

# Domestic Abuse, Child Contact and the Family Courts

## All-Party Parliamentary Group on Domestic Violence

### Parliamentary Briefing

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All-Party Parliamentary Group  
on Domestic Violence

**women's aid**  
until women & children are safe

## **Forewords**

We are very pleased with the issues that this report brings to light, and we are proud to have been part of it. This is the third investigative report that the APPG on Domestic Violence has produced. The APPG will use this piece of work to push for further action from the mechanisms in parliament and in government. This will not simply sit on a shelf but will be a document used to bring about much-needed improvements for victims.

The family court system in England and Wales has long been a concern to us as campaigners for victims of domestic violence. Over the past 20 years, the criminal courts have made huge strides to improving the experience of victims. The creation of independent domestic and sexual violence advocates, specialist domestic violence courts and special measures for achieving the best evidence all show how we have come a long way. The family courts, which remain largely shrouded in secrecy, have not moved with the times.

The evidence presented of victims having to face and argue in person against violent perpetrators who have terrorised them and their children has always seemed unreasonable. As this report shows, the growing number of women forced to represent themselves has given rise to the even more sinister practice of perpetrators cross-examining their victims. Even the strongest amongst us would never want to do this.

We have seen too many cases where the family courts and children's services were used by perpetrators to continue their controlling behaviour over their victims. State services and justice services must not collude with this practice.

For too long there has existed the misconception that mothers hold all the power in the family courts. This report shows how too often the reality is the opposite with vulnerable mothers left powerless, endangered and belittled. We hope that this report will be a step towards changing things.

**Jess Phillips MP (Chair, APPG on Domestic Violence)**

**Maria Miller MP (Vice-Chair, APPG on Domestic Violence)**



In the criminal justice system, there has been a welcome shift toward recognising the needs of victims and understanding how difficult it can be, and how damaging to evidence and justice, for them to face the perpetrator in court. All we are asking for in this report is a similar level of consideration in the family courts.

In fact, as this report and the Women's Aid report 'Nineteen Child Homicides'<sup>1</sup> show, without a vastly improved understanding of the experiences and needs of victims of domestic abuse, the family courts are unable to follow the principle which should guide all their decisions: that the best interests of children are paramount in every situation.

They are failing in their primary duty.

A recent survey by Women's Aid of domestic abuse survivors with experience of the family courts found that three quarters described the experience as "traumatic", and a quarter had been questioned directly by the perpetrator. In many cases, these were men with convictions for violence against their former partner – surely an even stronger case for protection measures than the criminal courts where, rightly, the accused is innocent until proven guilty. More than half had no protection measures at all, not even a separate waiting room or being permitted to wait until after the perpetrator had left, to avoid being followed or harassed.

Domestic abuse is an issue in at least 70% of cases in the family courts. They must adapt to this reality.

What is needed right now is a strong message from government and the senior judiciary that the safety and wellbeing of children demands urgent change.

**Polly Neate, Chief Executive, Women's Aid**



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<sup>1</sup> Women's Aid (2016) Nineteen Child Homicides. Women's Aid: Bristol.

## **Executive Summary**

This Briefing from the Parliamentary Hearing held on domestic abuse, child contact and the family courts, by the All-Party Parliamentary Group (APPG) on Domestic Violence, highlights the urgent need for an end to cross-examination of survivors of domestic abuse by their abuser in the family court if they do not have legal representation. All survivors must be protected from physical or emotional harm whilst on the family court estate and taking part in child arrangements order proceedings.

Women and children's experiences of domestic abuse do not end when the relationship with their abuser ends. This APPG recognises that the challenges women face after ending a relationship with a perpetrator of domestic abuse are frequently exacerbated by the treatment they receive when dealing with child contact and the family courts. They are also at increased risk of continued violence and homicide.

Many women report feeling re-victimised and re-traumatised through the family court process. They can find it difficult to access formal legal advice and representation, and now routinely end up being cross-examined by their abuser when they are representing themselves in court as Litigants in Person. We heard clear evidence, which will be explored in this briefing, suggesting that the pervasive assumption that family courts are unfairly biased towards mothers and against fathers is false. This is particularly pertinent when it comes to families where there has been a history of domestic violence.

The impact of unsafe child contact in families where there has been, or still is, domestic abuse can be devastating. Whilst only a minority (one in ten) of parental separations reach the family courts in England and Wales<sup>2</sup>, domestic violence is the most common welfare issue raised<sup>3</sup>.

To investigate these issues further, the APPG on Domestic Violence, supported by Women's Aid, conducted a Parliamentary Hearing on domestic abuse, child contact and the family courts in order to shed light on the key issues that survivors of domestic abuse and their children are facing in the family courts, and to make some clear recommendations for change.

## **Key Issues Highlighted at the Hearing**

The Government, family court judiciary and related statutory agencies take domestic abuse seriously, and are committed to working towards protecting children in these families. However, this Hearing has highlighted key areas of concern relating to the experiences of survivors of domestic abuse in the family courts, and these will be explored in more detail in the briefing:

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<sup>2</sup> Office for National Statistics (2008) Omnibus Survey Report No. 38, Non-resident parental contact, 2007/8.

<sup>3</sup> Hunt, J, & Macleod, A. (2008) Outcomes of applications to court for contact orders after parental separation or divorce

- A need to ensure safe child contact, not contact 'at any cost'.
- Access to Legal Aid and Litigants in Person.
- A lack of access to special measures in family courts.
- Implementing Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Violence and Harm.
- Understanding the impact of domestic abuse on children.
- Specialist domestic violence training throughout the family court judiciary.
- The role of child contact centres in supervised and non-supervised contact.
- A presumption that the father is competent to provide safe and appropriate care and parenting despite their abusive behaviour and assessing the risk a perpetrator of domestic abuse poses to their child.

### **Seven Key Recommendations and Calls for Action**

1. The Ministry of Justice, and the President of the Family Division, must clarify that there must not be an assumption of shared parenting in child contact cases where domestic abuse is a feature, and child contact should be decided based on an informed judgement of what's in the best interests of child.
2. The Government must put an immediate end to survivors of domestic abuse being cross-examined by, or having to cross-examine, their abusers in the family court.
3. The Ministry of Justice must urgently set up an independent, national oversight group overseeing and advising upon the implementation of Practice Direction 12J – Child Arrangements and Contact Order: Domestic Violence and Harm.
4. The Ministry of Justice and President of Family Division must ensure that special measures, such as dedicated safe waiting rooms for vulnerable witnesses and separate entrance and exit times, are available throughout family court proceedings and any subsequent child contact, to ensure the safety and well-being of both vulnerable women and children.
5. The Ministry of Justice, President of the Family Division and Cafcass must ensure Judges and court staff in the family court, Cafcass officers and other frontline staff in other related agencies receive specialist face-to-face training on all aspects of domestic violence - particularly coercive and controlling behaviour, the frequency and nature of post-separation abuse, and the impact of domestic abuse on children, on parenting and on the mother-child relationship.
6. The Ministry of Justice, President of the Family Division and Cafcass must ensure expert safety and risk assessments in child contact cases are carried out where there is an abusive parent involved; they must be conducted by a dedicated domestic abuse practitioner who works for an agency accredited to nationally recognised standards for responding to domestic abuse.
7. The President of the Family Division must ensure family court judges never order child contact in supported contact centres where a risk assessment has found that the abusive parent still poses a risk to the child or non-abusive parent.

## Chapter 1 – Introduction and Background

The APPG on Domestic Violence has noted the growing concerns from survivors of domestic abuse and among professionals within the domestic abuse sector about the impact of family court proceedings and unsafe child contact on women and children. In light of these concerns, the APPG on Domestic Violence, supported by Women's Aid, has conducted a Parliamentary Hearing in order to identify key issues and make recommendations for change.

### **The Hearing**

The APPG on Domestic Violence held a meeting in January 2016 with expert testimony from legal professionals, domestic abuse practitioners, eminent academics and survivors of domestic abuse.

Women's Aid identified and invited expert witnesses, with the approval of the Chair of the APPG, as people who would be able to provide expertise and knowledge on issues surrounding domestic abuse, child contact and the family courts, to ensure a realistic portrayal of the current situation.

The meeting was held as a Parliamentary Hearing where witnesses gave oral evidence about their personal and/or professional experiences with child contact and the family courts. The APPG Officers questioned the experts present on particular elements of their evidence and experience. Those that provided oral evidence were then asked to provide written accounts of this evidence after the Hearing.

See **Appendix A** for a list of all of the APPG Officers and the Hearing expert panellists.

### **Background**

Domestic abuse is a gendered crime which is deeply rooted in the societal inequality between women and men. Women are significantly more likely than men to experience multiple incidents of domestic abuse, different types of domestic abuse (intimate partner violence, sexual assault and stalking) and in particular sexual violence<sup>4</sup>.

- Over the last ten years, data from the Office of National Statistics has highlighted that, on average in England and Wales, two women are killed every week by a current or former partner.<sup>5</sup>
- Every thirty seconds the police in England and Wales receive a domestic violence call<sup>6</sup> – yet it is estimated that only 35% of domestic violence incidents are reported to the police<sup>7</sup>.

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<sup>4</sup> Hester, M. (2009) Who does what to whom: Gender and domestic violence perpetrators in English police records

<sup>5</sup> Office for National Statistics (2015) citing Home Office Homicide Index

<sup>6</sup> HMIC (2014) Everyone's business: Improving the police response to domestic abuse

<sup>7</sup> Stanko, E (2000) The Day to Count: A snapshot of the Impact of Domestic Violence in the UK and Home Office (2002) Crime in England and Wales 2001/02

- Domestic abuse cases now account for 14.1% of all court prosecutions; the most recent CPS data show 92.4% of defendants were male and 7.6% were women. 84% of victims were female and 16% were male.<sup>8</sup>
- 45% of women survivors of domestic abuse responding to the Crime Survey of England and Wales 2012/13 reported mental health or emotional problems as an effect of the abuse.<sup>9</sup>
- A research project tracking 100 women who had exited a range of domestic violence services between 2011 and 2014 found that 88% of those women experienced post-separation abuse in the three years following their separation, which interfered with both being, and feeling, safe.<sup>10</sup>

Any woman can experience domestic abuse regardless of her race, ethnic or religious group, sexuality, socio-economic background, or disability, but some women who experience other forms of oppression and discrimination may face further barriers to disclosing abuse and finding help.

Domestic abuse also has a devastating impact on children and young people that can last into adulthood. One in seven children and young people under the age of 18 will have lived with domestic violence at some point in their childhood<sup>11</sup> and in households where domestic abuse is happening, 62% of children are also directly harmed.<sup>12</sup> There is evidence of the co-existence of domestic abuse and abuse directly against a child. One study found that 34.4% of under 18s who had lived with domestic violence had also been abused or neglected by a parent or guardian.<sup>13</sup>

### **The Family Court and Child Contact**

Concerns have been raised to this APPG about the suitability of contact orders made in cases where the parent applying for contact with their child is also a perpetrator of domestic abuse.

Currently only a small minority, about one in ten, of child contact cases reach the family courts<sup>14</sup> and in only a tiny proportion of these (less than 1%<sup>15</sup>) is contact to the applicant parent refused. Most child contact agreements are arranged informally between the parents, or go through Mediation Information Assessments Meetings (MIAMs) to agree contact, rather than to the family court.

The introduction of the Shared Parenting legislation, through the Children and Families Act 2014, has led to an increased emphasis in the family courts on the importance of

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<sup>8</sup> Crown Prosecution Service VAWG Report, 2014-15

<sup>9</sup> Office for National Statistics (2014) Crime and Justice Chapter 4 - Intimate Personal Violence and Partner Abuse

<sup>10</sup> Kelly, L., Sharp, N. and Klein, R., Finding the Costs of Freedom. (London: CWASU and Solace Women's Aid)

<sup>11</sup> Radford, L. et al (2011) Meeting the needs of children living with domestic violence in London

<sup>12</sup> CAADA (2014) In plain sight: The evidence from children exposed to domestic abuse

<sup>13</sup> Radford, L. et al (2011) Meeting the needs of children living with domestic violence in London

<sup>14</sup> Office for National Statistics (2008) Omnibus Survey Report No. 38, Non-resident parental contact, 2007/8.

<sup>15</sup> Aris, R. & Harrison, C. (2007) Domestic Violence and the Supplemental Information Form C1A and Giovanni, E. (2011) Outcomes of Family Justice Children's Proceedings – a Review of the Evidence

children having contact with both parents. In many cases, a child having court-ordered contact with both parents can be a safe and beneficial outcome for all involved. However in cases where domestic abuse is an issue, contact with the abusive parent may not be in the best interest of the child or their non-abusive parent, and could leave them in considerable danger. It is important that the family courts consider the parenting capacity of the abusive parent and the likely impact of past and future abuse on their ability to parent safely, on their child, and on the safety of the non-abusive parent.

## Chapter 2 –Legal Obligations and National Leadership

### The UK Government

The Government has national and international obligations, duties and responsibilities towards the protection of children and women survivors of domestic abuse. These legal obligations include the following:

#### Domestic Legislation:

- Serious Crime Act 2015 - This Act created a new offence of controlling or coercive behaviour in intimate or familial relationships (section 76). The new offence closes a gap in the law around patterns of controlling or coercive behaviour in an ongoing relationship between intimate partners or family members. The offence carries a maximum sentence of 5 years imprisonment, a fine, or both.
- Children and Families Act 2014 – introduced a number of reforms including the introduction of a 26 week time-limit for the courts to decide whether or not a child should be taken into care, and the introduction of a single assessment process and an Education, Health and Care (EHC) Plan to support children, young people and their families from birth to 25 years.
- Children and Young Persons Act 2008 – which placed a duty on registrars to notify the Local Safeguarding Children Board of all child deaths.
- Children and Adoption Act 2006 – which gave courts more flexible powers to facilitate child contact and enforce contact orders when separated parents are in dispute.
- Domestic Violence Crime and Victims Act 2004 – which focuses on criminal justice, and legal protection and assistance to victims of crime, particularly domestic violence.
- Children Act 2004 – which strengthens the 1989 Children Act and encourages partnerships between agencies and creates more accountability.
- Adoption and Children Act 2002 – which amended the Children Act 1989 by expanding the definition of "harm" to include witnessing domestic violence.
- Education Act 2002 – which requires school governing bodies, local education authorities and further education institutions to make arrangements to safeguard and promote the welfare of children.
- Family Law Act 1996 – introduced protection measures such as non-molestation orders and occupation orders.
- Children Act 1989 – which provides the legislative framework for child protection in England including the paramount nature of the child's welfare and the expectations and requirements around duties of care to children.
- The Scottish government are currently considering a new all-encompassing offence of domestic abuse to include all forms of coercive behaviour. The consultation for this offence ended in April 2016 and this APPG will be keen to see its findings.

## European Legislation:

- The Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence (Istanbul Convention) 2011 – which, amongst other things, binds countries to do the following:
  - Train professionals on the dynamics and impact of domestic abuse in close contact with victims.
  - Regularly run awareness-raising campaigns.
  - Take steps to include issues such as gender equality and nonviolent conflict resolution in interpersonal relationships in teaching material.
  - Set up treatment programmes for perpetrators of domestic violence and for sex offenders.
  - Take the necessary legislative steps 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 and take the necessary legislative steps to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

While the UK government signed the Istanbul Convention in 2012, it has yet to ratify it as some countries haven't made the technical changes to domestic legislation required.

There are a number of statutory agencies which alongside the family court judiciary also have a role to play in protecting women and children survivors of domestic abuse, both when they are in the relationship and when the relationship has ended. These agencies include the Police, local authority Children's Services Departments, Adult Social Care, Cafcass, the family courts, and health professionals.

## Chapter 3 – Are the family courts putting children’s safety first?

The Hearing held by the APPG followed on closely from the launch of Women’s Aid’s ‘Nineteen Child Homicides’ report which tells the stories of 19 children in 12 families, killed by known perpetrators of domestic abuse in circumstances related to formal or informal child contact arrangements. In addition, two other children were seriously physically harmed at the time of these homicides, and two women were killed. These homicides took place in England and Wales, and were described in Serious Case Review reports published between January 2005 and August 2015. All of the perpetrators were men and fathers to the children they killed. One of a number of key findings from the report was that for 12 children (in seven families) of the 19 children killed, contact with the perpetrator (their father) was arranged in the family courts.

The evidence provided by experts in this Hearing has clearly highlighted challenges and concerns around domestic abuse, child contact and the family courts, these are explored in more detail in the sections below.

### **A need to ensure safe child contact, not contact ‘at any cost’**

In 2000, a landmark Court of Appeal child contact case (*Re LVMH*)<sup>16</sup> set out the detrimental effect that domestic abuse can have on children. The findings of this case underlined the need for a heightened awareness of the existence of, and consequences for children of exposure to domestic violence between parents or other partners in the family court.

In 2004, Women’s Aid published the ‘29 Child Homicides’ report which outlined the cases of 13 families where children had been killed by a perpetrator of domestic abuse during unsafe child contact arrangements. This report, alongside significant legal expertise and campaigning from the domestic abuse sector, reinforced the need to prioritise children’s best interests and safety in child contact cases involving domestic abuse.

As a result of this seminal research and landmark court case, alongside a growing body of evidence of the impact of domestic abuse on children, the domestic abuse sector, legal experts, academics and campaigners were able to come together to reinforce the need for judges to take allegations of domestic violence seriously, and recommended that there should be no automatic assumption that contact with a previously or currently violent parent is in the child’s best interests. Where there is not evidence in a particular case that the perpetrator of domestic abuse has posed, or continues to pose, a threat to their child, this does not mean the courts should disregard the Paramountcy Principle, which stipulates the courts must put the rights of the child first.

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<sup>16</sup> *Re LVMH* (2000) 2 FLR 334.

In 2008, a new set of guidance was added to the Family Procedure Rule for the family courts, *Practice Direction 12J - Child Arrangements and Contact Order: Domestic Violence and Harm*.

This Practice Direction sets out the process and rules to be followed when domestic violence is raised as an issue in child contact proceedings. See page 17 for a further exploration of issues around Practice Direction 12J.

Despite a growing understanding of and urgency in dealing with domestic abuse across the justice sector, and the new offence of coercive control (which was enforced in December 2015), there was a clear consensus between the witnesses at this APPG Hearing regarding the existence of an embedded culture within the family courts to allow contact with the child(ren) to the applicant parent, most of the time. This is also reinforced by evidence which shows that less than 1% of child contact applications are refused<sup>17</sup>, despite domestic abuse featuring in around 70% of Cafcass caseloads<sup>18</sup>, and in 70-90% of cases going to the family courts.<sup>19</sup>

*“There is a pro-contact approach.” CH*

*“There has been a shift to the presumption of child contact”. BJ*

Concerns were also raised that a preoccupation with promoting contact and a push to enable contact with a father and child, despite any history of domestic abuse, highlights a tension between the culture in the family courts and the legal and policy framework in place to protect children and women survivors of domestic abuse. The reported desire by the family courts to treat parents equally in a push towards shared parenting, can sometimes blind the family court to the potential impact of domestic abuse on children. This APPG heard that it is not unusual for a perpetrator of domestic abuse to be seen as a ‘good enough dad’ - despite the children witnessing or being affected by the abuse. The contact order often happens without any assessment of the capacity of the abusive parent to provide safe and appropriate care for the children.

*“Courts very rarely refuse any contact at all” SC*

The family court culture of ‘contact at all costs’ has been found to be detrimental to the safety of contact decisions that are made. The APPG heard that judges are often making an incorrect assumption that, because a relationship has ended, so has the domestic abuse. A recent study of women survivors of domestic abuse showed that over 90% of women experienced post-separation abuse.<sup>20</sup>

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<sup>17</sup> Aris, R. & Harrison, C. (2007) Domestic Violence and the Supplemental Information Form C1A and Giovanni, E. (2011) Outcomes of Family Justice Children’s Proceedings – a Review of the Evidence

<sup>18</sup> House of Commons Home Affairs Committee (2008) Domestic Violence, Forced Marriage and “Honour”-Based Violence

<sup>19</sup> HMICA (2005) Domestic Violence, Safety and Family Proceedings a Thematic Review

<sup>20</sup> Solace Women’s Aid (2014) Finding the Costs of Freedom

Concerningly, the APPG heard that in the family courts, cases can be used by the perpetrator as an opportunity to continue persistent, coercive and controlling behaviour or to even be physically abusive.

*“39% (of 91 respondents) of women were verbally or physically abused by their former partner in the family court.” PN*

*(Out of 23 completed cases) – “The victim, and therefore to some extent the child, was experiencing ongoing abuse at the point of assessment in 70% of those cases.” CB*

*“The contact process itself is used as a form of post separation violence and abuse.” RT*

Nevertheless, the impact of abuse which continues after the relationship has officially ended is routinely misunderstood and often results in contact still being granted.

*“The court ordered that pending the report the father was to have contact with his children at a supported child contact centre.” EC*

*“In my experience family courts and Cafcass were often overly optimistic about the propensity of my ex-partner to resume contact.” Anon*

Concerns were also raised at the Hearing that when survivors of domestic abuse open up about their experiences of domestic abuse in the family court setting, they do not always feel believed.

*“My barrister told me on one occasion that it was a shame I didn’t have a couple of black eyes... I wouldn’t want to endure serious bodily harm to be taken seriously. It shouldn’t come to that.” Anon*

*“Women do not feel believed.” CH*

*(From ‘Picking up the Pieces’)- “69% of the women who took part in our research said that judges did not take the allegations of domestic violence or its impact on children seriously.” MG*

When survivors of domestic abuse are already faced with the trauma of going to the family courts or contact visits, it is imperative they feel supported and believed.

## **Access to Legal Aid and Litigants in Person**

*“I’ve been a litigant in person. But it was dangerous. The person who was abusing me is skilled. That person was very skilled in manipulating the judge” Anon*

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 significantly cut the yearly legal aid budget, and altered the rules governing who is able to access legal aid and for which legal matters. Domestic abuse survivors remained eligible for legal aid; however, the Domestic Violence Legal Aid Gateway has a strict evidence criteria to qualify for assistance that many survivors of domestic abuse are unable to

meet. Rights of Women, Women's Aid and Welsh Women's Aid research highlighted that 40% of survivors of domestic violence still do not have the required forms of evidence to make an application for legal aid to begin with<sup>21</sup>. A recent Judicial Review of the new legal aid restrictions spearheaded by Rights of Women had success at the Court of Appeal in early 2016. The ruling found that the 24 month time-limit on evidence of domestic abuse was unlawful, and there must be admissible evidence for financial abuse. The Ministry of Justice must now make these changes to the legal aid regulations. Whilst this is a positive step forwards, the evidence criteria for legal aid in cases of domestic abuse is still too narrow and requires further consultation.

Professional legal representation in the family courts is expensive and many people are unable to afford this representation. Therefore, there has been an increased number of survivors of domestic abuse who are forced to represent themselves in the family court as litigants in person. The National Audit Office (NAO) found that since the implementation of LASPO there has been a 22% increase in the case involving contact with children where neither party was legally represented; there has been a 30% increase across all family court cases (including those that remain eligible for civil legal aid) in which neither party had legal representation; and, 80% of all family court cases starting in the January–March quarter of 2013-14 had at least one party who did not have legal representation.<sup>22</sup>

*"There has been an increase in litigants in person as a result of the cuts to legal aid." MG*  
*"In recent years we have seen a complete cessation of legal aid for domestic violence victims."*  
*CB*

The APPG was alarmed to hear that if a survivor of domestic abuse is a litigant in person, it is far from unusual for them to be cross-examined by their perpetrator or in turn have to cross-examine their abuser. Women's Aid's 2015 survey of survivors of domestic abuse found that a quarter of women had been directly questioned by the perpetrator<sup>23</sup>. This practice is unheard of in the criminal courts and as already noted, family court cases involving child contact can be used by the perpetrator as an opportunity to continue persistent, coercive and controlling behaviour - so it is wholly inappropriate in the family courts too.

*"Litigants in person are a major problem and when cross examination of a victim by an abuser takes place that is very concerning. Coercive control can be played out in the court arena." BToE*

*"Victims shouldn't be cross examined by the perpetrators. This wouldn't happen in criminal courts." KS*

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<sup>21</sup> Rights of Women, Women's Aid and Welsh Women's Aid (2016) Evidencing Domestic Violence: nearly three years on

<sup>22</sup> NAO, Implementing Reforms to Civil Legal Aid, 20 November 2014, HC 784 2014-15: page 15

<sup>23</sup> Women's Aid survey of survivors of domestic abuse (2015) (25.3% of 91 respondents)

*“Absolutely under no circumstances must a perpetrator who is representing themselves be allowed to interrogate their victim.” SR*

As well as being a traumatic experience for a survivor of domestic abuse, this can also mean that women feel that they are unable to advocate properly for the safety of their children, meaning that they and their children are denied access to justice.

*“At other moments I felt completely disempowered and very, very much at risk because of what the system was doing at that point.” Anon*

In Wales, there are particular concerns around the availability of legal aid due to the geographical constraints around accessing a limited pool of legal aid providers across the whole country.

*“Legal Aid is one that just keeps coming up, having to travel such long distances to get a lawyer who can even advise them on whether they can get access to legal aid in the first place. Some people are having to travel from Wales to London to get access to this type of support.” TR*

The APPG heard from a leading human rights expert that, depending on the specific circumstances of the case and whether in the light of all the circumstances the lack of legal aid would deprive the applicant of a fair hearing, this could breach the Human Rights Act (HRA).

The State should ensure the provision of legal aid in relation to cases that affect the right to life under Article 2 of the HRA, and the prohibition of torture and inhuman and degrading treatment and punishment under Article 3 of the HRA. These articles will have relevance for a survivor of domestic abuse as the ECHR has now held that domestic abuse can fall within the scope of Article 3 and Article 2 which will have been breached where the victim has been killed as a result of domestic abuse.

The APPG is calling for an immediate end to survivors of domestic abuse being cross-examined by, or having to cross examine, their abusers in the family courts.

### **A lack of access to special measures in family courts**

The family courts often lack the special measures that are in place in the criminal courts, which provide victims with fair access to justice and protect their safety and well-being when they are on the family court estate.

*“And this man who had raped her, beaten her and abused her over a six-year period interrogated her for three hours in the family court” SR*

According to a Women’s Aid survey of survivors, 55% of women respondents who had been to the family courts had no access to any special measures. 39% were verbally or

physically abused by their former partner in the family court.<sup>24</sup> Disappointingly, even when survivors sometimes asked, for example, to wait in a separate room to their perpetrator, their requests were refused.

*"I have found myself waiting in the same place as my ex because of the lack of available space in courts." Anon*

A number of comparisons between the family court and the criminal court were made at the Hearing which only further highlighted the negative impact that the lack of special measures has on survivors of domestic violence.

*"What our clients are saying is that they need special measures in court." SR*

*"Some of the lessons learned in the criminal sphere need to be applied to family courts." KS*

There should be no family court that forces a survivor of domestic abuse to wait in the same room as their perpetrator, or to have to go through the ordeal of leaving the court building at the same time or same way as the abuser. It is not uncommon for women to be followed, stalked, harassed and further traumatised after leaving the court. Crucially, if a woman is living in a refuge, this can also put the safety of every resident at the refuge at risk. Furthermore, this APPG heard about specific challenges with attending the family courts in Wales, where women in rural communities may only have the option of one bus or train route to get to the court, and are therefore inevitably coming face-to-face with their abuser and are being put in dangerous situations.

*"There are transport issues as transport isn't widely available so a perpetrator and survivor are having to travel on the same bus to get to a contact centre or court. There are incidents of violence that are happening on public transport." TR*

It is well-recognised that some victims and witnesses may have particular difficulties attending court and giving evidence due to their age, personal circumstances, fear of intimidation or because of their particular needs.

*"We found that over half of women that we surveyed who had experiences of domestic abuse and experiences of the family court had no special protection measures available at all." PN*

In the criminal courts, survivors of domestic abuse are treated as vulnerable or intimidated witnesses and are able to access the full suite of special measures. These measures include:

- Giving evidence behind a screen positioned around the witness box
- Giving evidence by a live TV link from a room outside the courtroom
- Giving evidence in private by clearing the courtroom of members of the public
- Use of video-recorded interviews as evidence in chief
- Examination of the witness through a Registered Intermediary
- Providing separate waiting rooms for victims and witnesses

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<sup>24</sup> Women's Aid survey of survivors of domestic abuse (2015)

- The provision of aids to communication such as through a computer or other device to communicate when giving evidence
- Ensuring victims and witnesses are able to leave the courtroom via a separate exit and at a staggered time

Understandably for survivors of domestic abuse, it can be very traumatic and frightening to come face-to-face with their perpetrators in the family court.

*“When the father came out of the court, he knocked her to the ground in front of a court official and CCTV cameras.” EC*

## **Implementing Practice Direction 12J**

There was a clear consensus from speakers at the Hearing in regards to a patchy implementation of *Practice Direction 12J - Child Arrangements and Contact Order: Domestic Violence and Harm* throughout the family courts.

*“Research demonstrates that Practice Direction 12J isn’t being implemented across the board as it should be...whatever’s happening, it’s not filtering through to the courts”. SC*

The APPG heard that there is variable awareness of the Practice Direction throughout the family court judiciary, and this is not an issue isolated to family court judges.

Practice Direction 12J applies to any family proceedings in the family court under the relevant parts of the Children Act 1989, or the relevant parts of the Adoption and Children Act 2002 (‘the 2002 Act’) in which an application is made for a child arrangements order.

The purpose of this Practice Direction is to set out what the family court should do in any case in which it is alleged or admitted, or there is other reason to believe, that the child or a party has experienced domestic violence or abuse perpetrated by another party, or that there is a risk of such violence or abuse. The APPG heard that this Practice Direction provides a sound framework which, if implemented, should ensure that all women and children survivors of domestic abuse are kept safe through child contact proceedings and any resulting contact orders.

The general principles of the Practice Direction set out that the court must, at all stages of the proceedings, consider whether domestic violence is raised as an issue, either by the parties or otherwise, and if so must:

- identify at the earliest opportunity the factual and welfare issues involved;
- consider the nature of any allegation or admission of domestic violence and the extent to which any domestic violence which is admitted, or which may be proved, would be relevant in deciding whether to make an order about residence or contact and, if so, in what terms;
- give directions to enable the relevant factual and welfare issues to be determined expeditiously and fairly.

Whilst the majority of panellists were in agreement about a lack of, or ineffective, implementation of Practice Direction 12J, there was evidence of a few areas such as Croydon that were seeing good practice in regards to the implementation of the Practice Direction.

*"In terms of Practice Direction 12J, it is implemented and it's routinely done so". CD*

However, clear reasons were stated as to why Croydon was more successful than other areas.

*"I think partly the Croydon issue is that we do have the Family Justice Centre there. There are better links between the judiciary and the family justice centre." CD*

If Practice Direction 12J was always put into practice and strictly followed rather than being trumped by a culture of 'contact at all costs', a number of the pressing concerns raised in the Parliamentary Hearing would automatically be addressed, and the safety and well-being of women and children would be far better protected. The APPG would be eager to see Practice Direction 12J effectively implemented across the country and better data collected on its implementation.

*"Magistrates are very positive about the value of Practice Direction 12J and in my own experience it is beneficial for all parties when it is followed." RH*

*"If Practice Direction 12J was actually put into practice, then quite a lot of these issues would not arise." PN*

## **Understanding the impact of domestic abuse on children**

*"Domestic violence on children includes whether the child has seen/heard abuse of a parent."  
BToE*

*"Absolutely, categorically, your use of violence and abuse will impact on your parenting of the child in all sorts of ways" BJ*

The Adoption and Children Act 2002, Section 120, expanded the definition of "harm" in relation to children to include witnessing domestic violence. Domestic abuse perpetrated against a child's parent, where the child is witnessing or involved in that abuse, is widely considered to be a form of child abuse. Thiara and Harrison's (2016) literature review on child contact and domestic abuse highlighted the complex and traumatic impact [on children] of exposure to domestic violence, which may result in a range of emotional, social, psychological and behavioural responses with short and longer-term implications.<sup>25</sup>

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<sup>25</sup> Thiara, R and Harrison, C (2016) Safe not Sorry: key issues raised by research on child contact and domestic violence. Women's Aid: Bristol.

However, in this Hearing anecdotal concerns were raised by the expert witnesses that domestic abuse against a mother is not seen by the judiciary and other professionals in the family courts as an issue affecting the child(ren) involved in child contact cases if there has not been any direct violence towards the child(ren). These concerns only confirm the current lack of understanding about the impact of witnessing or hearing domestic abuse has on a child.

*“Even where there was physical violence, the risk to children was underplayed.” MG*

*“The detrimental effects that witnessing domestic violence may have on a child and therefore their right to family life.” SC*

Children who have witnessed or heard domestic abuse suffer emotional and psychological trauma, and are denied a safe and healthy home life by the perpetrator of domestic abuse, who more often than not is also their parent. There is also a risk of the trauma associated with continuing to witness domestic violence if the courts make a contact order which effectively leaves the mother to manage the contact handover, or otherwise be in touch with the perpetrator to arrange contact. Supervised contact is almost always followed by unsupervised contact - at which point staggered handover options are usually no longer available, leaving the non-abusive parent to facilitate the handover. There will inevitably be some cases where unsupervised contact may never be safe or appropriate for the child and non-abusive parent.

Children who grow up witnessing domestic abuse can be left feeling a range of emotions, including fear, anxiety, confusion, and anger, and this emotional trauma can impact a child for the rest of their lives. Within the Government’s Troubled Families programme, 29% of the families have domestic abuse as an issue. In these families 62% also had a child truanting, 60% had an adult with mental health needs, 20% had a child excluded from school, 41% had a child with mental health needs, 57% had police callouts, 20% had an adult with alcohol dependency and 17% had an adult with drug dependency.<sup>26</sup>

Not only does a lack of understanding of the impact of domestic abuse on children and awareness of the evidence have potentially dangerous consequences for the child(ren)’s and mother’s immediate safety and well-being, it can also have much longer term consequences.

*“I have never seen more distressed women and children than those who have gone through lengthy court proceedings and are sitting in supervised contact centres where women feel that they can’t protect their children. They have to conform to orders that they believe are damaging to their children”. CH*

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<sup>26</sup> Troubled Families Presentation, DCLG Summit, (2015)

This Hearing elucidated how critical it is that the family court judiciary ensures that the effects of domestic abuse on children are fully considered in every case presenting in the family court where there has been abuse in the home.

## **The role of child contact centres in supervised and non-supervised contact**

Child contact centres play a vital role in safeguarding children during contact where there has been domestic abuse. Currently, there are two types of contact centres that a family may be referred to if the judge is not immediately able to order unsupervised contact: supported and supervised contact centres. Families can also self-refer if they are not going through the court process.

Supported contact centres are used generally at the beginning of the separation between parents where communication is difficult. Supported contact centres do not have a role in making verbal or written reports about contact sessions, and the majority are run by volunteers.

Supervised contact centres are used when a child has previously suffered or is at risk of suffering harm through a contact visit, so there are more safeguarding processes in place. Supervised contact centres have a role in reporting on the nature and quality of the contact between the child and parent, and must raise any safeguarding concerns.

*“Supervised contact is usually, but not always, court-ordered and with Cafcass involvement... Supervised Contact Centres often provide a report for court as to the long term arrangements appropriate for the child/children. This contact is usually ordered where there are risks of harm either from a parent who has been the perpetrator of domestic abuse, has misused substances such as alcohol or drugs, or where a parent has been absent from the child’s life for so long that some reintroduction is needed.” EC*

Across the UK there are around 405 contact centres. 220 of these contact centres are for ‘supported contact’, and 150 are centres where qualified workers facilitate supported and supervised contact. There are a further 35 centres which are commercially run and only provide supervised contact. This APPG has some concerns about the limited number of contact centres that are able to facilitate supervised contact.

Contact centres undergo an accreditation process through the National Association of Child Contact Centres every three years. This accreditation process is recognised by Cafcass and the family courts. Centres who do not meet the standards are put on to an action plan for improvement which must be implemented within three months.

Contact centres can be a safe and important option for child contact in cases where the staff are trained to recognise and deal with any abusive behaviour or continued coercive control. In such cases these centres are an important part of the framework to protect the best interests of the children in contact cases and their non-abusive parent.

Four key issues around child contact centres were raised during the Hearing:

### **1) Supervised contact being ordered to take place outside of contact centres**

The APPG heard of cases where supervised contact was ordered, but the supervision element of the contact in itself was very unsafe or inappropriate.

*“He applied for contact, and at the first hearing they granted supervised contact but the supervision was to take place at his parents’ home and his parents would do the supervision – his parents had two weeks before watched him smash my head through a wall and refused to tell the police what had happened...they (the court) never met the parents”. BO*

### **2) Inappropriate court orders for contact made to supported contact centres**

Supported contact centres cannot always provide the level and expertise of supervision needed to ensure that children in families where there has been domestic abuse are kept safe. Child contact can be used as a tool to continue to perpetrate coercive and controlling behaviour, and children can be at risk of further emotional or physical harm through contact.

Judges in the family court should not order supported contact in cases where there has been an assessment of the risk an abusive parent poses to the child and non-abusive parent, and there are ongoing safety concerns as the family is still at risk of further abuse or harm.

### **3) Difficulties in challenging inappropriate contact orders to contact centres**

Where an inappropriate order for contact in a supported contact centre has been made, the APPG heard that some contact centres find it challenging to push back on these referrals. This is in part due to supported contact centres being run predominantly by volunteers who may be unfamiliar with the judicial and court process.

*“Some centres find it difficult to refuse a judge when they want to make an order”. EC*

A contact centre does have the power to refuse a referral for contact if they are in any way concerned about it. The contact in the case below was refused by a supported contact centre:

Case study provided by the National Association of Child Contact Centres (NACCC) - *“The children’s father who was seeking contact stormed out of court hearing in a rage. When the mother came out of the court, he knocked her to the ground in front of a court official and CCTV cameras. The judge had the matter referred to the police and insisted that security be available at the next hearing. A report was requested to look into the potential risk to the physical and psychological impact on the children, because of the father’s history of being*

*unable to control his anger. The court ordered that pending the report the father was to have contact with his children at a supported child contact centre. The judge insisted in the order that the centre be informed that the father had a history of violence towards women”.*

It is important to ensure that there is a clear pathway for contact centre staff, whether volunteers or professionals, to challenge inappropriate contact orders that have been made in the family courts. Contact centre staff must be aware that they are able to refuse referrals where contact in their centre has been ordered inappropriately.

#### **4) Unqualified staff in supported contact centres, taking self-referrals for contact**

A number of instances were raised in the Hearing of supported contact centres taking self-referrals for contact from members of the public, where the contact has not been court-ordered.

Individuals who are approaching contact centres may have some concerns about the safety and welfare of their child in relation to contact with the other parent. In these cases, it may be appropriate to signpost the individual to a local domestic abuse support service to ensure that they are getting the support required, or making them aware that formal contact can be agreed by going through mediation or the family courts. It should be noted here, and was raised during the Hearing, that mediation is widely regarded to be inappropriate in cases of domestic abuse, as the mediation is very unlikely to be commencing from a situation where there is equality of power between the two individuals involved. It is also accepted that mediation can pose an additional risk to a survivor of domestic abuse, as they can be left vulnerable if expressing an opinion about child contact that the perpetrator does not agree with.

*“Research demonstrates that some people are being put in to mediation that should not be there...Some mediators themselves are not picking up on domestic abuse issues at all”. SC*

It is vital that volunteers in supported centres are fully trained in safeguarding and have an understanding of, and ability to recognise domestic abuse in all its forms. Practitioners in supervised child contact centres should be fully qualified and have specialist domestic violence training, as perpetrators will often try to use visits as a way of continuing their abuse of the victim. Contact centre staff must be able to recognise this behaviour and be equipped to address it. If this behaviour goes unnoticed or ignored, then this has considerable consequences for the safety and well-being of the mother and child(ren).

### **Specialist domestic violence training throughout the family court judiciary**

The definition of domestic abuse covers a wide range of behaviour. It is imperative that the training provided to the family court judiciary, including Judges, barristers and solicitors, as well as frontline staff in family courts, child contact centres and all associated agencies, is on-going and provides individuals with a comprehensive understanding of the gendered nature of domestic abuse, the power and control dynamics of domestic abuse, and the insidious nature of coercive and controlling behaviour. It is especially important that solicitors and barristers, who are often the first point of call for women in child contact cases, have a detailed and thorough understanding of the nature and impact of domestic abuse.

*"If judges and lawyers understood domestic violence then I think there would be more risk assessments from the experts on domestic violence." MG*

In light of the new criminal offence of coercive control, it is imperative that all members of the family court judiciary have an in-depth understanding of the power and control dynamics of domestic abuse, and how coercion and control can be manifested. This is particularly pertinent regarding the recent proliferation of online abuse and digital stalking, which needs to be recognised as a form of coercive control and domestic abuse by the family court judiciary.

*"(He is) still making many indirect threats towards me on social media...a whole new forum which gives perpetrators another way to use coercive control and to continue to intimidate their victims." BO*

Without a clear understanding of coercive control, the family court judiciary, including judges, will not be able to make informed and safe decisions about child contact.

*"The courts focus on individual incidents of physical violence and don't address coercive control which is at the root of the violence." MG*

Specialist domestic violence training undertaken on a regular basis is key, so that professionals involved in decision-making are able to fully comprehend the potentially life-threatening situation a mother and her children have been in, and will continue to be in, if unsafe contact is allowed.

*"The crucial point is that someone may not be likely to be abusive in the immediate future, but if they are in the longer term, and it is severe, then the results can be catastrophic." CB*

It is clear that such specialist training would be beneficial to the safety and well-being of survivors of domestic abuse and their children. This is key recommendation taken forward by this APPG.

*"One of the things I would say that could change is the training for people like the judges that goes into the domestic violence specialism" BO*

*"All professionals need to be educated about the risk of post-separation contact to children and women." Anon*

## **Assessing the risk a perpetrator of domestic abuse poses to their child**

A detailed risk-assessment of a perpetrator of domestic abuse is essential to working towards holding the perpetrator to account for their actions, and to decide whether any contact is appropriate. These risk assessments, when undertaken by qualified professionals, are a crucial way to protect women and children by identifying and managing any potential harm or danger to them as a result of child contact. As Hoyle<sup>27</sup> (2008) notes, robust research evidence consistently identifies the key risk factors for domestic violence: victim predictions of future harm, perpetrator use of weapons, perpetrator suicidality, perpetrator alcohol or drug use, forced sex, separation, obsessive jealousy, and extensive dominance.

Despite the significance of these risk-assessments, concerns were raised during the Hearing that due to a lack of public funding, risk-assessments were not always being undertaken for cases going to the family court.

*“50% of the time risk-assessments do not go ahead with the number one reason for it not going ahead being a lack of funds.” CB*

*“The legal aid changes have affected things. In 2012-2013 – we undertook 65 publicly funded risk assessments. In 2014-2015 – we had 1 publicly funded risk assessment.” BJ*

However, concerns were also raised about the quality or the effectiveness of the risk assessments that were being carried out, when they were not being carried out by recognised agencies, such as DVIP.

*“Research also demonstrates that some of the risk assessments that the courts order are not being undertaken properly’. SC*

*“Experts are not being used often enough to provide risk assessments.” MG*

Furthermore, the APPG heard that it is not sufficient for ‘substitutes’ to be used in replacement of risk assessments of a perpetrator of domestic abuse. Domestic Violence Prevention Programmes are behaviour-change programmes for men who use violence and abuse towards their partners or ex-partners. They aim to help men to stop being violent and abusive, help them learn how to relate to their partners in a respectful and equal way, show them non-abusive ways of dealing with relationship difficulties and keep their partner safe whilst the programme is in session.

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<sup>27</sup> Hoyle, C. (2008) Will she be safe? A critical analysis of risk assessment in domestic violence cases. In Children and Youth Services Review 30 (2008) 323 – 337

*“The availability of perpetrator programmes as a condition of contact in some cases can be seen as a substitute for risk assessments...What we would say is you have to separate out the treatment process, and the risk assessment should be undertaken first of all”. BJ*

There is a rigorous accreditation and assessment scheme for perpetrator programmes run by Respect<sup>28</sup> which can identify the programmes which put women and children’s safety at the heart of their practice, and the programmes whose policies do not prioritise survivors’ ongoing safety. This accreditation enables members of the public, funders, commissioners and family judiciary professionals to identify organisations which are assured to be high-quality and safety focussed which is absolutely critical when dealing with contact cases where domestic abuse is a factor.

It is vital that risk-assessments of perpetrators of domestic abuse are undertaken by an expert, for the family court to ensure the safety and well-being of the non-abusive parent and child(ren). This should be a priority during a child contact case.

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<sup>28</sup> The Respect Accreditation Standard: <http://respect.uk.net/work/work-perpetrators-domestic-violence/accreditation/>

## Chapter 4 - Conclusion

At present, women survivors of domestic abuse face a number of unacceptable challenges when in the family court. Their own and their children's safety is frequently being compromised.

Contributions to the APPG Hearing indicate that, whilst there is some good practice, the family court is regularly failing to ensure the protection of women and children's safety and well-being through allowing the cross-examination of victims by perpetrators, and the lack of available special measures. Furthermore, an inconsistent implementation of Practice Direction 12J and the embedded culture of 'contact with the child, no matter what' has been shown to lead to unsafe child contact.

These key factors, alongside the other challenges outlined in this report, often combine to leave women in unacceptably vulnerable situations and they consequently feel unable to represent their child(ren)'s wishes and best interests in the family courts.

Based on the Parliamentary Hearing and the evidence submitted, the APPG has developed seven key recommendations and calls for action to address the failings surrounding domestic abuse, the family court and child contact. We urge the Government and the family court judiciary to implement the following recommendations as soon as possible:

1. The Ministry of Justice, and the President of the Family Division must clarify that there must not be an assumption of shared parenting in child contact cases where domestic abuse is a feature, and child contact should be decided based on an informed judgement of what's in the best interests of child.
2. The Government must put an immediate end to survivors of domestic abuse being cross-examined by, or having to cross-examine, their abusers in the family court.
3. The Ministry of Justice must urgently set up an independent, national oversight group overseeing and advising upon the implementation of Practice Direction 12J – Child Arrangements and Contact Order: Domestic Violence and Harm.
4. The Ministry of Justice and President of Family Division must ensure that special measures, such as dedicated safe waiting rooms for vulnerable witnesses and separate entrance and exit times, are available throughout family court proceedings and any subsequent child contact, to ensure the safety and well-being of both vulnerable women and children.
5. The Ministry of Justice, President of the Family Division and Cafcass must ensure Judges and court staff in the family court, Cafcass officers and other frontline staff in other related agencies receive specialist face to face training on all aspects of domestic violence, particularly coercive and controlling behaviour, the frequency and nature of post-separation abuse, and the impact of domestic abuse on children, on parenting and on the mother-child relationship.

6. The Ministry of Justice, President of the Family Division and Cafcass must ensure expert safety and risk assessments in child contact cases are carried out where there is an abusive parent involved and they must be conducted by a dedicated domestic abuse practitioner who works for an agency accredited to nationally recognised standards for responding to domestic abuse.
7. The President of the Family Division must ensure family court judges never order child contact in support contact centres where a risk assessment has found that the abusive parent still poses a risk to the child or non-abusive parent.

The APPG believes that, until these calls for action are implemented, women survivors of domestic abuse and their children will continue to be left vulnerable and in danger by a family court system that claims to put their best interests first, but is marred by a culture of contact 'at all costs'.

## **Appendix A: Officers and Expert Witnesses**

### **Officers of the APPG**

Jess Phillips MP, Chair of the APPG  
Maria Miller MP, Vice-Chair of the APPG  
Angela Rayner MP  
Gavin Newlands MP  
Sir Keir Starmer MP  
Angela Rayner MP  
Caroline Lucas MP  
Caroline Nokes MP  
Fiona MacTaggart MP  
Nusrat Ghani MP  
Sir Peter Bottomley MP  
Thangam Debbonaire MP  
Baroness Thornton  
Lord Jones  
Baroness Gould

### **Keynote Speakers**

Sir Keir Starmer MP  
Baroness Claire Tyler, Chair of Cafcass

### **Panellists**

Ciara Bergman, DVIP  
Dr Shazia Choudhry, Queen Mary University  
Elizabeth Coe, CEO, National Association of Child Contact Centres  
Christine Dyson, Cafcass  
Mandip Ghai, Rights of Women  
Dr Christine Harrison, University of Warwick  
Rupert Holderness, Magistrate's Association  
Ben Jamal, DVIP  
Polly Neate, CEO, Women's Aid  
Becky O'Brien, Survivor of Domestic Abuse  
Tina Reece, Welsh Women's Aid  
Saskia Ritchie, Cheshire without Abuse  
Dr Ravi Thiara, University of Warwick  
Anonymous, Survivor of Domestic Abuse



All-Party Parliamentary Group  
on Domestic Violence

**women's aid**  
until women & children are safe

For further information about the APPG on Domestic Violence please contact  
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