



## Welsh Women's Aid response to MOJ Reducing Family Conflict Consultation

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<b>These are the views of:</b>	<i>Welsh Women's Aid (Third Sector) - the national charity in Wales working to end domestic abuse and all forms of violence against women.</i>

### 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).<sup>1</sup> 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 direct services including, for example, the Welsh Government funded Live Fear Free Helpline and a National Training Service partnership. . We are piloting the Survivors Empowering and Educating Services (SEEdS) project, which is empowering survivors of violence and abuse to collectively influence and inform improvements in public services and commissioning frameworks, and help change attitudes.

We also deliver the Wales National Quality Service Standards, 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/>)



## 1. Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce?

1.1 Welsh Women's Aid agrees that divorce reform is urgently needed. The current process, as the UK Government itself acknowledges, can aggravate conflict within a family<sup>1</sup>. We are particularly concerned about how this 'aggravation' can heighten the risk for women experiencing domestic abuse. We know separation and the months following are one of the highest risk times, with 77.4% of women killed in the year following separation<sup>2</sup>. Therefore proposals by UK Government to work to reduce this conflict are welcome.

1.2 We are concerned that the current divorce process can keep women in relationships with abusive spouses and gives perpetrators the opportunity to continue to control and abuse by manipulating the court process. We also feel it is unacceptable that women who cannot or won't rely on a fault based divorce are expected to remain tied to an abusive spouse for 2 or 5 years.

1.3 We agree with the argument put forward by Rights of Women that the state should not be able to refuse an application for divorce 'effectively overriding an individual's decision on whether they wish to remain married to another person'<sup>3</sup>. Clearly this is a concern for women leaving an abusive partner who may be prevented from divorcing and we're clear this must be amended as a matter of urgency.

## 2. In principle, do you agree with the proposal to replace the five facts with a notification process?

2.1 'Fault' divorces can further escalate risk and coercive control when there is domestic abuse within a marriage. If an applicant wishes to seek a divorce on the grounds of 'behaviour' they must list this. Additionally, coercively controlling behaviour can also be nuanced to the particular relationship, requiring it to be defined by the survivor as it may not be recognised by the court. In the case of domestic abuse, we are concerned that the perpetrator can retaliate, once they are made aware of the claims made against them, thus the survivor is put at further risk. Alternatives, such as waiting 2 years (or 5 years without consent), further exposes the survivor to abuse and manipulation. Additionally, in the case of women on low incomes, this period of 'separation' may force her to remain in the home as she cannot afford to leave and run a separate home while waiting for a divorce.

2.2 While some survivors may access non-molestation orders, it is unlikely these protective orders will last for the 2 or 5 year period. Such orders are a 'stop-gap' to give survivors space for action. They should enable divorce proceedings rather than act as an alternative to divorce. The very fact of requiring a non-molestation order should in itself indicate there are grounds for divorce.

<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/supporting\\_documents/reducingfamilyconflictconsultation.pdf](https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/supporting_documents/reducingfamilyconflictconsultation.pdf)

<sup>2</sup> <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2017/12/The-Femicide-Census-Report-published-2017.pdf>

<sup>3</sup> <http://rightsofwomen.org.uk/wp-content/uploads/2018/07/Briefing-on-divorce-law-reform-260718.pdf>



2.3 While we agree that perpetrators should be held to account for their behaviour and arguably listing these 'faults' to the court can do that. We also know from Rights of Women research that if a perpetrator defends the divorce, the impression is given that the courts support the abusive partner's position<sup>4</sup>. For example pressure might be put on the survivor to remove the abuse from the petition in order for the perpetrator to agree to the divorce, thus creating the impression that her experiences have been dismissed or minimised. This may also be a continuation of the tactics used by the perpetrator as part of coercive control.

**3. Do you consider that provision should be made for notice to be given jointly by both parties to the marriage as well as for notice to be given by only one party?**

3.1 Welsh Women's Aid agrees that notice can be given jointly, but feels it is imperative that notice can be given by one member of a marriage. This is particularly important in cases of domestic abuse where the abusive partner is exerting control. We are pleased that UK Government acknowledges that the current process of divorce can enable an abusive partner to continue to exert control. We ask that UK Government also takes action and ensure divorce court professionals are trained as standard to understand domestic abuse and coercively controlling behaviour.

**4. We have set out reasons why the Government thinks it is helpful to retain the two stage decree process. Do you agree?**

4.1 Welsh Women's Aid is concerned about the proposed 6 month waiting time between a decree nisi and decree absolute. Rights of Women has found that two thirds of calls to its advice line related to divorce stated they had experienced domestic abuse<sup>5</sup>. Therefore, in cases of coercive control, this can give further power to a perpetrator and expose the survivor to on-going abuse. We acknowledge that under the current law the court has the power to fix a shorter period, but this is only in 'exceptional cases' for example risk of death. This threshold will be too high for most women to meet. Additionally, if women are unable to access legal advice (for example due to low incomes) they may not be aware of this exemption.

4.2 We feel a 'period of reflection' may be an opportunity for perpetrators to attempt to keep the survivor in the marriage and while we support women to make their own decisions, we are fearful that this time-period will be an opportunity for further coercion and control.

4.3 Solace Women's Aid, Finding the Cost of Freedom<sup>6</sup> report found that 88% of the women it spoke to experienced post-separation abuse, highlighting that women who are able to separate are not necessarily free from further abuse. The report also found that 33% of the participants experienced abuse through the delay or holding up of divorce proceedings. We would therefore call on UK Government to reconsider the proposed 6 month time frame and how it could provide further opportunities for continued abuse.

<sup>4</sup> <http://rightsofwomen.org.uk/wp-content/uploads/2018/07/Briefing-on-divorce-law-reform-260718.pdf>

<sup>5</sup> *ibid*

<sup>6</sup> <https://www.solacewomensaid.org/get-informed/professional-resourcesfinding-cost-freedom>



## 5. What minimum period do you think would be most appropriate to reduce family conflict, and how should it be measured?

5.1 We are concerned that any minimum period could be dangerous for someone divorcing because of domestic abuse. We feel that if a decision to divorce has been made, this must be allowed to process as soon as possible. As stated, we are concerned this time of reflection could be an opportunity for perpetrators to manipulate and control survivors to remain in the marriage.

5.2 In terms of family conflict, the UK Government itself acknowledges; ‘...research shows that it is conflict between the parents which has been linked to greater social and behavioural problems among children rather than the separation and divorce itself’. We feel it is important therefore to minimise the timeframes as much as possible.

5.3 The summary paper for this consultation notes; ‘the current divorce process is complicit in exposing children to the damaging impact of on-going adult conflict...while the wider family justice system is focused on helping people to resolve family issues in a non-confrontational way’. We are concerned that the reality on the ground is quite the opposite and that the family court process often allows survivors and their children to be re-victimised.

5.4 We remain deeply concerned about the risks associated with child contact within the family courts. In our response to the DA Bill consultation<sup>7</sup>, Welsh Women’s Aid stated that support for survivors across all court systems must be assured and that there is join up in decision making across the court system. Support for survivors should include an assumption that all survivors should be provided with special measures, aligned to advocacy support for survivors to accompany them to all court proceedings and an insurance that they will not be cross examined by their perpetrator. As divorce is often the time when contact arrangements are likely to begin, we feel it is important for consideration to be given to how the different courts interact, particularly in cases of violence and coercive control. The Children’s Act 1989 sets out that ‘the child’s welfare shall be the court’s paramount consideration’<sup>8</sup> however, we are concerned that this is not the case, both in the current process for divorce or in the family courts. Reform of divorce alone is not enough and the entire court process and how it allows perpetrators to continue to abuse and manipulate women and children must be considered.

5.5 We know from survivors we have consulted that family courts are often used and manipulated by perpetrators of domestic abuse as an avenue to further control, coerce and abuse their victims. Survivors have reported how the family justice system services can prolong and reinforce the abuse they had experienced by perpetrators. They reported that perpetrators are using child contact as a

<sup>7</sup> <http://www.welshwomensaid.org.uk/wp-content/uploads/2018/05/WWA-Short-Response-for-UK-Gov-Transforming-Responses-to-DA-Consultation.pdf>

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/1989/41/section/1>



mechanism of ongoing control and that this was either not understood or ignored by the court and related agencies<sup>9</sup>.

## **6. Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases?**

6.1 Nullity can be an option for women who have been forced into marriage. We therefore feel it is important that timeframes are kept to a minimum. Attempting to leave a forced marriage can be incredibly dangerous with the survivor at risk of pressure to remain, physical violence and even death. Imkaan and Right's of Women's report 'This is Not my Destiny'<sup>10</sup> finds that women did not separate their experiences of forced marriage from other experiences of abuse in the context of violence against women, therefore consideration must be given to the risk factors facing women who are attempting to escape a forced marriage.

## **7. Do you agree with the proposal to remove the ability to contest as a general rule?**

7.1 Welsh Women's Aid fully supports the proposal to remove the ability to contest a divorce. As the paper acknowledges it could be used 'to exercise coercive control by one spouse over the other spouse who may be a victim of domestic abuse'. Currently, the state provides perpetrators an opportunity to continue to abuse the survivor and we argue that the state must do all it can in its power to protect survivors. Removing this element will also bring divorce laws more in line with section 76 of the Serious Crime Act 2015 which makes coercively controlling behaviour an offence, for example.

7.2 We are also keen that consideration is given to how perpetrators can manipulate the court process for other means, for example continuing to exert economic abuse and control by prolonging the court process or attempting to withhold money during settlement processes. We are pleased therefore that UK Government is considering wider areas, such as financial orders.

## **8. Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place?**

8.1 We would disagree with this. We are concerned that marriage can act as a trigger for domestic abuse starting or escalating. As perpetrators of domestic abuse feel a sense of ownership and marriage can be seen as the legal entitlement of that ownership. We are concerned that survivors may find themselves newly married to someone who has started or has increased their control or violence against them.

8.2 We are also concerned about how this impacts on women forced into marriage. While women can apply for the marriage to be annulled. If this isn't available for any particular legal reason, women may then be forced to remain in the marriage for longer.

<sup>9</sup> [http://www.welshwomensaid.org.uk/wp-content/uploads/2016/03/Are\\_you\\_listening\\_and\\_am\\_I\\_being\\_heard\\_FINAL\\_July\\_2016.pdf](http://www.welshwomensaid.org.uk/wp-content/uploads/2016/03/Are_you_listening_and_am_I_being_heard_FINAL_July_2016.pdf)

<sup>10</sup> [https://drive.google.com/file/d/0B\\_MKSoEcCvQwckVyd1JDZGhzaTg/view](https://drive.google.com/file/d/0B_MKSoEcCvQwckVyd1JDZGhzaTg/view)



***The Government will also retain the power of the court to make rules requiring legal practitioners to certify whether they have discussed the possibility of reconciliation, along with the power of the court to stay proceedings if there is a prospect of reconciliation. We think this power is an important safeguard before the marriage is finally brought to a legal end.***

**9. Do you have any comment on the proposal to retain these or any other requirements?**

9.1 Again, we are concerned about perpetrators using these processes to continue to exert control and manipulate survivors. Should a perpetrator threaten a survivor to remain in the marriage or work towards reconciliation the court could stay proceedings, thus essentially sanctioning the abuse.

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<sup>i</sup> Our membership of third sector violence against women, domestic abuse and sexual violence specialist services in Wales, with whom we have national partnership agreements to ensure our work is coordinated and integrated includes: Aberconwy DAS, Atal y Fro, Bangor and District Women's Aid, Clwyd Alyn Housing Association (CAHA) Women's Aid, Stepping Stones, Safer Merthyr Tydfil, Carmarthen Domestic Abuse Service, Calan DVS, Cardiff Women's Aid, Cyfannol Women's Aid, Domestic Abuse Safety Unit (DASU), Gorwel (Grwp Cynefin), Montgomeryshire Family Crisis Centre, Newport Women's Aid, North Denbighshire Domestic Abuse Service, Port Talbot & Afan Women's Aid, RCT Women's Aid, Safer Wales (including Dyn Project), Swansea Women's Aid, Threshold, West Wales Domestic Abuse Service and Rape and Sexual Abuse Support Centre (RASASC) North Wales.