



Minutes of the APPG on Domestic Violence and Abuse Meeting **'Two years on - have the Harm Panel's recommendations been delivered?'**

Wednesday 2nd November 2022, 13:00-14:00

Hybrid meeting

Chair: Apsana Begum MP

In 2020, the Ministry of Justice published its expert Harm Panel report which set out recommendations for transforming the response to domestic abuse and other forms of serious harm in private law child proceedings. In the same year, the Government published its implementation plan to address some of the report's recommendations.

The APPG on Domestic Violence and Abuse examined the progress of the implementation plan, as well as the relevant provisions of the Domestic Abuse Act 2021, and considered what additional measures are required to make the family courts safer and more just spaces for survivors and their children. The meeting was chaired by Apsana Begum MP and the other parliamentarians in attendance were Alex Norris MP, Baroness Brady and Baroness Uddin. The office of Dame Maria Miller MP was also present.

Apsana Begum MP

Apsana welcomed attendees and speakers and thanked them all for sharing their expertise. She referred to the Harm Panel report published in June 2020 by the Ministry of Justice and introduced the speakers.

Jenny Beck KC, Family Law Solicitor

Jenny noted that the issues raised during the Harm Panel review and the resulting recommendations gave a sense of optimism that concerns about how the system was failing are finally being heard, particularly with the proposals for reform. Two years on, we are considering what progress has been made and what more needs to be done. In monitoring for change resulting from the review, Jenny noted that unless the systemic barriers are addressed, any real wins will be of limited value.

She went on to outline the key barriers faced by survivors of domestic abuse in accessing justice in the family courts, as identified in the Harm Panel report. The first of these is resource constraints affecting all aspects of private law proceedings, noting that the situation appears to be getting worse, not better. This has also impacted the rollout of some initiatives and prevented the implementation of 'quick wins' that would have made a real difference. For example, the review of the legal presumption of child

contact would be a win, however, attempts to prevent this practice, including funding to secure advocates, have been very poor. Jenny noted that under-resourcing is taking us backwards, worsening the situation for survivors and embedding siloed practices. She gave an example of a client in need of a protection order, as the client's violent ex-partner had broken in whilst she was sleeping. Weeks were spent in chasing the courts, after which it transpired that the application had been granted on receipt, but no one had been told, resulting in the survivor experiencing increased trauma. The court also refused to serve the protection order, leaving the survivor afraid to face her upcoming fact-finding meeting. Long waiting periods further implicate survivors negatively, whilst a lack of resources has also impacted the availability of legal aid to survivors.

Jenny also noted the second barrier identified in the Harm Panel report was pro-contact culture in the courts and the minimisation of abuse. Controlling and coercive behaviour is more closely linked to homicide than any other abuse, yet it is minimised by the courts. The lack of understanding around and evidencing of controlling and coercive behaviour takes time, including from courts, solicitors, and other professionals. Jenny suggested that it would be more effective to fund the system and level the playing field, thereby upholding the rule of law and protecting survivors and their families.

She identified the final two barriers outlined in the Harm Panel report a lack of coordination between the courts and other agencies in dealing with domestic abuse, and the problem of an adversarial system, whereby the impact of trauma is exacerbated when the courts fail to recognise that trauma. Whilst the measures introduced through the Domestic Abuse Act to address such issues are welcome, there is a need for the court process to be further trauma-informed, which is currently not the case.

In examining what needs to be done to address these barriers, Jenny identified the need to understand the real dangers of abuse and train this throughout the family justice system. She also noted the need to ensure a trauma-informed infrastructure, and to effectively fund a system that protects survivors and families from abuse.

Apsana Begum MP

Apsana thanked Jenny for her contribution and echoed her suggestions for necessary actions to address the barriers faced by survivors in the family courts, noting in particular the importance of funding.

Lucy Hadley, Head of Policy, Women's Aid

Lucy acknowledged that big political changes have been seen since the publication of the Harm Report. However, she noted that what hasn't changed is that the primary issue survivors get in touch with Women's Aid about is their experiences of harm and abuse in family court proceedings. Whilst there was a feeling of optimism off the back of the report when it was first published, over two years later action has stalled. The Government published an implementation plan in 2020, but much of this has been

delayed or is making minimal progress; for example, the urgent review of the legal presumption of parental involvement is still not complete. Moreover, whilst the Domestic Abuse Act banned perpetrator cross-examination of victims, it only applies to new cases. This means that survivors whose cases had begun before the provisions were enacted can still be subjected to this harmful practice.

Lucy noted a catalogue of wider challenges, including the publication of judgments by the higher courts and guidance for judges and magistrates that run contrary to Practice Direction 12J and the new statutory definition of domestic abuse that includes children as victims in their own right. She also referred to the huge backlog in court cases, which is resulting in survivors being pushed into dangerous mediation with perpetrators. Family court domestic abuse perpetrator programmes in England have also been halted, opening the door for unaccredited providers to offer unsafe interventions, and making it more likely that courts will order direct contact between dangerous perpetrators and children. None of this was what the Harm Panel recommended and none of it will help to build a system that is trauma aware or child-centred.

Women's Aid published a report in June on the experiences of survivors and the specialist services supporting them over the last two years, which makes for harrowing reading. Lucy noted that a lot of women feel disillusioned and disappointed by the lack of progress in family courts, with survivors fearing that understanding of domestic abuse is stalling or even reversing, as illustrated by a quote she shared from one survivor.

Women also shared their experiences of coercive and controlling behaviour in the family courts, with family proceedings being used by perpetrators as a form of post-separation abuse. The pro-contact culture in courts is strong as ever, with children continuing to be ignored and instead retraumatised through forced unsafe contact with an abusive parent. Survivors also continue to be accused of 'parental alienation' when raising concerns about contact between a child and an abusive parent, some having their children removed from them as a result. Finally, support service raised concerns about the extra barriers faced by Black and minoritised women, women with no recourse to public funds, women whose first language is not English, and Deaf and disabled women, who face structural discrimination in the family courts.

From this research, Women's Aid concluded that the family courts remained trauma-inducing, rather than trauma-aware spaces for survivors and their children. Women's Aid is therefore calling on the Government and family courts to scale up and reinvigorate plans to implement the Harm Panel's recommendations in full.

Key priorities include:

- To urgently amend the Children Act 1989, to make clear that the presumption of parental involvement does not apply in cases involving allegations of domestic abuse or other forms of serious harm.

- For the Judicial College to work with specialist domestic abuse services to improve judicial understanding of domestic abuse and the delivery of multidisciplinary training to family court professionals.
- The development of learning and best practice from the Pathfinder pilots and sustainable funding to deliver on the vision of a child-friendly and survivor-centred approach in courts.
- Understanding and implementation of the Domestic Abuse Act provisions around special measures and cross-examination and monitoring of their impact
- Adequate resourcing of, support for and learning from the pilot phase of the monitoring and reporting mechanism developed by the Domestic Abuse Commissioner and the Victims' Commissioner, in order to develop a sustainable longer term mechanism.
- The resolution of resource constraints, including the availability of legal aid for survivors and alleged perpetrators in the best interests of child.
- Family court professionals are aware of and able to identify allegations of 'parental alienation' made by perpetrators to undermine, obscure and deflect from their own guilt.
- Better understanding of the experiences of survivors from marginalised groups by drawing on the expertise of and ring-fencing funding for 'by and for' specialist domestic abuse support services.
- The development and implementation of an effective system to appeal poor decision-making in cases of domestic abuse and other forms of harm, without cost to vulnerable victims and survivors.

Lucy concluded by inviting collaborative action to implement the recommendations made by Women's Aid in its report to achieve a fair, safe and accountable system that puts children first.

Apsana Begum MP

Apsana thanked Lucy for sharing Women's Aid's recommendations around following up on the Harm Panel report.

Natalie Page, Director of Survivor Family Network and Founder of #thecourtsaid

Natalie informed the speakers and other participants of her actions around supporting survivors in the family courts for many years, campaigning for their access to justice. This included contributing in 2019 to a review of the family courts, and inputting to the Domestic Abuse Bill. She noted that, whilst the Domestic Abuse Act sends a strong message that abuse is not okay, it stops at the door of the family court. The findings of the Harm Panel sought to address this issue, and their damning report exposed the abuse experienced by survivors.

Natalie stressed that not enough is being done to address the abuse of survivors in the family courts. She noted that survivors with children in particular are never able to walk away, because the perpetrator's rights trump their own under the current system. There

is a presumption that regular child contact will be achieved, leaving families at the mercy of post-separation abuse. Adult and child victims live in fear of the perpetrator and of the justice system, as the perpetrator is given the green light to continue his behaviour whilst the woman risks losing her children through the criminal justice system if she tries to stop it. Survivors are therefore left with nowhere to turn, as attempts to stop contact can lead to them being treated as perpetrators themselves.

She added that perpetrators also often push to have an 'expert witness' in family courts, who use pseudoscientific and unreliable theories to frame normal mothering as abusive and claim attempts by the survivor of parental alienation. Many of these 'experts' are not regulated or qualified yet are still allowed to work in these settings. Natalie has seen such experts mislead the court with jargon science and parental alienation theory. She noted that this is extremely dangerous to victims of abuse, as it creates a perfect storm for victims in courts by incapacitating them from stopping the abuse and putting them at risk of losing contact with their children, who they often lose to the perpetrator. This is detailed as a major issue in the Harm report, however it's publication such instances have been happening more, not less. Perpetrators are also continuing to threaten to take the children away if the victim tries to expose abuse.

Natalie referred to her contribution to the Channel 4 Dispatches documentary 'Torn Apart: Family Courts Uncovered', which narrates children being taken from their beds at night to live with the perpetrator, the person they feared the most. She noted that these enforced removals are not uncommon, yet no one has been able to provide data on how many children are placed with perpetrators.

Natalie concluded that victims of abuse deserve so much better, they deserve answers, and they deserve an improved response.

Apsana Begum MP

Apsana thanked Natalie for her contribution and welcomed Emily Fei to deliver her intervention on behalf of the Domestic Abuse Commissioner's Office.

Emily Fei, Chief of Staff, Office of the Domestic Abuse Commissioner

Emily expressed her wish to echo what the previous speakers had said, agreeing that there was huge optimism about the Harm report when it was published, which was extensive, well put-together and included key recommendations. She also noted that the Domestic Abuse Commissioner's Office (DACO) is contacted about issues for survivors in family courts more than any other issue.

Emily explained that the DACO have been developing a family court monitoring mechanism in response to the Harm Panel recommendation. The Ministry of Justice have been very supportive of the work to establish this mechanism and provided funding to pilot this in three court areas. DACO have commissioned a proposal for the piloting mechanism, which will demonstrate how domestic abuse is being dealt with in

the family courts. She noted that one issue that has been flagged is a lack of transparency, resulting in a failure to recognise domestic abuse due to difficulty around evidencing. DACO are therefore aiming for the mechanism to address this issue.

She added that external academics will be recruited to run the pilot, as well as researchers to conduct the work, with the pilot expected to start in February 2023. This will look at a range of data sets to identify sources of information to use for the monitoring mechanism and working with the Ministry of Justice to establish a case management system. It will also entail looking into the use of 'experts' in family courts in cases involving allegations of domestic abuse, investigating multiple disadvantage, and an in-depth case file review to understand what is going on. Interviews and focus groups will also be held with victims, survivors and children who have gone through the family court to garner qualitative understanding.

From this, Emily explained that the DACO are looking to develop recommendations for national roll-out and will be looking to the Government to show clear understanding and the need to be monitoring effectively. She noted that transparency is particularly important, and that once all the information is gathered and presented back to the judicial system, key will be what comes next in terms of capacity to respond to issues and make the necessary changes.

The DACO are also looking at what else needs to happen to support the monitoring mechanism and to improve the response to domestic abuse in the family courts. This includes considering the potential for domestic abuse champions or best practice leads in court areas to champion understanding of domestic abuse and provide advice on the implementation of practice direction 12J, to ensure the family court is following its own procedures. They are also looking into access to specialist IDVA support within courts, including whether they can access family courts, and ensuring IDVAs have a clear understanding of the issues.

Emily noted that many victims are also asking for specialist support in the family court, however only around a third could access that support, indicating issues around capacity that need to be addressed. Training within the court system, including with social workers and CAFCASS officers, is also needed to ensure a good understanding of domestic also in all aspects, including coercive and controlling behaviour. The DACO are also looking to remove the means test for legal aid for survivors of domestic abuse. Finally, a greater understanding of 'experts' within the family court is also needed, which should be monitored through this mechanism, ensuring regulation and qualifications for experts.

Emily concluded that the DACO will be publishing a full report into domestic abuse cases in the family courts, setting out our recommendations and plans for the monitoring mechanism in February 2023 to go alongside the pilot for the monitoring mechanism.

Apsana Begum MP

Apsana thanked Emily for her contribution and welcomed Gabriela Quevedo from Latin American Women's Aid (LAWA) to deliver her intervention.

Gabriela Quevedo, Advocacy, Community and Learning Director, LAWA

Gabriela noted that there are a huge number of areas around family justice where no progress has been made whatsoever. She reported that LAWA have been observing the situation and stated it was shocking that, for every shortcoming in the family courts found in the Harm Panel report, LAWA is able to illustrate these with a real-life example. LAWA have observed that some courts in London, as well as those beyond, have been responding quickly when applications for non-molestation orders are made, which LAWA welcomes. However, Gabriela also noted that the lack of knowledge of and issues around confidentiality for survivors/refuges in court proceedings have been overlooked or minimised. In repeated cases, courts have been revealing confidential details that identify domestic abuse services and their staff, putting both support workers and survivors at risk. LAWA have also been having to chase courts on this issue, when their resources are already very stretched.

Gabriela noted several actions needed to address these issues in the family courts. This includes addressing language barriers, which are exacerbated by a lack of interpreters available in the courts and increases the challenges faced by organisations such as LAWA in supporting survivors. She added that services themselves are often asked to provide interpretation, which they are sometimes obliged to do. However, this is but bad practice, as service staff are not trained in the legal terminology used and it is not their role to provide interpretation, putting survivors at further disadvantage. Gabriela recounted how one support worker had reported being asked to provide the interpretation for a whole non-molestation order document for a perpetrator. She recounted another who noted how intimidating the system is for survivors when they do not speak the language and do not know the system, at the same time as dealing with abuse and the trauma from this. They further reflected on the fact that the system is supposed to serve justice, not re-perpetuate abuse, yet this is what is happening.

Gabriela also noted how Black and minoritised women struggle to access and have greater reliance on legal aid due to the economic disadvantages they face, which are further exacerbated by language barriers, as well as isolation resulting from abuse. She added that the lack of resourcing and costs of the legal system for survivors is particularly acute outside of London.

Pro-contact culture and its impact on LAWA advocacy around location orders was further flagged by Gabriela as disproportionate and well-resourced. She noted that attempts by perpetrators to seek contact with the survivor is especially concerning when the survivor is a foreign national. Gabriela referred to repeated incidences since 2019 of perpetrators bypassing the family courts and abusing the power of the high courts to force them to issue location orders, thereby revealing the location of survivors, so the perpetrator can gain access to the child.

These orders are made based on the discriminatory and disproportionate presumption of increased risk of abduction of the child by the survivor outside the UK. This increases the risk to the child, including of abduction by the perpetrator, as well as to survivors, especially migrant women. Gabriela pointed out that a woman who has fled to a refuge is much less likely to abduct a child, and therefore the response of courts is illogical. Refuges also have measures for child protection and can provide support to both the survivor and their child. Location orders therefore undermine the legitimacy of refuges and their ability to provide safe accommodation, and further traumatise survivors. In some instances, LAWA has been forced by the courts to provide the refuge address, which is traumatising for the mother concerned, other women in the refuge and staff who have been named in court orders.

Gabriela illustrated the issue of location orders through a case example of a woman who arrived at a LAWA refuge in 2019 with her child, after fleeing the home she shared with her husband and perpetrator. The perpetrator was abusive in multiple ways and the mother decided to leave when the child started to copy his behaviour. Within a month of arriving at the refuge, the perpetrator had made a child abduction report against the survivor and the case went to the High Court. Despite the domestic abuse being raised in court and the survivor not having an interpreter available, the court issued an order for contact which allowed the perpetrator to discover the survivor's location. The result of this order also led to the perpetrator abducting the child, however the mother could not go to the country where her child was taken as the court had ordered the removal of her passport (based on the court having upheld the original report of child abduction made by the perpetrator against her), and so a service worker had to go in her place. As expected, this incident had a huge effect on the mental health and trust of both the survivor and her child. Fortunately, the perpetrator's claims did not progress further, her passport was released and after some time they continued rebuilding their lives after moving on from LAWA's refuge. However, they should not have had to face this experience in the first place.

Gabriela concluded that there is a strong issue around abuse of the legal system, which is especially concerning as perpetrators are taking advantage of this whilst the courts appear to take no notice.

Apsana Begum MP

Apsana thanked Gabriela for her intervention and opened the floor for discussion.

Discussion

- Alex Norris MP, referring to his role as Co-Chair of the APPG on Child Contact Centres, noted that they had secured a review from the Ministry of Justice regarding the accreditation of child contact centres. He added that whilst there are a lot of well-meaning people in the system, it is frightening for women suing those services, and encouraged contributions to the review. He also noted that

child contact centres are meant to be funded every year in September, however they have not yet received funding this year.

- Jenny Beck KC further noted a concern regarding child contact centres in relation to the difficulty around identifying perpetrators, especially of coercive and controlling behaviour, as perpetrators are often able to hide this from workers.
- On Child Contact Centres, Baroness Uddin:
 - shared that she had worked with child contact centres previously in her professional career, wherein she noted that child protection training was essential for workers, although this may have since changed.
 - referred to the number of women who have lost their lives as a result of domestic abuse, and suggested a different approach is needed from the NGO sector and others advocating on behalf of survivors. In particular, she suggested that mandatory and increased capacity and training is needed, as well as collective action in order to make people listen, rather than continuing to work too much in silos.
 - offered to raise the points made and any questions of the panellists in the House of Lords.
 - shared the personal case of her niece's experience with the family courts, wherein after four years the father was granted contact with her child despite him having perpetrated domestic abuse against her.
- Baroness Uddin further suggested that the terminology used around minoritised women is disagreeable, as a lot of survivors are British citizens and are fighting for the same causes, which is also not reflected properly in some of the bodies that are supposed to represent them. She added that the more we minoritise women suffering violence into categories, the less effective our efforts will be.

Apsana concluded the session, thanking all speakers and attendees and noting that the next meeting of the APPG will be in December.