

Written evidence submitted by Welsh Women's Aid (DAB89)

About Welsh Women's Aid

Welsh Women's Aid is the umbrella organisation in Wales that supports and provides national representation for independent third sector violence against women, domestic abuse and sexual violence (VAWDASV) specialist services in Wales (comprising our membership of specialist services and members of the regional VAWDASV Specialist Services Providers Forums). These services deliver life-saving and life-changing support and preventative work in response to violence against women, including domestic abuse and sexual violence, as part of a network of UK provision.

As an umbrella organisation, our primary purpose is to prevent domestic abuse, sexual violence and all forms of violence against women and ensure high quality services for survivors that are needs-led, gender responsive and holistic. We collaborate nationally to integrate and improve community responses and practice in Wales; we provide advice, consultancy, support and training to deliver policy and service improvements across government, public, private and third sector services and in communities, for the benefit of survivors.

We also deliver the Wales National Quality Service Standards (NQSS), a national accreditation framework for domestic abuse specialist services in Wales (supported by the Welsh Government) as part of a UK suite of integrated accreditation systems and frameworks. (More information on the NQSS can be found here: <http://www.welshwomensaid.org.uk/what-we-do/our-members/standards/>)

Welsh Women's Aid's Evidence to the Public Bill Committee on the Domestic Abuse Bill

Welsh Women's Aid welcomes the opportunity to submit written evidence to the committee following the oral evidence session with our Chief Executive, Sara Kirkpatrick. In this submission we will highlight our key issues and reference joint amendments which we are supporting.

The Domestic Abuse Bill provides real opportunity for a step change in national response to VAWG. As it stands, the Bill does not fully protect and support *all* survivors. The COVID 19 pandemic has further highlighted system failings and a lack of support for survivors of domestic abuse and other forms of violence against women and girls (VAWG).

Welsh Women's Aid's Key priorities for the bill remain:

- Equal protection and support for migrant women and no recourse to public funds (NRPF).
- Family Justice and recognition of the serious impacts of domestic abuse to children.
- Alignment with existing Welsh legislation and inclusion of representation for Welsh survivors.
- Amendments around Strangulation, Rough Sex and pre bail charges

When the Bill was first introduced, Welsh Women's Aid prepared a briefing¹ produced following engagement with survivors and specialist services across Wales to inform our recommendations. It provides full context for the detail of this briefing.

Throughout the process of the Bill's development we have worked in partnership with Women's Aid Federation England and other specialist women's organisations across the UK to develop proposed amendments and additions. These can be found here:



Joint

Recommendations f

Equal protection and support for migrant women and NRPF

In [our original briefing](#) to the public bill committee we highlighted the impact no recourse to public funds had on survivors.

All agencies see is an immigration status they do not see us as human beings. We need help. (Survivor)

They told me to go back home to Africa as I would be safe there because he now has his stay [leave to remain]. I called the police 100s of times about him and he nearly killed me. The police know all about it. But they let him stay anyway. (Survivor)

He told me no one will believe me because of my status, that they will take my children from me. (Survivors)

¹ <https://www.welshwomensaid.org.uk/wp-content/uploads/2019/10/DA-Bill-briefing-for-committee.pdf>

In 2018/19 68% of referrals from women with NRPF to our membership of specialist VAWDASV services in Wales, were accepted (of the 44 referrals, 30 could be accommodated). However, the number of those supported who were eligible for the DV rule was only 5.² Of those who could not access funding under the DV rule, the majority of places were funded either by social services for women with dependent children, via the service's own reserves or via Southall Black Sisters' 'Last Resort No Recourse Fund'³ which is specifically for cases where there are no other options available. Services who use their own reserves inevitably take a hit to their own finances, who are often already overstretched, highlighting the need for secure and sustainable funding for the VAWDASV sector. This clearly demonstrates that the DV rule is too narrow in its scope and should be expanded to all migrant women subject to violence and abuse.

We strongly support the following amendments:

- Abolish the no recourse to public funds (NRPF) policy which prevents many migrant women with insecure immigration status from accessing vital, often life-saving support and routes to safety.
- Ensure all survivors, regardless of age or immigration status, are entitled to support, equal access to welfare systems and legal tools that can provide protection from abuse, in accordance with the requirements of the Istanbul Convention which the Bill seeks to ratify.
- Extend eligibility for the existing Domestic Violence (DV) Rule, to ensure all women with insecure immigration status, not only those on spousal visas, are eligible to apply for indefinite leave to remain, and extend the time period for the Destitution Domestic Violence Concession (DDVC) to at least six months.
- Deliver safe reporting mechanisms which ensure immigration enforcement is kept completely separate from the domestic abuse response and the safety of the victim is paramount.
- Provide long-term ring-fenced funding to ensure sustainability of BME and migrant 'by and for' specialist services.

Family Justice

There is now a significant body of evidence demonstrating the harm caused to children, young people and their non abusive parents/carers (survivors of domestic abuse) by the family justice system.⁴

They put you back in the same room as the abuser, to try to get you to mediate with him when he holds all the power and has dominated you for years, you haven't got a chance it's not equal. (Survivor)

He went to prison, but the family courts were just interested in him seeing the children. I'm not sure they even knew about the prison stuff. (Survivor)

Court services aren't utilising all the services in place that victims need. (Survivor)

² <https://www.welshomensaid.org.uk/wp-content/uploads/2019/11/Annual-Membership-Report-2018-19-FINAL.pdf>

³ <https://southallblacksisters.org.uk/no-recourse-fund/>

⁴ <https://www.welshomensaid.org.uk/wp-content/uploads/2019/09/WWA-response-to-MOJ-inquiry-into-family-courts.pdf>

Welsh Women's Aid has received testimony from many survivors on the barriers they face both in court as well as during contact sessions.

- Survivors have talked about the perpetrator using contact to turn the child against the mother, for example showing them what the mother said in the court room or undermining her parenting capacity to the children during contact sessions.
- Cuts to legal aid have resulted in more women having to represent themselves and therefore face the prospect of being cross-examined by the perpetrator. This means that women cannot speak freely about the abuse or their concerns for their child's safety. Further to this, an example highlighted to Welsh Women's Aid demonstrated a direct impact on the evidence presented, as without a solicitor the section seven report from children's social care could not be requested by the survivor and the judge would not ask for it.
- There are particular concerns for survivors in rural areas, in terms of access to legal advice and representation as well as transport and travel times to court. One member highlighted to us that concerns about childcare have been dismissed by the courts for women travelling over three hours to reach the court building. This member also highlighted that poor public transport makes it difficult to reach the court but that requests to provide evidence by video have been ruled out at a late stage or not agreed to at all.
- Many survivors have expressed to us the inadequacy and inconsistency in which family courts provide safety measures. One survivor told us that her request for special measures was partially agreed, she was given a separate waiting room, but other requests were ignored, including having her IDVA in court with her. This has been echoed by other survivors whose specialist workers were denied access to the court room or mediation. In addition, there is an issue with the very structure of the family court buildings not providing a safe environment impacting on where special measures can be implemented effectively or where a survivor's safety can be guaranteed. For example, one entry/exit point or too small rooms to accommodate screens. One example highlighted to us was the entry point for a particular family court in Wales which is via a multi-storey car park, which of course the perpetrator is also likely to use. The support worker explained there were long waits to be allowed into the court, which heightened anxiety for the survivor and then a long wait at the end to ensure the perpetrator had left.
- In our report, 'Are you Listening, Am I being heard' the overriding feeling amongst focus group participants was that the abusive parents right to see his children seemed to override the safety and well-being of those children; *'children aren't listened to, these children who are afraid of their fathers are going through hell'. 'my child is dragged, kicking and screaming to contact visits but they do nothing.'*

We strongly support the following amendments:

- Ban direct cross-examination in any family, criminal or civil proceedings in all cases involving domestic abuse, sexual abuse, stalking or harassment. **Annexe A sets out the amendment Women's Aid Federation England, 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.**
- Guarantee access to special measures for survivors of domestic abuse, sexual abuse, harassment or stalking in the family and civil courts.

- End the assumption of contact in cases where children are at risk of harm from domestic abuse, with contact arrangements in domestic abuse cases based on informed judgement of a child's best interests and safety.
- Prohibit unsupervised contact for a parent waiting for trial, or on bail for, a domestic abuse related offence, or where there are ongoing criminal proceedings for domestic abuse.
- Amend the proposed definition of domestic abuse to make clear that children experience domestic abuse, and the Children Act 1989 needs to name coercive control as 'harm to children'.

Alignment with existing Welsh legislation

It is crucial that the Domestic Abuse Bill and the VAWDASV (Wales) 2015 Act are complimentary and not contradictory to one another. Welsh Women's Aid Chief Executive, Sara Kirkpatrick welcomed the opportunity to highlight the following whilst giving oral evidence to the committee:

- A recognition that Cafcass and Cafcass Cymru (which is part of Welsh Government) are separate from one another and that both must align with the changes to the family justice system.
- The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 recognises the gendered nature of domestic abuse, along with all forms of violence against women and girls. It recognises that although men do experience domestic abuse the frequency and severity of the abuse differs. Acknowledging these differences enables practice to be tailored to the specific needs of the person experiencing abuse as opposed to a 'one size fits all' approach.
- Funding distribution must take into account the different nature of delivering support in rural settings.
- Clarity in use of language, e.g. use of 'national' and what this means where powers are devolved.

Welsh Women's Aid remain concerned about the different approaches to legislation and strategy, which in Wales, reflects the reality that survivors may experience a myriad of different forms of abuse.

- Ensure that proposals for service models and their sustainability are aligned with similar work being carried out in Wales. There needs to be equivalent funding being allocated to support specialist organisations in Wales, that is secure and enables their sustainability. There needs to be assurance that duties on non-devolved and devolved public sector funders can work together to ensure that there are not gaps created by the differing legislative agendas.
- Acknowledge the gendered nature of domestic abuse and situate it within the myriad of violence against women and girls, in line with the UK's commitments under international law - including the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) and the Istanbul Convention and the UN Convention on the Rights of Persons with Disabilities (Article 16).
- The Domestic Abuse Commissioner has effective consultative remit with survivors and services in Wales to ensure there is an understanding of the context as to how devolved and non-devolved competency areas interact and can work effectively to ensure a holistic response in Wales as elsewhere in the UK. To enable this the

Commissioners Advisory board should have representation from Wales to ensure the representation of non-devolved of survivors and services in Wales. (Currently the Bill only allows for representation from voluntary organisations for England under Duties of public authority for the Commissioner section 11 Advisory board subsection 4 (b).)

Strangulation Offence, Rough Sex and pre bail charges

We also strongly support the following key amendments:

- Introduce a new criminal offence of non-fatal strangulation.
- Prohibit defendants relying on a “rough sex” defence that the victim consented to her injuries.
- Guarantee a presumption in favour of pre-charge bail in all domestic abuse and sexual offences cases, and introduce a duty to consult with victims at each stage of decision-making on bail.

We continue to support the joint call for the Review on Family Justice, Migrant women and Bail to be used to inform the bill. Following the second reading debate, both family justice and the equal protection and support for migrant women were identified as urgent areas for reform and we urge that conclusions from both reviews are received and inform the bill.

June 2020

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.