

Written evidence submitted by the Women's Aid Federation of England (DAB65)

Women's Aid Federation of England (Women's Aid) is the national charity working to end domestic abuse against women and children. We are a federation of nearly 180 organisations which provide just under 300 local lifesaving services to women and children across the country. Over the past 45 years, Women's Aid has been at the forefront of shaping and coordinating responses to domestic abuse through practice, research and policy. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs. Our support services, which include our Live Chat Helpline, the Survivors' Forum, the No Woman Turned Away Project, the Survivor's Handbook, Love Respect (our dedicated website for young people in their first relationships), the national Domestic Abuse Directory and our advocacy projects, help thousands of women and children every year.

Women's Aid welcomes the Domestic Abuse Bill as an opportunity to deliver a step change in the response to domestic abuse and other forms of violence against women and girls (VAWG). The COVID 19 crisis has laid bare the lack of protection for women and children experiencing domestic abuse and demonstrated the urgent need for coordinated action to meet their needs. Our long-standing recommendations for improving the Bill are more urgently needed than ever.

This submission sets out the amendments which Women's Aid is leading on or actively supporting. We have also included a list of the other key issues and amendments which we support and are also vital to ensure the Bill meets the needs of all survivors.

Local Authority support

- The Ministry for Housing, Communities and Local Government (MHCLG)'s statutory duty on local authorities to deliver support for survivors in safe accommodation, including life-saving refuges, has the potential to save lives. It is urgently needed to tackle the threats facing our national network of refuges; 64% of referrals to refuges were declined in 2018-19. The number of refuge spaces in England is now 30% below the number recommended by the Council of Europe¹.
- Demand for refuges exceeded capacity before COVID 19, and we are highly concerned about how these life-saving services will cope with expected increases in women and children seeking safety as lockdown measures lift. The average number of refuge vacancies in England during the 7 weeks of lockdown was 97, compared with an average of 183 for the same period last year.² The reasons for this include: the lack of a move-on pathway; difficulties in accepting new referrals; staff shortages; and lack of consistent access to testing and PPE; and residents self-isolating with symptoms. 36% of refuge providers responding to our survey in March 2020 had needed to reduce or cancel one or more of their services.
- COVID 19 has starkly shown the insecurity of the national network of refuges. 13% of refuge services receive no funding at all from their local authority, and many more are 'not-commissioned'. These services, who tend to be smaller and include specialist services led 'by and for' black and minority ethnic (BME) women - are most at risk from lost fundraised and rental income.
- The new legal duty on local authorities is a significant step in the right direction, and has the potential to end this inconsistency and the post-code lottery that survivors currently face when seeking safety. However it is crucial that the new statutory system recognises the value of

¹ Women's Aid (2020) The Domestic Abuse Report 2020: The Annual Audit, Bristol: Women's Aid.

² Based on snapshots from Routes to Support, the UK wide violence against women and girls service directory.

specialist refuge services and tackles the significant problems with the local funding and commissioning landscape that they face. In the past decade we've seen a 'race to the bottom' on costs within procurement processes which often favour larger scale, generic providers and not women's refuges who are experts in supporting women and children to cope, recover and rebuild a life free from abuse.

- The statutory duty must deliver a secure future for specialist refuges, ensuring they are equipped with the resources needed to support all survivors and their children - including those facing multiple forms of disadvantage and discrimination. Our key concerns with the government's current statutory duty are:
 - **Resources:** adequate, ring-fenced and long-term funding for the provision of specialist refuge services will be essential to underpin the statutory duty. Currently, the government's impact assessment states the duty will cost £90 million³ per year, yet there is no clarity about how this figure was calculated. Women's Aid estimated in 2019 that 173.8 million is needed to ensure the national network of refuge services is sustainable, safe and can meet the needs of all survivors and their children⁴. This figure will need to be reviewed, particularly as demand is expected to rise post-lockdown.
 - **Definitions:** current definitions of 'domestic abuse safe accommodation', set to be included in regulations underpinning the statutory duty, are unclear. As currently drafted, they are likely to lead to unsafe forms of temporary accommodation, which aren't designed meet survivors needs, being funded. A clear definition of a 'refuge service' is needed and should clarify that a refuge address should never be publically available or disclosed, to resolve the challenges that one of our member services is currently facing⁵. A definition of 'specialist' is also required to underpin the model of funding to ensure services are delivering the trauma-informed support women and children need.
 - **Quality and expertise:** without appropriate safeguards around quality and standards, statutory duties could further incentivise generic services which can be provided at lower cost, but which do not have the required quality or expertise to support survivors. Quality standards already established within the VAWG sector must be the basis of requirements for service provision within statutory guidance.
 - **Commissioning:** the Bill must ensure that commissioning decisions are based on a gendered understanding of domestic abuse, as a form of VAWG which affects women disproportionately. The duty must also tackle long-standing and increasing challenges with complex and onerous commissioning practices. We are calling for an end to competitive tendering for domestic abuse services where it is not required, replaced with an approach based on quality and expertise and long-term funding and grant arrangements where possible. The law must also make clear that local authorities must undertake equalities impact assessments (EIA) in full compliance with the Public Sector Equality Duty when taking decisions on commissioning and procurement.
 - **Safeguards for very specialist services:** including those led 'by and for' BME women, disabled and deaf women and LGBT survivors. These services are essential for meeting obligations under the Equality Act 2010 and Public Sector Equality Duty but face severe challenges in a fully localised funding system, as they are often run across different local authorities and meet the needs of survivors across wider geographic areas. Ring-fenced national funding for these services is required to deliver sustainability for these services, which support survivors across local areas.

³ HO0353, The Home Office, Ministry of Justice, Impact Assessment: The Domestic Abuse Bill, February 2020

⁴ Women's Aid (2019) Funding Specialist Support for Domestic Abuse Survivors Bristol: Women's Aid

⁵ <https://www.telegraph.co.uk/news/2020/05/17/domestic-abuse-victims-put-risk-court-rulings-reveal-refuge/>

- **National oversight:** the 'national steering group' proposed should be replaced with a real accountability mechanism to ensure that the national network of refuges can operate effectively. Responsibilities for the mechanism must include: robust oversight and monitoring to ensure that all survivors can access the support they need; undertaking a national needs assessment, as local needs assessments alone are inadequate for refuges; enforcing and monitoring EIA commissioning and procurement processes; delivering ring-fenced national funding for services led 'by and for' BME, disabled, and LBT survivors; and powers to sanction inadequate provision and practice.
 - **Other legislative reforms:** the duty alone will not tackle some of the significant challenges that survivors face in accessing refuge. Reforms to ensure that women with no recourse to public funds (NPRF) can access a refuge space (page 18) and to ban on 'local connection' restrictions for survivors accessing refuges and other forms of accommodation (page 16) are also required.
- **We urge MPs to support amendments 67-83, NC20 and NC48 proposed by Imkaan and Women's Aid, to ensure that the statutory duty truly secures the future of the national network of specialist refuges and does not lead to survivors being housed in unsafe and unsuitable forms of accommodation.**

Family Courts

Special Measures

Criminal courts

- Women's Aid warmly welcomes the introduction automatic eligibility for complainants in domestic abuse cases for special measures, as is the case in relation to sexual offences, modern slavery offences and offences involving guns and knives. It must be delivered alongside specialist support and advocacy for victims to help them attend court, provide practical safety planning, and emotional support.

Current situation in the family and civil courts

- The seriousness and impact of domestic abuse is already treated very differently between different court systems. Survivors continue to report to Women's Aid that they are re-victimised and re-traumatised within family proceedings, where court infrastructure and practices fail to protect them.
- In 2016 the APPG on Domestic Violence found that the family courts often lack the special measures in place in the criminal courts, which provide victims with fair access to justice and protect their safety. The APPG heard from women who had been stalked, harassed and further traumatised on the court estate.⁶
- Women's Aid's research with Queen Mary University of London (QMUL), which included a survey of over 70 survivors, found clear failings in survivors' access to protection measures in the family court:
 - 61% of respondents had no access to any form of special measures in court;
 - Only 33% stated that they had a separate waiting room from their perpetrator;
 - 7% were provided with separate entry and exit times into the court room, a no-cost and practical measure that can protect victims;
 - 7% had access to screens in the court room, and 4% had a video link;

"My experience of family court - horrific, traumatic, psychological warfare. Mind games replicate the abuse from the relationship."
Expert by Experience, Law in the Making Project

⁶ APPG on Domestic Violence (2017) *Domestic abuse, child contact and the family courts*, Women's Aid. [Available online](#)

- Of the women who had some sort of special measure, 59% told us that the measures were only in place in some hearings they attended, rather than all.⁷
- The findings from a 2019 survey of private family law professionals highlighted that the majority of family law cases involving domestic abuse are allocated to magistrates' courts, where special measures are used in only a minority of cases.⁸
- The recent appeal of His Honour Judge (HHJ) Tolson's judgement in *JH v MF* [2020] EWHC 86 (Fam) found that the survivor had applied for screens to be made available in the court room as a measure to be put in place to assist her in giving her best evidence. The appeal judge found that HHJ Tolson *'took the inexplicable step contrary to the expressed view and request of the Appellant, and contrary to the rules of procedure, of ordering that the Appellant give evidence from counsel's row, albeit from behind a screen, as "better" than using the witness box with the screen/s in place. In doing this he had not only decided not to follow Part 3A of the FPR 2010, but he also completely failed to give any or adequate reasons for doing so as required by r3A.9 of the FPR 2010.'*

"I had to request for myself a separate waiting room area. And every time I put in that request, [...] when I'd arrive I'd find that the arrangement hadn't been passed on to the people on the front desk, and he'd always be there - standing and intimidating, and one of the waiting rooms in the court [...] was so small that there was nowhere to sit other than feet away."

Survivor

Reforms required

- The family courts have no clear law providing for the use of 'special measures'. Currently the Family Procedure Rules 2010 Part 3A and Practice Direction 3AA set out what special measures are available to a family court judge, but these provisions are complex and not consistently used.
- The current rules in the civil courts are also inadequate. The Civil Justice Council recently recommended that the Civil Procedure Rules are amended to include provision for vulnerable witnesses and parties as none currently exists.⁹
- One of the key barriers is infrastructure - many civil and family courts are ill-equipped to ensure effective provision of special measures and require investment. However the government is currently leading a £1 billion reform programme, *"Transforming Courts and Tribunals"* which aims to increase access to justice. Women's Aid has continued to state that this investment must be urgently targeted to improving safety in the family courts.¹⁰ A statutory entitlement through the Bill is necessary to ensure resources are diverted to where they are needed most.
- Currently, clause 58 of the Bill provides for special measures to be applied in the civil and family courts but *only* when the court is dealing with Domestic Abuse Protection Orders (DAPOs). There will now be different rules for special measures for survivors accessing DAPOs than for other cases in the family and civil courts, creating even more inconsistency and confusion.
- The joint pre-legislative scrutiny committee backed Women's Aid's recommendation to extend the provision set out in Section 53 of the Bill to victims in the family and civil courts. In response, the government stated that they did not want to pre-empt the findings of the Ministry of Justice review of the family court response to domestic abuse, which is being led by an expert panel that Women's Aid is a member of. We do not agree, however, that further evidence of, or review into, the significant problems in access to special measures in the family courts is required. The Bill is an opportunity to deliver these changes now.

⁷ Birchall, J. and Choudhry, S. (2018), *"What about my right not to be abused?" Human rights, domestic abuse and the family courts*, Bristol: Women's Aid

⁸ Lefevre, M. and Damman, J. (2020). *Practice Direction 12J: What is the experience of lawyers working in private law children cases?* University of Sussex

⁹ [Civil Justice Council, Vulnerable Witnesses and Parties within Civil Proceedings: Current Position and Recommendations for Change](#), Feb 2020

¹⁰ Women's Aid evidence to Justice Committee, Oral evidence: Court and tribunal reforms, HC 1886, 11 June 2019

- **We urge MPs to support NC45 proposed by Women’s Aid, Welsh Women’s Aid, Rights of Women and Resolution to ensure that victims are protected consistently across our justice system and provide much needed clarity to the law on special measures.**

Cross-examination

Current situation

- The legal aid reforms have led to a significant rise of direct cross-examination in the family courts. The growth of Litigants in Person (LiPs) means that women frequently face cross-examination by an unrepresented former partner or have to directly cross examine them in return. Perpetrators use direct cross-examination to exert power, control and fear within the court room.
- Women’s Aid and QMUL’s survivor survey found that 24% of respondents had been directly cross-examined by their perpetrator in the family courts.¹¹ This abhorrent practice prolongs the impact and trauma caused by abuse, diminishes the quality of evidence that survivors can provide and bars them from advocating for their child’s best interests and safety.
- We are delighted that the government has included a ban on direct cross-examination of domestic abuse victims by their abuser in the family courts in the Bill. However, we are not assured that survivors will be able to access this protection effectively and fairly if it is subject to an evidence test. The evidence to be included in this provision will be specified in regulations, and we understand that this will broadly replicate the evidence used in the legal aid regime. Survivors continue to fall through the gaps when evidence tests are applied; evidence requires disclosing domestic abuse to another professional or service, which many women will never do.

“It was horrible, I mean it was the worst thing I’ve ever had to do in my life, I mean the cross-examination was just disgusting, and you know, the judge twice stepped in and stopped him. The questions were about my sex life and previous boyfriends and who was going in my house, and it was ridiculous”

Survivor

Reform required

- The prohibition must be extended to prohibit direct cross-examination in any family proceedings in which allegations of domestic abuse and other forms of VAWG are being determined, or where either party has admitted - or been found to have perpetrated - these offences.
- **Annexe A sets out the amendment Women’s Aid, Welsh Women’s Aid, Rights of Women and Resolution are proposing to the prohibition to ensure that survivors are adequately protected from direct cross-examination by their abuser in the family court.**

The presumption of parental involvement in the Children Act

The current situation

- Section 1(2A) of the Children Act 1989 says that the family court is to presume that the involvement of a parent in the child’s life will further the child’s welfare, unless that would put the child at risk of suffering harm. This was added to the Children Act in 2014.
- Women’s Aid recognises the importance of safe child contact, when it is proved to be in the best interests of the child and where the arrangements for contact prioritise the child’s safety and wellbeing. A child’s interests must be of paramount importance

“The fact finding hearing was in my favour. With police documentation, hospital records, photographs of my injuries, you name it, we had it. Yet still they pushed for contact.”

Survivor

¹¹ Birchall, J. and Choudhry, S. (2018), “What about my right not to be abused?” Human rights, domestic abuse and the family courts.

in all decisions made about his or her welfare, including within child contact arrangements. This is made clear in judicial guidance (Practice Direction 12J).¹²

- However, Women’s Aid research, along with a significant body of academic research has shown that this guidance is consistently undermined, and the presumption of contact is routinely prioritised above the child’s best interests in cases of domestic abuse. A study published by the Ministry of Justice found that all professional groups involved in the child arrangements process start from a position in favour of contact and “make considerable efforts to bring this about”.¹³ Subsequent research published during the last decade demonstrates that little has changed. One study published found that most professionals and judicial officers continued to endorse a message of ‘contact at all costs’ after Practice Direction 12J was issued.¹⁴
- Research published in 2017 by Cafcass, in partnership with Women’s Aid, showed that more than two thirds of 216 child contact cases sampled involved allegations of domestic abuse, yet in 23% of these cases, unsupervised contact was ordered at the first hearing.¹⁵ This prioritisation of contact forms a major barrier to courts’ abilities to seriously consider the impact of contact ordered on children and non-abusive parents in cases where there has been/is domestic abuse.
- This ‘pro-contact’ approach leads to potentially unsafe contact decisions being made and results in serious safeguarding concerns. Women’s Aid’s 19 Child Homicides research uncovered the tragic stories of 19 children and two women in 12 families who were killed by known perpetrators of domestic abuse in circumstances related to unsafe child contact from 2005-2015. We found that in the cases where contact was arranged through the courts, abuse of the mother was often seen as a separate issue from the child’s safety and wellbeing, rather than the two being intrinsically linked¹⁶.

“[The report said] that my ex-partner would have unsupervised contact with the children at weekends. Despite his abuse towards me being assessed as high risk, it was considered he was no risk to the children.”

Survivor

Reform needed

- The Bill as it stands does not contain any provision relating to safe child contact, although this remains a foremost priority for the survivors we work with.
- In May 2019 Women’s Aid welcomed the Ministry of Justice’s announcement of a review into how the family courts respond to domestic abuse. The panel of experts undertaking this review, have already¹⁷ found ‘systematic issues’ with how risk and harm is managed in the family courts. The panel set to publish full recommendations later soon.
- We are calling for the Bill to end the presumption in the Children and Families Act (that the welfare of the child is best served by the involvement of both parents) in cases of domestic abuse, replaced with child arrangements that are based on an informed judgement of a child’s best interests and safety. We also want to see a safer approach to child contact where there are ongoing criminal proceedings for domestic abuse.
- We are proposing an amendment that will:

“In court I explained the situation to the judge who said my actions were ‘wholly inappropriate’, that he didn’t believe me and that a father ‘has a right to see their child’...I was ordered to take my son to the contact centre and wait for CAFCASS and psychologists reports. These reports stated that at age six, my son was having to judge his own safety, my husband’s actions were causing further trauma, and that the contact centre was not providing enough protection. This took nearly six months which in the meantime meant that my son further suffered.”

Survivor

¹² Ministry of Justice (2017) *Substituted practice direction: Practice direction 12J – Child Arrangements and Contact Orders: Domestic Violence and Harm*

¹³ Hunt, J. and McLeod, A. (2008) *Outcomes of Applications to Court for Contact Orders After Parental Separation or Divorce*, London, Ministry of Justice

¹⁴ Barnett, A. (2014) ‘Contact at all costs? Domestic violence and children’s welfare’ in *Child and Family Law Quarterly*, Vol 6, Issue 4

¹⁵ Cafcass and Women’s Aid. (2017) *Allegations of domestic abuse in child contact cases*. London: Cafcass.

¹⁶ Women’s Aid, *Nineteen Child Homicides*, Bristol: Women’s Aid, 2016.

¹⁷ Ministry of Justice (2019), *Assessing risk of harm to children and parents in private law children cases – Progress Update*. Available [online](#)

- Use the wording of Practice Direction 12J to introduce an explicit statutory framework which makes clear the presumption that the involvement of a parent will further a child's welfare does not apply when there has been any allegation or admission of harm by domestic abuse to the child or other parent or any evidence indicating such harm or risk. This encourages fact-finding early on to determine the truth of such allegations. If there are no findings of fact and the allegations are unfounded, then the presumption will of course continue to operate.
 - Prohibit unsupervised contact for a parent waiting trial or on bail for a domestic abuse, related offence or where there are ongoing criminal proceedings for domestic abuse.
- **We are urging MPs to support NC34 proposed by Women's Aid, Welsh Women's Aid and Rights of Women's for safe child contact in domestic abuse cases to protect children from harm.**
 - **We also urge for the Children Act 1989 needs to name coercive control as 'harm to children'.**

Housing

End local connection restrictions

- Many survivors escaping abuse need to leave their local authority area in order to be safe. Leaving an abuser is statistically a highly dangerous time, and survivors face ongoing and severe threats to their safety from the perpetrator, and their family and friends.
- Women and children escaping to refuge, in particular, will often need to cross local authority boundaries to remain safe. Around two thirds of women resident in refuge services in England have escaped from a different local authority area.¹⁸
- Government guidance¹⁹ makes clear that local connection rules should not apply in cases of domestic abuse. There remains significant inconsistency between local authorities across England in meeting their obligations to house women fleeing domestic abuse from another local area, including:
 - Councils imposing 'local connection' restrictions on their refuge funding contracts. Such restrictions including 'capping' the number on non-local women able to access the refuge.
 - Homelessness teams refusing to support women escaping abuse because they are not from their local area. Nearly a fifth of survivors supported by Women's Aid's No Woman Turned Away project in 2016-17 were prevented from making a valid homeless application for reasons including that they had no 'local connection'.²⁰
 - Local housing teams de-prioritising survivors who don't have a local connection within their housing allocation policy.
- The government already requires local authorities to makes exemption for certain groups from these local connection requirements, or 'residency tests' – including for members of the armed forces²¹ and those seeking to move for work.²²
- To tackle these inconsistencies, a statutory bar on local authorities imposing local connection restrictions on refuges or any temporary or permanent accommodation is required. This must sit alongside an amendment to guarantee housing allocation for survivors, by exempting them from residency requirements altogether.

"After a year of fallout, I was still homeless and on my backside - it felt like I was worse off for going through 'the system'."

Expert by Experience, Law in the Making Project

¹⁸ Women's Aid, Data on Service Provision, 2017. [Accessible online.](#)

¹⁹ Ministry of Housing, Communities and Local Government (2018), Homelessness Code of Guidance for Local Authorities. Available [online.](#)

²⁰ Women's Aid, [Nowhere to Turn: Findings from the First Year of the No Woman Turned Away Project](#), 2017 - 19% of 404 women supported by the NWTAP project.

²¹ The Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012

²² The Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015

- **We are urging for MPs to support NC43 proposed by Women’s Aid and the Chartered Institute of Housing to bar local authorities from imposing dangerous ‘local connection restrictions’ on survivors of domestic abuse and exempt them from residency requirements.**

Secure Tenancies

- We warmly welcome section 56 of the Bill which will help to ensure that survivors in England who already have a local authority tenancy, or an assured tenancy with a housing association, do not experience further barriers to escaping an abusive home.
- The provisions will guarantee the transfer of a secure tenancy for survivors who need to leave their home, have recently left their home, or need to terminate a joint tenancy, in order to escape an abuser.
- However, local authorities do not currently take a consistent approach to rehousing women and children fleeing domestic abuse without a ‘local connection’ to their area. Many survivors will need to move their secure lifetime tenancy to a new local authority area in order to be safe from the perpetrator. It is critical that the provisions of the Bill extend to women who need to be rehoused in a secure lifetime tenancy within a new local authority area.
- **We urge MPs to support these provisions, and amend the Bill to abolish local connection restrictions on survivors.**

“A lot of women I work with have a secure tenancy. They really don’t want to leave the secure tenancy. But then often they might not have a lot of choice (...) some women will prefer to (...) take massive risks ...than leave it.”

**Key Worker, Solace Women’s Aid:
quoted in *Finding the Costs of Freedom***

Welfare Reform

Welfare reform impact assessment

- Access to welfare benefits is vital to ensure women can access the financial support they need to escape and rebuild independent lives. A robust safety net that enables survivors to escape and rebuild independence is a lifeline. However, the cumulative impacts of numerous changes to welfare reform policy – including the benefit cap and two child limit - in recent years are having serious consequences for survivors).
- Women’s Aid is also concerned about the roll-out of Universal Credit (UC) for two key reasons:
 - The design of Universal Credit risks exacerbating economic abuse for survivors, and poses an additional barrier to their ability to escape abusive relationships;
 - Reforms are needed to ensure Universal Credit works effectively in refuges, which support women to manage claims, but are struggling with the complexity of the system.
- In August 2018 the Work and Pensions Select Committee made clear that the single household payments for UC “could put claimants living with domestic abuse at risk”. **Women’s Aid therefore urges for the Bill to deliver separate payments by default, and supports NC39 and NC40 to deliver advance payments as grants to survivors.**
- Welfare reforms are restricting the resources women need to leave; we are receiving direct reports from our member services about the stark choices between poverty and safety that women are forced to make as a result of welfare changes. This has sharply increased during COVID 19, with our member services reporting serious concerns about women’s access to food and basic essentials. Women in refuge are largely reliant on food banks – but these are struggling

for donations, volunteers and locations in which to operate in. Specialist domestic abuse services are therefore using their own reserves to ensure women can access their most basic rights to food and survival.

- The government is having to retrospectively revise welfare policies because of unintended consequences, which is inefficient and time consuming. We are also concerned that welfare reforms risk undermining the government's intention to transform the response to domestic abuse - including economic forms of abuse - through the proposed new Bill. Although the consultation on the Bill stated the intention to *'identify practical issues that make it harder for a victim to escape'* and *'consider what can be done to help victims of economic abuse'*, no mention of welfare reform policy has been made.
- The range and severity of concerns with the current welfare reform agenda demonstrates that a new approach is needed. It is vital that the impacts - and unintended consequences - of welfare reform policies on survivors' safety are robustly assessed before implementation in the future.
- **We are urging MPs to NC24 proposed by Women's Aid to establish a duty on government to assess welfare reform policies for their impact on survivors**, with specific focus on the ability of women to escape abusive relationships and rebuild their lives.

Benefit cap

- The 'benefit cap' - a limit on the total level of benefits²³ - that a household can receive - was introduced in 2013 and has impacted a quarter of a million households since²⁴. In 2016, the limit was lowered to £23,000 in London and £20,000 elsewhere.
- The government's evaluation shows that only 5% of households moved into work because of the cap, which is largely impacting on lone parents and those with an illness or disability.²⁵ The cap is having a devastating impact on single women with children and, consequently, survivors. Single female parents make up 85% of all householders impacted²⁶.
- The cap increases the barriers women face in leaving an abuser. There is no free childcare before the age of two, meaning that lone parents with young children can often not work enough hours to avoid the impact of the cap. This issue is particularly acute where a woman has fled domestic abuse and is far from her support network, so is unable to rely on friends or family for childcare and may be unable to work due to the abuse she has experienced.
- The cap also restricts survivors' abilities to find a safe new home or move on from refuge, as their benefits may not cover the costs of housing - either in social housing or the private rented sector. This can lead to 'bed blocking' - where women ready to leave a refuge are stuck in the service, blocking spaces that other survivors fleeing abuse desperately need.
- DWP states that Discretionary Housing Payments (DHPs), which are paid by local authorities, are available for survivors in such circumstances. However DHP allocations remain inconsistent, short-term and dependent on different councils' policies and practices - a 'postcode lottery'. They are not monitored by the government centrally so it is impossible to know whether they are providing an effective solution.
- **We urge MPs to NC41 proposed by Women's Aid to exempt survivors of domestic abuse from the benefit cap.**

²³ Benefits that count towards the cap include: Income Support, Jobseeker's Allowance, Income related Employment and Support Allowance, Incapacity Allowance, Maternity Allowance, Child Tax Credit, Child Benefit, and Housing Benefit.

²⁴ Department for Work and Pensions, Benefit Cap Data to May 2019.

²⁵ House of Commons Work and Pensions Committee, The benefit cap, March 2019, HC 1477

²⁶ ONS, Families and households, 2017. Table 1.

Protection for migrant women

Women's Aid, as a member of the Step Up! Migrant Women UK campaign, is clear that the Bill must deliver full and equal protection for migrant survivors. The Istanbul Convention makes clear that victims should be protected regardless of immigration status²⁷ but the Bill contains no provisions to tackle the multiple forms of discrimination and often insurmountable barriers to support facing migrant women. Together with organisations led 'by and for' migrant and BME women, we are calling for the Bill to deliver reform across three main areas:

Safe reporting

- Migrant women face severe barriers to reporting domestic abuse and seeking help. Perpetrators use immigration status as a form of coercive control - threatening to inform the authorities, exploiting survivors' fears of deportation and destitution, and withholding information or documentation on their status.
- This can pose insurmountable barriers to leaving and is compounded by the 'hostile' immigration policies. Despite clear duties that protection of victims should be prioritised ahead of immigration action, it is highly concerning that over half (27) of police forces in England and Wales confirmed in response to Freedom of Information requests that they share victims' details with the Home Office for immigration control purposes.²⁸ Migrant survivors therefore justifiably fear that the police - and other statutory agencies - commonly prioritise immigration enforcement over their protection.
- The pre-legislative scrutiny committee made a clear recommendation to Government to *"establish a firewall at the levels of policy and practice to separate reporting of crime and access to support services from immigration control."*
- **As members of Step Up! Migrant Women UK, we NC37 proposed by Latin American Women's Rights Service to establish safe reporting mechanisms for survivors accessing vital public services, so they can safely report abuse to the police, social services, health professionals and others with confidence they will be treated as victims and without fear of immigration enforcement.**

No recourse to public funds

- Survivors with NRPF²⁹ currently often face insurmountable barriers to accessing support. Without access to public funds they are not eligible for welfare benefits, which are required to cover the cost of a stay within a refuge service. Very few refuge services, which face a funding crisis, are able to cover the costs of a woman's stay without this funding; only 5.8% of refuge vacancies in England in the year 2017-18 would even consider a woman with NRPF.³⁰
- Since 2016, Women's Aid's No Woman Turned Away project has supported nearly 1000 survivors who are struggling to access a refuge space. Each year, between 20%-25% of women refused access to a refuge space had NRPF.³¹
- The Destitution Domestic Violence Concession (DDVC) - secured through advocacy from 'by and for' BME women's sector - is a life-line to support, providing survivors with welfare benefits for three months so they can stay in refuge while applying for indefinite leave to remain under the

²⁷ [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), Article 59.

²⁸ Latin American Women's Rights Service, Safe reporting of crime for migrants with insecure immigration status., May 2018.

²⁹ Including those with insecure status, undocumented migrants, asylum seekers and European Economic Area (EEA) nationals

³⁰ Women's Aid (2019) The Domestic Abuse Report 2019: The Annual Audit, Bristol: Women's Aid.

³¹ Women's Aid, Nowhere to Turn: Findings from the First, Second and Third Years of the No Woman Turned Away Project, 2017, 2018 and 2019.

Domestic Violence Rule (DVR). However, the DDVC and DVR are only available to those on spousal visas, where their spouse or partner is a British citizen or has settled status in the UK.

- Many migrant survivors are therefore barred from accessing this protection. 67% of the women supported by our No Woman Turned Away project in 2016 who had NRPF were not eligible for the DDVC.³²
- The experiences of survivors with NRPF unable to access refuge are shocking. Only 8.2% of the women with NRPF supported by the NWTAP project in 2017 accessed refuge. Many had to sleep rough, sofa surf or even return to the perpetrator while they waited for help.³³
- **Women’s Aid support NC36 proposed by Southall Black Sisters to abolish the No Recourse to Public Funds (NRPF) condition for victims of domestic abuse and ensure all women are able to access vital, often life-saving support and routes to safety. We also support calls to extend eligibility for the existing Domestic Violence (DV) Rule and Destitution Domestic Violence Concession (DDVC) so all survivors – whether students, domestic workers or others – can apply to regularise their immigration status independent of their perpetrator, if it is their wish to do so, and access public funds at the point of need in order to escape abuse. We urge MPs to support NC35 in this regard.**

Magda’s story
Magda was a woman with NRPF seeking refuge with one child. She was unable to access the housing benefit she needed to stay in refuge, and was told by social services that her only option was to return to ‘her own country’. She gave up her search and stayed with the perpetrator.

Non-discrimination

- Article 4(3) of the IC sets out that the provisions in the treaty “shall be secured without discrimination on any ground” including “migrant or refugee status, or any other status.”³⁴
- Given the extent and range of barriers migrant women face in accessing protection and support, we are not assured that the government will be compliant with this article after the Convention is ratified. The pre-legislative scrutiny committee recommended that a non-discriminatory approach was put on a statutory footing in the Bill, which we urge MPs to support.
- **Women’s Aid supports the End Violence Against Women and Girls (EVAW) Coalition’s proposal to ensure all survivors of domestic abuse can equally access support, welfare systems and legal tools that provide protection from abuse, without discrimination on any grounds, in accordance with the language in Article 4(3) and fundamental principle of the Istanbul Convention. This principle is included in NC19 and NC20.**

“Being a non-citizen of UK keeps women in fear of being deported, not helped, no rights to benefits and fear from their children to be separated from them. Returning back to face trial and accusation becoming further subject to different kinds of abuse.”
Expert by Experience, Women’s Aid’s Law in the Making Project

Other issues and amendments Women’s Aid supports:

Definition

- Refuge’s amendment to establish a gendered definition.
- Stay Safe East’s amendment to ensure the proposed definition includes paid and unpaid carers within the list of a ‘personal connection’.
- Action for Children’s amendment to ensure the proposed definition makes clear that children experience domestic abuse.

³² Women’s Aid, Nowhere to Turn: Findings from the First Year of the No Woman Turned Away Project, 2017. [Accessible online.](#)

³³ Women’s Aid, Nowhere to Turn: Findings from the First Year of the No Woman Turned Away Project, 2017. [Accessible online.](#)

³⁴ [Council of Europe Convention on preventing and combating violence against women and domestic violence](#), Article 59.

Housing

- We welcome, that after years of cross-sector campaigning, that the government will ensure survivors of domestic abuse will be automatically considered in 'priority need' for housing. It is crucial that all survivors are included within this, particularly survivors with NRPF, and that housing allocations are both safe and appropriate for survivors and their children.
- Amendments to deliver legal solutions to the difficulties and barriers survivors face with joint housing tenancies.

Polygraph tests

- We urge MPs to ensure the polygraph test measure is removed from the Bill. The government should consult properly on this proposal before legislating, and explore other more effective options for using technology to manage perpetrators.

'General Duties'

- The 'general duties' amendments proposed by the Equality and Human Rights Commission, which would provide a robust framework for accountability and action on domestic abuse across government.

Criminal justice protections

- We recommend that government further considers how Clare's Law could be extended to cover requests and disclosures from ex-partners as well as those currently in a relationship.
- The Prison Reform Trust's amendments for improved legal protection for survivors who are driven to offend by their experience of abuse.
- The Centre for Women's Justice's, amendment to establish a presumption in favour of pre-charge bail in all domestic abuse and sexual offence cases unless this is clearly not necessary and a duty to consult with victims at each stage of decision-making on bail.
- Harriet Harman MP and Mark Garnier MP's amendment to ensure consent cases are successfully prosecuted in England & Wales, moving the "clear" case law of R v. Brown into statute, and to introduce Director of Public Prosecutions review when prosecutors are proposing to charge a lesser crime, like manslaughter, in a domestic homicide.
- The Centre for Women's Justice amendment for a free-standing offence of non-fatal strangulation or asphyxiation in the Bill.

Routine enquiry

- Agenda's amendment for a duty on public authorities to ensure frontline staff in our public services are making trained enquiries into domestic abuse.

Coercive control legislation

- Stay Safe East's amendment for the repeal of the 'carer's defence' clause in the 2015 Serious Crime and Domestic Violence Act.

Paid Employment Leave

- We are urging MPs to ensure the Bill delivers requirements on employers to provide a period of paid leave and other flexible working arrangements for survivors of domestic abuse.

Other

- We urge the government to work with the devolved nations to ensure that survivors across the UK have equal access to same support and protections.
- We also recommend the Public Bill Committee take note of the recommendations made by the *Law in the Making* project which are available [here](#).

Annexe A

Survivors and their children are falling between two court systems, and often report that they are re-victimised and re-traumatised within the civil and family courts. 24% of survivors surveyed by WAFE in 2017 had been directly cross-examined by their perpetrator in the family courts¹. The government's commitment to widen access to the ban on direct cross-examination in person, to all those in family proceedings who have 'evidence' of domestic abuse, is progress. However, we remain concerned that this will not work for all survivors. 'Evidence' of domestic abuse requires reporting it, and many survivors never talk to anybody about the abuse they've experienced. Further, the ban does not extend to civil proceedings.

We have also welcomed the Ministry of Justice's review of the family court response to domestic abuse, which WAFE sits on the expert panel for. However we do not need to wait until this panel has reported to deliver urgent changes to improve safety now. That is why we are proposing the following amendment to prohibit cross-examination in person in civil and family proceedings.

As the leading family law body in England and Wales, representing 6,500 family justice professionals, Resolution fully supports these amendments.

Prohibition on cross-examination in person in civil and family proceedings

Proposed amendments to the Bill

PART 5

PROTECTIVE MEASURES IN THE CIVIL AND FAMILY COURT

59 Prohibition of cross-examination in person in civil and family proceedings

In the Matrimonial and Family Proceedings Act 1984, after Part 4A insert—

“PART 4B

CIVIL AND FAMILY PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

31Q Prohibition of cross-examination in person: introductory

In this Part—

“the court” means the family court or the Family Division of the High Court in the context of family proceedings (as defined below) and the county court, High Court or Civil Division of the Court of Appeal in the context of civil proceedings (as defined below);

“civil proceedings” means –

- a. proceedings in the county court,
- b. proceedings in the High Court; and
- c) proceedings in the Civil Division of the Court of Appeal

“family proceedings” means—

- a. proceedings in the family court, and
- b. proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other;

“witness”, in relation to any proceedings, includes a party to the proceedings.

“domestic abuse” means behaviour falling within Part 1, Chapter 1 of the Domestic Abuse Act 2020.

31R Prohibition of cross-examination in person: domestic abuse

1. In family proceedings:
 - a. no party to the proceedings may cross-examine in person a witness who is the victim, or alleged victim, of domestic abuse; and
 - b. no party to the proceedings who is the victim, or alleged victim, of domestic abuse may cross-examine in person a witness who has, or is alleged to have perpetrated that abuse.

2. In civil proceedings, unless the court orders otherwise:
 - a. no party to the proceedings may cross-examine in person a witness who is the victim, or alleged victim, of domestic abuse; and
 - b. no party to the proceedings who is the victim, or alleged victim, of domestic abuse may cross-examine in person a witness who has, or is alleged to have perpetrated that abuse.
3. This section shall apply as soon as the court becomes aware of the domestic abuse or allegation of domestic abuse.
4. Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in civil or family proceedings if the court was not aware of the domestic abuse or allegation of domestic abuse.

31S Direction for prohibition of cross-examination in person: other cases

1. In civil and family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—
 - a. section 31R does not operate to prevent the party from cross-examining the witness, and
 - b. it appears to the court that—
 - i. the quality condition or the significant distress condition is met, and
 - ii. it would not be contrary to the interests of justice to give the direction.
2. The “quality condition” is met if the quality of evidence given by the witness on cross-examination—
 - a. is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and
 - b. would be likely to be improved if a direction were given under this section.
3. The “significant distress condition” is met if—
 - a. the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
 - b. that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.
4. A direction under this section may be made by the court—
 - a. on an application made by a party to the civil or family proceedings, or
 - b. of its own motion.
5. In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to—
 - a. any allegations of behaviour by the party in relation to the witness either in the civil or family proceedings or generally that do not fall into section 31R, including, sexual abuse, child abuse, stalking, or harassment;
 - b. any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;

- c. any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;
- d. the nature of the questions likely to be asked, having regard to the issues in the civil or family proceedings;
- e. any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the civil or family proceedings or any other proceedings;
- f. any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the civil or family proceedings or any other proceedings;
- g. any behaviour by the party at any stage of the civil or family proceedings, both generally and in relation to the witness;
- h. any behaviour by the witness at any stage of the civil or family proceedings, both generally and in relation to the party;
- i. any relationship (of whatever nature) between the witness and the party;
- j. Any other directions given by the court to assist the party or witness to attend court, participate in the civil or family proceedings, or give evidence.

6. Any reference in this section to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy.

7. For this purpose "coherence" refers to a witness's ability in giving evidence to give answers which—

- a. address the questions put to the witness, and
- b. can be understood, both individually and collectively.

31T Directions under section 31S: supplementary

1. A direction under section 31S has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

2. But the court may revoke a direction under section 31S before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—

- a. on an application made by a party to the civil or family proceedings, or
- b. of its own motion.

3. The court may revoke a direction under section 31S on an application made by a party to the civil or family proceedings only if there has been a material change of circumstances since—

- a. the direction was given, or
- b. if a previous application has been made by a party to the civil or family proceedings, the application (or the last application) was determined.

4. The court must state its reasons for—

- a. giving a direction under section 31S;
- b. refusing an application for a direction under section 31S;
- c. revoking a direction under section 31S;
- d. refusing an application for the revocation of a direction under section 31S.

31U Alternatives to cross-examination in person

1. This section applies where a party to civil or family proceedings is prevented from cross-examining a witness in person by virtue of section 31R or 31S.
2. The court must consider whether (ignoring this section) there is a satisfactory alternative means—
 - a. for the witness to be cross-examined in the civil or family proceedings, or
 - b. of obtaining evidence that the witness might have given under cross-examination in the civil or family proceedings.
3. If the court decides that there is not, the court must—
 - a. invite the party to the civil or family proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and
 - b. require the party to the civil or family proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.
4. Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either—
 - a. the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness, or
 - b. no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.
5. The court must consider whether it is necessary in the interests of justice (and in the case of civil proceedings having regard to the overriding objective) for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.
6. If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.
7. A qualified legal representative appointed by the court under subsection (6) is not responsible to the party.
8. For the purposes of this section—
 - a. a reference to cross-examination includes (in a case where a direction is given under section 31S after the party has begun cross-examining the witness) a reference to continuing to conduct cross-examination;
 - b. “qualified legal representative” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act) in civil and family proceedings.

31V Costs of legal representatives appointed under section 31U

1. The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of—
 - a. fees or costs properly incurred by a qualified legal representative appointed under section 31U, and
 - b. expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.
2. The regulations may provide for the amounts to be determined by the Lord Chancellor or such other person as the regulations may specify.
3. The regulations may provide for the amounts paid to be calculated in accordance with—
 - a. a rate or scale specified in the regulations, or
 - b. other provision made by or under the regulations.

31W Regulations under Part 4B

1. Any power of the Lord Chancellor to make regulations under this Part—
 - a. is exercisable by statutory instrument,
 - b. includes power to make different provision for different purposes, and
 - c. includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.
2. A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.