

**Alex Chalk KC MP**

Lord Chancellor and Secretary of State for Justice  
Ministry of Justice  
102 Petty France  
London, SW1H 9AJ

15 June 2023

## **Compulsory pre-court mediation and co-parenting programmes**

Dear Lord Chancellor,

We welcome the Ministry of Justice's renewed commitment to family courts reform expressed in the Harm Panel progress report in May. The landmark Harm Panel report was widely welcomed, and we are seriously concerned that MoJ proposals to introduce compulsory pre-court mediation and co-parenting programmes threaten its ethos of safety and protection.

Domestic abuse is estimated to feature in over 60% of cases in the family courts<sup>i</sup>; it is a high risk, high harm crime which the government recognises has devastating impacts on survivors and their children.<sup>ii</sup> As such, private law children proceedings should be designed around the needs of adult and child survivors – rather than considering them an exception to the rule. Our shared concerns with the proposals in the Ministry of Justice (MoJ) consultation on 'supporting earlier resolution of private family law arrangements' are outlined below.

**Firstly, these proposals threaten the safety of survivors.** Abuse does not end when the relationship ends, and the point of (and after) separation is an intensely dangerous time for child and adult survivors alike.<sup>iii</sup> It is well evidenced that private law children proceedings are already used by perpetrators as a way of continuing abuse.<sup>iv</sup> Compulsory co-parenting programmes and mediation therefore risk giving more tools and power to perpetrators, as well as restricting survivors' access to the protection of court.

As the government recognises, mediation can sustain and further unequal power relations and cause psychological harm to the survivor. Furthermore, it can result in unsafe child contact decisions; when compulsory pre-court mediation was introduced in Australia, up to one fifth of separating parents had safety concerns about parenting agreements made through the process.<sup>v</sup>

**Secondly, it is clear that the safeguards intended to protect survivors will not protect all.** Despite the current Mediation Information and Assessment Meeting (MIAM) exemption system, many survivors end up in mediation against their will, as evidenced in the Harm Panel report.<sup>vi</sup> Survivors may not disclose abuse because they fear repercussions from the perpetrator, fear the consequences for their case or do not recognise what they are experiencing to be domestic abuse. Even where survivors do disclose abuse, they may not have the evidence required to access an exemption. As one survivor explains:

'How can you mediate with someone who intimidates and frightens you? If you've got no previous evidence that that person has intimidated and frightened you, 'cause you've never reported it, 'cause you're too frightened and intimidated?'.<sup>vii</sup>

In addition, the current criteria do not include disclosures of child rape or sexual abuse, which should receive an automatic and unevicenced exemption.

When survivors end up in mediation, evidence shows that mediators are not all adequately trained to identify and respond to abuse.<sup>viii</sup> Whilst domestic abuse training is required as part of mediator accreditation, the current scope, depth and outcomes of such training is unclear. The safeguards are inadequate for the current MIAM system, let alone for the proposed compulsory mediation and co-parenting programmes which pose even greater risks.

**Thirdly, these proposals are likely to have a disproportionate impact on survivors facing additional forms of inequality.** Organisations led 'by and for' Black and minoritised women and Deaf and disabled survivors have highlighted that the women they support face significant challenges in navigating the existing system and accessing MIAM exemptions, particularly where they do not have legal representation. These challenges include unmet language and communication needs, lack of understanding of the UK legal system and fears around immigration control.

Black and minoritised women, and those with insecure immigration status, may also face specific community expectations and pressure to reconcile or agree to a contact arrangement – for example, for fear of being deported, permanently losing their children or being further isolated. We are not confident that mediators currently have the expertise to identify and respond to these structural forms of inequality and their weaponisation by perpetrators. We urge the MoJ to undertake and publish an equalities impact assessment of the proposals to ensure that these concerns are properly addressed.

**Fourthly, we believe that the proposals will not achieve their stated aims,** namely increasing the number of cases 'resolved without going to a courtroom'.<sup>ix</sup> The consultation document states that, in 2020/21, 'only' 35% of applicants for relevant case types attended a MIAM before coming to court and that this is 'not enough'.<sup>x</sup> Given that an estimated 60% of private law children cases involve domestic abuse, it seems that close to the maximum number of applicants who are not exempt from a MIAM are attending one and exploring mediation.

In addition, compulsory mediation may not decrease case numbers in the family courts; GREVIO has found that 'although child custody mediation is mandatory in Norway for all separating couples with children, the number of child custody disputes in courts is similar to the other Nordic countries with voluntary mediation schemes only'.<sup>xi</sup>

**Lastly, the proposals undermine the MoJ's goal of creating a safer, more trauma-aware family justice system.** After the Harm Panel uncovered 'deep-seated and systemic problems' in the family courts,<sup>xii</sup> the MoJ 'committed to both immediate action and longer-term reform, to ensure the system fully supports those who are victims of domestic abuse or otherwise vulnerable and delivers the right outcomes for them and their children'.<sup>xiii</sup> We welcome the reaffirmation of this commitment in the progress report published in May 2023. This is a goal we share.

We are concerned, therefore, that the current proposals threaten that direction of travel. Emerging reports from the pathfinder pilots suggests that this investigative model has far greater potential than mediation or co-parenting programmes for reducing the adversarial nature of child arrangements and responding effectively to domestic abuse.

We urge you and your department not to introduce compulsory mediation and co-parenting programmes, and instead prioritise implementing the full package of Harm Panel recommendations to ensure that family courts reform is both safe and effective for survivors. We stand ready to support your department with this endeavour.

We look forward to your response.

Yours sincerely,

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**Gisela Valle**, Director, Latin American Women's Rights Service

**Andrea Simon**, Director, End Violence Against Women Coalition

**Amra Dautovic**, National Lead for Domestic Violence Services, Richmond Fellowship

**Helen Parr**, Chief Executive Officer, Centre for Action on Rape and Abuse

**Heidi Riedel**, Chief Executive Officer, Woman's Trust

**Janet Dalrymple**, Chief Executive Officer, Safer Places

**Sara Kirkpatrick**, Chief Executive Officer, Welsh Women's Aid

**Sarah Hill**, Chief Executive Officer, Independent Domestic Abuse Services

**Frank Mullane MBE**, Chief Executive Officer, Advocacy After Fatal Domestic Abuse

**Ruth Bashall**, Acting Chief Executive Officer, Stay Safe East

**Estelle du Boulay**, Director, Rights of Women

**Liz Thompson**, Director of External Affairs, Safe Lives

**Medina Johnson**, Chief Executive Officer, IRISi

**Paula Clarke**, Deputy Chief Executive Officer, Juno Women's Aid

**Ruth Davison**, Chief Executive Officer, Refuge

**Anthea Sully**, Chief Executive, White Ribbon UK

**Maureen Connolly**, Chief Executive, Birmingham and Solihull Women's Aid

**Dr Nicola Sharp-Jeffs OBE**, Chief Executive Officer, Surviving Economic Abuse

**Bernadette Keane**, Interim Chief Executive Officer, Solace Women's Aid

**Victoria Benson**, Chief Executive Officer, Gingerbread

**Aoife Delaney**, Senior Women's Coordinator, Traveller Movement

**Dr Rachael Grey**, Chief Executive Officer, Project Lighthouse

**Kyla Kirkpatrick**, Director, The Drive Partnership

**Dhriti Suresh Eapen**, Senior Project Manager, Against Violence and Abuse

**Dr Elizabeth Dalgarno**, Lecturer, University of Manchester, Chair and Founder, SHERA  
Research Group

**Professor Ravi K. Thiara**, Professor in Sociology, University of Warwick

**Felicity Kaganas**, Professor of Law, Brunel University London

**Claire Throssell MBE**, Survivor Ambassador and campaigner

**Anonymous**, expert by experience

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- <sup>i</sup> Cafcass and Women's Aid. (2017) *Allegations of Domestic Abuse in Child Contact Cases*. Bristol: Women's Aid Federation of England. Available [online](#). P.23.
- <sup>ii</sup> Home Office. (2022) *Tackling Domestic Abuse Plan*. London: Home Office. Available [online](#). P.5.
- <sup>iii</sup> Home Office. (2022) *Controlling or Coercive Behaviour Statutory Guidance Framework*. London: Home Office. Available [online](#). P.6.
- <sup>iv</sup> MoJ. (2020) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases*. London: MoJ. Available [online](#).
- <sup>v</sup> Kaspiw, R., Gray, M., Weston, R., Moloney, L., Hand, K. & Qu, L. (2009) *Evaluation of the 2006 family law reforms*. Melbourne: Australian Institute of Family Studies. Available [online](#).
- <sup>vi</sup> MoJ. (2020) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases*. London: MoJ. Available [online](#). P.89.
- <sup>vii</sup> Birchall, J. & Choudhry, S. (2018). *What about my right not to be abused? Domestic abuse, human rights and the family courts*. Bristol: Women's Aid Federation of England. Available [online](#). P.28.
- <sup>viii</sup> Symonds, J. et al. (2022) *Separating families: Experiences of separation and support*. London: Nuffield Family Justice Observatory. Available [online](#). [Separating families: Experiences of separation and support - Nuffield Family Justice Observatory \(nuffieldfjo.org.uk\)](#)
- Barlow, A., et al. (2017) *Mapping paths to family justice: Resolving family disputes in neoliberal times*. Basingstoke: Palgrave Macmillan.
- <sup>ix</sup> MoJ. (2023). *Supporting earlier resolution of private family law arrangements: A consultation on resolving private family disputes earlier through family mediation*. London: MoJ. Available [online](#). P.3.
- <sup>x</sup> MoJ. (2023). *Supporting earlier resolution of private family law arrangements: A consultation on resolving private family disputes earlier through family mediation*. London: MoJ. Available [online](#). P.11.
- <sup>xi</sup> GREVIO. (2022) *Baseline Evaluation Report: Norway*. Strasbourg: GREVIO. P.49.
- <sup>xii</sup> MoJ. (2020) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases*. London: MoJ. Available [online](#). P.40.
- <sup>xiii</sup> MoJ. (2020). *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan*. London: MoJ. Available [online](#). P.4.