



# RESPONSE TO CALL FOR EVIDENCE BY THE COMMISSION ON JUSTICE IN WALES

## ABOUT THE WORK OF THE CHARITY

1. FNF Both Parents Matter Cymru is a Wales based charity supporting the rights of children to maintain direct contact and a meaningful relationship with both parents following divorce or separation. We support parents (primarily fathers) and grandparents who are being denied a relationship with the children they care about. In responding to the needs of our service users we have developed a specialist domestic violence support service for men – where the abuse they are suffering is linked to child contact issues.
2. The charity operates across the whole of Wales through a telephone helpline (c900 callers per annum) and a network of 10 face to face support meetings from Bangor to Newport and Carmarthen to Mold. Around 1,000 people a year attend these support meetings. Running in parallel with the meetings we deliver the largest number of LawWorks legal advice clinics in Wales through volunteer solicitors providing pro-bono specialist advice to parents on a one to one basis.

## CONTEXT OF OUR SUBMISSION

3. The charity's primary area of interest is the Family Justice system, although the developing work around domestic violence also covers the criminal justice system to an extent.
4. We seek to represent the needs, wishes and perspectives of service users of the Justice system rather than those of lawyers and other professionals.

## OVERVIEW

5. We have considered the five work streams, nine principles and the fourteen questions set out in the call for evidence. As our remit is narrower than the overall call for evidence we felt it was more appropriate to focus our response thematically around Family Justice rather than to comment on areas beyond our remit eg on legal education, debt and housing advice etc. We have sought to identify question numbers in our responses where appropriate.
6. **KEY POINTS**
  - **Confidence in the Family Justice system is low and requires a litigant focussed re-imagining. We highly commend the work of Professor Richard Susskind to the Commission in terms of the innovative approaches that he is advocating for the development of citizen centred legal solutions<sup>i</sup>**

- **Cuts to Legal Aid for Private Law proceedings have disproportionately disadvantaged men.**
- **Domination of the domestic abuse agenda and consequent funding has created a serious imbalance in the outcomes between men and women who are victims / survivors of abuse.**

## **THE FAMILY JUSTICE SYSTEM – Questions 1—3**

### **Public Law**

7. *'I believe we take too many children into the care of local authorities. We need to do more to repair families where we can instead of rescuing children and putting them into care..'*<sup>ii</sup>
8. These are the words of Professor Mark Drakeford AM published in a Ministerial statement in 2015 when he was Minister for Health and Social Services. He repeated these words at the Family Justice Network stakeholder meeting in Cardiff in January 2016. In the following month Wales saw a record number of applications for s31 care proceedings by Local Authorities (n.88)<sup>iii</sup>. In the twenty six months following (to May 2018) this record figure has been beaten on 13 occasions. It is significant to note that in the financial year ending March 2009 a total of 422 applications to remove children from their parents were made by Local Authorities in Wales. Nine years later that had increased to 1050 (ibid). Others – including notably Sir James Munby, President of the Family Division, have also drawn attention to the crisis in the care system caused by the dramatic and uncontrollable rise in applications to remove children from their birth families.
9. Parents and grandparents tell us that social workers fabricate evidence against them. Many are dissatisfied with the service they receive from their own legal team despite that being provided through non means tested Legal Aid. All tell us that they feel powerless against a state system that appears to have decided the case from the outset. Public confidence in the system has collapsed. Geographical analysis of the prevalence of Public Law s31 care applications across Wales would highlight major structural problems in some areas eg Gwent.

### **10. Recommendations**

- That the Improving Outcomes for Children Ministerial Advisory Group engages with children, parents and families to ensure that their views are placed at the centre of the review and takes note of the Care Crisis Review reports<sup>iv</sup> – including specifically the views of parents and other family members<sup>v</sup>
- Develop and implement a modified version of the PACE (Police and Criminal Evidence Act) protocols to be used by social workers (including Cafcass Cymru Family Court Advisers) whenever they rely upon evidence of discussions and interactions with parents and family members in matters relating to Public Law (as well as in Private law cases – see later section)

- Provide legal support to grandparents & kinship carers seeking to oppose s31 Orders

## Private Law

11. *'The family justice system was the most negatively experienced by survivors who participated in this consultation. Every focus group highlighted significant criticism in relation to family court processes, child contact proceedings and the consideration given to domestic and sexual abuse.'*<sup>vi</sup>
12. These words used in the report by Welsh Women's Aid entitled 'Are you listening and am I being heard' clearly illustrate the problems that beset the Family Justice system in Wales (as in England). The report brought together 66 survivors of domestic abuse (only one of whom was male) in focus groups across Wales to capture their experience of domestic violence and abuse. The report then carried on in page 40 to state the following:
13. *'Survivors in many areas talked about their experience of perpetrators using the family court system to continue to abuse and control them.'*
14. The significance of this is profound. The service users of our charity – predominantly fathers excluded from the lives of the children they care about – tell us that they too find the Family Justice system damaging, unhelpful and a forum in which they will face unfair and untrue statements requiring them to prove that they are safe to have a relationship with their own children. Service users of the Family Justice system are therefore united in many ways in their criticism of the system we currently endure. Many men, and it seems also women, believe that the system is designed by lawyers for lawyers.
15. Men comprise over 70% of applicants for Private Law s8 Orders. In terms of applications for some form of 'contact' with children men account for around 94%<sup>vii</sup> This clearly reveals the fundamental structure of Private Law – mothers act unilaterally to prevent contact and men are forced to seek the help of the Family Court to have any prospect of a relationship with their children.
16. The question that we have asked both of the Ministry of Justice and the President of the Family Division is **'What is the lawful basis on which one person with PR prevents the child from a relationship with another person with PR without a Court Order to that effect'**. We have never received a response to this fundamental question. This illustrates the inadequacy of the system – which fails to define 'normality' in a way that children and parents can understand. This lack of clarity pushes more people towards litigation to resolve the arrangements for the care of their children.
17. **Recommendations**
  - Require Cafcass Cymru FCAs (and Local Authority social workers where they write reports for Courts in Private Law proceedings) to adopt a modified version of PACE

(see note above re Public Law) if they seek to rely upon any statement or interaction with a party or other relevant individual in reporting to the Family Court.

- Establish an inquiry into the exercise of the Family Justice system in Wales – specifically examining options for alternatives to the existing adversarial system of Private Law - establishing ‘norms’ of expectations for the shared care of children grounded in the existing Wales specific legislation such as the Rights of Children and Young Persons (Wales) Measure 2011.

#### **LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT (LASPO) – Question 4, 10**

18. The impact of LASPO on women has been widely reported due largely to the work of organisations such as Women’s Aid and Rights of Women.<sup>viii</sup> However the impact on men has been much less reported or studied. Our charity undertook a research project using the Rights of Women survey questions to better understand the experience of men around Legal Aid for Private Law family disputes.<sup>ix</sup> This revealed that men were twice as likely not to have the necessary evidence of domestic violence and abuse to qualify for Legal Aid.
19. Applications from men for Private Law Legal Aid have collapsed from approximately 40% prior to LASPO to just 15% by 2016.<sup>x</sup> This has resulted in a major structural problem for men who lack the financial ability to pursue access to justice when a controlling parent has acted unilaterally to prevent or diminish contact.
20. Bringing back Legal Aid at pre LASPO levels would not however be the answer. Simply having more barristers and solicitors involved In Private Law might be of interest to professionals in the legal system who bemoan the rise of the Litigant in Person, but parents tell us that they want a much clearer system that prioritises problem solving rather than encouraging ‘pre-emptive strikes’ to ‘capture’ the child/ren and deny contact or the making of false or spurious allegations of abuse to acquire Legal Aid.

#### **21. Recommendations**

- Create parent and child friendly guidance grounded in the Wales specific Child’s Rights legislation already in place that prioritises the needs of children and the duties of parents to share their care post separation.
- Support greater access to Private Law Legal Aid funding for men who have been disproportionately affected by the changes to LASPO regulations.

#### **DOMESTIC VIOLENCE AND ABUSE – Questions 1, 4, 6, 7, 10**

22. The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 has had the desired effect of prioritising the needs of women as victims of abuse and marginalising and diminishing the access to help for men who are also experiencing domestic violence and abuse.
23. The National Strategy<sup>xi</sup> sets out a range of Priority Groups who need special help and support to recover from the abuse that they have suffered. These groups include

women, Migrant, refugee and asylum seeking women, Black and Minority Ethnic communities, Female survivors who commit offences. Men are conspicuous by their absence from the National Strategy – except where this is to affirm the needs of women for ‘safe separate provision from men’ (page 12)

24. Men report that they face systemic prejudice from a range of third sector and statutory services often resulting in them being told to ‘man up’ or ‘grow a pair’ by Police and other statutory services when reporting abuse that they have suffered.
25. The lack of provision for support services for male victims of abuse in Wales proportionate to their numbers and needs has resulted in a significant imbalance in the justice system both in terms of Family and Criminal Justice systems.
26. Data shared by the North Wales and the Gwent VAWDASV strategy teams show that while men account for between 25 and 35% of recorded victims of domestic violence and abuse they represent around 1-2% of individuals who have received help and support. This gender help gap is further exacerbated by the extent to which funding of services has prioritised the needs of female victims of abuse to a disproportionate level.
27. The training of frontline services by feminist organisations – for example through the ‘Ask and Act’ framework funded by Welsh Government but designed and delivered by Welsh Women’s Aid – has resulted in all frontline public sector staff receiving training that marginalises the experience of men and creates a presumption that an allegation is true. Training materials that we’ve seen explicitly tell health professionals to accept what their patients tell them and to signpost them to Welsh Women’s Aid for further help and support.

PAUL APREDA MA, MBA

National Manager FNF Both Parents Matter Cymru - June 2018

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<sup>i</sup> <http://www.susskind.com/>

<sup>ii</sup> <https://gov.wales/newsroom/health-and-social-services/2015/150930adopt/?skip=1&lang=en>

<sup>iii</sup> <https://beta.gov.wales/sites/default/files/publications/2018-06/Cafcass-Cymru-2018-04-Section-31-Applications-to-May-18.pdf>

<sup>iv</sup> <https://www.frg.org.uk/involving-families/reforming-law-and-practice/care-crisis-review#stakeholders-and-advisers>

<sup>v</sup> [https://www.frg.org.uk/images/Care\\_Crisis/Family-Survey-Results-FINAL.pdf](https://www.frg.org.uk/images/Care_Crisis/Family-Survey-Results-FINAL.pdf)

<sup>vi</sup> <http://www.rhianbowendavies.com/wp-content/uploads/2016/09/Are-you-listening-and-am-I-being-heard-FINAL-July-2016.pdf> p39

<sup>vii</sup>

<http://www.nuffieldfoundation.org/sites/default/files/files/Executive%20Summary%20with%20full%20disclaimer.pdf> p4

<sup>viii</sup> <http://rightsofwomen.org.uk/wp-content/uploads/2014/09/Evidencing-domestic-violence-V.pdf>

<sup>ix</sup> <https://www.fnf->

[bpm.org.uk/image/upload/branch/cymru/Evidencing\\_DV\\_FINAL\\_report\\_for\\_publication.pdf](bpm.org.uk/image/upload/branch/cymru/Evidencing_DV_FINAL_report_for_publication.pdf)

<sup>x</sup> Data shared with FNF BPM Cymru by Legal Aid statistics team 21/10/2016

<sup>xi</sup> <https://gov.wales/docs/dsjlg/publications/commsafety/161104-national-strategy-en.pdf>