

To the Rt Hon David Gauke MP,

We are a group of concerned family and human rights lawyers, working in-house in women's organisations, in private practice and at the Bar, who support the letter sent to you by a group of over 120 cross-party MPs calling for an independent Inquiry into treatment of domestic abuse in family courts.

While we welcome the announcement today that the Government will review the treatment of domestic abuse and the application of Practice Direction 12J, we echo the comments of Louise Haigh MP that this is not enough. 12 weeks is not enough time to properly evaluate the reasons why the system is currently placing children and victims at unacceptable risk.

Any inquiry must be independent if justice is to be seen to be done.

We also note with concern that whilst the government propose to take evidence from various sources, no mention is made of taking evidence from family lawyers who deal with these issues at the coal face and can provide critical insight into the disparity in application of Practice Direction 12J in practice; identified by us as a 'postcode lottery of protection'.

As lawyers working with this issue, we have significant concerns about the safeguarding of victims of abuse and their children because of the disconnect between the Practice Directions (particularly 12J), best practice guidelines and what happens in practice in court, on the ground every day across the country.

The cuts to the court estate, Local Authority budgets, policing, legal aid, training budgets across the whole of the sector, women's services, and indeed every part of the justice and support system has led to a complete crisis.

The court estate has reduced, care proceedings have risen significantly and unrepresented parties' cases take twice the time they used to when legal aid was available. The net result is insufficient time and resources for private family cases in which domestic abuse is a feature.

HHJ Sir Paul Coleridge, speaking on the Victoria Derbyshire programme spoke of the complexity of these cases, the need for specialist input, and the fact that, formally, these cases would have been heard before senior judges who would have adhered closely to PD12J and the centralisation of the child's safety within the decision making process. He also stated that a 3 month Inquiry "hadn't a hope of doing anything meaningful".

There is no data collected about the implementation of Practice Direction 12J but anecdotal evidence suggests, as remarked by Lord Justice Munby in 2016, that there are very real concerns about its application in practice at different levels of the judiciary and across the country.

We can say from our experience that Practice Direction 12J is often ignored or ‘noddled through’ without any proper risk assessment, leaving women and children vulnerable. Where a fact-finding hearing is listed, the victim is increasingly being told to limit the number of allegations that can be considered by the judge, meaning that there is not a full forensic and expert assessment of the risks. The impact of coercive control, emotional abuse, economic abuse and other forms of non- physical violence are routinely overlooked.

We suggest the following possible improvements to the family justice system for the inquiry to consider:

1. Improved procedures for early notification and identification of abuse within the wider definition.
2. Triaging of domestic abuse cases to be undertaken by an independent body properly qualified to understand and identify abuse and risk.
3. A review of whether the current approach to fact-finding hearings (including decisions by courts on whether to hold a fact-finding hearing, the fact-finding hearings themselves and what happens after findings are made or not made) is the best approach for survivors of domestic abuse and children.
4. Fast-tracking cases with disputed allegations of domestic abuse to a fact-finding hearing so the nature, extent and impact of the abuse can be identified. Where findings of domestic abuse are made, decisions made by judges following findings of domestic abuse should prioritise child safety and take into account risk assessments completed by accredited domestic abuse experts. Sufficient resources will need to be made available for risk assessments.
5. The fact finding must offer a fair process with:
  - a. A consistent national approach to special measures
  - b. Legal aid for both parties where financially eligible up to the conclusion of the hearing
  - c. National guidelines for timely police disclosure
  - d. A domestic abuse coordinator in each court appointed in order to specifically ensure that victims going through the court process are properly protected and all necessary measures are in place, to try to minimise the risk of further abuse through the court process.
6. Explore alternative justice models for domestic abuse cases, for example:
  - Specialist domestic violence problem solving courts similar to the FDAC model adopting a multi-agency approach to domestic abuse.
  - Trauma informed models such as the approach taken by the the Family Violence Courts Division of the Magistrates Court of Victoria, Australia).
  - Involving independent domestic violence advisors and independent domestic violence advocates during the process to assist the court and survivors.

7. There should be a court recorder collating data which is made publicly available and reporting good and bad practice to the Domestic Abuse Commissioner to embed better practice and instill greater confidence in the court process.
8. Where domestic abuse is established (through a fact-finding hearing or otherwise) protective measures must be considered expeditiously.
9. Training for the judiciary to better understand domestic abuse, particularly the nuances and subtleties of abuse such as gas lighting, coercive control, and financial abuse especially apparent when hidden by a polite, non-threatening perpetrator. Input from psychologists in this regard is key.
10. More accredited perpetrator programmes which should be both clearly accessible and better resourced so that if a referral is made the outcomes are easier to predict and timescales are clear in order for sensible case management to take place.
11. Both survivors and perpetrators spend too long waiting for support or change programs. This wait impacts the process and prejudices children who are denied a safe relationship, if one can happen, or the security of knowing that an unsafe contact will not occur.
12. Legal aid for early legal advice needs to be reintroduced for ALL separating parents who are financially eligible. Cases that do not involve domestic abuse or safeguarding issues could then be diverted from the court system to mediation.

The Prime Minister has stated that she has not seen sufficient evidence to justify an inquiry. Domestic abuse costs £66 billion a year. It costs the state £1million to prosecute for murder. 2 women die every week as a result of domestic abuse and children are being placed at huge risk by the Family Courts. The question is how much more evidence does she need?

We propose that Practice Direction 12J is enacted by the Domestic Abuse Bill and that robust recording of decision making is made by the Judge, and collated by an appointed court recording officer so that we can begin to assess the scale of the problem and so understand how we must deal with it

Yours Sincerely

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