



Rights of Women response to the Private Law Working Group's Review of the Child Arrangements Programme

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 a response to the report of the Private Law Working Group's (henceforth, PLWG) review of the Child Arrangements Programme in relation to the experiences of the women we speak to on our family law advice line. We will address the topics covered in the report below but first wish to raise some wider points about the report.

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. The report recognises the significant effect this has had on private proceedings including that it is likely that hearings now take longer when at least one party is represented. It is important to highlight that the effect on the length of hearings is only one of the effects of the introduction of LASPO.

Although amendments to the Bill as it passed through parliament were meant to protect legal aid in family cases for survivors of domestic abuse, in reality, we speak to large numbers of survivors 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 survivors who are not able to access gateway evidence and there will always be

survivors who have never spoken to a professional about their experiences and, therefore, do not have gateway evidence.

The strict legal aid means assessment currently excludes significant numbers of survivors of abuse from representation who are not able to pay for a solicitor. The same means assessment is applied to legal aid for mediation, excluding many people (because they cannot afford to pay) from any form of out of court disposal.

When considering the numbers of people making applications to the Family Court, it is important to look at figures that pre-date the introduction of LASPO and not only figures post-LASPO. As has been reflected in the report, the current number of applications is returning to what they were pre-LASPO. What we do not know is whether there has been a change in the types of cases appearing before the court. Resources within the family justice system have reduced so it is easy for those professionals working within the system to feel like things are escalating in a way they never have before, but it is also possible that this is a reflection of reduced resourcing, not a change in the types of cases that are appearing before the court. What is equally plausible is that without proper advice or an understanding of what their legal rights and responsibilities are, family law issues may escalate, or parents become more 'desperate' before making applications, making those applications more complex. Whatever the truth is (and we suspect it is likely to be a combination of these problems and others), it is not our experience that the *"court has become the default option for too many unhappy separators"* (p.4). Our experience is that those who make applications to the court feel like they have no other options and recommendations that encourage them to avoid court need to be seen in this context.

The focus of the recommendations

There is significant emphasis in the report on helping families avoid court proceedings with a strong assumption that there are a significant number of parents in proceedings unnecessarily. We question the underlying assumption, as we have explained above, that there are a significant number of families who should not be in proceedings. It is accepted that the large majority of private children law cases are cases where safeguarding issues are raised. It should not be assumed that safeguarding issues are not present just because they have not been identified by the court. Some of the women that contact our advice line seek advice about whether to raise abuse, in particular, emotional abuse or controlling and coercive behaviour, in court proceedings in a situation where they do want contact to happen, just in a more restricted way than the other parent is seeking. They sometimes decide not to raise the abuse they have experienced.

In cases where there are no safeguarding concerns which may be classed as cases where the parents are simply unable to agree arrangements themselves for various reasons, we would still query whether these parents should not be in proceedings. This is not because we think court proceedings are the best option for those families but because we suspect that many of them simply did not have any other option. Without additional funding for the support that separated parents require in order to resolve their legal problems and while so many parents are ineligible for legal aid, parents will have no other alternative but to turn to the courts for resolution.

It is in this context, that Rights of Women believes it is unhelpful for policy and reform to be so focussed on the very small number of cases that do not need to be in court instead of improving the system for the large majority of cases that do need to be in court.

Non-Court Dispute Resolution (NCDR) and Support: Supporting Separating Families Alliance (SSFA)

QUESTION: Do you support the formation of an alliance of services (the ‘Supporting Separating Family Alliance’)? Should this be overseen by the Local Family Justice Boards, or overseen/managed in some other way? Should the alliances have a local or national identity/organisational structure?

In principle, we support the formation of an alliance of services.

We support the idea that families would benefit from the family justice system being more willing to signpost parents to local services and listen to the views of relevant professionals such as domestic abuse support services. Our experience is that many of the support services that work with individual parents or families feel like the family justice system is completely inaccessible to them (as professionals) and is unwilling to listen to their professional opinion or understand what support a parent/family is receiving. A more integrated approach across local organisations including increased awareness of the availability of local services and a willingness to refer to other organisations would improve the experiences of families accessing the family justice system. We believe it would also improve decision making in court.

We are unclear from the report exactly how the SSFA would function and have set out some points below for consideration in the development of the SSFA proposal which we believe are central to ensuring the proposal works.

- The SSFA should not be viewed simply as a way of preventing applications being made to the court. We recognise the importance of encouraging out of court disposals for families where that is appropriate. However, the policy focus of successive reforms have been based on the idea that fewer families should be coming to court despite research showing that the large majority of cases in private children proceedings raise safeguarding concerns. This suggests that the large majority of applications to the court are probably justified and the policy focus should be on improving the experience of those families accessing family justice, not trying to stop them from doing so. The inclusion of specialist support organisations in Annex 6 suggests that the SSFA would not solely be about encouraging out of court disposal but could also be used as a way for families involved in proceedings to receive support throughout those proceedings. We would support the SSFA having this role and believe that with careful development, family courts would see the benefits of professional support for families being available throughout proceedings as well as before proceedings start.
- Any model, the intention of which is to divert some families away from the family justice system entirely, must be cautious to avoid the unintended consequence of putting up additional barriers to justice for those who do need to access the

courts which we believe is the large majority of cases already in the family court. By way of example, a survivor of domestic abuse is exempt from attending a MIAM. Assuming attempts to reinvigorate the MIAM are successful, a survivor who is directed to mediation without realising that she has an exemption (perhaps because she has never told anyone that she is a survivor of abuse) and who is then diverted to SPIP and local relationship counselling is sent the clear message that she needs to agree contact arrangements with the perpetrator of abuse. We know from the women we speak to that they would often like to be able to agree arrangements and avoid court proceedings but feel unable to do so because the perpetrators demands are unreasonable, and he continues to use contact arrangements to continue the abuse. Without access to advice and support, this survivor may feel this is the only option available to her and be prevented from accessing the family court when that may be the safest option.

- We are concerned that the focus and emphasis on co-parenting will strengthen the misconception that there should be “contact at all costs” or the idea that the starting point should always be a 50:50 shared parenting arrangement. This is dangerous, particularly in the context of domestic abuse. We are concerned that survivors will feel pressured to agreeing to unsafe arrangements to avoid appearing unreasonable, and that judges and lawyers will continue to promote contact even when there has been serious domestic abuse because it is assumed that contact with an abusive father is still better than no contact with that father, with scant regard to the safety of the child and the survivor and the abusive father’s parenting capabilities. We note that there is no suggestion of public education of the impact of domestic abuse upon children, or the ways in which abusers might use contact with children to continue to exert power and control over the family. We are concerned that this continued focus on the small proportion of families within the family justice system who genuinely do not need to be in court (a very small number in our view) will end up encouraging the continuation of the contact at all costs mentality that persists for many professionals within the system.
- Any proposals must ensure that all the organisations involved know how to properly assess safeguarding risks including identifying domestic abuse and ensuring that the right support is put in place for those individuals. Otherwise, cases where there are safeguarding concerns risk receiving generic, inappropriate support and children risk unsafe arrangements being made. We believe this is particularly important given the example in the report of the DWP’s Reducing Parental Conflict programme. Some organisations have raised concerns that the DWP did not fully consult domestic abuse support services and this has led to concerns that the services involved in the programme fail to identify and respond to cases which are not “conflict” cases but are, in fact, domestic abuse cases. This programme raises significant concerns about the way in which survivors of domestic abuse are being supported and we would not support a model that did not ensure all organisations were able to properly and safely identify domestic abuse and refer survivors to specialist services.

- The SSFA should include as diverse a range of services as possible including smaller local charities and organisations that are able to support parents with various protected characteristics.
- Many the organisations included in Annex 6 are charities. Any expectations put on charities becoming involved in SSFAs will have to be properly funded.
- We question the usefulness of LFJB as the mechanism for dissemination of information about SSFAs to parents. They would be able to provide information to the court but our experience of parents and other professionals working within the family justice system is that most will not have heard of the LFJB. In that case, how are parents supposed to find out about these services without approaching the court or stumbling across it online? We are supportive of the principle but concerned that without careful consideration of how the information is disseminated, it will be a service that largely benefits better off, less vulnerable parents who are able to access the information.

MIAMS

QUESTION: What more could be done to refresh or revitalise the MIAM to encourage separating parents to non-court dispute resolution?

Most callers to our family law advice lines are survivors of domestic abuse, for whom mediation is rarely appropriate. We would like to comment on some specific recommendations:

“First, we propose that the ‘invitation’/direction to applicants to attend a MIAM should contain a more encouraging, positive, and child-focused message underlining the benefits to parents and their children of NCDR; we have drafted improved wording (see Annex 7).”

The information in the draft invitation is clear and easy to read. We are concerned that the letter may send a message to survivors of domestic abuse that if they do not have a valid form of exemption (many do not) then they must attempt mediation. Some of survivors ask us to advise in situations where they are anxious about mediation but are worried that they will appear unreasonable if they do not attend.

The letter could be improved by including a paragraph to reassure survivors that if they have experienced domestic abuse then mediation is unlikely to be appropriate, that she will not be forced or pressurised into mediating with the abusive parent, and that a mediator can refer to domestic abuse support services if she would find that helpful.

“Secondly, the quality of the delivery of MIAMs should be more rigorously monitored and consistently maintained.”

We support this recommendation. We have heard of cases where:

- The mediator has allowed or recommended that mediation continue despite abusive parent shouting at the other party and slamming his hands on the table when he is frustrated;

- the survivor has felt pressured into agreeing to a solution because the perpetrator won't back down and the mediator, keen to reach an agreement and recognising that the survivor is more likely to bend than the perpetrator, conducts mediation in a way that makes the survivor feel the mediator agrees with the perpetrator and that she must agree to the perpetrator's demands;
- parties attending shuttle mediation have been left to wait in the same waiting room, and no arrangements have been made for staggered departure.

The approach that mediators take to cases where domestic abuse is raised must be carefully scrutinised.

It would be helpful if, as part of the monitoring process, statistics were provided on the number of cases where:

- a) domestic abuse is identified at or before the MIAM
- b) domestic abuse is identified after the MIAM and during mediation
- c) the mediator recommends mediation despite domestic abuse being identified
- d) the mediator recommends mediation and other forms of NCDR is not appropriate due to domestic abuse being identified
- e) mediation or NCDR has taken place despite domestic abuse being identified.

We support the suggestion that to *“be safe and effective, a MIAM needs to be a confidential face-to-face meeting with the parent on his/her own, regardless of the suggestion in the original legislation that a MIAM might be conducted as a joint meeting.”* Screening for domestic abuse is an important part of the MIAM and this should be done in a private face to face meeting.

We do not agree that the Code of Practice (Nov 2018) would be improved by amending *“Section 5.4.2 on domestic abuse, to require a mediator to consider whether there are alternative models of mediation which could create a safe process for mediation to take place”*. We also suggest that the following statement requires reframing: *“Where domestic abuse emerges as an issue, the mediator should (and in many cases will) assess and, if appropriate, review with the client whether an alternative mediation model might be an option, for example shuttle or online video conferencing”*.

Safety and equality will not be achieved simply by putting the parties in separate rooms because the power imbalance will still be present. The dynamics of an abusive relationship can make mediation of any type inappropriate. Calls to our advice line indicate that many mediators fail to understand that at the root of domestic abuse is the need for the perpetrator to control. We are not convinced that it is right to assume that mediation, be it shuttle mediation or any other form of mediation that requires parties to negotiate with each other without a judge or a solicitor looking out of the survivor's interests, is the best course of action. The general position should be that if domestic abuse is identified then the assumption is that there should be no mediation, unless there are strong and clear reasons why mediation should take place, in which case shuttle mediation and alternative forms of mediation will be considered.

We agree that alternative forms of mediation should only take place *“if, and only if, the client is willing. The issue of domestic abuse should always be kept under review and,*

at any stage, the mediator may need to form a professional opinion as to whether it is appropriate to continue with mediation or to terminate it immediately”.

We also strongly support the suggested amendment on separate waiting spaces and other safety arrangements, and the invitation to the Family Mediation Board to look again at domestic abuse training for mediators and screening.

“Thirdly, Judges and court staff should be more prepared to enforce the MIAM requirement (per r.3.10(1) FPR 2010).”

It goes without saying that judges and court staff should enforce the MIAM requirement where appropriate. It should also go without saying that if the judge or court officer can see that there are safeguarding or domestic abuse issues then, regardless of whether or not the survivor has the relevant form of evidence for an exemption, the court will not be expected to enforce the MIAM requirement. It would be helpful to have data from HMCTS about MIAM exemptions, in particular, how many applications are made without the appropriate exemption being claimed to understand how significant the problem is.

“Fourthly, Judges and professional participants in the family justice system should be encouraged to re-appraise the value of the MIAM, with a view to promoting their value as a child-focused vehicle for considering NCDR across all sectors of the family justice system.”

For Rights of Women’s advisors to have more confidence in MIAMs and promote their value we need to see evidence that the approach to survivors is appropriate, safe and consistent.

Occasionally we hear of cases where it appears as though the mediator gives a “hard sell” on the benefits of not going to court and parties find it difficult to say no. This could be because there are financial incentives for the mediators if the parties a) mediate and b) reach settlement. This needs to be addressed in order for us to have confidence in MIAMs.

“With the assistance of the Family Mediation Council, we consider that it would be valuable to conduct a trial by which parenting agreements concluded in mediation become open documents.”

Rights of Women can see the benefit in this approach. However, we are concerned about the impact this will have on survivors who were coerced into an agreement. We would also want information on how the courts will approach agreements reached without the survivors having received any legal advice on what is possible and the strengths and weaknesses of her position. If this approach was adopted, it would be important for judges to spend time understanding how the agreement was reached and why the parties do not believe it is suitable any longer.

Rights of Women supports the view of the Working Group in relation to the cost of mediation. We also agree that legal advice would be beneficial, particularly in relation to cases where there has been domestic abuse. Early legal advice for family law matters should include the ability for solicitors to negotiate with the other party. For a survivor who feels apprehensive about mediating using solicitors will enable her to

negotiate with the perpetrator or his solicitor without the parties having to be in the vicinity of one another, it will limit the perpetrator's ability to bully her by communicating with her directly and, hopefully, she will feel more confident that her interests and the interest of her child are being promoted.

Gatekeeping and triaging

QUESTION: Do you support the changed arrangements for gatekeeping? And for triaging cases?

Rights of Women does not currently have a position on the best arrangements for gatekeeping as this is largely a matter for the courts. It is important, however, to consider how litigants will be kept informed and involved in the process.

Survivors who call our advice line do not always agree with the Cafcass officer's assessment of risk. There is also the potential that they may disagree with decisions on gatekeeping, which track the case will be allocated to, whether there should be a section 7 report or a fact-finding hearing etc. Parties will require clear information on:

- how they will be informed of the outcome of safeguarding checks, gatekeeping decisions and triaging decisions; and
- whether they will have an opportunity to comment upon the level of risk, gatekeeping decisions and triaging decisions and, if so, how and when.

Finally, Rights of Women would strongly object to any increase in court fees in the hope that this would incentivise constructive and supported resolution of proceedings. It would be a regressive step in terms of access to justice and would disproportionately affect those who are already severely hampered from accessing justice and we would strongly oppose it.

Tracks

Question: What are your views about placing cases on 'tracks' once in the court system? Do you agree with the distribution of work between tracks 1 and 2 based on complexity?

Rights of Women has no strong views on the track system at present other than that it should be carefully piloted, and the results of the pilot made public. The pilot should include an assessment of views from parties, legal professionals and other court users.

The ability of the judge and court staff to properly assess which track a case should be allocated to will depend upon enough information having been obtained from the parties at this early stage. Thought will need to be given as to what will happen if the respondent to the application has not yet had an opportunity to put any information to the court or speak to a Cafcass officer during the safeguarding process.

There is a risk that the track system may be complicated for unrepresented parties to understand, and so it is important to consider how this information will be communicated to them.

Finally, we have considered the “range of options on each track” at paragraph 107 and suggest that the following option be added to tracks 2 and 3:

“Direct special measures such as separate waiting rooms, screens, staggered arrival and departure, attendance via a video link etc.” For cases involving domestic abuse it will be appropriate for these measures to be put in place before the ground rules hearing. It is important that there is an opportunity for parties to be able to request these measures before the first hearing, and that such requests are followed up by the courts without requiring the party having to chase the court (as is currently the case for many courts).

Domestic Abuse cases: PD12J FPR 2010

We understand that the Working Group has decided not to put forward any recommendations on PD12J as this falls beyond the remit of the report. Nonetheless, we hope that our comments below will benefit any work on domestic abuse after the Government’s review.

Unfortunately, the response that survivors receive from the family courts is inconsistent. Rights of Women submitted a response to the Ministry of Justice’s ‘review’ of how family courts protect children and parents in cases of domestic abuse and other serious offences, in which we detail our concerns and recommendations: <https://rightsofwomen.org.uk/wp-content/uploads/2019/09/Evidence-to-the-Family-Justice-Panel-FINAL.pdf>

Rights of Women shares the concerns of some members of the Working Group that the draft legislation on automatic prohibition of direct cross-examination has been too narrowly drawn. We have expanded upon our concerns in our Written Evidence to the Joint Committee on Human Rights on the draft Domestic Violence and Abuse Bill: <https://rightsofwomen.org.uk/wp-content/uploads/2019/02/Evidence-to-the-JCHR-on-draft-Domestic-Abuse-Bill.pdf>

Given the privacy that surrounds child arrangements and other children law cases it is difficult to identify exactly where failures and inconsistencies are taking place. We suggest one area that the Private Law Working Group could focus on (if it is not already) is working with HMCTS to put in place systems to enable the collection of anonymous data in relation to cases where domestic abuse is alleged.

We would also like to highlight a complaint that some of our callers raise in relation to the behaviour of some judges and magistrates towards survivors who are unrepresented. We are increasingly hearing from callers that the judge or magistrate displayed anger and contempt towards them by their comments and demeanour. Lawyers can withstand judges and magistrates who are curt and ill-tempered. However, this type of behaviour can completely shatter a survivor’s confidence and reinforce feelings of inferiority to the perpetrator, especially when the behaviour appears to be directed towards her but not the other party. Some survivors have described feeling that the judge automatically assumed she is being unreasonable before she has had an opportunity to speak to the judge and put her case forward. Other responses that survivors receive indicate that the judge or magistrates simply do not understand the reality that a survivor of domestic abuse lives (for example, by

chastising a survivor for failing to report breaches of a non-molestation order to the police).

Rights of Women appreciates that judges and magistrates are human beings who are under increasing pressure and they must manage unrepresented parties in order to avoid prolonging hearings unnecessarily. Many (but unfortunately not all) judges and magistrates are able to achieve this while remaining pleasant and avoid giving an impression that they do not take domestic abuse seriously. We would like to see all judges behave appropriately.

SPIPs/WT4C

Question: Could/should we encourage more parents to attend SPIPs? If so, when and how?

Generally, when we raise SPIPs with callers they are interested and sound willing to attend.

The feedback we receive from callers who have attended a SPIP tends to be that it provided useful information and increased the caller's understanding of the impact of separation, but it did not result in any change in the other party's behaviour and did not make any difference to their ability communicate and resolve differences. Overall, however, they do find it useful.

It is important that the CAP makes clear that SPIP/WT4C is not designed to address abusive behaviour and should not be directed for that purpose. It may be helpful for HMCTS to provide data on the number of parents that have been ordered to attend a SPIP/WT4C, have actually attended them and, most importantly, whether there were safeguarding concerns in those cases. A SPIP/WT4C is not a solution in cases where there are safeguarding concerns about one of the parents' behaviour.

Judge-led Conciliation / Cafcass-led Conciliation

We would draw on what we have said above about SPIP/WT4C and our comments about judge's attitudes to domestic abuse to answer this question. We see no issue with judge-led or Cafcass-led conciliation in cases where it is appropriate. Unfortunately, we believe that it will only be in a small number of cases where it would be appropriate and are concerned about survivors of abuse feeling like they must agree things that they think are unsafe so that they do not appear difficult.

Returner cases

We have provided our views on specific recommendations below.

“We recommend that the C79 is taken out of circulation, and that all applications (including applications for ‘enforcement’) are made on a C100.

The revised C100 should contain specific enforcement questions; further questions around enforcement of a previously made order should also be included in the form.”

Rights of Women does not have any strong views on the removal of the C79. We are not aware how frequently they are used and, therefore, how much of a difference this

would make. The removal of the form should not make the C100 significantly more complicated as it is already a lengthy form to complete for an unrepresented party. For breaches which are enforced by an enforcement order, the court still needs to ensure that appropriate steps are taken by the applicant to ensure alleged breaches are properly and clearly set out to the respondent and the breach proven beyond reasonable doubt. They must also be given appropriate notice and warning of the enforcement powers available to the court.

“We recommend that at gatekeeping, the judge decides the timing of the hearing of a returner case, with the primary objective of placing the parties back in front of the same judge/magistrates/legal advisor who heard the previous case (where possible) as soon as possible, and ideally within 10-15 days ... Fresh or new safeguarding checks will not generally be ordered at gatekeeping in a returner case.”

We are concerned about the way in which returner cases are managed by the court and do not consider that these proposals will improve the situation. The report recognises that very few cases are returned to court as a result of genuine breaches that warrant an enforcement order. As a result, very few enforcement orders are made. The report instead identifies most returner cases falling into 3 categories:

- Cases involving parents whose conflicts with each other prevented them from making a contact order work reliably in practice;
- Cases with significant safety concerns;
- Cases involving older children wanting to reduce or stop contact.

The fact that so many cases are returning to court for these reasons suggests that the right orders are not being made in the first instance. We do not agree that removing safeguarding checks will improve this and are concerned that safeguarding issues may be overlooked without safeguarding checks.

Question: What are your views on the arrangements for ‘returner’ cases, specifically, their early re-allocation to the original tribunal for triage?

Rights of Women can see advantages and disadvantages of returner cases being re-allocated to the original tribunal for triage. We have no issue with early re-allocation, we would like to see all cases dealt with more swiftly. However, our view is that for many these cases, judges need to start re-examining the way in which the order was made in the first place and be more willing to consider that the reason the case has returned to court is because it was not the right order. The original tribunal may find it difficult to do this or may be seen by the parties as already biased. This is especially the case for orders made for contact to step up over time when only limited contact was taking place at the time of the final hearing, cases where Cafcass recommendations were not followed in the final order and cases where safeguarding concerns were identified but the final order was made by consent (where parties may not have fully understood the effects or felt forced to agree an order).

Rights of Women have advised women who are survivors of domestic abuse, who bring applications to vary orders when the perpetrator continues his abuse through the order for contact and are accused of parental alienation as a result of having returned the case to court. We come across very dismissive attitudes to what is then considered “historic” domestic abuse because judges are not willing to consider the perpetrators behaviour as a continuation of that abuse. These cases have the potential to escalate

with survivors of abuse feeling like the court has completely failed to understand their concerns and dismissed them as being “difficult”. In this situation, the abuse is likely to continue in more subtle ways, but the survivor feels unable to raise this in the face of a hostile court.

We believe the fact that so many cases are returning to court so quickly after an order has been made must be an indication that the court is not resolving the real issues that lead to litigation and that should be the focus of policy work and reform.

Judicial continuity, in principle, is advantageous. In relevant cases, it would make it easier for judges to identify issues such as a change in the views of older children or perpetrators using repeat application to continue their abuse. However, if the intention is to reduce the number of returner cases, then more effort needs to be put into ensuring orders are safe the first-time round.

After care

We agree that judges “should more actively contemplate” aftercare provisions, particularly where contact has been ordered despite establishing that there has been domestic abuse. Judges should consider whether after care provisions would be helpful to assess whether the non-resident parent is using contact to control or coerce the resident parent. After care provisions may also be helpful where parents have raised other concerns such as excessive consumption of alcohol and drugs or concerns around parenting capabilities.

We would repeat what we have said above about returner cases in relation to the reduction in the number of review hearings currently taking place. This is perhaps an area where research in relation to any increase in the number of returner cases would be helpful. In some returner cases, it could be argued that a review hearing may have led to a different outcome.

Digitisation of Private Law Processes

“We recommend that the HMCTS Reform team remain closely involved in this Private Law Working Group’s work so that digitisation of private law processes (including the process of making an application and the form on which it is made) can be crafted to enhance the messages (including the desirability of NCDR) of the reforms proposed.”

We are unaware of whether HMCTS Reform are working with domestic abuse specialists to ensure the online form is sensitive and provides accurate information about abuse but if they are not, they should be. As with our comments above in relation to SSFAs, it is important to ensure that survivors do not feel they have to engage in NCDR if this is not safe for them.

CAP for LiPs

Rights of Women supports the provision of easily accessible legal information and believe it is positive to attempt to demystify the law for unrepresented parties. However, in our experience, almost no unrepresented parties are aware the Family

Procedure Rules exist, never mind that they are expected to comply with them. Our experience is also that many lawyers and sometimes the court does not comply with them. We have extensive experience of trying to write guides on the law that are easy to understand. In our experience, the easier a guide is to understand, the less law there is in it. If there is a separate CAP for unrepresented parties, would the expectation be that they are expected to comply with it and not the more detailed CAP in the rules? Appeals based on procedural irregularity would be based on the more detailed CAP and, therefore, is there a risk of disadvantaging those unrepresented parties who rely on the easier to understand CAP and may not be aware that the court has not followed the rules?

These are issues that would need to be carefully considered in the development of alternative information for unrepresented parties.

Implementation/Pilots

The implementation and piloting of any proposals should be carefully designed, and the outcomes made public. In the focus to discourage parents from accessing the courts, reporting on the success of any proposals must include feedback from court users, in particular, vulnerable court users and survivors of abuse. We do not believe that a reduction in the number of applications to the court would be a success if it was at the cost of survivors' safety or their access to justice. We would expect to see all of the effects of the proposals reflected in any pilot report.

Rights of Women
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