

## Women's Aid's response to the Ministry of Justice consultation on reform of the legal requirements for divorce

### Introduction

Women's Aid welcomes the opportunity to respond to the Ministry of Justice's consultation on reform of the legal requirements for divorce. Women's Aid Federation of England is the national charity working to end domestic abuse against women and children. Women's Aid was founded in 1974 and, over the past 44 years, has been at the forefront of shaping and coordinating responses to domestic abuse through practice, research and policy. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs.

We are a federation of over 180 organisations who provide just under 300 local lifesaving services to women and children across the country. We provide expert training, qualifications and consultancy to a range of agencies and professionals working with survivors or commissioning domestic abuse services, and award a National Quality Mark for services which meet our quality standards. We hold the largest national data set on domestic abuse, and use research and evidence to inform all of our work. Our campaigns achieve change in policy, practice and awareness, encouraging healthy relationships and helping to build a future where domestic abuse is no longer tolerated.

We welcome the opportunity to respond to the Government's consultation on reform of the legal requirements of divorce. *Women's Aid supports the submission made by Rights of Women (ROW) to this consultation. We have also used feedback from the 24 Hour National Domestic Violence Helpline on 0808 2000 247 (which we run in partnership with Refuge) inform our consultation response.*

To introduce our response, we wish to set out why the current divorce process is not working well for survivors of domestic abuse. The existing system presents major barriers to leaving abusive relationships for survivors and too often fails to keep them safe. Domestic abuse is high volume crime that has devastating impacts on women and children, who frequently rely on the family justice system to enable their escape and secure their independence and freedom from abuse. Despite how commonly domestic abuse features within family proceedings - of the sample of 135 divorce behaviour petitions included in Trinder's *Finding Fault?* research, 42.2% contained allegations of domestic abuse<sup>i</sup>, and Women's Aid's research with Cafcass into 216 child contact cases found that allegations of domestic abuse were made in 62% of cases<sup>ii</sup> - Women's Aid remains seriously concerned with the poor response to this crime within the family jurisdiction, including, but not limited to, divorce proceedings.

Our research demonstrates that the family justice system continues to be a dangerous environment for both women and children survivors. We have found consistent gaps between safeguarding and child contact arrangements - which can have devastating consequences - and demonstrated how the family court process is used by perpetrators to continue coercive control and cause harm. Survivors with experience of the family courts tell us that they live everyday with anxiety about the impact of family court proceedings on their child's safety and their fear of being further abused and harassed by their former partner in court.<sup>iii</sup> The seriousness and impact of domestic abuse and coercive control is treated very differently between criminal, family and civil courts, leading to markedly different experiences for survivors going through different court processes.

The current legal requirements for divorce pose a number of specific concerns for survivors of domestic abuse which are summarised as follows:

## **Barriers to leaving abuse**

Survivors frequently experience economic abuse - perpetrated routinely as part of a pattern of domestic abuse to stop women from working and accessing resources, control every element of their money, use blackmail and build up debts, and withhold their benefits and wages - as part of a pattern of coercive control. This can result in fundamental barriers to escaping; over half of survivors surveyed by Women's Aid and the TUC could not afford to leave.<sup>iv</sup>

As ROW have set out, women with limited financial resources seeking to escape an abuser, and secure a divorce from them, are discriminated against under the current divorce system. If they cannot financially afford to move out of the household, they must either rely on one of the three 'fault-based' facts - which, as is set out below, can increase their risk of harm - to secure a divorce, or remain in the same household as the perpetrator, but live 'separately'. In cases of domestic abuse, this is clearly highly unsafe and leaves women with a stark 'choice' between facing continued abuse and harm, or leaving to seek alternative accommodation.

With refuges unable to meet the current demand from women and children seeking to escape - 60% of total referrals to refuges in 2016/17 were refused in 2016/17<sup>v</sup> - it is clear that this is not really a 'choice' in practice. In reality, women have a 'choice' between facing continued harm within an abusive household, or severe financial insecurity and potential homelessness if they leave. Many, particularly those with children, will therefore simply be unable to leave in practice. Women calling to the National Domestic Violence Helpline, which we run in partnership with Refuge, report being 'financially trapped' and dependent on abusive partners, will no money to pay for what can be complex and lengthy divorce proceedings. The barrier that the current divorce system poses to leaving an abusive relationship is severe and unsafe.

## **Increased risk of harm**

As the government recognise, by requiring a 'fault-based' fact, the current system can exacerbate hostility and conflict between spouses. In domestic abuse cases, the dynamics of power, control and fear within the relationship make this highly dangerous. It is well evidenced that women reporting domestic abuse in divorce proceedings are scared that their petition will result in recriminations from the perpetrator. Whilst they may actually want the court to understand that they seek a divorce due to domestic abuse, they are highly fearful of the perpetrator's reaction to this. Women calling the National Domestic Violence Helpline report feeling trapped within a marriage - as they are simply too scared of using 'unreasonable behaviour' as the fact, and the consequences of what the perpetrator will do to her and her family if she does. These fears are serious and well-founded; the police report a domestic abuse crime every minute in England and Wales, and it now accounts for just under a third of violent crime.<sup>vi</sup> Women will therefore often 'edit' their petition, and may even refuse to make an application altogether and remain in the abusive relationship, to avoid the consequences of 'angering' the perpetrator.

Those who can afford a solicitor will be advised that they do not have to set out the domestic abuse within the application - as the 'fault-based' fact used to apply for a divorce is not scrutinised thoroughly by the court and rarely has any impact on financial proceedings. However, this is not well known by the public, and those without access to legal advice may understandably believe that the facts used within the application should be the reason for the divorce. As ROW have made clear, women without legal advice are therefore more likely to set out the real cause of their marriage breakdown - and are placed at greater risk of harm as a result of setting out domestic abuse when doing so is redundant anyway. This is an untenable situation.

## Post-separation abuse

It is well evidenced that, in cases of domestic abuse, separation escalates risk. Experiences of post-separation - including stalking, harassment, continued emotional, financial, sexual and physical abuse - are very common and survivors can face persistent, ongoing risks to their safety. The time after separation can be a period of severe risk of harm and even homicide; data from the Femicide Census<sup>1</sup> found that 77.4% of women killed by their ex-partner or ex-spouse in 2016 were killed within the first year that followed that separation.<sup>vii</sup>

Research has also consistently shown how family court processes - including child contact arrangements - are used as a vehicle for post separation abuse. Women from black and minority ethnic (BME) communities are particularly impacted, as there may be multiple perpetrators involved; in one study, 78% of BME women involved in contact proceedings reported severe and chronic post-separation violence for as long as five years, involving not just the partner but also extended family members.<sup>viii</sup>

Research shows that perpetrators often use litigation and court proceedings to continue abuse and sustain and regain control, and deny women and children safety and independence. Many women report to us that the family courts not only fail to stop the abuse, but give their former partners the power to continue it. A third of the 100 survivors studied for a three year period within Kelly's *'Finding the Costs of Freedom'* research experienced post-separation abuse through divorce proceedings. Perpetrators frequently sought to delay the divorce process by: claiming the marriage certificate was lost; refusing to disclose an address for the divorce papers to be sent to; ignoring divorce papers; not turning up at court; and refusing to answer letters or sign divorce papers.<sup>ix</sup> Domestic abuse is also a clear motivation for contesting, issuing cross-allegations about the petitioners' conduct, and defending a divorce.<sup>x</sup> Women calling the National Domestic Violence Helpline also report that perpetrators use, or threaten to use, the divorce process as a means of continuing abuse. We know that the complexity and protracted nature of the current system can be manipulated by perpetrators to regain and sustain control and, as such, we welcome reforms to make the divorce process simpler.

It is also important to recognise that women from religious communities can face further forms of post-separation abuse from separate legal systems. To get divorced under Jewish law, a 'get' must be willingly given by a husband and received by a wife. 'Get refusal' occurs when one party refuses to cooperate with the issuing of a get - leaving a person unable to remarry and, for a survivor, trapped within an abusive relationship. Jewish Women's Aid report that perpetrators use this 'get abuse' as a means of continuing to exert power and control. Judicial understanding can make a powerful difference in delivering appropriate protection and support within UK law in such cases; Jewish Women's Aid have cited a case of best practice where a judge used financial orders in order to compel the perpetrator to give the 'get'. The high proportion of Muslims who have an Islamic nikah, without a separate civil ceremony to make the marriage legal under UK law, has also been identified as a risk to women's rights; as a Nikah is not a legally recognised marriage, women - and particularly those experiencing domestic abuse - can be misled by their spouse as to their intention to obtain legal recognition for the marriage, and left without protection from the UK courts for future financial and child arrangements.<sup>xi</sup> Although reform of these systems is outside the scope of this consultation, it is important to recognise the diverse forms of abuse that women from different religious communities' experience, and the importance of specific awareness raising, signposting and support, and judicial training in this regard.

## Barriers to justice

As has been made clear, the current divorce system is highly complex. Survivors without legal advice are therefore forced at a highly traumatic and distressing time in their lives, to navigate a

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<sup>1</sup> The Femicide Census is a database containing information on over one thousand women killed by men in England and Wales since 2009. It was developed by Karen Ingala Smith and Women's Aid working in partnership, with support from Freshfields Bruckhaus Deringer LLP and Deloitte LLP.

confusing process, where the law simply does not operate in the way it is expected to. As ROW have made clear, the lack of 'intellectual honesty' in the process is highly unfair. Although the facts alleged in a divorce case are unlikely to have any bearing on other proceedings - such as child contact arrangements - survivors without legal advice may understandably be concerned that they will.

Similarly, if a survivor does choose to set out the domestic abuse as the cause of the relationship breakdown, it is likely that her lawyer or the court will press for these facts to be removed or 'watered down' in order that the perpetrator will agree to them, and the case can progress more quickly. Perpetrators systemically wear down self-esteem and worth - routinely telling women that they won't be believed - during the course of abuse. It is unacceptable that a court process could unintentionally collude with a perpetrator in this way by de-legitimising, and dismissing, their experiences in this way.

The outcomes of divorce proceedings, while out of the scope of this consultation, can also bar survivors from accessing justice. Although the current divorce process requires conduct to be set out in the divorce petition, 'fault-based facts' have little or no bearing on the proceedings or other family court processes. This can have perverse outcomes. As a case cited by the Shadow Justice Minister Gloria de Piero MP has made clear, the lack of join-up within the system can mean a perpetrator convicted of attempted murder by stabbing his wife thirty times is still able to claim for joint assets through divorce proceedings.<sup>xii</sup>

### **Wider family court reform**

We believe that the Government's policy objective of 'reducing family conflict' through reformed legal requirements for divorce will only be delivered with wider reforms to the family court system to ensure it is safe for survivors and their children. Despite improvements to guidance for the family courts on domestic abuse and 'vulnerability'<sup>2</sup>, we continue to find that the judiciary, magistracy and legal professionals lack understanding about the dynamics and impact of domestic abuse, and particularly how it can escalate after separation. Changes to the divorce system must work alongside an improved response to domestic abuse within the family courts which ensures: survivors are able to access special protection measures in the family court, and are consistently signposted and referred to specialist support; the bar on the ability of a perpetrator to cross-examine a victim in family proceedings is delivered; and mandatory, specialist and in-depth training for judges, magistrates, court staff and all professionals engaged in family court proceedings. As we have previously made clear to the Ministry of Justice, we are calling for these essential reforms to be included within the government's landmark Domestic Abuse Bill.<sup>xiii</sup>

We understand that a divorce petition setting out domestic abuse will also not trigger any further action to keep survivors and their children safe - such as protection orders or child contact arrangements. However we know that survivors going through multiple court processes simultaneously - such as criminal, divorce and child contact proceedings - find the inconsistency and lack of information sharing incomprehensible. While the Government's proposals will not change this, or tackle the glaring gaps in the response between our court systems, it will at least mean survivors do not have to set out domestic abuse within a divorce petition - and remove at least one complex process to undertake when leaving an abusive partner. We recommend that, in addition to reforming the legal requirements for divorce, the Government: improve communication with survivors on the limitations of these proceedings, understanding divorce law and how it (rarely) impacts on other family court processes; and ensure information and signposting to advice and specialist support is available for survivors throughout the reformed system. The new process, and the revised divorce petition that it results in, provide a real opportunity to improve signposting and support and Women's Aid looks forward to working with the Ministry of Justice in this regard.

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<sup>2</sup> Practice Direction 12J Child Arrangements & Contact Order: Domestic Violence and Harm; Practice Direction 3AA Vulnerable Persons: Participation in Proceedings and Giving Evidence

## Consultation response

### Question 1

Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce? You may wish to give reasons in the text box.

- **Yes**
- No
- Undecided
- [Free text]

Women's Aid agrees that irretrievable breakdown should be retained as the sole ground for divorce. As stated in our introduction, the current system is complex and difficult for survivors to navigate without legal advice and provides perpetrators with opportunities for further abuse and control. Although any future divorce system could be manipulated, a simpler process, which has just one sole ground for divorce - that is clearly and easily explained to the parties - may help to reduce the risk that survivors face during this time.

### Question 2

In principle, do you agree with the proposal to replace the five facts with a notification process? You may wish to give reasons in the text box.

- **Yes**
- No
- Undecided
- [Free text]

Women's Aid agrees that the current 'fault-based fact' system should be replaced with a notification process, which will remove the requirement to prove irretrievable breakdown of a marriage with 'facts' to the court. We consider that this simplified system, and the elimination of fault, will be beneficial for survivors because:

- It will be easier for those without legal advice to understand and access safely, without the need to set out 'facts' of domestic abuse that can increase their risk of harm from a perpetrator and mean they feel unsafe in making such allegations;
- It will be quicker and simpler for the courts to administer, hopefully meaning that the procedure itself cannot be used by perpetrators as a mechanism for post-separation abuse and control;
- Some of the barriers that the current divorce process poses for survivors in leaving an abuser will be reduced, particularly for those who are currently living 'separately' with their abusive spouse because they cannot afford to leave.

We also agree that the reformed system will better reflect people's personal autonomy in, and consent for, marriage. The proposed notification system would mean that the court is no longer able to refuse an application for divorce or have a decision making function on the facts of the case, which we consider will better uphold women's freedom and rights.

We recognise, however, that some survivors set out the domestic abuse as the reason for the divorce to secure due recognition of the harm they've experienced and some form of justice. A notification process will remove the ability of survivors' to do this. However, as outlined in our introduction, such justice is often illusory - as the court will not examine or scrutinise the facts in a divorce, but will usually press for them to be removed in order that the case proceeds more quickly.<sup>xiv</sup>

Much improved communication about the purpose and limitations of the system will be required to ensure everyone understands that the reformed divorce process will enable a person who

has concluded that their marriage is over to legally end it - not to examine or determine whose responsibility, or 'fault', the breakdown of that marriage was. It will be essential that all survivors fully understand the scope and limitations of the new divorce system and that it will not be a process through which to raise domestic abuse. It is also vital that the reformed system delivers signposting to help and support or survivors, and provides information about how to access other family court processes – such as protection orders and child contact arrangements - which may improve safety and protection.

We support the framing of this new system as a 'notification process'; as ROW have made clear, the term 'no-fault' divorce is not helpful - as, in cases of domestic abuse, there will clearly be one party who is at fault.

**Question 3 Do you consider that provision should be made for notice to be given jointly by both parties to the marriage as well as for notice to be given by only one party? You may wish to give reasons in the text box.**

- Yes
- No
- Undecided

As set out in our introduction, perpetrators will often manipulate the divorce process in order to continue to control, harass and abuse their partner. Whilst we recognise that, at the end of a healthy marriage, parties may choose to separate jointly and consensually, where there is domestic abuse it is highly likely that the perpetrator will seek to sabotage a survivors' attempts to leave the abusive relationship. We agree with the Ministry of Justice that provisions for notice to be given separately, and jointly by both parties, are therefore essential.

As stated in our response to Question 2, ensuring that the notification process – which will presumably be largely online - includes information and signposting to support on domestic abuse, and the other family court processes that survivors may need to help keep themselves and their children safe, is also essential.

#### **Question 4**

**We have set out reasons why the Government thinks it helpful to retain the two-stage decree process (decree nisi and decree absolute). Do you agree?**

- Yes • No • Undecided [Free text]

We appreciate that, after a healthy marriage, the decision to divorce is a serious one which should not be taken lightly. The two-stage decree can allow a couple time to consider the implications of the proceedings and make other practical arrangements – including care of children, pension and inheritance rights, and financial matters. The two-stage process currently can help to protect people's rights and financial interests in this time.

However, it is important to recognise that a survivor giving notice for a divorce will have already overcome enormous barriers to leaving the relationship and starting those proceedings – and has likely been experiencing a pattern of abuse for months, years, and even decades. Data from On Track<sup>3</sup> shows that, of over 1000 women using domestic abuse services in 2016-17, 47% had experienced abuse for between 1-9 years, 21% for between 10-19 years and 13% for over 20 years. A divorce process which extends the time that women have to live within an abusive marriage is inappropriate and highly unfair. At the point of petitioning, a survivor is

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<sup>3</sup> On Track is Women's Aid's case management and outcomes monitoring system, which launched nationally in 2016 and is already used by over 50 local service providers throughout England. Services contribute to a national dataset which provides information on women's experiences of abuse, support offered by services, and outcomes achieved.

likely to have been assessing the risk that divorce poses to herself and her children over a long period of time; the decision will have already been made with a highly limited chance of change. For survivors who have long escaped the abuse, further delays to finalising the divorce are also not helpful or appropriate. We recommend that these reforms ensure that, as long as financial arrangements can be made and people's rights and interests protected, the divorce process itself can be completed as swiftly as possible.

As stated in our introduction, survivors will also likely be experiencing post-separation abuse during divorce proceedings. Research has shown that all parties find the current process far too long and difficult, which is compounded for survivors who will likely be experiencing significant trauma and stress. It is therefore essential that, whatever process is established for securing a divorce in the future, it is made as simple and clear as possible – and that information and signposting to support for domestic abuse is available at each stage.

**Question 5 What minimum period do you think would be most appropriate to reduce family conflict, and how should it be measured? Please give your reasons in the text box.**

• Six weeks (the current minimum period is six weeks and a day) • Three months • Six months • Nine months • A different period (please use the text box to specify) • **Undecided** •

As stated above, in cases of domestic abuse, ensuring that divorce proceedings are completed as swiftly and safely as possible - with people's financial interests and rights protected - is crucial to minimise the ongoing risks of post-separation abuse. For survivors of domestic abuse, a six-month timeframe between the divorce decrees is unlikely to provide security and the 'stability' to plan ahead – but expose them to continued risk of harm. After having overcome serious barriers to leaving the relationship, it is also inappropriate for the divorce system to require survivors to 'consider the implications' of the divorce proceedings for their future over a six month period. This time frame, coupled with post-separation abuse, could mean that some women find the experiencing of divorce too harmful and risky to continue with.

As the consultation notes, under the current law, the court has an existing power to fix a shorter period for specific divorce cases – including in exceptional cases such as where one party is in imminent danger of death. While, on average, two women a week are killed by a partner or ex-partner in England and Wales<sup>xv</sup>, this power is critical for ensuring that divorce in domestic abuse cases can be processed as swiftly as possible. There needs to be enough time built into the process to make financial arrangements - or to make robustly clear that these will be settled completely separately and are unrelated to the divorce process itself - but otherwise the process must complete as swiftly as possible in such cases. We recommend that the Government expand this power to ensure that the minimum timeframe can be reduced in cases of domestic abuse where a party is at risk of, or fears, harm from the other.

**Question 6 Are there any circumstances in which the minimum timeframe should be reduced or even extended? If so, please explain in the text box.**

• **Yes** • No • Undecided • [Free text]

As stated in our response to Question 5, we recommend that the Government further expand the court's current power to fix shorter periods for divorce cases - as long as people's financial interests and rights are protected - with the aim of ensuring the minimum timeframe can be reduced in cases of domestic abuse where a party is at risk of, or fears, harm from the other.

We also note that there may be cases in which a survivor has separated, and lived apart from, the abuser, for potentially a long period of time before seeking a divorce. To minimise the risk of post-separation abuse, harassment and stalking in these cases it will again be imperative that proceedings are as swift and safe as possible. A perpetrator should not be able to manipulate

court proceedings by delaying and drawing out the process to continue coercive control. We therefore further recommend that the Government consider a different minimum timeframe for cases where there has been a prior period of separation, which is particularly important in cases of domestic abuse.

**Question 7 Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases?**

• Yes • No • **Undecided** • [Free text]

We do not have specific views on the minimum period for nullity cases, which is a very separate process from divorce. We recommend that the Government consult on nullity separately.

**Question 8 Do you agree with the proposal to remove the ability to contest as a general rule? You may wish to give reasons in the text box.**

• **Yes** • No • Undecided • [Free text]

We warmly welcome the Government's proposal to remove the ability to contest – or 'defend' – a divorce. This is essential to ensure that a perpetrator does not have the ability to keep a victim within a marriage that they no longer consent to be in.

As the consultation recognises, the ability to contest can offer abusers the opportunity to continue exerting coercion and control; Trinder's *No Contest* research found that domestic abuse, and the power and control which underpin it, were consistently key motivations for parties contesting a divorce. A perpetrator of domestic abuse assumes control over a woman throughout their relationship, and the belief in this entitlement does not end after separation. As the research found, abusive husbands can use the ability to defend a divorce to regain control over their wife – including in 'obsessive' and 'dogmatic' ways.<sup>xvi</sup> For these survivors, the ability to contest a divorce may have resulted in prolonged proceedings, increased risk of abuse and harm, continued economic abuse and court hearings which – as set out in our introduction - can be unsafe and re-traumatising. For others, it may have forced them to remain married to their abuser. Either of these impacts are unacceptable. We therefore strongly support the Government's proposal to remove the ability to contest and protect survivors from this potential avenue of abuse.

**Question 9 Are there any exceptional circumstances in which a respondent should be able to contest the divorce? Please explain these exceptional circumstances in the text box.**

• Yes • **No** • Undecided • [Free text]

**Question 10 Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place? You may wish to give reasons in the text box.**

• Yes • **No** • Undecided • [Free text]

We appreciate that, after a healthy marriage, divorce is a serious consideration and the bar on petitioning for divorce in the first year of marriage can help to ensure that a couple makes the decision carefully. However, in cases of domestic abuse, there may clearly be scenarios in which a survivor wishes to start these proceedings more swiftly – including where they have been forced or coerced into marriage. Although victims of forced marriage can seek an annulment, the deadline of three years to do so - or the fact that they may not have sufficient evidence or grounds for this - can mean that in practice a divorce may be their only option. The one year bar on petitioning for divorce in the first year of a forced marriage is highly unfair, and colludes with the perpetrators of this offence in continuing to keep the victim in a marriage that they do not consent to.

In addition, although a person may annul a marriage if they did not consent to it, there may be circumstances where it is difficult for a victim of coercive control to prove they did not 'consent' in practice; our research has shown that understanding and awareness of coercive control amongst the judiciary and legal professionals continues to remain inconsistent. We have also heard from women who have stated that domestic abuse didn't start until the wedding day, or the day after the wedding. In such cases, a divorce rather than an annulment may be required – and we do not consider that a bar on petition for a divorce for one year should apply. We recommend that the Government removes this bar, in recognition that in cases of domestic abuse and forced marriage a year of marriage will continue to put one party at risk of continued abuse and harm.

**Question 11 Do you have any comment on the proposal to retain these or any other requirements?**

Although we understand why the Government seeks to retain these requirements, we restate that understanding of domestic abuse and coercive control remains highly inconsistent within the family jurisdiction. Without this understanding, it will be challenging for legal professionals and the judiciary to understand when a perpetrator is seeking to use or manipulate the 'prospect of reconciliation' to continue to control and abuse. Kelly's *'Finding the Costs of Freedom'* research found that perpetrator manipulation of statutory agencies - and the family courts – to continue post-separation abuse was highly prevalent; over a third of perpetrators in the 100 cases studied during the research sought to sabotage women's attempts to leave the relationship, and holding up divorce proceedings was the most common method of doing so. It is therefore crucial that judges, magistrates, court staff and all legal professionals engaged in family court proceedings have mandatory, specialist and in-depth training on the dynamics and impact of domestic abuse – including perpetrator behaviour. Without a high level of understanding, we are concerned that the power of the court to stay proceedings for the purpose of reconciliation could be manipulated by a perpetrator seeking to continue to abuse and control.

**Question 12: We invite further data and information to help update our initial impact assessment and equalities impact assessment following the consultation.**

We welcome the Government's recognition of the positive impact that reforming the legal requirements for divorce will have for victims of domestic abuse – who are disproportionately women. However the prevalence statistics currently used in the equalities assessment are, in isolation, problematic, and obscure the true gendered nature of the crime. As the Office for National Statistics recognise, prevalence statistics currently do not take into account important context and impact information, such as whether the violence caused fear, who the repeat victims were and who experienced violence in a context of power and control. When these factors are taken into account, the gendered nature of domestic abuse becomes much more apparent. We would therefore like to share the following data and information with the Ministry of Justice that will be helpful for the impact and equalities assessments:

- Women experience higher rates of repeated victimisation and are much more likely to be seriously hurt or killed than male victims of domestic abuse. Over 80% (83%) of high frequency victims (more than 10 crimes) are women. (From a study of data from the Crime Survey for England and Wales, a nationally representative household survey).<sup>xvii</sup>
- Women are more likely to experience higher levels of fear and are more likely to be subjected to coercive and controlling behaviours. A study involving in-depth interviews with couples affected by intimate partner violence found that, apart from a few men who had suffered serious injuries, men tended to view the domestic abuse by female perpetrators as

“relatively inconsequential and of no lasting effect”, whereas female victims of domestic abuse by men tended to express “fear, bewilderment and helplessness.”<sup>xviii</sup>

- Women are far more likely than men to be killed by a partners/ex-partner and these homicide figures show the gendered nature of domestic abuse in stark terms. From April 2013 to March 2016, 246 women were killed by a partner/ex-partner and 72 men were killed by a partner/ex-partner. Almost all of these women were killed by men: 242 of the 246 women killed by partners/ex-partners were killed by men, one by a woman, and for three female victims there were no suspect details available. 32 of the 72 men killed by partners/ex-partners were killed by men and 40 were killed by women.<sup>xix</sup>

We recommend that the Government expand the section on domestic abuse, and its disproportionate impact on women, with this evidence within the final impact and equalities assessment.

### **Contact details**

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- <sup>i</sup> Trinder et al., Finding Fault? Divorce law and practice in England and Wales, Nuffield Foundation, 2017.
- <sup>ii</sup> Women's Aid and Cafcass, Allegations of Domestic Abuse in Child Contact Cases, 2017
- <sup>iii</sup> Women's Aid, *Nineteen Child Homicides*, Bristol: Women's Aid, 2016; Birchall, J. and Choudhry, S. (2018), "What about my right not to be abused?" *Human rights, domestic abuse and the family courts*, Bristol: Women's Aid.
- <sup>iv</sup> Howard, M and Skipp, A, Unequal, trapped and controlled, Women's Aid and TUC, 2015 - from 126 respondents to this survey.
- <sup>v</sup> Women's Aid, *Survival and Beyond: The Domestic Abuse Report 2017*. [Accessible Online](#)
- <sup>vi</sup> Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services, A Progress Report on the Police Response to Domestic Abuse, March 2018. [Accessible online](#).
- <sup>vii</sup> The Femicide Census: 2016 findings. Annual Report on cases of Femicide in 2016. [Published online](#): Karen Ingala Smith and Women's Aid
- <sup>viii</sup> Thiara, R.K. and Gill, A. (2012) Domestic Violence, Child Contact and Post Separation Violence: Issues for South Asian and African-Caribbean Women and Children; A Report of Findings, London, NSPCC
- <sup>ix</sup> Kelly, L., Sharp, N. and Klein, R. (2014) Finding the Costs of Freedom How women and children rebuild their lives after domestic violence. London: Child and Woman Abuse Studies Unit and Solace Women's Aid.
- <sup>x</sup> Liz Trinder and Mark Sefton, *No Contest: Defended Divorce in England and Wales* (London: Nuffield Foundation, 2018), p.5
- <sup>xi</sup> Kathryn O'Sullivan & Leyla Jackson (2017) Muslim marriage (non) recognition: implications and possible solutions, *Journal of Social Welfare and Family Law*, 39:1, 22-41, DOI: 10.1080/09649069.2016.1272767
- <sup>xii</sup> Gloria de Piero MP, 9 October 2018, vol. 647, col. 20
- <sup>xiii</sup> Women's Aid's response to the Government's consultation on the Domestic Abuse Bill
- <sup>xiv</sup> Trinder et al., Finding Fault? Divorce law and practice in England and Wales, Nuffield Foundation, 2017.
- <sup>xv</sup> Office for National Statistics (ONS). (2018) *Homicide in England and Wales: year ending March 2017*. Published [online](#): ONS Between 1 April 2014 and 31 March 2017, a total of 241 women were killed by their partner/ex-partner In England and Wales (ONS, 2018). This gives us an average of 1.54 women per week (241/[52 weeks\*3]) – rounded up to two women per week
- <sup>xvi</sup> Liz Trinder and Mark Sefton, *No Contest: Defended Divorce in England and Wales* (London: Nuffield Foundation, 2018), p.5
- <sup>xvii</sup> Walby, S. and Towers, J. (2018) 'Untangling the concept of coercive control: Theorizing domestic violent crime', *Criminology & Criminal Justice*, Vol 18, Issue 1, pp 7-28
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