Response to: Proposed changes relating to court bundles in family proceedings: Practice Direction 27A supplementing the Family Procedure Rules 2010

About Rights of Women

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

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

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

Rights of Women's consultation response

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

Introduction

We see the need to update the current Practice Direction 27A (PD27A) concerning the preparation of bundles in family proceedings and welcome this consultation.

Rights of Women hears women's experiences of court bundles through our family law services. Most of them are survivors of domestic abuse and are not represented by a lawyer.

Despite litigants in person (LIPs) being a key group of people who will be impacted by the practice direction, we note that the working group that produced the draft PD27A comprised of judges and lawyers only. The review of the current PD27A presented an opportunity to consider the specific challenges faced by LIPs which, in our view, should have been considered from the start of the process. We appreciate that organisations that support LIPs are now given an opportunity to comment upon the draft new PD27A. However, this is not the same as having survivors of domestic abuse and litigants in person, who are experts by experience, involved in the working group and development of the practice direction from start to finish. We cannot predict what the new PD27A would have looked like had experts

by experience been involved in the drafting. **We suggest the Family Procedure Rules Committee (the Committee) update its process for developing practice directions to include survivors and litigants in person**.

The consultation paper highlights that the Family Procedure Rules Committee (the Committee) must exercise it's power to make rules to ensure fairness, accessibility and efficiency in the family justice system. We see how the draft new PD27A improves efficiency, but more can be done to achieve fairness and accessibility for court users in the family justice system.

We suggest one way to address accessibility would be to **produce simple, plain language guidance for family court bundles**. Ideally, this would be available in a variety of formats (written, images, videos) to help people understand what court bundles are, how to navigate court bundles, how to prepare eBundles and paper bundles if the court decides they must prepare one, agreeing the contents of the bundle with the other party and what to do if key documents are not in the bundle.

We have commented on chapters of the draft new PD27A below and answered questions within those chapters.

Chapter 3

Question 1: What are your views about the provision in Chapter 3 of the draft new Practice Direction as regards who should be responsible for preparing the court bundle?

The provisions on who should prepare the bundle may seem convoluted to a LIP. Plain language guidance will be needed to explain how a LIP will know who is to prepare the bundle. The practice direction should make clear that the court will tell the parties who is to prepare the bundle, and that this is not something parties will be expected to work out themselves.

We agree that where the applicant is a LIP and a respondent is represented, the respondent's representative must prepare the bundle. However, further thought is needed to ensure that this does not disadvantage the LIP. We have supported survivor LIPs in cases where the other party's legal representative is preparing the bundle and have come across cases where:

- The survivor LIP has not received the index in advance or been given an opportunity to comment on the contents of the bundle before it is filed, which has meant that documents she intended to rely upon are not in the bundle;
- The survivor LIP has communicated the documents she wants included in the bundle in advance of the bundle being filed, and her communication is ignored;
- The other party's lawyer has refused to include documents that the survivor LIP intends to rely on at the hearing;

- The other party's lawyer has very diligently included all the documents that supports their client's case and has failed to include documents that support the survivor's case.

These actions are distressing for survivor LIPs. They often do not know what they must do to ensure the documents they intend to rely on are in the bundle, and this can cause delays on the day of the hearing.

3.8 of the draft practice direction provides that, excepting cases where the court is preparing the bundle, the contents of the bundle should be agreed by all parties. We do not think this is sufficient to address the concerns we have raised above. The practice direction should require the person preparing the bundle to share the index in advance of the hearing. We have commented on timescales in response to Chapter 13 below.

Where the court is preparing the bundle, either the rules or plain language guidance (or both) should direct LIPs on what to do if the court bundle does not contain documents that they intend to refer to at the hearing.

Chapter 4

Question 2: Do you agree with the draft provision stating what may not be included in a bundle? Should any other items be included, such as photographs, travel documents, educational reports?

No, we do not agree. **No other items should be added and the list should be removed altogether.** Many of the documents in the list of what cannot be included may well be needed for survivors to evidence domestic abuse. The proviso at the end of the list that this does not prevent the inclusion of documents which are necessary will not give survivors the confidence to include documents that have been specifically excluded in the list.

For example, a survivor experiencing economic abuse may have text messages and financial records to evidence the abuse. The other party who is denying the abuse has controlled, manipulated and gaslighted her and the people around her for years and she is terrified the court will not believe her. For her, the prospect of not being able to present the documents to the court and not being believed is frightening. In addition, she may feel she cannot include the documents for a fact finding hearing because the practice direction specifically excludes them. The other party could attack her for including documents when the practice direction specifically excludes them.

We suggest that the rules make clear that documents should only be in the bundle if they will be referred to at the hearing. We suggest that there be plain language guidance along with the practice direction to explain the purpose of different types of hearing and how that might impact what documents go in the bundle.

There will be cases where a judge will need to make specific case management decisions to limit the documents in a bundle. Survivors tell us that filing reams of irrelevant evidence or bombarding the court with documents is a tactic some perpetrators use to bully or further abuse survivors. The practice guidance could include provisions that remind judges to

lookout for tactics that parties may use to intimidate or abuse survivors and consider what case management decisions may be needed to mitigate the abuse.

Chapter 5

This chapter is not easily understood by lay people. If the Committee expects LIPs to comply with these requirements then plain language guides in multiple formats need to be made available to help them understand how to prepare the bundle.

Our view is that **Forms ES1 and ES2 in their current format should be discontinued** altogether. They are extremely complicated and it is astonishing that LIPs are expected to complete them. They are daunting and in places undecipherable for many lay people. We therefore object to these forms being included as preliminary documents that must be included in the bundle.

We understand that courts need the information in the forms. However, we are not aware of any attempts that were made to ensure these documents are accessible for lay people before they were introduced. **To achieve efficiency *and* accessibility, the judiciary and the Committee must commit to ensuring experts by experience from a cross-section of society are engaged to help develop any new documents or court procedures.**

Similarly, further consideration could be given to allowances for LIPs who struggle to produce the preliminary documents listed at 5.4.

Question 3: Should different provision to that in the draft PD be made in relation to bundles filed for subsequent hearings in financial remedy proceedings?

We can see positives and negatives to both updated and new approaches. Updating bundles will save LIPs from having to update documents with new page numbers for each hearing. However, it may be difficult for LIPs to work with bundles if there are gaps in numbering or extended numbering as a result of removing or adding documents to the middle of the bundle. If possible, lay people and experts by experience should be consulted on what they find easier.

We do think it important that LIPs know what documents are added or removed from subsequent bundles so that they are not taken by surprise or disadvantaged. The party preparing the bundle must be required to communicate this information to the other party.

Chapter 6

Preliminary documents can be an important part of the bundle for many LIPs and can also be a point of considerable stress when they are prepared by the solicitor for the other party and without adequate time to respond or consideration given to their neutrality. We have come across many case summaries that are a poor reflection of the case from the perspective of the LIP. Language that tries to paint a survivor of domestic abuse as unreasonable or of children as unreliable is used to shape the impression of the case without

any adequate redress for the survivor. This is particularly the case when documents are sent as part of the bundle without any attempt to agree the documents in advance.

Where preliminary documents are to be prepared, the timescales must be significantly more generous and directions set out for what should happen if they are not agreed. It would be helpful for there to be easy to understand guidance on these documents including what is expected of lawyers representing other parties. LIPs would also find it helpful for the court to be prepared to enforce these requirements on lawyers. It is too easy for abusers to continue their abuse through the use of court processes such as these and when lawyers representing abusers are not held accountable, it only continues and leads to survivors feeling increased anxiety in advance of hearings and a lack of trust in any of the professionals operating in the system.

We note that the arrangements for subsequent bundles at 6.10 is different to the corresponding arrangements at 5.8 for financial proceedings. No explanation is given as to why there should be different rules depending on the type of proceedings. We suggest there be one approach for all types of proceedings. Our comments above on LIPs being notified of what documents have been added or removed from the bundle apply here too.

Question 4: What are your views about the appropriate pagination system to be used for bundles in (a) financial remedy proceedings (b) public law proceedings relating to children (c) private law proceedings relating to children and (d) any other proceedings?

We are confused as to why there should be a different pagination system depending on the type of proceedings. It adds an extra layer of complication for litigants in person, particularly for those who are involved in more than one set of proceedings.

We are of the view that the same pagination system should be used for all types of proceedings, and that system should be the one that a LIP would find the easiest to work with. We assume continuous numbering would be easier than 'Bates numbering', but this should be explored with experts by experience if possible.

It is also unclear why there are separate provisions as to the pagination of the index between the different sets of proceedings. One clear rule that is the easiest to follow for LIPs should be adopted for all sets of proceedings.

Chapter 8

Question 6: Do you consider that, as well as setting out limits on the length of position statements, this PD should set out more detail about what a position statement should include? If so, what provision should be made?

We have spoken to survivors whose ability to articulate themselves has been shattered by domestic abuse. The courtroom involves power dynamics that can affect survivors of domestic abuse differently to other court users, and can make it particularly difficult for them to make oral submissions. From what we hear, survivors find position statements a helpful tool to collate their submissions and express them to the court. We would therefore support

any efforts to consult survivors who have been litigants in person on what improvements, if any, can be made to rules and guidance relating to position statements.

Chapter 9

In relation to 8.2 and chapter 9, most laypeople will not know what an 'authority' is. Whilst very few LIPs will have the knowledge or experience to be able to refer to authorities, separate plain language guidance to demystify this part of the practice direction would still be helpful.

Chapter 10

It is unfair to expect LIPs to be able to comply with a long list of requirements that necessitate technical expertise. The practice direction should make clear that in the event that a LIP is having to prepare the bundle they will not be penalised if they are unable to meet the pagination, formatting etc. requirements of the bundle.

Question 7: Do you consider that the default 350 page limit should be altered?

It may be that increasing the page limit will reduce resources used to seek permission to exceed the limit. It is difficult to answer this question without data on how often court bundles exceed the limit, how often the court's permission is sought to exceed the limit, and by how many pages.

Some LIPs have reported negative experiences as a result of the page limit, such as the other party or their lawyer excluding documents without explaining why or giving them an opportunity to agree the documents in the bundle.

Question 8: Should this PD require computer-generated page numbering to match PDF "page label" numbering? If so, should the court have discretion to direct otherwise?

It can be frustrating and confusing to have the page numbers differ from the PDF "page label". If the bundle is being prepared by a legal representative then the expectation should be that they match. However, there will be circumstances where this is not possible so the court should have discretion to direct otherwise,.

Using consecutive numbering from the start to the end of the bundle, and requiring all pages including the index to be numbered for all types of proceedings may make it more likely that the page numbering will match the PDF "page label".

Chapter 11

The requirements at 11.2 which apply to all documents in the paper bundle are confusing. The party preparing the bundle cannot control the font, spacing, numbering etc. of

documents that have been authored by other people, or that have already been produced. They only have control over the preliminary documents they are preparing.

We also question whether the practice direction needs to specify the typeface. Times New Roman is outdated and not the most easy to read font. Any legible and readable font should suffice, and plain language guidance that accompanies the practice direction could include examples of acceptable fonts.

Chapter 13

Question 9: (a) Do you consider that the timescales in Chapter 13 are appropriate? (b) Should different provision be made for different types of proceedings? (c) Should a hearing template (which is one of the preliminary documents) be filed much further in advance of a hearing so that, for example, any necessary listing adjustments can be sought in good time?

There are less than two working days for the parties to agree the contents of the bundle before it is filed with the court. This is too short a time period for cases involving LIPs, who will need extra time to consider the index. LIPs may also want to seek advice from voluntary advice services which can take a long time to receive due to high demand and limited resources.

We suggest the practice direction require:

- The party preparing the bundle to share the index and preliminary documents with the other party at least 3 weeks in advance of the hearing;
- The other party to respond to the party preparing the bundle with their agreement or suggested amendments at least 2 weeks in advance of the hearing;
- If amendments are suggested, the party preparing the bundle must respond at least 1 week in advance of the hearing.

The practice direction should also specify what should happen if a party fails to undertake the steps specified in the timetable, or what to do if the contents of the bundle and preliminary documents cannot be agreed.

Chapter 20

The words “without good reason” could be added to 20.1 after “failure to comply” for clarity and hopefully reduce the power of perpetrators to use this provision to intimidate survivors.

Rights of Women
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