Women’s Aid Federation of England (Women’s Aid) is the national charity working to end domestic abuse against women and children. Over the past 44 years, Women’s Aid has been at the forefront of shaping and coordinating responses to domestic violence and 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.

We are a federation of over 180 organisations who provide just under 300 local lifesaving services to women and children across the country. We provide expert training, qualifications and consultancy to a range of agencies and professionals working with survivors or commissioning domestic abuse services, and award a National Quality Mark for services which meet our quality standards. We hold the largest national data set on domestic abuse, and use research and evidence to inform all of our work. Our campaigns achieve change in policy, practice and awareness, encouraging healthy relationships and helping to build a future where domestic abuse is no longer tolerated. The 24 hour National Domestic Violence Helpline (run in partnership with Refuge) and our range of online services, which include the Survivors’ Forum, help hundreds of thousands of women and children every year.

As a member of the HM Courts and Tribunal Service (HMCTS) Victims and Witness Engagement Group we have been pleased to work closely alongside HMCTS in its approach to modernisation and reform. While Women’s Aid agrees with the overarching principles of the reforms - improving access to justice, enabling efficiency, and delivering value for money, we do, however, have concerns about how the current reforms have and will impact survivors of domestic abuse. We are pleased to provide this submission to the Justice Committee’s inquiry on court and tribunal reforms. We have limited our answers to the first two questions, which fall within our area of expertise, and we have focused most on how the reforms will impact on survivors of domestic abuse in the family courts.

Women’s Aid’s Child First: Safe Child Contact Saves Lives campaign has, over the past three years, been pushing for changes to make the family courts safer for non-abusive parents and their children. Our answers are based on our learning from the campaign, and on what we are told by our member services and the survivors who regularly contact us to tell us about their experiences.

1. What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to:

   a. civil justice?
   b. family justice?
   c. criminal justice?
   d. administrative justice, particularly as delivered by the tribunals system?
   e. those who are digitally excluded or require support to use digital services?
Women’s Aid agrees with the overarching principles of the reforms set out by HMCTS; improving access to justice, enabling efficiency, and delivering value for money, but considers that a further principle is required. Last year we recommended, in our response to HMCTS’ consultation on transforming the court and tribunal estate, that protecting the safety of the victims and witnesses using court buildings must be at the heart of HMCTS’ reform programme - either within the access to justice category, or as a stand-alone principle in itself.

The modernisation process provides significant opportunities to improve safety within the courts, but we are concerned that unless this is a central objective of HMCTS’ reform programme, the reforms required will not be delivered. Improvements to safety are required across: future design; the move away from using traditional buildings; travel and transport to the courts; virtual hearings, video links and digital service delivery; and scheduling and listing systems.

Survivors of domestic abuse frequently tell Women’s Aid that their experiences of court - both within the criminal and family jurisdictions - leaves them feeling re-victimised and re-traumatised. Criminal courts have special measures available for vulnerable and intimidated witnesses, including: screens; provision for giving evidence through video link; separate waiting rooms; and staggered times or separate entrances for arrival and departure. However, there remains no equivalent legislative protection for those involved in civil proceedings, and the current poor provision of these essential safety measures within the family courts can mean that survivors often feel highly unsafe while on the court estate. Unlike in the criminal courts, family courts pay little or no attention to providing separate facilities or entrances. This can bring women into direct contact with men who have committed serious offences against them.

Women’s Aid’s recent research, conducted in partnership with Queen Mary University of London, found that 61 percent of women in the research sample had not had access to special measures in the family court.¹ One participant described her experience:

_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._²

The former President of the Family Division, Sir James Munby, echoed these concerns in January 2017, stating that “In too many courts the only available special measure is a screen or curtains round the witness box. What, for example, about safe waiting rooms? The video

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links in too many family courts are a disgrace – prone to the link failing and with desperately poor sound and picture quality. More, much more, needs to be done to bring the family courts up to an acceptable standard, indeed to match the facilities and ‘kit’ available in the Crown Court.”

We welcome recent steps taken by the Ministry of Justice and HMCTS to improve the treatment of vulnerable victims and witnesses - including survivors of domestic abuse - within the family courts. These steps include the Family Procedure (Amendment No. 3) Rules 2017 and Practice Direction 3AA - Vulnerable Persons: Participation in Proceedings and Giving Evidence, as well as refreshed training and guidance on domestic abuse for court staff. However, guidance alone will not address many of these safety challenges; significant investment and upgrades in facilities and special measures are needed.

The lack of effective and safe facilities, access arrangements and special measures can mean that the family court can be used as a vehicle for continued abuse and harassment, prolonging the impact of abuse and frequently leaving women and children in fear. This of course hinders survivors’ ability to effectively advocate for their children’s safety in court, impacting on access to justice. The reforms need to ensure that where family court proceedings continue to take place in physical court spaces, that these problems of safety and access to justice are overcome.

The problems experienced by survivors in family court spaces described above may, on the face of it, add weight to the argument that more proceedings should take place virtually. However, if this goes ahead, as the HMCTS reforms intend, it will be equally as important to ensure new virtual and online processes are safe and accessible to survivors of domestic abuse. We discuss this below.

2. What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented; and of reductions in HMCTS staffing under the reform programme? For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

Women’s Aid would like to stress that, whether court and tribunal processes and hearings are conducted online or in physical court buildings, vulnerable parties who have experienced domestic abuse must be able to access appropriate support, and the systems in place must include safety and accessibility as paramount.

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3 Sir James Munby (2017), 16th View from the President’s Chambers: Children and vulnerable witnesses: where are we?
4 Birchall, J. and Choudhry, S. (2018) What about my right not to be abused? Domestic abuse, human rights and the family courts, Women’s Aid; Thiara, R and Harrison, C (2016) Safe not sorry: key issues raised by research on child contact and domestic violence. Women’s Aid
We know that, particularly in rural areas, survivors of domestic abuse often find that they have to travel long distances to reach family courts. This creates a range of challenges including the cost of travel, safety if the perpetrator is travelling the same route, and childcare arrangements. As more courts close, this problem is only going to be exacerbated; indeed the Public Accounts Committee has noted the problems already being caused by courts closing before online services are available.\(^5\) We also know that survivors of domestic abuse are often not able to access special measures to keep them safe in and around court buildings. Women’s Aid is concerned that reductions in HMCTS staff numbers (5,000 fewer staff by March 2023\(^6\)) may mean that there is less support available to assist survivors with the special measures that they need and are entitled to.

HMCTS has said that “as new technologies bed down, we anticipate that more and more cases or parts of cases will be carried out virtually or online”. It also specifically mentions separating parents as benefiting from digitisation and simplification of proceedings, so that they are able to “resolve issues equably between them, avoiding the stress, expense and aggravation of legal proceedings”.\(^7\) However, we are concerned that an online system that is not designed with safety and support as central principles will not provide survivors of domestic abuse with access to justice. Robust procedures will need to be in place to identify cases where there is domestic abuse, and to ensure that, in these cases, non-abusive parents are not expected to ‘resolve issues’ without appropriate support and protection.

The Government has recently awarded £900,000 funding to two organisations based in family courts to provide specialist support to victims during, before and after hearings. Citizens Advice plans to extend its Witness Service in selected family courts to provide information and practical and emotional support to victims before, during and after the day of the hearing. The Personal Support Unit will be using the funding to invest in further training of its staff and volunteers and to share learning on best practice with a range of family justice stakeholders.\(^8\) Women’s Aid is concerned that this type of vital support may not be available to survivors of domestic abuse using an online system. We share the concerns of the Public Accounts Committee that “without sufficient access to legal advice, people could make uninformed and inappropriate decisions about how to plead, and that the roll-out of virtual hearings could introduce bias and lead to unfair outcomes.”\(^9\) If, as HMCTS reforms intend, more and more cases will be carried out virtually, then investment needs to be made in

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ensuring that victims and survivors can access specialist support before, during and after the virtual proceedings.

In addition, the online systems themselves need to be designed with safety and awareness of power dynamics between parties in mind. We know that perpetrators of domestic abuse use the family court process as a form of post-separation abuse. Online abuse is also increasingly used as a form of domestic abuse.\textsuperscript{10} If more family court cases are to take place online or virtually, there is a clear need for consideration and awareness raising about how these settings could also be used to perpetrate abuse. It will be essential that all professionals involved in virtual processes and hearings are able to identify, and deal with appropriately and sensitively, allegations of domestic abuse. This may require different skills than those used when all parties are in the same physical space. There is a strong body of research demonstrating significant gaps in knowledge around domestic abuse among legal professionals and the judiciary.\textsuperscript{11} Women’s Aid has long been recommending that improved training is needed for all professionals involved in family court cases involving domestic abuse and child contact. Tailored training will also now be needed for online and virtual settings.

In addition, Women’s Aid would like to stress that survivors of domestic abuse who are seeking access to justice should be offered services that are appropriate and sensitive to their needs and preferences. HMCTS has set out that:

\textit{In certain circumstances, of course, justice will require that parties, their advisers and judges conduct hearings in physical courtrooms. [There will also be] “virtual hearings” enabling lawyers, parties and witnesses to participate in traditional hearings by telephone and video conferencing. This will extend throughout the system, not just the criminal jurisdiction, making courts more convenient for all.}\textsuperscript{12}

Many survivors tell us that having to go to a physical family court is terrifying, even where special measures are available. For these survivors, a virtual process that is fully resourced and where victims receive specialist support throughout may be a preferred option. However, for other survivors it is important to be in the physical space of a court, to be able to give evidence in a face-to-face way and see their abuser facing justice. Virtual processes can throw up complicated issues to consider; for example, some survivors, who have given pre-recorded video evidence in their cases, have told us that they felt it was unfair that their abuser, who was in the physical space of the court, would be able to watch the video in court and respond to it in the victim’s absence. Virtual and online processes should therefore not be assumed to be simple and preferred in all cases, and decisions about their suitability should

\textsuperscript{10} Hadley, L. (2017) \textit{Tackling domestic abuse in a digital age}, All Party Parliamentary Group on Domestic Violence and Women’s Aid
\textsuperscript{11} Birchall, J. and Choudhry, S. (2018) \textit{What about my right not to be abused? Domestic abuse, human rights and the family courts}, Women’s Aid
be made on a case by case basis. Women’s Aid recommends that when making decisions about whether hearings will be virtual or in physical courtrooms, victims or survivors are always consulted about their needs, wishes and requirements.

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