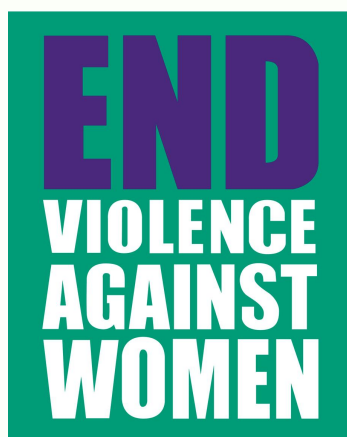


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# Access to Justice for Women & Girls during Covid-19 Pandemic

Report into impacts of pandemic on family and criminal courts for victims and survivors of Violence Against Women & Girls (VAWG)



*imkaan*



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## **Purpose of this Briefing**

This joint briefing seeks to highlight how the difficulties women and girls already have in accessing justice and protection, from both the criminal and family courts, are being exacerbated by the Covid-19 pandemic, with new barriers to justice and protection caused by the necessary public health measures. The paper looks at what may change in terms of women's access to justice and protection as restrictions ease, and as our society adapts to ongoing vigilance and preparedness for reintroduction of public health restrictions.

## Introduction

### Duty to predict and prevent abuse

Women's organisations have been clear since the start of the Covid-19 crisis that any response planning must factor in the predictable increase in violence against women and girls (VAWG); and include strategies to protect women and girls and prevent assaults and murders before they happen. Women and girls have rights to protection and safety, and it is everyone's business to be part of the prevention of abuse, and to ensure women and girls can access justice. We are very concerned at what has already transpired and the lack of urgency in setting right the specific justice and protection problems now occurring for women and girls and which are set to persist indefinitely.

For the purposes of this briefing we have considered 'justice' within the frameworks of the criminal and family justice systems. We also recognise that the term 'justice' will mean different things to different survivors.<sup>[1]</sup> Any consideration of 'justice' needs to be framed within the structural inequality and institutional racism that exists within our society and systems.

### Existing endemic VAWG and inequality

Before Covid-19 there was already enormous prevalence of violence against women and girls, with three quarters of a million domestic abuse related offences last year, and around half a million rapes and sexual assaults every year (England and Wales only). Covid-19 'landed' on top of this widespread abuse, deep inequalities which make some women and girls more vulnerable than others and experience compounded harms, and victim-blaming.<sup>[2]</sup> For Black and minoritised women and girls, these issues were, and continue to be, exacerbated by structural inequality. The state response to VAWG, from justice through to health and welfare, tends to be piecemeal; and the voluntary sector specialist women's support services run on a shoestring. The experience and needs of disabled, Black and minoritised, migrant, homeless, and destitute women and girls are marginalised and made invisible. There is a persistent tendency to tell victims to modify their behaviour rather than looking at what drives perpetrators of abuse.

### Women's access to justice before Covid-19

The criminal and family justice systems were already in a state of disrepair, overloaded with cases, backlogs and delays, due to 'austerity' cuts and an absence of effective leadership. The criminal and civil systems already place additional, specific blocks on women's ability to secure protection and justice following abuse for themselves and their children. These barriers are felt from initial police call out through to investigations and court hearings in the criminal system, to the post-separation abuse enabled by the family courts, and the discrimination and harm done to women abuse survivors in asylum and immigration proceedings, where there have been disproportionate cuts to legal aid. We have seen the removal of access to legal aid in family court proceedings create chaos, the prosecution rates for rape plummet, and family court judges who perpetuate rape myths.

As highlighted by the Step Up Migrant Women campaign the 'hostile environment' for migrant and refugee women also prevents meaningful access to justice as information sharing between the police and immigration enforcement mean many women are unable to escape abuse for fear of immigration authorities. And if they do seek help they are largely unable to access refuge support as they have No Recourse to Public Funds.

All of these amount to criminal and family justice systems which discriminate against women and make it harder for them to access safety and justice, despite the constant exhortation from leaders that women should not hesitate to do report abuse. The crisis caused by Covid-19 must not be allowed to mask these systemic failings, or be used as a way to excuse state institutions for deeply entrenched faults that were endemic before the virus.

### **Racism and barriers to justice**

Covid-19 has disproportionately impacted Black and minoritised people who are much more likely to become seriously ill and to die than others.<sup>[3]</sup> This is due to systemic racism, where Black and minoritised people are more likely to work in frontline health sector and other work where there are higher risks of contracting the virus, more likely to live in housing conditions where there is risk of contagion, and less likely to be able to make the choices others can make to keep themselves and their families safe (related for example to insecure work and economic necessity).

The murder of George Floyd on 25 May 2020 and subsequent widespread Black Lives Matter protests against racism and police brutality – where so many men and women made the choice to protest here in the UK despite facing additional risk of catching the Coronavirus – is a stark reminder of the everyday injustice Black and minoritised men and women experience here. If Government and policy makers in the UK want to be able claim that police protection, access to justice, and family resolutions are available to all equally and regardless of race/ethnicity, they have a lot of listening to do and a mountain of reform to enact. At present, even basic data collection in relation to ethnicity and victimisation is extremely poor.

The reality of racism in the justice system has a huge impact on Black and minoritised women and girls' ability to access justice and protection in relation to VAWG.<sup>[4]</sup> Crime statistics show that Black and minoritised men and boys are far more likely to be over-policed and criminalised from a very early age, an experience that affects decisions and attitudes towards the police and justice system through whole families and communities.<sup>[5]</sup>

The over-policing of minoritised communities, the barely accountable use of stop-and-search such that it is a routine experience for many Black men, and the absence of leadership or initiatives to put this right, are at the heart of some communities' fear and distrust of calling the police for protection when they should be able to do so. Hostile environment policies, delivered by law enforcement agencies, are inherently racist, and mean that migrant women experiencing abuse risk being treated as immigration offenders rather than victims of crime if they seek help.

The over emphasis of policing in the Domestic Abuse Bill making its way through parliament is of concern here, and we are equally worried about the attempts to align the Prevent agenda with VAWG for particular communities of women, which fails to recognise the root causes of VAWG as patriarchy but uses the policing and surveillance regime to target specific communities.

Black and minoritised women and girls face inequality of access to justice and protection due to this systemic racism across the justice systems. Black and minoritised women are more likely to report inappropriate professional responses from statutory and voluntary agencies than their white counterparts, including responses based on cultural, ethnic and religious stereotypes.<sup>[6]</sup>

These include frontline professionals working in the police, NHS, schools, social services, housing and other agencies having a poor understanding of gender-based violence, its drivers and how some forms of abuse occur in different communities; not hearing disclosures of abuse when they are made; and responding to reports/disclosures/signs of abuse with disbelief, blame, a failure to recognise harm and urgency, and a basic lack of compassion. Black and minoritised girls, for example, encounter racialised tropes and stereotypes when trying to disclose abuse in settings including schools and social services.<sup>[7]</sup> At a time of extra pressure on many public services this racist failing for Black and minoritised women and girls may put those who seek help at even greater risk.

### **New strains on protection and justice**

The public health crisis is creating even greater impediments to women and girls being able to access justice: from specialist support services seeing surges in demand without the resourcing including legal advisors to meet it; to statutory instruments relaxing the requirements on Local Authorities to protect the vulnerable; reduced workforce across the police, CPS, lawyers; jury trials ceasing and remote hearings for some; all creating a myriad of issues around participation, confidentiality and due process. All of these factors, as well as perpetrators' experience of impunity and poor monitoring of cases, serve to further embolden perpetrators of abuse.

We know there will have been increases in all forms of VAWG across the Covid-19 lockdown period, and our support services expect multiple surges in 'demand' for support, which makes access to justice and redress via family and criminal courts more important than ever.

We set out below a short summary of the particular barriers to justice facing women and girls experiencing abuse right now, and proposed recommendations. We also recognise the potential for post Covid-19 repair and transformation of systems to create opportunities for real long-term improvement. We urge policy makers to seek out and listen to women who have experienced abuse, and women working in support services, about what changes can be made for the better.

## CONTEXT AND PREVALENCE

### Incidents and reporting of Violence Against Women and Girls during Covid

Covid-19 does not cause abuse and violence, but it creates a 'conductive context' for it to happen and for there to be impunity. Our society already has alarming rates of domestic and sexual violence. Increases in the rate of reported domestic violence during the pandemic have been widely reported in many countries, and there are police and others' deep concerns about online abuse of children.

Organisations supporting women and girls who have experienced sexual, domestic and other forms of violence have now reported significant increases in the demand for crisis support and more. Chillingly, what has really spiked for women's organisations, is reliance on web-based support and information services, because, whilst trapped at home with perpetrators, women cannot make private phone calls or make arrangements to leave in the same way they might have pre-pandemic. This move to digital provision leads to excluding certain women in particular, women from low income backgrounds, elderly women and women who have support needs to access technology including language barriers.

Women making contact also have needs that are complex and are often taking longer to work with than average; women have been more desperate than ever and services have reported more contact with women who are suicidal. We can also confirm that perpetrators are using isolation requirements to control and abuse under the guise of protection from the virus. ONS statistics shows that 45% of victim-survivors are subjected to sexual violence within a domestic violence context; the stay at home policy has meant that women and girls are likely to be at heightened risk of sexual violence.

The isolation requirement of the Covid-19 crisis increases the likelihood of sexual violence against partners in the home, the sexual abuse of children in the home and the sexual exploitation of children online. These restrictions do not mean that stranger rape, and acquaintance rape have ceased. Although there has been a reduction in the level of reporting of sexual violence to the police across the pandemic, with a decrease of 42% in the first weeks of the crisis, to 35% in May [8], it would be dangerous to assume the reduction in reports is attributable to an actual decrease in offending. Additionally, Rape Crisis Centres observe that 75% of survivors accessing their services do so a year or more after the rape or sexual abuse took place. Based on the lag between the abuse taking place and the accessing of specialist sexual violence and abuse support services are expecting demand for services to increase significantly in the coming months and year.

In the context of help-seeking, Black and minoritised [9] survivors are disproportionately impacted by austerity and under-served by services nationally (Imkaan, 2015; Women's Resource Centre and Women's BudgetGroup, 2018). [10] Imkaan refers to the 'Dual Pandemics' of Covid-19 and violence against women and girls in its recent position paper stating, "No one is immune to Covid-19, but structural inequality reproduces disproportionately across diverse communities and exacerbates existing racialised inequalities." [11]

Covid-19 has meant support services delivering a period of indefinite “mixed provision” of support, with part of their workforce at home, others working at their premises, and the continuing provision of more phone and online support than they have ever provided; and with support services own workforces including women who are in isolation, who have children at home and more.

Additionally, there were huge delays in getting complicated emergency funding to women’s specialist support services – which women often depend on if and while any case is brought against the perpetrator – with some monies granted only in June but with a demand it be spent by end of October. Delays also occurred in responding to corporate hotel offers to support with refuge accommodation.

### **Specialist support for victims as reporting ‘surges’ and court delays increase further**

The issue for the lengthy delays and “backlog” of cases through the criminal justice system is not just one of legal system capacity, but also one of voluntary sector provisions and the availability, and right to access, therapeutic support while waiting. Specialist support means support that is geared to the individual needs of the survivor ie services that are community-based, led by and for Black and minoritised women, that are inherently feminist and intersectional in their practice, that are independent and experienced at working with domestic and sexual violence as a cause and consequence of gender inequality. This can include therapy, pre-trial therapy, advocacy (such as ISVA & IDVA support) and other models developed by specialists such as ‘institutional advocacy’ in some ‘led by and for’ Black and minoritised services, and specialist disabled support in others as well as LGBT+ expertise delivered by organisations such as Galop.

Confidential therapy and counselling should be available regardless of whether there is an open police investigation, and the need for sexual abuse survivors for example to be supported with the appropriate specialist Rape Crisis therapy and counselling, but this is currently severely restricted due to evidence rules. If someone will now be waiting three years for their case to go ahead, it is entirely unethical for that person to risk their mental wellbeing and bypass/suspend therapy lest their notes are disclosed. Not having appropriate support is a contributor to victim attrition too. This means that specialist services must be properly funded, for the work they have done in unprecedented circumstances, and facing increased demand during Covid, and for future work supporting new clients.

### **Why might women not report abuse and seek help during lockdown/isolation?**

In addition to not being able to access the standard (but underfunded) support services. There may be a vast number of reasons why women haven’t reported abuse to the authorities during Covid-19 – these are unique to each person. Reasons for not reporting could include:

- Incidents having occurred while not adhering to lockdown restrictions, and fear of ramifications including the sense that as women they will somehow be “to blame” for the sexual violence having occurred in an extension of prevalent victim blaming rape myths;
- Black and minoritised communities have experienced racialised policing including disproportionate fines in relation to breaching coronavirus stay at home rules;<sup>[12]</sup> and high profile incidents leading to an IOPC on the inappropriate use of taser,<sup>[13]</sup> and not one but two IOPC investigations into the policing response to the murders of Nicole Smallman and Bibaa Henry (where police officers took selfies next to their bodies, and call handlers dismissed the families’ concerns). The Met Commissioner, even while apologising for these incidents, has denied there is ongoing institutionalised racism in her police force despite the thousands who needed to come onto the streets for #BlackLivesMatter protests, and has actually called for increased police powers;
- Black and minoritised women and girls have experienced racism from the police and would therefore not consider reporting abuse to the police an option that would feel safe. Particularly within the context of Prevent, and increased policing and surveillance which continue discriminatory practices against communities;
- Women and girls feeling that the national crisis will be prioritised as it would be perceived to be more important than what happened to them – an assumption that police have “better things to be dealing with”;
- Women needing to prioritise coping with the current crisis and immediate needs such as childcare, income, sourcing food, looking after loved ones at risk etc rather than help seeking or reporting;
- Women and girls seeing involving police as additional stress in an already highly stressful time, with little faith anything positive could come from it. Particularly with the knowledge the system is likely to be under even more strain and therefore even less effective;
- Women may fear reporting to the police could involve interactions with others that could place themselves and loved ones at increased risk of contracting Covid-19.

It is vital to stress that even without these additional barriers many women and girls choose never to engage with the police and criminal justice system. Some might talk to their GPs, but these services are now largely closed for face to face services and switched to phone and online. Disabled victims and survivors face multiple and complex barriers to accessing services, finding safety or refuge, negotiating the benefits and housing systems,<sup>[14]</sup> let alone accessing the criminal justice system and trauma support. The diversion of public services removes vital safety nets, while voluntary sector support services face overload. Isolation, closure of schools and diversion of policing and health resources are a potential disaster for women and girls.



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Specialist support services provide a vital picture of incidences of Violence Against Women and Girls during Covid-19. Imkaan notes that during the crisis there has been an increase in demand for Black and minoritised women's refuges which is "exponential, that is, Imkaan members have noticed weekly increases in need for refuge space."<sup>[16]</sup> The Revenge Porn helpline has also experienced a doubling in calls during Covid-19.<sup>[17]</sup>

There is serious risk of increased child sexual abuse online, sexual exploitation of children and young people who are not in school and unsupervised, and sexual violence against girls by their 'peers (on and offline), during this crisis. During the arrival of the Covid-19 pandemic the moderation and removal of child abuse images has decreased, while creation and dissemination is going up, with moderators off work and mass global platforms increasingly reliant on AI that is not up to the task.<sup>[15]</sup> Schools are perhaps the most critical space of all for daily vigilance over children who are at risk, and even for mothers to have contact with other parents and school workers they could talk to if abuse was escalating. With most young people yet to return to school, the extent of this harm is yet to be fully understood.

## CRIMINAL JUSTICE SYSTEM RESPONSES TO VIOLENCE AGAINST WOMEN & GIRLS

How the criminal justice system, from police and Crown Prosecution Service to the Courts services, has had to be reshaped during Covid-19, has not been communicated clearly to survivors at all. The consequences of the changes and lack of communication has left many women and girls at increased risk whether they are considering reporting and decide not to, or face a chaotic system where their needs are sidelined and justice is denied.

### **Police response to reports of VAWG**

We know that the police have been operating under the pressures of a reduced workforce due to illness and self-isolation, as well as potential redeployment to other priorities during Covid-19.

While the increase of VAWG during lockdown was predictable and an issue the VAWG sector raised directly with government from the very outset, it took the government almost three weeks into the lockdown to acknowledge this, launching the You Are Not Alone campaign on 11 April.

**Police availability** - Many police forces across England & Wales have sought to reassure domestic abuse victims that they can still report and expect the same level of police support, with social media campaigns and media interviews claiming this. However, this has not always played out in reality and is further compounded by the institutional racism within the police.

**High quality evidence and interviews** – During lockdown, particularly the first 8 weeks, women's organisations have heard of ABE's (Achieving Best Evidence video interviews) not being carried out when sexual violence victims have reported crimes to the police, thereby severely impacting the quality of the evidence gathered, and removing a victim's ability to have her ABE pre-recorded evidence used for cross examination. This appears to have been police force policy in a number of areas where they specifically suspended ABE's for non-recent childhood sexual abuse cases.

**Interpreters** - Vital support such as translators and intermediaries have also had a depleted service due to Covid, these were already hard to arrange pre-Covid-19, particularly female translators. Similarly there have been issues around BSL interpreters as often no one is available at short notice (no language line) and so survivors have been told to come back another day to report a crime or to arrange their own interpreter.

**Minimising reports to police and others** - Imkaan members have shared examples in their position paper of women's needs not being appropriately or consistently assessed, with women being told "their domestic violence is not serious enough." Imkaan heard of police disclosures not resulting in any further action or being re-framed as 'family support' meaning women are being encouraged to stay with family members rather than access specialist refuge provision.

Imkaan has also noted that Covid-19 has, to some of their members, been used as an excuse for institutional discrimination and rolling back of statutory responsibilities in some services. "Slow and/or non-responses are also placing women at more risk of returning to the perpetrator. One member states that despite trying to refer the case to the appropriate MARAC – the lack of response meant that 'due to lack of assistance from the LA she is returning to her husband, the perpetrator. She is pregnant and has a 15-month old baby'. "[18] This has in turn increased the need for specialist women-led 'by and for' services, particularly Black and minoritised women's services, to undertake 'institutional advocacy' to ensure women have access to rights and protections.

**'No Further Action' and good evidence gathering** - While we await data on the actual use of 'No Further Action' case closures during lockdown, women's organisations have anecdotally heard of an increase in the use of this outcome. The lockdown period also raises the question of what standard of good evidence gathering has been possible during this period. In terms of ongoing police investigations, to what extent have they been able to source witness statements, invite suspects in for interview, access forensics, do drive arounds with victims and so on. The reduction in this investigative work will create a serious justice gap when systems return to "normal". This issue does not appear to be understood by system leaders, with no measures being put in place to combat it. The already controversial data when it comes to rape and the poor justice outcomes will therefore become even more stark, and revealing of inequality of access to justice when it comes to women and girls.

This paper echoes Imkaan's call for any data being collated and shared to be disaggregated across the protected characteristics, so that it is possible to see the intersecting impact of Covid-19 on Black and minoritised communities, Black and minoritised women and VAWG.[19]

In relation to data sharing we also repeat the need for data sharing practices between police and immigration enforcement to change so that migrant women and girls access to justice is not further restricted.

### **Forensic Medical Examinations**

There was reduced access to Forensic Medical Examinations (FME) within Sexual Assault Referral Centres due to Covid-19 risks during the initial lockdown period. In some centres access was limited depending on the victims age or the crime type, with an individual's eligibility for an FME assessed on a case by case basis. This means there has been no guaranteed access to an examination even if one would usually be deemed necessary/appropriate.

In other instances, police have, perhaps alarmingly, encouraged victims to undertake their own forensic examination using 'Early Evidence Kits' where they collect their own samples. It remains to be seen how such a process, and the "chain of evidence" will be construed in court, potentially leading to forensic evidence being excluded. Victims are entitled to understand these risks as they are asked to consent to and undertake these self-exams.

### **Crown Prosecution Service & Courts**

**Scale of backlog** - Prior to Covid-19 there was a significant backlog of criminal cases awaiting trial, and as a result, huge delays faced by survivors subsequent to the case having been charged. It is estimated that by the end of May this backlog stood at a stunning 500,000 cases across the Magistrates and Crown Courts. Covid-19 has exacerbated what was already an unacceptable backlog pre-lockdown with too many victims waiting years for their cases to get to trial pre-lockdown. The Government is responsible for this backlog and the only way to improve this injustice is to increase resources in the court system.

**Less attention to victim and survivor wishes** - Interim guidance for use by Prosecutors during the Coronavirus pandemic was published in April.<sup>[20]</sup> An area of concern has been that prosecutors have been more likely to accept guilty pleas for lesser crimes, without consulting with the victim and seeking her wishes as a way of managing the backlog, and the fact that trials are being set so far in the future. It is vital that survivors' voices are centred in this negotiation and that decisions are not made on the basis of what will expedite the resolution of the case.

**Out-of-court disposals** - There have also been proposals for increased use of out-of-court disposals as a way to manage the current pressures on the system, worryingly this was proposed in rape and sexual offence cases, a move strongly opposed by specialist organisations. The issue here is that the CPS have provided generic advice that when considering the public interest stage of the code test – out-of-court disposals should be considered as a way to ease pressure on the system. This raises deeply serious questions about the standard justice practice being applied to serious crimes, and what actual sanction or deterrent is even aimed for.

**Reduced remand detention** - During Covid-19 there has been a decrease in the number of prisoners remanded in custody awaiting trial. This is understandable given the health risk posed to the prison populations by the virus. However this can also add to the risk of re-victimisation to the women and girls who have reported, and can have a detrimental affect on the their mental health, knowing that someone who is dangerous, or a flight risk is not being held, particularly given that breaches of bail conditions are not enforced.

This should not be happening as the guidance is clear that release from prison and remanding in custody should not be compromised where offenders pose a significant risk. However, we know that police and CPS are not always the most effective at judging risk, particularly given the vast decrease in use of bail conditions following the changes to the pre-charge bail regime in 2017. We would additionally seek disaggregated data across protected characteristics of those offered reduced detention during Covid-19 given the significantly racialised responses within the system.

**Very late notice to victims** - Throughout lockdown, there have been considerable issues with late notification of trial postponement, with some survivors hearing from the Witness Care Unit on the day of or the day before the trial that it has been postponed. Re-listings and new listings have been set with dates that seem arbitrary, and there is a concern that the re-listed postponed cases will be once again postponed a few months later. Survivors without specialist support such as an ISVA who would have been accompanied to trial by a friend or family member have had to attend alone without any support. These factors had a significant effect on the ability of a survivor to provide evidence, or attend at all. The impact of a last minute postponement of a long awaited trial to a traumatised survivor cannot be underestimated.

Magistrates courts have put safety measures in place, but then gone on to list trials during lockdown without properly consulting the witness about whether they are able to travel to court. Both Magistrates and Crown Courts have not taken into account the variety of challenges facing women expected to attend trials during this time, including the particular difficulties with childcare, that they may be considered clinically vulnerable, that they may not be able to travel to court, or that they may be scared about breaking lockdown rules without proper support. We are aware of one case where a survivor of domestic abuse did not feel comfortable attending a magistrates court during lockdown and her case was discontinued very shortly after.

**Rape case delays** - Many rape cases are already taking over two years to reach trial. The increased delays due to Covid-19 will have significant impacts on women and girls feeling prepared to remain engaged with the system. This is in the context of high profile challenge to CPS policy and decision making in rape cases, and the allegations that changes in policy have occurred that have led to a risk averse approach to charging cases as set out in EAW's judicial review of the CPS.[21]

The ongoing Government Rape Review is set to conclude with a number of recommendations by the end of the year, notwithstanding a further joint inspection taking place into 2021 by the HMCPSI and HMICFRS. The findings and recommendations of the review need to represent a meaningful close analysis of the system and its multiple failings and strive to make ambitious and radical recommendations. It is only significant changes that will make a difference to survivor experiences and justice outcomes, anything less – a tweaking at the edges or an attempt to minimise the scale of the issues - will be a pointless exercise.

### **Reduction in use of DVPN and DVPOs**

We have heard reports of Courts less willing to make orders due to Covid-19, especially where there are concerns it would make a perpetrator 'homeless' and more at risk of Covid. We have also heard anecdotal reports of perpetrators claiming they have Covid-19 in order to avoid custody and have orders made against them. Again we seek data on the use and ethnic breakdown of these measures for a more transparent and accountable system.

### **Restrictions in use of special measures**

Courts are keen to ensure the safety of jurors by social distancing and placing them 2 metres apart. However, spreading the jurors out across the courtroom has had ramifications on survivors giving evidence in rape trials. Screens, a typical "special measure", that allow a survivor to provide her best evidence and not to see or be seen by the defendant cannot be used if they also block the view of the spread out jurors. Some survivors, who had prepared to give evidence in person in this way are feeling pressured to forgo the screens. There is also inconsistency in judicial practice when it comes to whether a form of screen can instead be placed in front of the defendant during the survivor evidence, creating uncertainty in courtrooms for survivors. The safety of jurors should not be in direct opposition to the safety and wellbeing of survivors giving evidence.

### **Proposed plans for jury trials**

According to the Victims Commissioner, in evidence given to the Justice Select Committee on 28 April, there were no victim representatives involved in the planning for the re-emergence of jury trials. Proposals include cancellation of summer recess for higher courts, and extended hours of magistrates courts over evenings/weekends, with potential for jury trials to be comprised of 7 jurors, and magistrates given powers to hand down longer sentences.[22] These latter proposals would require primary legislation but have subsequently been cited by the Justice Secretary before the Justice Committee. It appears victim's views have not been taken into account in the design of proposals to move into 'Nightingale' courts and the impact on those who are shielding for example. There is also overwhelming opposition to extended court sitting hours from the legal profession – something which has a disproportionate impact on women working in the profession who are more likely to have caring responsibilities that mean they cannot work extended hours and women victims/witnesses who will face similar difficulties with extended hours.

The proposal to run juryless trials during the lockdown has been rejected both in England and Wales, and in Scotland, though feted by the Lord Chancellor and Lord Chief Justice as a potential solution for dealing with the backlog of cases.

Jury trials resumed on 18 May in a handful of courts with special arrangements to maintain social distancing in courtrooms including use of video technology and adjacent courts. There is potential for larger venues such as universities or leisure centres to be used to effect jury trials. Despite the plans for social distancing there may remain health concerns for potential jurors, victims and witnesses which may cause them not to attend.

Many courts can struggle with the technological requirements needed to show recorded victim interviews, and the move to using video links extensively are likely to create a number of issues which may add to the delays during trials as well as access by lawyers to their clients. There is also the question of the impact of use of video links on jurors' engagement and concentration. It is well established that barristers often prefer survivors to give 'live' evidence rather than via video link in trials on the basis that jurors could be more likely to feel disconnected or removed from the evidence, and less likely to convict. Though this is contested by various academic studies.[23]

The use of pre-recorded cross examination is seen as being a way in which survivors are not put through the delays, and potential re-traumatisation of the trial process. In the Gillen review of the law and procedure of serious sexual offences in Northern Ireland Gillen made multiple recommendations regarding increased use of this measure.[24] Gillen sets out how it could "reduce the duration of the trial itself and thus reduce costs. It would facilitate pre-trial decisions by the prosecution and defence, irrelevant or inadmissible material can be edited out, and it could provide finality for complainants since in the event of a retrial the evidence has already been captured." The increased use of video evidence could be an opportunity to further incorporate pre-recorded cross examination of survivors before trial, for those survivors that choose it. It would enable the survivor to give evidence remotely in a safe and secure environment away from the court and the defendant.

However the introduction of trials by video link, and increasing the use of pre-recorded cross examination requires a huge amount of resource and investment which, thus far, the government has avoided making in the court system. This could provide an opportunity to "build back better" and create a court system fit for the 21st century.

### **Criminalised women**

In a paper dealing with the experiences of victims and survivors going through family courts and criminal justice system it is vital to also address the issue of criminalised women and the potential access to justice issues posed by Covid-19 amongst a population that is made up of so many victims of various forms of VAWG.[25]

Given women are disproportionately handed custodial sentences for offences versus men, their very existence within a prison creates risk to life that is further increased at a time of the Coronavirus and its potential to infect prison populations. The issue of criminalised women is also racialised, with an overrepresentation of Black and minoritised women in prison. Criminalisation of women has a disproportionate impact on communities who are already subject to over-policing and surveillance and also communities who fear immigration enforcement.[26] Language barriers for some incarcerated women which exacerbates their isolation. Women with language barriers need to be able to access timely and accurate information, but too often this is not the case.

The lack of family visits under lockdown – where prisoners are held in their cells up for 23 hours a day - is a huge issue impacting severely on prisoners' mental health. It also impacts on the families of women in prison, in particular young children who may be separated for many weeks if not months.

The incarceration of pregnant women as a practice is utterly inhumane and should cease. Black and minoritised women who are pregnant are over-represented in prisons, the justice system must acknowledge and deal with its racist practices which enable this outcome. The indication given by government was that pregnant women in prisons would be released as a result of Covid-19, but in actual fact only 23 women have been released on this basis, during which time a stillborn baby was born while in prison after an inmate had complained of stomach ache.[27]

Women are disproportionately represented in certain types of offence prosecution such as failure to control children (like truancy), failure to pay for TV licence, drugs offences, subsistence theft, benefit fraud, and are more likely to be remanded and then not sentenced to prison. Covid-19 makes it more likely there will be offending, especially poverty motivated offences, drugs/alcohol motivated offending (as women are less able to access support they are more likely to be in situations they want to 'escape' from), children breaking lockdown and non-payment of fines among others.



# FAMILY LAW RESPONSES TO VIOLENCE AGAINST WOMEN & GIRLS

## Social Services

***Child abuse already deeply hidden*** - Only one in eight children in England who are sexually abused come to the attention of statutory authorities. There has been enormous concern that lockdown, school closures and isolation requirements, are likely to lead to increased levels of child sexual abuse in the family, child sexual abuse and exploitation online by peers and strangers, and sexual abuse in the community. Social services and schools usually only know to conduct welfare checks on the children who are already known and flagged to them (having had to first meet a high threshold), with Black and minoritised children tending to be over-represented in child welfare institutions. Children's social services and schools, with limited capacity and varying expertise around safeguarding practices, are not able to consistently have contact with every child, in what is now a five month period of millions of children and young people not being seen by a teacher or other caring professions worker.

***Disastrous vulnerable children arrangements which violate human rights*** - The Adoption and Children (Coronavirus)(Amendment) Regulations 2020 (Statutory Instrument 445) [28] enacted key changes which seriously impact children in care and reduce safeguarding responsibilities. These changes mean children will be more vulnerable to being sexually abused, and already existing sexual abuse could be exacerbated as there will be fewer opportunities to see the signs of sexual abuse and for the child to disclose sexual abuse. Not a single provision in these Regulations was actually necessary to meet the circumstances of the pandemic, and not a single Regulation is concerned with protections for children, but is rather designed to strip away important safeguards.

The Regulations set out:

- Social worker visits to children in care can now be via a phone call, but the clear 6-weekly duty to contact the child has been removed;
- Six-monthly independent reviews of a child's care is now no longer mandatory;
- The dilution of the duty on children's homes to ensure independent visits and monthly reports on children's welfare;
- Twice-yearly Ofsted inspections of children's homes are no longer required;
- The loss of safeguards for children placed out-of-area with people who are not connected to them;
- Relaxation of notification duties in respect of criminal offence with regards to fostering;
- Local authorities are no longer required to go through the adoption panel process before approving adoption placements.

A number of organisations, including the Children's Commissioner, have called on the Government to withdraw the statutory instrument with immediate effect. Secondary legislation of this nature has been proposed three times since 2016. It would be reasonable therefore to conclude that the pandemic has been used as an opportunity for the relaxation of regulations of children's social care, with neither the scrutiny of Parliament nor stakeholders.

***Annul these Regulations now*** - As lockdown restrictions are eased, and social services return to normal working practices, there is no longer any justification for these Regulations to continue and they should be annulled now rather than waiting until they cease to have effect on 25 September 2020.

Without the safety net of schools and other services such as GPs, the role of social services has become even more important in ensuring the welfare and wellbeing of women and children in abusive relationships, at a time when the workforce is depleted due to Covid-19. Schools in particular were encouraged to increase their liaison with social workers to ensure that children were appropriately safeguarded and did not fall through the net. The government have arranged for just over 1,000 social workers to return to employment. However there have been many obstacles presented by Covid-19 which has detrimentally impacted on their ability to ensure the wellbeing of children, including:

- Confusing and unclear guidance issues by Department for Education (see below);
- Statutory Instruments introduced which reduce the safeguarding responsibilities of Local Authorities;
- Lack of guidance on and provision of PPE;
- Families choosing not to engage, or grant access to social workers.

New Coronavirus guidance for local authorities on children's social care, published 3 April, by the Department for Education [29] gave inaccurate information about the legal protections and help available at this extremely difficult time. In a section titled 'Principles', in relation to family support and the welfare and protection of children, the guidance makes a sweeping statement that: "We know that local authorities and local safeguarding partners will want to continue to meet their statutory duties as far as they can, but there will be times in the current circumstances when this is not possible". The guidance was subsequently updated to specifically list the limited changes, after concerns were raised by a number of organisations.[30]

Our specific recommendations in this area:

- The Statutory Instrument should be annulled immediately;
- Social services staff should be supported with appropriate safety measures and PPE to enable them to conduct their safeguarding role;
- Guidance should be drawn up to set out any new ways of working within the previous safeguarding rules.

## Child contact arrangements

Arrangements for children to see the other parent have been one of the biggest concerns of victims of domestic abuse during the pandemic. Although the Government guidance was that children could continue to travel between homes for contact arrangements, a large number of women are having to deal with difficult situations in relation to child contact arrangements including:

- Abusers keeping children after contact/ not permitting contact for false reasons including alleged symptoms that were never confirmed and that appeared and disappeared as it suited the abuser to be able to keep the children, and using the mother's employment as a key worker as part of the argument;
- Safety measures that were in place around contact prior to lockdown no longer being available such as contact centres or third party handovers meaning victims having to decide between their own safety and children continuing to have contact;
- Abusers breaching the stay at home guidance during contact placing the children and other parent at risk of contracting the virus;
- Remote contact being difficult to manage not only because abuser rarely accept that it will be difficult to ensure a child stays engaged with remote contact for a lengthy period but more importantly because it can be an extremely intrusive way for contact to take place and result in victims of abuse having to manage the trauma of having the abuser back in their home, even if only virtually.

Victims' experiences of the Family Court are often extremely traumatic. No one wishes to end up in Family Court as it often means intimidation and threats from abusers to apply to the court to return the case to court for enforcement of a current order. Victims have been left having to manage abuser's behaviour in relation to their children alone.

The way in which the court will deal with these issues is still to be determined. We predict there will be an increase in applications for enforcement orders and variation of child arrangements for the court to deal with post-lockdown. We are concerned that courts will be punitive towards victims of abuse who have had to make difficult decisions in difficult and uncertain circumstances.

Rights of Women has published [an essential resource](#) on child contact arrangements responding specifically to the challenges posed by Covid-19.

## Move to remote hearings

In the move to remote hearings during Covid-19, public proceedings have been a priority, as have injunction applications. However Rights of Women experienced that large numbers of private law cases, including contact cases, are being delayed.

**Telephone hearings** - In the move to remote hearings, the vast majority of judges have conducted telephone hearings with only some willing to conduct video hearings, and many experiencing delays in ascertaining what platform to use. Logistical issues have been manifold and concerns around access to justice have resulted in the President of the Family Courts undertaking a review into proceedings, in recognition that further guidance is likely to be necessary.<sup>[31]</sup> To illustrate, the court has to dial-in all the participants to the hearing; While this can be around four individuals in private law hearings, in care proceedings this can be ten or more individuals. This does not include translators. This means hearings take significant time to get underway and have been known to be cut off suddenly.

**Childcare during hearings** - A serious logistical issue that has arisen in remote hearings is the presence of children, often who are at the heart of the issue being discussed. While parents and carers are encouraged to find a quiet place for the remote hearing this often cannot occur when individuals are in sole charge of children during Covid-19, or living in a small or confined living space. These hearings often deal with highly traumatic issues which are not appropriate for the children to be present around.

Not being in a court setting is also highly confusing for people not unaccustomed to procedures attached to family court hearings. As stated, these hearings can be very emotive and can lead to clients with no prior experience of these hearings feeling unrestrained and interrupting proceedings.

Support workers at local women's services are unable to attend remote hearings, whereas they often will have attended hearings in court prior to Covid-19 and lockdown, in an emotional support role. They are reduced to holding discussions with their clients in advance of and following a hearing, this means the support they can provide is significantly reduced.

There is no way for these remote hearings to be "fair" and digital exclusion and access to technology is an ongoing issue. While some women may have access to a smart phone with at least limited internet access, they are unable to access court papers, and can't easily make notes while using a phone for the hearing. Most importantly they can't have effective conferences with their lawyers. In the middle of hearings, individuals are trying to email their barrister with instructions.

Hearings listed have been dealing with interim and urgent issues around contact and removal of children. Cases are occurring where women are having children, including new born babies removed after a hearing in which she has never even met her own barrister, let alone seen the Judge who has made an order for her child or children to be handed over to a social worker, standing two metres away. This is an anathema to a sense of justice being done, and one can only imagine the additional distress and confusion caused to parents as a result of hearings conducted in such a way.

Those working with families in different roles around the family courts, including women's organisations, describe a sense of an upcoming tsunami of domestic abuse and child protection work ahead, with everything becoming overwhelmed.

### **Proposed plans for Family Courts**

As with the criminal courts a huge backlog now exists in the Family Courts. Although the family courts have continued proceedings with many hearings, there have been a large number of hearings that have been adjourned which will create significant delay to cases which are already significantly delayed by years of underfunding of the family justice system.

Courts will gradually be reopening in a way which allows for hearings to be conducted in a socially distanced manner. This generally will mean one court being open on each floor. At the Central Family Court this will mean four courts open but in most other family courts it will be more like one court room only. Discussions will be held in the lobby rather than in the smaller conference rooms – raising issues around confidentiality. As with the criminal courts, appropriate levels of resourcing here is essential.

The Ministry of Justice recently published *Assessing the harm to Children and Parents in Private Law Children's Cases*.<sup>[32]</sup> It concludes that victims of domestic abuse and their children are being placed at risk in private law children cases and recommends root and branch reform. This is an opportunity to rebuild the family court, address the backlog and improve the safety of women and children but requires proper resourcing and leadership to change the pro-contact culture.

### **Legal Aid and means testing**

Access to legal aid is vital to ensure victims of domestic abuse are able to access protection for themselves and their children from the family court in the form of injunctions. The most significant barrier to victims of domestic abuse accessing legal aid is the means test. All assets, including those such as jointly owned home, are considered in the assessment. This means that victims unable to release funds from a property (because they would require the consent of the perpetrator) are often excluded from accessing legal aid. In cases where the victim has fled the family home but their name is still on the deeds, they find it even harder to pass the financial assessment. The Domestic Abuse Commissioner has identified that means testing of legal aid is presenting an additional barrier during this time and has called for means testing to be removed in injunction applications. <sup>[33]</sup>

## Data

A brief point on data here. Specialists organisations, and the wider public, rely on statistics published by the Home Office, the CPS, and the MOJ to provide insight, and to allow scrutiny of the criminal justice system. A good example of this is the recent plummeting prosecution rates for rape, and how that has provided a basis to judicially review the CPS. Published statistics allow for comparisons over time to be made, and progress to be monitored with some transparency. However, Covid-19 will cause such severe impacts on the data that it is likely to be some time before they can be effectively comparable to pre-Covid statistics. The concern is that state agencies may be able to evade scrutiny for some time as a result.

We await with interest data on the impact of measures introduced during this period such as the 'code word' rolled out in pharmacies and supermarkets. It is important to know how this worked and whether it led to more referrals to police and other agencies.

## CONCLUSIONS AND RECOMMENDATIONS

We will all now live with a degree of threat from Covid-19 to ourselves and our families for some time, and in a state of preparedness for further isolation and even localised lockdowns and disruption to normal life. We need to have criminal and family justice systems which build around this preparedness while ensuring all women's access to justice and protection. Ongoing public policy responding to the pandemic needs to have comprehensive regard to inequalities related to all protected characteristics. This should be a public policy priority.

### Recommendations

#### LEADERSHIP

In Government, and in the leadership of the family and criminal justice systems, there needs to be curiosity about understanding the blocks women encounter, and then a high priority on commitments and action planning to alleviate these whilst Covid-19 is present and beyond.

There should be Cabinet Minister level interest – with Secretaries of State at the Home Office, Ministry of Justice, the Attorney General, as well as the Lord Chief Justice taking interest, asking for reports from Chief Constables, Police & Crime Commissioners, Local Authorities, the Director of Public Prosecutions, Her Majesty's Courts and Tribunal Service and judiciary leaders on the volume and quality of criminal investigations and proceedings, and the volumes and conduct of proceedings in the family courts. Ministers should aim for a measure of victim satisfaction with the process. The consequences of not making improvements here, and instead making women's poor access to justice a part of Covid collateral damage, should be recognised.

In particular, Black and minoritised women's actual experience of the criminal and family justice systems needs to be understood in terms of the ongoing, systemic racism therein. It is not acceptable to keep exhorting 'all' women to report abuse when such experiences are endemic. Policy makers and system leaders need to make a high priority of finding out about these women's experiences and views, and implementing reform, which should include considerable workforce training. There should be public commitment to this at Cabinet level.

Leaders in Government and the justice systems are keen to identify the opportunities that Covid-19 presents us. One area of opportunity is a reflection and reform of the police – who and what they exist for. Moves within the police is needed away from their increasing militarisation towards a community-based force which is responsive and accountable to the community, moving from interactional to relational responses to communities.

## **CRIMINAL JUSTICE SYSTEM**

Leadership - Ministers, PCCs, and Chief Constables should make public statements and clarify to policing workforces now that a very high standard of victim care and of best evidence gathering remains in place. These public commitments should explicitly set out expectations on victim and survivor communication and contact, suspect interviews, searches, forensics and more. The statements should say clearly that Covid-19 does not reduce evidence gathering requirements.

### **Resourcing**

Provision of the appropriate resources is critical, in particular, the gathering of evidence should be made possible in every relevant case, and the appropriate PPE and other protections sought to enable this. Interpreters must be provided on a no-excuses basis, with an explicit recognition to the fact that access to justice is seriously impaired without this. The Covid-19 crisis has exposed the disproportionate responsibility on mothers for childcare, this has implications for mothers going through the courts, therefore women's childcare needs should be assessed in good time as criminal hearings approach.

Women's specialist support services need funding for the indefinite period of Covid-19 pandemic we are living in and the emergency funding cliff edge of 31 October 2020 should be scrapped.

Women's support services are often essential to women's access to justice, thus this specialist sector requires urgent resourcing to provide support to women and girls, with a particular focus on advocates supporting women in specialist 'by and for' groups working in VAWG with Black, minoritised, young, disabled groups, ISVAs and IDVAs and institutional advocacy for groups that experience multiple, intersecting barriers to justice.

### **Out-of-court disposals and remand detention**

Out-of-court disposals are not appropriate in VAWG cases, there is an even greater danger of domestic abuse offending being minimised so that out-of-court disposals appear attractive to police forces. Remand in custody is a fundamental security tool where other measures, such as stringent bail conditions, have been ineffective. It must remain available in all cases where risk demands such a step. It was never suggested that prisoners who pose a risk to victims should be part of the early release scheme, and the same approach should be applied to remands.

### **Pregnant women prisoners**

All pregnant women prisoners should be released from detention immediately, and extreme caution used when sentencing women to jail terms hereon. There should be a review of all sentences currently in place as we are concerned about the over representation of Black and minoritised women in the prison system (see Lammy Review)



**Data**

There should be a commitment to reviewing all criminal justice system outcomes data in relation to the Covid-19 period by June 2021. This should specifically assess whether the Covid-19 crisis has caused any increase in NFAs and what can further be learnt; and look where possible at what worked well and what did not, including the codeword, public awareness campaigns and more.

There should accordingly be orders now to improve and expand what is collected, particularly with regard to victim race and ethnicity.

**IN THE FAMILY COURT SYSTEM****Leadership**

Ministers, and Family Court systems leaders, should make a stated public commitment to ensuring women and children are not further harmed by family court proceedings despite the extra pressures.

**On abuse of isolation in order to control**

Advocates and judges should be briefed immediately on perpetrators' known abuse of isolation requirements to disrupt child contact arrangements and should indicate that when detected this will be sanctioned.

**The vulnerable children Coronavirus Regulations 2020** should be annulled immediately because they violate human rights and put children at risk.

**PPE**

At the most basic level, social workers and school staff must be provided with all necessary PPE and guidance to enable home and other special visits.

**Remote hearings**

A considerable rethink is needed on the rights, resourcing and conduct of remote hearings, not least because Coronavirus and preparedness for the disruption it can cause is here indefinitely. Women's organisations and specialist lawyers should be consulted on this. There must be agreed standards with regard to interpreters, notice of hearings and childcare arrangements and an opportunity for support workers to join remote hearings.

**Legal aid**

The means test in relation to family law should be suspended/dropped immediately.

## CONTRIBUTORS & ACKNOWLEDGMENTS

Many thanks to the valuable input from our specialist members who have fed in their expertise and knowledge to this report.

### **The End Violence Against Women Coalition**

The End Violence Against Women Coalition is the UK's largest coalition of organisations working to eradicate violence against women and girls; members include Fawcett Society, Forward, Imkaan, Jewish Women's Aid, London Black Women's Project, Rape Crisis England and Wales, Refuge, Respect, Southall Black Sisters, Standing Together, Women in Prison, Women's Aid, WRC, The Women's Institute and the TUC. The EVAW Coalition is a registered charity 1161132.

### **Imkaan**

Imkaan is a UK-based, Black feminist organisation. They are the only national second-tier women's organisation dedicated to addressing violence against Black and minoritised women and girls i.e. women and girls which are defined in policy terms as Black and 'Minority Ethnic' (BME). Registered Charity 1105976 and a Company Limited by Guarantee 4943395.

### **The Centre for Women's Justice**

The Centre for Women's Justice (CWJ) is a legal charity which aims to advance the human rights of women and girls in England and Wales by holding the state to account for failures in the prevention of violence against women and girls. CWJ is a registered charity 1169213.

### **Rape Crisis England & Wales**

Rape Crisis England & Wales (RCEW) is a feminist organisation that supports the work of Rape Crisis Centres across England and Wales working to raise awareness and understanding of sexual violence and abuse in all its forms. RCEW are the national umbrella body for the network of autonomous member Rape Crisis Centres across England and Wales. RCEW exists to improve services and promote the needs and rights of women and girls who have experienced sexual abuse, rape and all forms of sexual violence. RCEW also works towards the elimination of sexual violence and abuse, raising awareness in the wider community and with government. RCEW is a Charitable Incorporated Organisation (CIO), registered charity 1155140.

### **Rights of Women**

Rights of Women are a women's charity working in a number of ways to help women through the law. Their vital services aim to provide women with the legal advice and information they need to understand and use the law and their legal rights. They also work to improve the law for women and increase women's access to justice. Registered charity 1147913 and Company Limited by Guarantee No. 8002509.

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