



Submission to the Family Court Bill General Scheme

February 2021





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Introduction

Women's Aid is a leading national organisation that has been working in Ireland to stop domestic violence¹ against women and children since 1974. In this time, the organisation has built up a huge body of experience and expertise on the issue, enabling us to best support women and share this knowledge with other agencies responding to women experiencing domestic violence.

Women's Aid welcomes the publishing of the General Scheme of the Family Law Court Bill and more generally the government's commitment to reform the Family Law Court. However, we are concerned that the experiences and needs of domestic violence victims/survivors are not examined or addressed in this process.

Statistical Data on Domestic Violence

The EU Fundamental Rights Agency² survey on violence against women has found that in Ireland:

- 14% of women have experienced physical violence by a partner (current or ex)
- 6% of women have experienced sexual violence by a partner (current or ex)
- 31% of women have experienced psychological violence by a partner (current or ex)

Women's Aid data

In 2019 there were³

- 20,763 contacts with Women's Aid Direct Services

1 While recognising that the legal term in Ireland is 'domestic violence' we acknowledge that many victims/survivors identify more with the term 'domestic abuse' or 'intimate partner violence'. Women's Aid uses these terms interchangeably in this submission to refer to the same set of abusive behaviors perpetrated by current or former intimate partners (including emotional, physical, sexual and financial abuse and coercive control).

2 European Union Agency for Fundamental Rights, Violence Against Women: an EU-wide survey Main results, 2014

3 Women's Aid, Annual Impact Report 2019, available here: https://www.womensaid.ie/assets/files/pdf/womens_aid_annual_impact_report_2019_-_embargoed_29820.pdf



- 19,258 disclosures of domestic abuse against women and 4,791 disclosures of child abuse
- 102 disclosures about children being directly physically, emotionally and/or sexually abused during access visits with their fathers
- 508 disclosures about women being abused by their ex-partners during access visits, often in front of their children

Children and Domestic Violence

Children are often the unseen victims of domestic abuse, whether they are directly targeted by the abuser or whether they are forced to witness the abuse of their mother, which is in itself a form of child emotional abuse, as acknowledged in *Children First: National Guidance for the Protection and Welfare of Children*. The FRA report mentioned above found that in Europe 73% of women who have experienced physical or sexual violence by a current or a previous partner indicated that their children were aware of the violence.⁴

We do not know how many children experience domestic abuse in Ireland. Data from Women's Aid Direct Services shows that 90% of the women using our One to One Service for the first time in 2019 had children and that many are abused during the relationship, including having to witness the abuse of their mother. Domestic abuse does not necessarily stop after separation, in fact access visits are often used by abusive men to continue the abuse of mothers and children after separation.

The Istanbul Convention

The Istanbul Convention states clearly that children who experience or witness domestic abuse suffer a negative impact and that domestic violence must be taken into consideration when deciding on custody and access. Moreover, the Convention requires that the safety of children, and the non-abusive parent must be upheld in custody and access arrangements.

4 Ibid. this data is not available by country



Article 31 – custody, visitation rights and safety

1. *Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.*
2. *Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.*

Women's Experiences with the Family Law Court

Women's Aid has held serious concerns about family law outcomes and processes for many years. Women regularly tell us that custody and access arrangements are made which **are not safe for children and their mothers and which allow the abuse to continue post separation**. The women report that proceedings are biased against them and that many professionals, including judges and child report experts, do not understand the issues faced by women separating from an abuser nor the impact of domestic abuse on children.

In theory, access to their parents should be the right of the child, in practice it is exercised as the right of the parents, in this context specifically of the abusive father. There is a pro-contact assumption that often trumps considerations regarding the risk to the children and their mothers, as well as sometimes the stated wishes of children not to be forced to go on access.

As a result, custody and access orders are dangerous and/or detrimental to the safety and the wellbeing of children and their mothers. Children may be directly abused or neglected by the perpetrator during the time spent with them. Children are also emotionally abused when forced to witness the abuse of their mother during changeover and by the undermining of the relationship



and bond with their mother, which is critical to their healing⁵. Additionally, proceedings in the Family Law Court are protracted and costly, the premises are inadequate and there is a lack of support for women engaging with the Family Law Court during and after proceedings.

In a consultation with Women's Aid held in October 2018⁶, women reported the following in relation to the Family Law Court process:

- Fears about the physical safety and the psychological wellbeing of their children are often not heard and the safety of the woman herself is not considered at all.
- Criminal behavior is not taken into account in the Family Law Court even when the abuser has been convicted of serious offences (such as assault or sexual assault) against the mother or a sibling of the child, if the offence was not against the child for whom access is sought. This fails to acknowledge the impact of witnessing abuse against family members and the risk of further abuse.
- Orders under the Domestic Violence Act 2018 are not taken into account as domestic violence is considered a "separate issue".
- Children are not heard and believed when they report abuse during access.
- S32 reporters are not adequately trained, do not understand domestic violence and its impact on children and are easily manipulated by the abuser.

5 See in particular Bancroft and Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, 2002, Sage Publications. For Irish research see S. Holt, "A Case of Laying Down the Law: Post-Separation Child Contact and Domestic Abuse" *Irish Journal of Family Law* Vol. 14 No.4 Winter 2011

6 Women's Aid, *Unheard and Uncounted: Women, Domestic Abuse and the Irish Criminal Justice System*, 2019. Available here: https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf

Note that women were not specifically asked about family law, however, issues relating to family law spontaneously and consistently came up during the consultation, demonstrating this is a very critical issues for women.



- Access is granted in cases where it puts the children and the mother at risk and exposes them to abuse. Most of the time, the access is unsupervised, regardless of the level of danger posed by the abuser.

Domestic Violence as a core issue for Family Law reform

Women's Aid agrees that family law needs urgent reform and warmly welcomes the establishment of a separate Family Law Court to start addressing some of the issues outlined above. We appreciate that the publishing of the General Scheme of the Family Court Bill is but an aspect of a bigger reform project. We are concerned that so far, domestic violence has only been a marginal consideration in this project. No domestic violence organisation was called to give evidence to the Oireachtas Inquiry⁷ and their Report had little to say about it, other than in relation to anger management, the need for data, exemptions from mediation and the Domestic Violence Act 2018.

The Joint Committee on Justice and Equality Report on Reform of the Family Law System therefore suffers from an unbalanced level of consultation, that clearly lacks the important perspective of women separating from an abusive partner and trying to ensure their children's and their own safety in fraught custody and access proceedings. Disproportionate focus has been given, to date, to the rights of fathers in the absence of meaningful consideration of the particular circumstances of where there is domestic violence and abuse, and the centrality of the wellbeing, voice and rights of children as well as the non-abusing parent.

Unfortunately, there is no data in Ireland on the number of family law cases (including separation, divorce, custody, access and maintenance) where domestic violence was an issue. However, data from other countries suggest that **domestic violence is a feature of many relationships ending up in the Family Law Courts and that domestic violence victims/survivors are a key user group.**

⁷ Notwithstanding very good points made by RCNI, there was no expert specifically representing domestic violence services and the views of women accessing the Family Law Court when separating from an abuser.



For example

- A recent UK report⁸ says that
in 2019, 54,920 private law Children Act cases started in the family courts. Estimates indicate that the prevalence of domestic abuse in these cases is considerably higher than in the general population, with allegations or findings of domestic abuse in samples of child arrangements/contact cases ranging from 49% to 62%.
- In Australia, data shows that there is a high prevalence of family violence in separating couples, especially those using courts to sort out parenting issues. The Australia Law Reform Commission⁹ in a 2019 Report states that
*the majority of parents using the courts to resolve parenting arrangements report emotional and/or physical violence, **with 46% reporting safety concerns for themselves or their children** (or both) as a result of ongoing contact with the other parent (emphasis added).*
- In Ireland, the Rape Crisis Network of Ireland (RCNI) has suggested during the Joint Committee Inquiry, that a **significant proportion** of family separation and child custody cases going through our Family Law Courts, involve the rape and sexual abuse of children by family members in the absence of a parallel criminal conviction¹⁰.

The establishment of a dedicated Family Law Court presents an excellent opportunity to ensure that domestic violence is taken into account in family law and that victims are protected, in terms of both safe outcomes and processes. However, what is so far missing in the overall reform project is the understanding that domestic violence victims are a **key vulnerable** group accessing the Family Law Court and that they access the court not only in relation to domestic violence orders but also, just as importantly, in relation to child matters such as custody, access and maintenance.

8 Minister of Justice, 2020, Assessing Risk of Harm to Children and Parents in Private Law Children Cases
 9 Australian Law Reform Commission, March 2019, Family Law for the Future — An Inquiry into the Family Law System Final Report
 10 RCNI, Submission to the Joint Oireachtas Committee on Justice and Equality, February 20th 2019



It is essential that further work on family law reform, including the Family Court Bill, address the needs of these vulnerable users and is designed with the safety of victims of domestic violence and their children at its heart. Moreover, the lack of consultations with women and specialist support services needs to be remedied urgently and their voices should be heard by the Oireachtas Joint Committee on Justice deliberating on the Family Court Bill.

Recommendations

1. The safety of victims/survivors of domestic violence should be a key consideration in the drafting of the Family Court Bill.
2. The Oireachtas Joint Committee on Justice should hear from women who have experienced domestic abuse and have accessed the court in relation to custody, access and maintenance.
3. Specialist domestic violence support services should also be consulted.

Specific Comments on the General Scheme of the Family Law Court Bill

Our main concern in this General Scheme as in the overall Family Court reform project is the lack of consideration given to domestic violence, as already discussed. In particular, we would like to highlight the following concerns:

Guiding Principles

- The invisibility of and lack of focus on domestic violence in the Bill is reflected in the lack of a guiding principles on **safety** in Head 5 (3). It is a grave concern to Women's Aid that in these guiding principles, no reference is made to the safety and welfare of parties that may be in the Family Law Court in relation to separation, divorce, child custody and access or



maintenance in the context of an abusive relationship or indeed in relation to an application under the Domestic Violence Act 2018.

- There is no reference in the guiding principles to the necessity of prioritising the **safety and emotional wellbeing** of children involved in proceedings who have experienced domestic violence as direct targets of abuse or as witnesses of abuse against other family members.
- The Family Law Court should be accessible and its proceedings clear and comprehensible to all users, including those with a disability, minorities, users for whom English is not their first language or those experience additional barriers or disadvantages. This should be reflected in the guiding principles.

Recommendations

4. Insert as a guiding principle in Head 5 (3) the promotion of the safety and welfare of victims of domestic violence accessing the courts for any family law proceedings (including separation, divorce, custody, access and maintenance, as well as for orders under the Domestic Violence Act 2018).
5. Insert as a paramount guiding principle in Head 5 (3) the protection of children involved in relevant proceedings in the Family Law Court from any form of domestic abuse.
6. Insert as a guiding principle in Head 5 (3) a recognition that having to witness domestic abuse against a family member is a form of emotional child abuse that the Court should protect children from.
7. Insert as a guiding principle in Head 5 (3) that proceedings should be accessible to all users, including those with disabilities and those experiencing additional barriers or disadvantages.

Mediation

Women's Aid recognises that mediation and other Alternative Dispute Resolution (ADR) methods can provide effective and positive options to parties in family law disputes where there is no domestic abuse. When there is domestic abuse, Women's Aid strongly believes that mediation is not appropriate, as it could put women at risk during the process of mediation and it could lead to unsafe and unfair outcomes for themselves and their children.



Mediation is predicated on the parties having an equal relationship and being able and willing to cooperate with each other, which is not the case in an abusive relationship. On the contrary, our experience is that women may not be able to freely articulate their fears and concerns in the presence of the abuser and end up agreeing to disadvantageous and dangerous arrangements. For many women leaving a violent relationship, separation is a particularly fraught time, with increased risk of intimidation and violence by the abuser. Participation in mediation can put women in danger of further abuse and harassment through contact with the abuser on arrival, during the mediation session and on departure.

In recognition of these risks, Article 48 of the Istanbul Convention prohibits the mandatory use of mediation or other ADR methods in criminal or civil cases, including family law, where there is domestic violence or other forms of violence against women covered by the Convention. In our experience, it may however be very difficult for women who are separating from an abuser to refuse mediation if they cannot “prove” the abuse by producing an order under the Domestic Violence Act 2018. Many women do not report domestic violence to the Garda or apply for a domestic violence order prior to separation. If they refuse mediation in the absence of such “evidence”, this is held against them as they are deemed uncooperative or difficult. Women may therefore feel obliged to participate in mediation when it is not safe for them.

Mediation is predicated on parties being willing to cooperate and able to do so safely. As such it should remain genuinely voluntary for all parties and no adverse inference should be drawn by parties refusing mediation, even if they are not able to provide “hard evidence” of domestic abuse.

Concerns Regarding Mediation in the General Scheme

While the General Scheme does not go as far as to make mediation mandatory, Women's Aid is concerned that the strong emphasis on mediation and ADR without a recognition of their limitations may compel victims of domestic abuse to participate in it regardless of the risk to their safety.



Specifically

- Mediation is included in Head 5 (3) (a) as the first guiding principle of the Family Law Court, without any statement recognising its unsuitability for cases of domestic abuse.
- Applications to the District¹¹ and Circuit¹² Family Law Courts to commence family law proceedings will have to state whether or not mediation has been attempted, except for proceedings under the Child Care Acts and the Domestic Violence Act 2018¹³. This exemption does not cover equally important proceedings for women separating from an abuser, such as divorce, separation, custody, access and maintenance.
- At any stage of proceedings, a judge can suspend proceedings to allow the parties to resolve some of all of the issues by mediation/ADR. This can be by the judges own motion or by request of one of the parties¹⁴. Again there is no exception or safeguard for victims of domestic violence who may find themselves coerced into mediation by their abuser. It is not clear if this suspension applies to proceedings under the Domestic Violence Act 2018 as well.

11 Head 10 (2) (a)(ii)

12 Head 15 (2) (a)(ii)

13 Head 10 (2) (b) for the District Court and Head 15 (2) (b) for the Circuit Court

14 Head 10 (3) for the District Court and Head 15 (3) for the Circuit Court



Recommendations

8. In Head 5 (3) (a) insert a principle stating that while mediation is promoted, it is recognised that it is not appropriate where there is domestic abuse, and that parties in Family Law Court proceedings will not be penalised in any way for refusing to participate in mediation.
9. In Head 10 (2) (b) and Head 15 (2) (b) ensure that exceptions to mediation requirements already provided for proceedings under the Child Care Act and the Domestic Violence Act 2018 should equally apply to custody, access and maintenance, separation and divorce proceedings where domestic abuse is alleged.
10. In Head 10 (3) and Head 15 (3), dealing with suspending proceedings to attempt mediation, include adequate safeguards for victims of domestic violence accessing the Family Law Courts in relation to separation, divorce, custody, access or maintenance as well as in relation to orders under the Domestic Violence Act 2018, so that victims of domestic abuse are not compelled to participate in mediation. When a party declines mediation/ADR because of domestic abuse, their statement to this effect should suffice.

Training

Women's Aid appreciates that judges appointed to the Family Law Court would have to have relevant experience or training as required by the Judicial Studies Committee. In our day-to-day experience supporting women accessing the Family Law Court for applications for domestic violence orders or for custody, access and maintenance orders we have noted great inconsistency in judges and other Family Law Court professionals understanding of domestic violence. We therefore suggest that the judicial training referred to in the Bill would include training on the dynamics of domestic violence, its impact on children and its impact on the ability of victims to confidently participate in legal proceedings.



Moreover, the General Scheme is silent in relation to training being provided to professionals in the court other than judges. It is equally important that other professionals such as lawyers, mediators, court staff, S32 reporters and any other child experts are specially trained on domestic violence.

Recommendations

11. That the judicial training referred to in the General Scheme¹ should include training on domestic abuse, including coercive control, how children experience domestic abuse and its impact on the ability of victims to confidently participate in legal proceedings. This training should be mandatory and a requisite for appointment to the Family Law Court.
12. That training on recognising domestic violence, including coercive control, is also provided to all other professionals in the Family Law Court.

Head 18: Family Law Rules Committee

Women's Aid believes that there should be a formal mechanism for the Family Law Rules Committee to engage with Court users and domestic violence specialist services, via membership on the Committee or alternative arrangements. Domestic violence is highly prevalent and impacts greatly on all aspects of family law. Many of the most intractable, prolonged and costly family law cases are cases where there is domestic violence and child abuse, due to the abuse of process that domestic violence perpetrators often engage in. It is therefore essential that the court is informed about domestic violence and hears from the users and specialist services to counter the marginalisation of domestic violence as a side issue in family law and provide safe and supportive measures to families escaping abuse.



Recommendation

13. A mechanism for the Family Law Rules Committee to engage with court users and domestic violence specialist services is included in Head 18.



Appendix 1: Women's Aid Services and Expertise

24hr National Freephone Helpline

The 24hr National Freephone Helpline provides a listening ear, emotional support and practical information to women experiencing abuse from their current or former partners. It is the only free, national, domestic violence helpline with specialised trained staff, fully accredited and quality assured by The Helplines Partnership. It has a Telephone Interpretation Service facility covering 170 languages for callers needing support in their own language. We also provide a text service for deaf and hard of hearing women. The Helpline is a gateway into our Dublin-based face-to-face and court support services and to other local independent support services and refuges around the country.

Instant Messaging Support Service

The Women's Aid National Helpline Instant Messaging Support Service is a free, confidential and secure service where women can seek support and advice from fully trained and accredited staff through instant messaging. The service is open daily and can be accessed through Womensaid.ie and toointoyou.ie. The service is more easily accessible to women who feel they are at risk of being overheard by their abuser.

One to One Support Service and Court Accompaniment

We provide direct face-to-face support to women at safe, accessible outreach locations embedded in communities around Dublin city and county. We offer court accompaniment and court advocacy support to women who access our One to One Services and who are seeking legal redress in the courts regarding violence and abuse by a current or former spouse or partner.

Dolphin House Family Law Court Support and Referral Service

Based in the Dolphin House Family Law Court, the support and referral service is a free and confidential drop-in service for women who are experiencing domestic violence. This can include emotional, physical, sexual or financial abuse. The service provides support and information on legal



options, safety planning and links women in with domestic violence services for ongoing support. Women's Aid runs this service in partnership with the Inchicore Outreach Centre.

High Risk Support Project

The High Risk Support Project provides a multi-agency response to women at high risk of ongoing abuse and homicide from their ex-partners. Women's Aid partners with An Garda Síochána and local domestic abuse services to deliver a coordinated rapid response system for women and families, which is generously supported by the Vodafone Foundation and the Department of Justice Commission for the Support for Victims of Crime.

Women's Aid Law Clinic

Our confidential and free legal information and assistance clinic supports women experiencing domestic violence who are representing themselves in domestic violence and family law proceedings. The clinic is staffed by volunteer lawyers from McCann Fitzgerald whose services are provided free of charge.

Specialised Training

Women's Aid is a Centre of Excellence for Training and Development of professional and organisational responses to women and children experiencing domestic violence. We provide support to local and national organisations throughout Ireland, both statutory and non-statutory, to promote best practice responses to women and children experiencing domestic violence. All Women's Aid training is informed and guided by over 40 years of experience of direct work supporting women and by international models of best practice.

Public Awareness and Campaigns

Women's Aid leads the way in raising awareness and providing information on domestic violence to women experiencing abuse, their families and friends, their communities and the wider society. Our annual public awareness campaigns and communications activities are a vital way to highlight the prevalence, nature and impact of domestic violence, dating abuse and femicide. We also engage



with the media to promote the 24hr National Freephone Helpline and our other support services. The Women's Voices testimony project encourages and facilitates survivors of domestic violence to tell their stories in a safe way to create better awareness and change for women in similar situations.

Influencing Government and Policy

Women's Aid provides solution-based recommendations on experiencing abuse to a number of national and local fora. We make submissions and meet with Government ministers, policy-makers and members of the Oireachtas to discuss a range of issues and collaborate with other agencies and organisations to bring about political and social change.

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