has led to a significant increase in unrepresented parties in the family courts. Although amendments to the Bill as it passed through parliament were meant to protect legal aid in family cases for victims of domestic abuse, in reality, we speak to large numbers of victims who are representing themselves in the Family Court. Changes to the domestic violence gateway introduced in January 2018 have led to an increase in the number of women who are able to access legal aid but there are still victims who not are able to access gateway evidence and there will always be victims who have never spoken to a professional about their experiences and, therefore, do not have gateway evidence.

There are also a large number of unrepresented victims of abuse in the Family Court as a result of the strict legal aid means assessment which currently excludes large numbers of victims of abuse from representation who are not able to pay for a solicitor. The financial thresholds for legal aid have not changed for many years and the assessment of disposable income and capital so unrealistic that many women are excluded from legal aid for financial reasons. For example, as a result of changes

introduced under LASPO, every applicant for legal aid must pass the capital assessment which will include the family home in the assessment. This leads to the conclusion that a victim of domestic abuse who is eligible for state benefits but jointly owns a property with the perpetrator of that abuse being ineligible for legal aid. Clearly in this situation, the victim will be unable to afford legal representation.

The re-introduction of legal aid for family law will not resolve all of the problems we identify in this evidence, but it would make a significant difference in a number of ways. Improving access to justice ensures that victims of abuse are able to present their cases properly and challenge bad decisions. In practical terms, it would reduce the number of cases being issued in the Family Court, improving the resources available for those cases that are in court.

## **The scope of this review and evidence gathering**

Although hailed as a review of the way in which the Family Court manages cases where there is domestic abuse and, therefore, protects children, the specific questions being asked are limited and the time frame short. We would favour an independent inquiry into the way in which the family justice system operates, considering the whole approach to domestic abuse taken by the Family Court.

The consultation on the Domestic Abuse Bill did not ask any specific questions about reforms to the family justice system but the Government recognised in its response that issues with the Family Court were raised by many respondents<sup>1</sup>. Yet in response to calls for an inquiry, the Prime Minister stated that the Government did not have evidence to justify an inquiry. It is not clear to us what additional evidence the Government requires. Respondents to this review are not in a position to provide the Government with data about the Family Court response to domestic abuse. The Ministry of Justice should, in theory, be able to obtain a significant amount of data from HMCTS. Where we feel the Government should consider what data they have easy access to, we have highlighted this. Where we feel there is a lack of data, we have also highlighted this.

## **Attitude change**

There are areas of family law that would certainly benefit from improvement or clarification and we have made some specific proposals below in relation to changes that we feel would make a difference to the experiences of victims of domestic abuse below. However, we also believe that without significant attitude change within the family justice system, women and children will continue to be let down. We feel that, in general, attitudes in relation to domestic abuse are slowly shifting, there remain some attitudes that professionals within the family justice system are particularly wedded to. We have highlighted some of these issues in our evidence below but in particular we point to the following:

- There remains a hierarchy of abuse with physical violence at the top.

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- Domestic abuse, especially sexual abuse of the other parent, is too often viewed as separate from parenting ability.
- Coercive control is not taken seriously in relation to the effect it has on the victim or the suggestion that it is harmful to children, especially where there has been no physical violence.
- Economic abuse is rarely taken into account at all.
- Children who do not want to have contact with a perpetrator of abuse and express their desires strongly are too quickly viewed as being influenced by the victim of abuse instead of being seen as expressing an independent view of the perpetrator which may be formed as a result of their experiences of the perpetrator's parenting ability.

### **Public v private proceedings**

Approaches to domestic abuse in private and public children proceedings is very different. In public proceedings victims are expected to stay away from the perpetrator and even a continuation of communication between the two can be viewed as the victim failing to take the local authority's concerns seriously. Contact is less likely to happen between the perpetrator and children because it is the local authority that manages contact arrangements and has the authority to cancel contact when the perpetrator doesn't attend in a way that the victim of abuse cannot.

When mothers remain in abusive relationships during care proceedings, our experience is that these mothers are viewed as a "lost cause". She may be offered referrals to support services, if they are available, but the responsibility to change is placed on her. Rarely do we see the same efforts being put into changing the perpetrator's behaviours in recognition of the fact that it is his behaviour that has led to the children being removed.

In contrast, in private children proceedings, victims are expected to manage the risk to the children themselves. Children's services will often have been involved at some point in the past but not provided support because the parents are separated and, therefore, the victim is protecting the children. However, there is often little difference between the abuse described to us in private and public proceedings suggesting the risk the perpetrator poses is similar. Victims of abuse in private proceedings who refuse contact and insist that they do not wish to have any communication with the perpetrator are too often seen as obstructive and difficult rather than protecting the children.

### **New models for family justice**

There have been piecemeal amendments to procedure rules and legislation for decades, but nothing has yet achieved a system that truly works for children and families. A judge alone is not always the best person to decide the outcome of a case and our adversarial model is not able to prevent re-traumatising victims of abuse through the process. This review is an opportunity for the Government to explore radical changes and alternative models of justice for family law cases.

For example, the Family Violence Courts Division of the Magistrates Court of Victoria (Australia) is a multi-jurisdictional court with powers to make decisions on a range of matters including crime, civil, private family, child protection and compensation arising out of the abuse (so, effectively, bringing the “3 planets” together). One of the benefits of this system is that it avoids the survivor having to repeat her experiences to multiple courts and lawyers. One judge is allocated to the family to address all the issues. The court is supported by both survivor and perpetrator services. Importantly, the court takes a trauma-informed, problem-solving approach, with risk assessments and information sharing taking place very early in the process. This differs starkly from the approach of family courts in England and Wales, which do not take a trauma-informed approach, judges rarely have input from other professionals (other than Cafcass whose expertise is limited) and risk assessments take place towards the end of the case after a fact-finding hearing.

We would welcome a more radical approach to reform, looking at alternative models of family justice and piloting them in a way that would work in England and Wales.

### **Section 1 - Your experience of private family law children proceedings**

RoW has chosen not to answer the questions in this section. Our answers to the other questions are informed by the experiences of the women we advise on our family law advice line.

### **Section 2 – Raising allegations of domestic abuse or other serious offences in private law children proceedings**

RoW believes that the introduction of revised Practice Direction 12J in December 2017 has made a difference to the court’s approach to domestic abuse in some areas. However, approaches to domestic abuse vary widely in different areas and between different judges. We are not aware of any research into changes the revised PD12J have brought about and without this, we are only able to provide anecdotal evidence.

One of the key aspects of PD12J is the requirement to identify cases where there is domestic abuse at an early stage and make early case management decisions about how the case will progress. However, without appropriate support and advocacy, we believe there are cases where the history of domestic abuse is not identified by the court.

#### Cases where the abuse is not identified by the Court

There are a number of reasons why domestic abuse may not be identified by the court. For example:

- Some women we speak to consider not informing the court of the domestic abuse they have experienced because they believe they will be viewed as being obstructive or awkward if they tell the court about the perpetrator’s behaviour towards them. They worry that the perpetrator has been able to create a negative picture of them from when they issue proceedings stating that the mother is preventing contact for no reason. They see themselves as constantly

struggling against this assumption and, as a result, do not raise the domestic abuse so that they are not seen as difficult.

- Some victims of abuse will enter the court room having received no support from any professional at all whether that is legal advice, domestic abuse support or even in some cases a telephone call from the CAFCASS officer. They do not know what to expect, what the court thinks is relevant or how to present their case and are silenced by the authority of the court.
- Many women tell us that they are worried about contact but don't know what to do or do not believe their views will be listened to because "he never hit me or anything". It is most often with the support of domestic abuse support services that victims start to be able to identify the perpetrator's behaviour as abusive. There are strong societal pressures on mothers to accept abusive behaviour in order to maintain the children's relationship with the father and many women attempt to do so at risk to themselves and their children.
- Identifying coercive control requires an understanding of the dynamics in the relationship. When victims appear in court without any form of support, they struggle to explain the importance of this behaviour because it takes time that the judge does not have.
- In our experience, economic abuse is rarely raised in family courts. It is generally considered that anything related to finances and economics is completely unrelated to child arrangements, even though economic abuse can have a real impact on the victim's emotional and physical wellbeing and impact upon her care of the child.
- A survivor's sense of the power and control that her abuser has over the process is heightened when she must appear in court unrepresented and her abuser has an expensive legal team to represent him. Judges may see this in court but are not in a position to be able to do anything about it as this is not their role.
- Unrepresented victims of domestic abuse face the prospect of having to sit in a small room with the perpetrator of abuse sometimes within arm's length and explain to the judge why the perpetrator's behaviour is a risk to them and the children. In our experience, special measures are rarely available for directions hearings. This will sometimes have the effect of silencing victims. For those who are able to explain some things to the judge, it is unlikely they will feel able to explain the full extent of the perpetrator's behaviour in front of him.

#### Cases where the abuse is not recorded by the Court

We have been informed of cases where judges are not properly recording on the face of the order the reason why a fact finding hearing was not ordered. We are also aware of cases where admissions have been made by the perpetrator outside of court and these have not been relayed to the court and, therefore, not recorded in the order.

Since the introduction of the revised PD12J, the court is now required to record admissions on the face of the order. This is an area where research would help identify courts that are not following PD12J and also help to understand the reasons why some domestic abuse allegations are not being taken seriously by the court.

The introduction of standardised orders in the Family Court and the requirement that certain information is recorded in the order under PD12J means it should now be possible to conduct some form of audit of different courts and how well they are complying with these aspects of the rules. It will not be comprehensive but a comparison of the initial papers including the safeguarding letter along with the first order would provide an indication of areas that are not applying PD12J appropriately.

### **Section 3 - Children's voices**

The most common way in which children's voices are heard in the court room is through the Cafcass report. We are told of varying practice in relation to the way in which Cafcass officers obtain the children's views. We are particularly concerned to hear that some Cafcass officers do not see the children alone. Some give views on contact without observing any contact the perpetrator is having. We are informed of Cafcass officers making recommendations for unsupervised contact with a perpetrator of abuse that they are unwilling to sit in a room with because they present a risk to the Cafcass officer. We have also been informed of Cafcass officers changing their recommendations over time despite nothing changing in the case (often in proceedings that have continued too long for reasons unrelated to the children or victim, for example, the court not having judges available to hear the case, perpetrators not attending hearings or requesting hearings are relisted at the last minute).

In some cases, guardians are appointed by the court. We have some concerns about varying practice in relation to the appointment of guardians for children in private proceedings. We would be interested to know whether the number of guardians appointed in private proceedings has remained constant post LASPO. We believe that the appointment of guardians is likely to be vary widely across the jurisdiction because unrepresented parties do not know that this is something they can ask the court to do.

We would suggest this is an area that needs further research to fully understand how children's voices are being heard and taken into account in the court proceedings.

### **Section 4 - The procedure where domestic abuse raised**

#### 5 - Fact finding hearings

Since the introduction of the revised PD12J, RoW receives fewer calls where judges have decided not to hold a fact finding hearing when domestic abuse has been raised. Anecdotally, this indicates that the revised PD12J has made a difference, however, the Government should seek data in relation to this from HMCTS.

It is now a requirement that the judge records in the order why a fact-finding hearing has not been ordered, if that is the case. Research would be able to identify whether that is being recorded in the orders and also identify the reasons given for not having a fact-finding hearing.

Under the current system, it is important that fact finding hearings occur so that any findings of domestic abuse can inform the outcome of the case. However, we have set out below some of the limitations of fact-finding hearings:

- In our experience, judges limit the number of allegations to be made to around 6. These allegations must be put into a schedule of allegations and supported by a witness statement. Many of the women we speak to struggle to understand how they can fit the perpetrator's behaviour into this model when what they want the court to understand is a pattern of controlling and coercive behaviour.

Some judges will allow coercive control to be squeezed into these templates using dates over a specified period and considering the narrative in the witness statement to describe the perpetrator's behaviour and understand the context. Others are unreasonably strict about having to fit abusive behaviour into specific incidents. The consequences of the latter approach on the rest of the case are obvious. The only evidence the court has will relate to isolated incidents, some of which may not seem particularly serious out of the context. Even if findings are made about those isolated incidents, without the context of the behaviour, it becomes harder for professionals to conduct a proper risk assessment and easier for perpetrators to convince the court they were "one-offs" that won't be repeated. We suggest a move away from an incident based approach to fact finding hearings to look at the whole picture.

- Direct cross examination is still taking place. Special measures to prevent direct cross-examination should be introduced urgently.
- Evidencing domestic abuse can be difficult. This may be due to the nature of domestic abuse which happens in private and does not always leave a trail of evidence, or because the abuse occurred a long time ago and the evidence no longer exists, or because unrepresented parties do not have the forensic skills and resources to be able to offer their best evidence. For cases which lack corroborative evidence the judge's decision will be based upon the strength and credibility of the accounts given by the parties at court. This can sometimes lead to the judge being unable to decide whether the abuse is more likely to have occurred or not. Without an understanding of trauma, judges sometimes expect victims to present in a particular way. Women who do not present at typically vulnerable sometimes find judges holding this against them, believing that the abuse could not have been that bad. This is particularly the case when perpetrators are able to present as respectable and regulate their behaviour in public; something that is very common in coercive control. A problem solving, trauma-informed and multi-professional approach to cases may help counteract some of the limitations of fact finding hearings.

## 6. Risk assessments

As far as RoW is aware there is currently no data on the number of risk assessments once domestic abuse is established, who conducts the risk assessments or the outcome of risk assessments. HMCTS should be able to produce this data in order to

evaluate adherence to Practice Direction 12J and consider whether any improvements are required to the way risk assessments are conducted.

In our experience, risk assessments are conducted by judges and / or Cafcass. Cafcass officers usually have a social work background, with varying degrees of experience in working with families affected by domestic abuse. It is very rare in private law proceedings for risk assessments to have input from experts with clinical and psychological expertise. The risk assessments tend to be brief and superficial and this may be because a judge and a social worker do not have the expertise to provide a full risk assessment.

Risk assessments focus on the risk to the child, and almost no attention is given to the risk to the survivor. It is presumed that so long as direct contact between the abuser and survivor is limited then she will not experience domestic abuse (this presumption is incorrect). Some callers tell us that the Cafcass officer had a long and thorough conversation with the perpetrator and little or no conversation with the survivor, and this is reflected in the attention given to both parties in the report to the court.

In RoW's research<sup>2</sup> survivors reported that risk assessments conducted by specialists are more accurate and cognisant of strategies used by abusive men to terrorise women and children while disguising their behaviour from others.

It is our view that risk assessments could be improved by ensuring all risk assessments are conducted by domestic abuse specialists who are accredited by Respect to ensure quality and expertise.

## 7. The impact of Practice Direction 12J

If PD12J is applied fully and properly by judges who are willing to try to understand the dynamic of the relationship between the parents, it does improve the response of the court and help protect victims and children. It is particularly helpful to have a fully set out definition of domestic abuse that includes coercive control and forms of abuse predominantly experienced by black and minority ethnic women. When judges take it seriously, it is helpful. But it cannot, alone, resolve the problems faced by victims of abuse. We have set out earlier in this evidence some of the problems with the system as a whole, below are some examples of harm that can be and is caused to victims on which PD12J have no impact:

- Victims of abuse may face many different sets of proceedings against the perpetrator of abuse, not just child contact proceedings. In particular, financial proceedings where domestic abuse is almost entirely ignored.
- Victim's safety at court is compromised because of their lack of access to special measures and giving the perpetrator opportunities to intimidate and harass victims;
- Victims may be traumatised by being directly cross-examined by the perpetrator, by having to cross-examine the perpetrator themselves and

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<sup>2</sup> *Picking up the pieces: domestic violence and child contact*, Rights of Women and CWASU 2012



generally by having to take part in court proceedings unrepresented against a perpetrator who has a history of manipulating and controlling her.

- Direct contact is ordered in all but the very extreme cases of physical violence. Perpetrators can use contact in many subtle ways to assert control or continue abuse for example cancelling contact at short notice to disrupt the victim's plans (whereas the victim cannot cancel contact as she will face enforcement proceedings); questioning the children for details about the victim's life, confronting the victim with details about her life which he obtained from the children, denigrating the victim to the children, passing messages to the victim through the children, using handovers or communications which are meant to be about the children to shout at or be abusive towards the victim.
- We rarely see the court make non-molestation orders of their own motion. Non-molestation orders are most commonly made without notice on an emergency basis. They sometimes turn into child contact proceedings with an application being made by the perpetrator in response to the non-molestation order application. However, many of the victims of abuse who face contact proceedings do so without any form of protection. If the court was serious about protecting victims, it seems obvious that making a non-molestation order following findings or before making a final order would be a good way to send a clear message that the perpetrator is expected to manage their behaviour. For some reason, we rarely see this happening.

## **8. Challenges and variation in implementing Practice Direction 12J**

### **8. What are the challenges for courts in implementing PD12J? Is it implemented consistently? If not, how and why do judges vary in their implementation of the Practice Direction.**

To answer this question we have relied on information we receive on our family law advice lines from survivors of domestic abuse. A fuller, more detailed picture could be obtained by collecting or reviewing data available in HMCTS case files.

The main challenge the court faces is protecting victims and children from domestic abuse within a strong "contact at all costs" culture. Many judges lack a deep understanding of the dynamics of domestic abuse, the subtle ways abusers can perpetrate abuse and the impact of domestic abuse on women and children. This hampers their ability to apply the various provisions of Practice Direction 12J which require judges to consider risk of harm, managing risk and promoting the safety and well-being of children and parents.

#### Paras 25-26 Interim orders before determination of facts:

*Where the court gives directions for a fact-finding hearing, or where disputed allegations of domestic abuse are otherwise undetermined, the court should not make an interim child arrangements order unless it is satisfied that it is in the interests of the child to do so and that the order would not expose the child or the other parent to an unmanageable risk of harm (bearing in mind the impact which domestic abuse against a parent can have on the emotional well-being*

*of the child, the safety of the other parent and the need to protect against domestic abuse including controlling or coercive behaviour).*

This requirement is inconsistently applied and in many cases contact is ordered to take place before the fact-finding hearing when it should not have been. While judges do make reference to the risk of harm to the child before making an order for interim contact, judges do not usually have the expertise to assess whether the child may suffer emotional harm especially in the context of coercive control. The concept that any delay in contact would be harmful for the child appears to be more persuasive to judges than the risk of harm as a result of domestic abuse. This is exacerbated by cuts to the court estate and judicial resources because judges know that a case where there is a fact-finding hearing is unlikely to take less than a year. This is a long time for a parent who should be having contact with their child and judges feel more pressure to put something in place to mitigate this delay.

Once interim contact is ordered, if the child appears to be distraught or displaying signs of trauma before, during or after contact (for example by crying uncontrollably, suddenly bed-wetting, experiencing nightmares, displaying aggression towards the mother or at school) then the issue of risk of harm to the child is not usually revisited. It is presumed, in these circumstances, that the survivor is not doing enough to promote contact with the abusive father or that the child is projecting her own anxiety towards the father, and everyone is required to persist with contact despite the impact it is having on the survivor and the child. A judge who has ordered interim contact, even if supervised, is unlikely to go back to their decision as this is tantamount to admitting they were wrong. When there is no judicial continuity, subsequent judges work on the basis that the contact should have been ordered if the order was not appealed.

RoW has not seen any research on whether waiting until after the fact-finding, risk assessment and any appropriate treatment would be better for the quality of contact long-term (if there should be any contact) than rushing into contact at such an early stage. Such research would be useful for this review.

Very little focus is given to the survivor's emotional well-being despite the requirement to

*give particular consideration to the likely effect on the child, and on the care given to the child by the parent who has made the allegation of domestic abuse, of any contact and any risk of harm, whether physical, emotional or psychological, which the child and that parent is likely to suffer as a consequence of making or declining to make an order*

The focus tends to be on the survivor's physical safety only, and it is presumed that the parents do not have direct contact at handovers then the risk is fully managed. We often hear from mothers who tell us that they have had to seek help from their GP due to the anxiety they feel over having to hand their child over to a man they know is abusive. Mothers do not always feel confident in disclosing this to the courts for fear that this will be used against her by the father as a reason why she is not a good parent. Furthermore, as mentioned above, she could also be criticised if the child also displays anxiety as it is presumed that the child is projecting her anxiety (often without any expert evidence upon which to base this presumption) and the mother will be

expected to do something about this. This stems from an attitude that once the couple has separated, both parties can move on and abuse stops. It is due to a lack of understanding of the trauma caused by abuse and sometimes lengthy effect this can have. There is also a gendered dynamic to this attitude as the women whose mental health suffer as a result are categorised as “overly emotional” and those who are strong enough to fight against contact are seen as “difficult women”.

Making orders for supervised contact at such an early stage can pose a dilemma to judges later on in the case. We recently received a call from a survivor who had lost confidence in the family courts. The judge ordered interim supervised contact before the fact-finding hearing. The perpetrator, knowing that he is being supervised, behaves well during supervised contact and the contact records show no concerns. However, the fact-finding hearing established that the father had been violent towards the mother. The father was ordered to attend a perpetrator programme (presumably after a risk assessment which showed that there was a risk to either the child, or the mother, or both). The father refuses to attend the programme and continues to deny that he was violent. Supervised contact continues and appears to be going well. The mother’s lawyer (not RoW) has advised the mother to be prepared for contact to progress to unsupervised contact despite the father not attending the treatment programme as supervised contact is progressing well. The mother senses from the judge’s comments that their hands are tied by the positive supervised contact records despite her concerns that this manipulative perpetrator is putting on a show for the contact supervisors and will continue his abuse once contact is unsupervised or after court proceedings have ended.

This is a common pattern when supervised contact has been ordered prior to the fact-finding and risk assessment. Another caller informed us of a similar situation. The Cafcass officer’s final recommendation was for monthly contact to be supervised by his parents (the Cafcass officer had taken the father’s word for it that his parents were suitable to supervise contact). Unfortunately, in that case, the caller had spent approximately a year getting the case listed for final hearing after the first final hearing was adjourned (due to court resourcing issues). Her case had then floated around with no one in the court taking responsibility for it before getting another listing for final hearing. The case was listed for a directions hearing (it being about 11 months since the last ineffective hearing) at the directions hearing, a new judge directed an updated Cafcass report. The new report recommended staged increases in contact to unsupervised within about 6 months. The mother accepted that the child was going to supervised contact without issue. Her concern was the fear of what would happen when the father was no longer being watched. The father had been found to have physically and sexually abused the mother. The mother was unrepresented and informed us that despite her presenting numerous allegations, the court would only listen to 6 and wouldn’t listen to her evidence of controlling and coercive behaviour. If the court follows the Cafcass officer’s recommendations, the father will have achieved unsupervised contact largely through waiting out the process. The father has a well-paid job but does not pay maintenance. RoW agrees that maintenance and contact are issues that should be dealt with separately but question why the court, in a case like this, would not see this as an indication of whether the father has really changed his attitude to the mother.

What is clear in these cases and the many others we hear about is that interim contact should not have been ordered until after the fact-finding, and if findings are made interim contact should not take place until after treatment or intervention and a risk assessment.

Once contact has started, the court's ability to order no contact or very limited contact is hampered. Given the length of cases, some judges feel it is unfair to delay contact when it can take place in a contact centre. But once started, in the large majority of cases, our experience is that contact will progress, whatever else happens in the proceedings. This is a short-term solution that determines the long-term outcomes. Paragraph 38(d) which would enable the court to list the case for a review hearing is rarely used. We explain how this can go wrong after final orders are made, especially when final orders are made without any unsupervised contact taking place during proceedings, under s. 91(14) where we have considered return cases.

If courts were properly funded and able to hold a fact-finding hearing within a short period, judges would be less likely to take the risk of ordering supervised contact before this process had been completed. A safe system would be able to identify cases where there is a risk of domestic abuse early, get to grips with the dynamic of the relationship and should have the resources to hold any form of fact-finding exercise early in the case so that children and victims are protected but also children who can safely have contact with the non-resident parent are not negatively affected by delay in the proceedings.

#### Para 32 Obtaining information about local services once domestic abuse is established

RoW does not have sufficient information or seen any data to confidently assess whether or not this provision is being applied appropriately or consistently. This is an area that would benefit additional research. We would be particularly interested to know the availability of Respect accredited perpetrator programmes and domestic violence support services. We understand Cafcass has tried to commission accredited programmes for anyone they wish to refer. We would like to see this kind of information collected.

#### Para 33(a) Social work, psychiatric, psychological, or other assessments including expert safety and risk assessments of any party or the child

This paragraph requires the court to *consider* whether an assessment would assist the court if domestic abuse is established. RoW does not have sufficient data to comment upon whether the court consistently considers whether an assessment is required, but can say that it is rare for such assessments to be ordered in private law children cases.

RoW would be interested in a comparison of the numbers of expert assessments ordered prior to LASPO compared to those ordered after the cuts to legal aid. Unrepresented parties who would significantly benefit from an expert assessment are trapped. If neither party can afford an expert assessment, there is no option but for the court to proceed without one. This is one of the reasons RoW would be interested to know how many guardians are appointed pre and post LASPO. We suspect that some judges appoint a guardian, thereby providing the child with a solicitor who will be

publicly funded, in order to find a way of paying for expert assessment. This is an area that would benefit from additional data to understand when expert assessments are being granted, how they are being funded and what happens in cases where there is reason for an assessment but no one can pay for it.

RoW is of the view that expert safety and risk assessments should be prepared in *all* cases if domestic abuse is established and consideration should be given to how such assessments will be funded if legal aid is not available. The type of expert and nature of the assessment will depend upon the circumstances of the case. The assessments should assess risks to the survivor as well as the child. The expert should be an appropriately qualified, specialist in the area of domestic abuse and accredited where relevant.

#### Para 33(b) Making advice, treatment or other intervention a precondition to any child arrangements being made

Again, RoW does not have sufficient data to say confidently whether the courts consistently make good use of this provision but it is important for this review to reach a conclusion on the application of para 33(b).

RoW receives some calls which involve cases where advice, treatment or other intervention has been ordered. We also receive calls where a Cafcass recommendation is that contact should not become unsupervised until the perpetrator has successfully completed perpetrator work. Equally, we have described above a case where Cafcass was happy for contact to progress to unsupervised despite the perpetrator continuing to deny any wrongdoing and refusing to engage in any work at all. It is rare for work to be a precondition of and contact taking place. As can be seen, the approach to this sub-paragraph is varied.

The overall impression is that courts feel a sense of urgency to progress contact and that behaviour from the perpetrator which falls short of physical violence is something that the survivor must manage. This is despite the Practice Direction specifically stating:

*It is acknowledged that acceptance on a DVPP is subject to a suitability assessment by the service provider, and that completion of a DVPP will take time in order to achieve the aim of risk-reduction for the long-term benefit of the child and the parent with whom the child is living.*

It is very common for RoW's callers to tell us that they would like their child to have a relationship with their father and for contact to occur but not without evidence that the father has changed and is no longer a risk to her or her child. Para 33(b) provides the potential for this to happen but, for one reason or another, our callers are finding it difficult to obtain orders which make treatment or intervention a precondition of contact.

Completing a treatment or intervention may not always reduce the risk to the child and to the survivor. Not all perpetrators are the same. RoW understands that when a perpetrator programme is recommended, Cafcass will refer the perpetrator to one of their commissioned, Respect accredited programmes. The programme then

completes an assessment of whether the perpetrator is suitable for the programme. There is no clear strategy for cases where the perpetrator is deemed ineligible or where a perpetrator is unwilling to attend a programme. From the calls we receive, RoW knows that in some of these cases, contact is still being granted.

Final orders made for supervised contact to increase once the perpetrator has completed a programme are unsafe. It is important for there to be a further risk assessment after the treatment or intervention is complete to assess whether the risk has reduced and contact is safe before any direct contact takes place. In our experience, attendance at a perpetrator programme is seen a success and not as a process through which the perpetrator should be challenged to change.

#### Para 36

*The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.*

The women that call RoW would not agree that this paragraph is being applied.

The “contact at all costs” culture and the lack of expert risk assessments has resulted in this paragraph being applied inconsistently. Contact is routinely ordered without properly considering the emotional (and sometimes physical) safety of the child and the parent with whom the child is living. Insufficient consideration is given to protecting the parent with whom the child is living from further domestic abuse, particularly emotional, financial and psychological abuse and controlling and coercive behaviour.

#### Para 37:

*In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –*

- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;*
- (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;*
- (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;*
- (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and*
- (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.*

RoW does not have access to judgements which will evidence whether judges are consistently giving the considerations in (a)-(e) the attention that is required. The impression that RoW has is that judges are failing to take these considerations

seriously. RoW cannot recall receiving any calls during which the caller stated that the judge concluded that the parent was motivated by a desire to continue abuse rather than promote the best interests of the child despite this being a common concern for survivors. The effect of the domestic abuse on the child and its effect on the child's relationship with the parents is either not fully considered or is considered to be outweighed by the perceived harm that will be caused to the child by not having frequent, direct contact with the father.

All of the factors in (a) to (e) including the likely behaviour of the perpetrator during contact, his motivation for applying for contact, his capacity to appreciate the effect of past domestic abuse and potential for future abuse are factors that can only really be properly investigated by an expert. Given that expert risks assessments are rare, it is likely that these considerations are not being applied as they should be.

#### Para 38 Directions on how contact is to proceed

*Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supervised by a parent or relative, is not appropriate.*

Many of the women that call our advice line, are shocked that there is a rule of court that states this. This paragraph appears to be completely overlooked by the courts. In our experience, contact is routinely ordered even if it is evident that there is a risk to the child and the other parent. This paragraph is usually only applied if there is a risk of serious physical or sexual harm to the child.

#### **The presumption of parental involvement**

#### **9. What has been the impact of the presumption of parental involvement in cases where domestic abuse is alleged? How is the presumption applied or disapplied in these cases?**

Prior to the introduction of Section 1(2A) there was already a general approach that fathers who have abused mothers should nonetheless be involved in the child's life, and such involvement usually involves direct contact (supervised and then moving to unsupervised, overnight contact). The introduction of the presumption may have strengthened this approach. The only way to properly assess this is for HMCTS to provide data on the number of cases before and after the introduction involving domestic abuse for which it was decided that:

- interim contact should take place with the abusive parent;
- the abusive parent will have no involvement with the child;
- the abusive parent will have indirect contact only;
- the abusive parent will have direct contact;
- the child will live with both the abusive parent and the survivor of domestic abuse;

- the child will live with the abusive parent, and the survivor will have direct contact;
- the child will live with the abusive parent, and the survivor will have indirect contact only;
- the child will live with the abusive parent, and the survivor will have no involvement.

The calls RoW receives reflect the “contact at all costs” approach, which means that unsupervised contact is ordered even if there has been serious physical and sexual violence perpetrated towards the mother and no work has been done by the perpetrator to change their behaviour. It is assumed that a person can be very abusive towards the mother and be a good father to the child. Callers sometimes report the father behaving in controlling and abusive ways towards the children (for example by making the children feel worthless or inferior, threatening physical violence, shouting and causing the children to feel fear), but these behaviours are not considered serious enough by the courts to require any change in type or frequency of contact arrangements or the mother or child is simply not believed.

One of the advisors on RoW’s family law advice line will never forget a call from a mother who was experiencing abuse (coercive and controlling behaviour and some physical abuse) from the father of the child. She witnessed the father being emotionally abusive towards the child but she felt able to mitigate it either by intervening or by reassuring the child after an incident. The father never spent any time alone with the child. She was considering leaving the father but she knew he would apply for a child arrangements order. After talking to other mothers who had been in a similar position, investigating advice online and speaking to lawyers she concluded that the father was likely to be granted unsupervised contact with the child. As she would not be supervising contact, she would not be able to mitigate the effects of the abuse. She told the advisor that she has decided to stay with the abuser as that is the best way to protect her child.

Sometimes children refuse to see their father, or are too distraught for contact to take place. The general approach in this circumstance is to tell the mother that she must force the children to see their father and if she does not she faces enforcement proceedings or the child could be removed from her care (even if the mother reports trying to be as positive as she can about contact and the father to the child). Callers to RoW’s advice line do not generally report there having been any investigation by an expert as to why the child feels so strongly about not seeing their father and whether there should be any treatment or intervention to address these feelings.

## **Orders**



## **10. Where domestic abuse is found to have occurred, to what extent do the child arrangement orders made by the court differ from orders made in cases not involving domestic abuse?**

Excluding the unusual cases where no order for contact is made (which should be considered distinct from cases that conclude with no order due to the applicant's failure to engage in the court process which sometimes happens). In cases where some type of contact is ordered, HMCTS should be collecting this basic outcome data. Where there is abuse, there are cases where the contact ordered will only be letterbox, these cases would be highly unusual in cases not involving domestic abuse unless there was some other safeguarding concern. Where direct contact is ordered, which we believe would be the majority, there is no significant difference in the type of contact ordered.

It generally takes longer for fathers who have been abusive to obtain a child arrangements order than a father who has not been abusive. The abusive father will probably have to go through a period of supervised contact before getting to unsupervised contact and then slowly build up to overnights. A lot of weight is placed on positive reports of supervised contact even though it is known that many perpetrators are manipulative and behave very differently in public than they do in private. However, in the end the level of contact final outcome for both the abusive and non-abusive father is similar. A typical arrangement is unsupervised contact from Friday to Sunday every other weekend, possibly an overnight during the week, and half of all school holidays. The only difference will be the arrangements for handovers to avoid close physical contact between the mother and father.

## **Section 5 - Safety and protection at court for victims of domestic abuse and other serious offences**

Survivors we speak to are not aware of special measures to protect their safety until we advise them. More needs to be done to make survivors aware of what special measures are and how to request them.

We often hear from survivors that they requested a separate room but on the day it is not available or something has gone wrong.

Ticking boxes on a form is not usually enough to ensure special measures are available, normally the survivor needs to contact the court a couple of days before the hearing to remind them that she has requested special measures.

Our experience is that some judges can be difficult to convince to put screens in place. RoW considers this a basic special measure that should be available to all survivors of abuse. If it is difficult to convince a judge to put screens in place, the idea that any more onerous special measures such as video link should be put in place is even harder.

When judges do agree that special measures are appropriate, the availability of video links and telephone links is extremely limited or non-existent in some courts.

## **12. Vulnerable witnesses**

RoW does not have access to judgements on these decisions so are unable to answer this question. Judges are not considering victims of domestic abuse vulnerable routinely. RoW speaks to many women who are extremely vulnerable due to the perpetrator's abusive behaviour but they are not considered vulnerable simply because of this. From our experience, to be considered a vulnerable witness, someone would have to have additional vulnerabilities, for example a learning disability. This could mean that judges are not applying Part 3A or that the caller has not understood or retained the judge's decision on Part 3A, or that they simply did not want any advice from us on this particular issue. This is another area where data from HMCTS would be helpful.

### **13. Direct cross-examination**

RoW is aware that direct cross-examination of victims of abuse is still happening despite the Government committing to ban this egregious abuse of victims' human rights a number of years ago. RoW has written about this many times. We would direct the FJP. Most recently in February 2019 in our [Evidence to the Joint Committee on Human Rights on the draft Domestic Abuse Bill](#) and in July 2018 in our [Evidence to Home Affairs Select Committee Inquiry into Domestic Abuse](#).

In our [Response to the Government consultation to the Domestic Abuse Bill](#) in May 2018, we wrote the following about direct cross-examination:

*The system is currently muddling through with this situation and the result is that survivors are being further abused through the court process. We would highlight the recent case of JY v RY [2018] EWFC B16. In this case, the mother made allegations of serious domestic abuse against the father. Neither party was represented because neither could afford a lawyer and neither was eligible for legal aid. This is as a result of the overly stringent means test to be eligible for legal aid. In the case of the mother, she was ineligible for legal aid despite being on benefits. The mother, understandably, found the situation unbearable and was only able to give evidence on some of the allegations. The Judge stated that:*

*There is always the fear in the mind of the Court that the questioning of an alleged victim about their abuse merely prolongs that abuse by other means. Given my findings in this case, limited though they are to only the first few allegations, I think that fear is borne out here.*

*It is unacceptable that these parents were unrepresented in such a serious case. It is further unacceptable that the Judge was expected to step in a take over the role of representing both parties at different times in order to prevent direct cross-examination by the perpetrator. The Judge was clear that:*

*the lack of legal representation gravely affected the fairness and efficiency of the process of questioning both parents. So far as my role in this was concerned, although I did my best to abide by the guidance in PD12J at paragraph 28, I was hesitant about participating in this way, being reluctant to be seen to step into the arena myself. Ours is an*

*adversarial (i.e., led by opposing parties) not an inquisitorial or judge-led legal system: judges have neither the training, tradition nor natural inclination to subject witnesses to detailed questioning.*

*The result is that the court will now have to go on to make important decisions about the welfare of a 10 year old child based on the limited findings the Judge felt able to make. The other allegations have not been tested but the court must treat them as if they did not happen. They cannot possibly assess the risk the father poses without addressing all the allegations.*

*This would never have happened in a criminal court. It is unsatisfactory for the position to be that there is a commitment to legislate against this at some point. This needs to be addressed as a matter of urgency and the system in the criminal courts should be replicated where an order is made for the unrepresented parties to be represented during cross-examination. Cross-examination is not the role of the judge and, again, this is something that would never happen in the criminal courts.*

## **The implementation of FPR Part 3A and Practice Direction 3AA**

### **14. What are the challenges for courts in implementing FPR Part 3A and PD3AA? Are they implemented consistently? If not, how and why are they inconsistent?**

Currently the likelihood of a survivor being granted a particular special measure will depend upon how well the judge understands domestic abuse and the way it might impact upon a survivor giving evidence or being in a courtroom with her abuser. The only way to avoid inconsistency is to have clear provisions which guarantee that survivors will have access to special measures, rather than relying on judicial discretion.

Inconsistency can also occur because the availability of special measures varies between courts. The lack of availability of certain measures will obviously hinder the court's ability to provide the measure. Many callers have reported to RoW that they requested a separate waiting room but when they arrived at court the staff had no idea about the request, or no rooms were available. In our experience courts prioritise use of the limited special measures available for cases listed for fact-finding hearing as, in the court's mind, this is seen as the most serious hearing and fits with Part 3A in terms of ability to give evidence.

However, for a party who is unrepresented and has no legal knowledge, most hearings all feel very similar. The experience of having to speak for yourself in court while the perpetrator sits, within arms' length in some courts, is extremely difficult. RoW is not suggesting they are the same as being cross-examined directly by the perpetrator of abuse, but that judges seem to minimise how difficult it is for victims to speak about their experiences in front of the perpetrator.

Provision could be improved by ensuring that all court buildings and hearings have special measures available for all hearings which include:

- A sufficient number of separate and secure waiting rooms for which survivors have priority

- Separate entrances and exists
- Screens
- Live links (video and audio links)
- Clear procedures for staggered arrival and departure times

It is important that survivors are made aware of the availability of special measures and how to request them well before the first hearing and so that they are prepared to explain to the judge why the special measure is required. See our [Response to the consultation on amendments to Family Procedure Rules – Vulnerable Witnesses and Children](#) (September 2015) for further practical considerations.

Unrepresented survivors may struggle to speak, or appear unable to articulate herself or participate in proceedings due to anxiety, fear or PTSD. The re-introduction of legal aid, widespread use of IDVAs in family courts and proper use of special measures would assist. However, as discussed early in this evidence, an altogether alternative approach could have appropriate safeguards built into it to ensure victims are not prevented from having their views understood.

### **The impact of FPR Part 3A and Practice Direction 3AA**

#### **15.How effective are these provisions in protecting victims of domestic abuse and other serious harms from harm in private law children proceedings?**

RoW does not receive a sufficient number of calls where special measures have been granted in the family courts to be able to answer this question. We can say that callers to our criminal law line (special measures including prohibitions on direct cross-examination are routine in the criminal justice system) find the measures to be reassuring. The special measures do not eliminate their fear or anxiety, but they do make a difference to the likelihood that they will give evidence.

### **Section 6 - Repeated applications to the family court in the context of domestic abuse**

#### **16.Repeated applications as a form of abuse**

The ways in which perpetrators of domestic abuse use the family courts to continue their abuse are many and varied. Repeated applications are only one way in which the justice system is complicit in abuse. We will answer this question in detail in relation to repeat and returning applications in private children proceedings but would remind the Panel that family breakdown and domestic abuse can lead to a number of different types of proceedings before both and Family and Civil Courts. Other common proceedings being financial arrangements, possession proceedings when the perpetrator stops paying the mortgage or rent for a property he no longer lives in, debt or bankruptcy proceedings especially in cases of economic abuse where a perpetrator has amassed debt in the victim's name.

RoW is not aware of the different types of proceedings being taken into account when the court considers an order under s.91(14). To do so would require a more complicated assessment of the merits of those other proceedings because it is often the case that some proceedings are necessary when a victim of abuse leave the

relationship. However, some are obviously intended to cause the victim further distress and anxiety, for example, failing to pay the mortgage when the perpetrator can afford to because they are no longer living there.

### Repeat applications as a form of abuse

At RoW we consider not just repeat applications but sometimes the very first application as a mechanism to continue abuse. We speak to women who tell us that the perpetrators of abuse use contact arrangements as a way to perpetuate abuse along with the threat of issuing proceedings. In our experience, there are many women who try to manage contact arrangements with abusive ex-partners when they separate from them. However, perpetrators abuse this in many ways:

- They use it as an excuse to harass and pester the victim by telephone, email and in person;
- They turn up at the victim's home unannounced demanding to see the children. In some cases, women will allow them into the home in order to avoid a confrontation and we have been informed by some women that when this has happened, the perpetrator has become highly abusive with physical and sexual assaults taking place;
- They make arrangements for contact and don't turn up, causing the victim to have to rearrange her plans including cancelling work leaving her economically worse off. From some of the women we speak to, we are aware that some perpetrators find this a particularly effective way to continue economic abuse of the victim;
- They keep children beyond the agreed time for handover without informing the victim of the reasons why or leaving the victim waiting at a designated handover location for long periods, unsure where the children are;
- They use the children directly in many ways including to pass messages to the victim, to quiz the children on the victim's life, to be derogatory about the victim in front of them. they are intimidating or threatening directly to the children, fail to take care of the children's medical or educational needs during contact and in some cases are physically violent to the children.

A victim of abuse may try to gain some form of control over the situation by putting forward a routine and stating that she will not deviate from this routine, or informing the perpetrator that she believes his contact should be supervised. This leads to an application to the court. Many of the women we speak to inform us that the application they are facing has come about because of them trying to regain some control of their lives.

As explained above, many courts fail to grapple properly with the dynamic in the parents' relationship; the court fails to, or in some cases is unwilling to, identify coercive control. As a result, the way in which the perpetrator is abusing the system goes unnoticed. RoW would like to see the court address this behaviour properly. Firstly, by identifying it within its proper context and secondly by making barring orders

that remove that avenue of abuse where the court's view is that the perpetrator's behaviour is motivated by a desire to continue their abuse. If the court was properly applying PD12J, they should already be considering the perpetrator's motivation but in our experience, they rarely take this into account.

In those cases where perpetrators are allowed to make repeated applications to the court, RoW's experience is that the court will allow this to continue for a long time before stepping in. It prevents mothers and children from being able to move on and progress in any treatment they are receiving. We receive calls from women who describe being completely worn down by court proceedings that they find traumatising and relentless. Some of the women that call RoW struggle with their mental health or to focus on anything else in their lives which seem to revolve around court hearings. Economically, RoW also receives calls from women who have spent all of their savings on representation and are left with no financial stability or, worse, large amounts of debt on credit cards, to family members and in loans in order to fund representation.

A typical example of this is *Re T (A Child) (Suspension of contact) (Section 91(14) CA 1989)* [2015] EWCA Civ 719. The mother and father separated on 2010. There were safeguarding concerns about the parent's mental health and domestic abuse (the details of the domestic abuse towards the mother are not set out but the judgment records some details of the father's abusive behaviour towards other professionals). Care proceedings were issued in 2010 but withdrawn in 2011. Private children proceedings started in May 2011. The judgment states the following:

*The style of these [the father's] challenges was described as "hectoring and argumentative", the father portrayed as "bullying and aggressive if he does not get his own way". leaving the mother ostensibly vulnerable and undermined, or as HHJ Compston ... observed "utterly and completely miserable by this case ... overwhelmed by difficulties . . . a sad, bruised figure".*

What typifies the court's response in this case is that despite this being stated about the mother in 2012, the s. 91(14) order was not actually made by the court until 2014. Proceedings had been continuing with numerous, unreasonable applications being made by the father for at least the subsequent 2 years, if not well before then.

#### Return applications by victims of domestic abuse

RoW would distinguish repeated, unmeritorious applications made by perpetrators and a growing concern we have about return cases brought by the victim of abuse as a result of the contact arrangements breaking down. We are referring to cases where a child arrangements order has been granted and the case is returned to court with an application to vary or discharge the order by the victim of abuse.

We have raised elsewhere in this evidence that we are concerned that child arrangements orders are being granted for contact to step up over time when the only contact that has been taking place during the proceedings is supervised and the perpetrator has refused to engage in treatment.

We receive calls from women who inform us that over time, as supervision has decreased and the length of contact increased, their children have become extremely

upset about contact. They are bedwetting, having nightmares or misbehaving. The women that call RoW rarely want to return the case to court because they fear being viewed as obstructive. It often requires a third party, normally the school or social services, to raise their concerns before the victim returns the case to court.

In this situation, our experience is that the case will normally be listed in front of the judge that made the final order. The reality is that most judges are unwilling to concede that, in the circumstances, the final order was, perhaps, the wrong one and instead view the break down in contact or the children's growing fear as the mother's fault. It is within this context that we see "parental alienation" being raised with most success. RoW has spoken to victims of abuse in cases where findings were made against the perpetrator in the first proceedings, the perpetrator has done no work to reduce any risk he poses but it is the victim that is being told she must do more to support contact when the children are becoming fearful of attending. Courts will rarely "go behind" the final order and consider the circumstances under which it was made. They take the view that if it was not appealed, it must be correct.

RoW also finds that in these cases, the court will view the domestic abuse as "historic" and no longer relevant. This approach is unsurprising when the findings that were made were limited to 6 specific incidents, the most recent of which may have been a few years ago. This is an example of where the court's failure to grapple with coercive control and psychological or emotional abuse has a serious long-term effect. It obscures the reality of the situation and enables perpetrators to blame the mother for failing to support contact.

RoW is growing more concerned about these types of cases and has received a number of calls that follow this pattern. It is relevant to s.91(14) orders because we have seen s.91(14) orders being made against women in this situation. By the time these cases get to this point, the damage has largely already been done and it is, generally, not possible to unravel it legally.

## **Making s.91(14) orders**

### **17. Under what circumstances do family courts make orders under s.91(14)?**

The case law all suggests that s.91(14) orders should only be made in exceptional circumstances as a weapon to prevent repeated and unreasonable applications. The child's welfare is paramount and they can be made to protect a child's welfare but, again, only in exceptional circumstances. The orders are viewed as more draconian that they need to be as the only step they add to the application process is a permission stage.

The case law all suggests the court will wait a considerable time and victims are left to endure years of abuse through the courts before they will grant a s.91(14) order.

In a more recent case where the court made s.91(14) orders without there being a history of extensive applications to the court but as a result of the risk posed by the father, the risk to the mother and children from the abusive father was so high that the court had placed the mother and children in the UK Protected Persons Scheme (*PM v CF* [2018] EWHC 2658 (Fam)).

RoW's experience is that s.91(14) orders are made very rarely. We have heard of orders made against victims of abuse in situations where duplicate orders are made against both parents which has been explained above in relation to return cases.

RoW has received calls from victims of domestic abuse who have had a s.91(14) order made against them where their children live with the perpetrator of abuse and they are struggling to have contact with their children. This is unusual.

RoW is not aware of having received any calls from victims of abuse who already has a s.91(14) order in place to protect them or their children from applications to the court. This is another area where research in relation to the numbers of orders and the circumstances under which they are granted would clarify the picture.

RoW would like to see a barring order used more extensively that is designed to protect victims and children from abusive behaviour, recognising that applications to the court are likely to be part of a pattern of behaviour and that other behaviour, as described in the previous section should also be taken into account.

### **Leave to apply applications**

**18.How do courts deal with applications for leave to apply following a s.91(14) order? Is the other party always given the opportunity to respond to the application? Are applications heard by the same judge who made the original order? In what circumstances are courts willing to grant leave?**

We are unable to provide any evidence in relation to the way in which leave to apply applications are dealt with in practice. We would assume these cases are very rare. HMCTS should be asked to provide data in relation to the number of s. 91(14) orders made, subsequent applications for leave made and the outcomes of those applications.

We would support the practice which has been set out in case law of an application initially being dealt with on paper or even at an oral hearing without the respondent being notified and, in the event that the judge feels the case is arguable, notifying the respondent and listing the case for a hearing dealing with the leave to apply application so that the respondent can raise any issues before the leave application is granted. This would have the benefit of filtering hopeless applications without bothering the respondent and causing further stress.

### **The implementation of s.91(14)**

**19.What are the challenges for courts in applying s.91(14), including applications for leave to apply? Is there consistency in decision-making? If not, how and why do inconsistencies arise?**

The answer to this question is dealt with above in our other answers.

### **The impact of s.91(14)**



## **20. How effective are s.91(14) orders in protecting children and non-abusive parents from harm?**

RoW is unable to answer this question due to limited experience. We believe it is likely that when they are made, they provide some breathing space for the children and the non-abusive parent. If contact is continuing, they do not remove all avenues for abuse to continue but remove one of the avenues so should be viewed as one useful tool among many.

### **Section 7 - Outcomes for children**

#### Impact on child

The Family Court is making decisions about contact with little input from experts in domestic abuse. Cafcass officers are variable in their level of expertise. We support the Family Justice Observatory's aim of compiling readily available research that can be relied upon by professionals within the family justice system. Understanding of the long-term impacts of domestic abuse on children are little known. Although attitudes are shifting, they are shifting too slowly. Coercive control is one of main areas where judges are still of the view that children are not affected by it. This is incorrect.

Mothers have described the following behaviours which indicate that the child is experiencing harm as result of being forced to see their father, often against their will:

- Obvious signs of being distraught such as crying hysterically, shouting, refusing to go to contact without physical force, hitting the parents;
- Being withdrawn in the lead up to or after contact;
- Bed wetting before or after contact is to take place (when bed wetting was not previously an issue);
- Experiencing nightmares;
- Being generally well-behaved but aggressive and violent towards the mother or at school after contact is ordered or after contact sessions;
- Telling the mother that she is a bad mother, or criticising her after contact sessions (repeating comments the father has made about the mother to the child).
- Impact on the victim parent
- Mothers often describe the following after orders are made for contact, or after the father issues his application for child arrangements:
  - Mental health issues, anxiety, or depressions as a result of having to either communicate with the father or facilitate contact with their abuser;
  - Regressing in their recovery from the abuse;
  - Feeling as though they must revolve their whole life around the father's availability to see his child - this is an issue that both survivors and non-survivors of domestic abuse have to deal with but for survivors this can often like the abusive parent is back in control of her life;
  - Feelings as though they are stuck, they cannot move on, they can never feel free or happy;
  - Fear and anxiety following shouting or abusive behaviour over the phone or during handovers.

## **The impact of domestic abuse**

As explained above, research and understanding are integral to changing attitudes to domestic abuse. RoW is not the most appropriate organisation to answer this question but we support any moves to increase understanding of impact of domestic abuse.

## **Section 8 - Any other comments**

Survivors are protected from direct cross-examination and are routinely granted special measures in the criminal justice system. The Code of Conduct for Victims of Crime makes it a requirement for various agencies to consider special measures at the start and at various stages of a case. Similar provisions and procedures could be introduced to the family courts.

IDVAs (independent domestic violence advocates/advisers) who are currently funded to assist women through the criminal justice system often find themselves providing some support for women going through the family justice system. Helping survivors access special measures in the criminal courts is a key part of an IDVA's role. RoW would like to see the professional role of domestic violence support services properly recognised in the family courts and funding provided for IDVAs to be made available.

**26 August 2019**