

# Domestic abuse in financial remedy proceedings



SCAN FOR THE FULL REPORT

Resolution's Economic Abuse Working Party was formed to consider the relationship between domestic abuse and the division of finances on separation and/or divorce/dissolution, and how domestic abuse is addressed in these and other financial proceedings relating to families and their children.

The working party's research<sup>1</sup> found that 80% of family justice professionals believe domestic abuse and specifically economic abuse is not sufficiently taken into account in financial remedy proceedings; 85% said it is not sufficiently taken into account in Schedule 1 (awards for parents of children) and 87% in cases where the separating couple have cohabited but not been married.

Resolution's view is that the current approach of the courts to s25(2)(g) of the Matrimonial Causes Act 1973 i.e. *conduct* leads to unfair outcomes for some victim-survivors of domestic abuse. This report does not set out to achieve a final recommendation about how to resolve that complicated issue, but Resolution will continue to consider this issue.

In any event, Resolution calls for a cultural shift from all family justice professionals to better meet the needs of victim-survivors of domestic abuse seeking the resolution of finances on divorce. Resolution recommends:

- The Family Procedure Rule Committee should consider changes to the Family Procedure Rules 2010 to ensure that parties are safeguarded from ongoing domestic abuse.
- It should be made clear as a matter of law that the duty of full and frank disclosure will usually start before any court proceedings.
- In certain circumstances, the balance usually shifts away from any form of Non-Court Dispute Resolution continuing.
- The Institute of Family Law Arbitrators and the Lead Judges of the Financial Remedies Court should work with Resolution and others to develop an expedited procedure to convert financial arbitration awards, and agreements reached at private FDRs, into court orders to avoid delay which can leave victim-survivors vulnerable.
- Lead Judges, in consultation with Resolution and others, should introduce amendments to the Financial Remedies Court Efficiency Statements to include specific reference to the need to ensure that financial remedy proceedings are not used by perpetrators to facilitate ongoing abuse.
- Further consideration should be given to measures to help ensure that victim-survivors are financially supported between the time of separation, and the final outcome of a financial remedies application.
- A review of the legislation relating to Legal Services Payment Orders in order to recognise that post-separation economic abuse may be in play to obstruct a victim-survivor of domestic abuse from accessing resources to instruct a lawyer to help resolve their finances on divorce; and greater awareness of this risk.

1. The survey was open to family justice professionals for six weeks at the start of 2024. The survey received 526 full responses.



*“Victims and survivors know all too well that domestic abuse doesn’t always end when a relationship does. This report sheds light on the prevalence of economic abuse as a tool of coercive control, highlighting that abuse often continues post-separation, including within the Family Court and in financial proceedings.”*

*“In recent years through the Pathfinder Courts – currently in four court areas – there have been strides in the Family Court’s understanding of the impact of domestic abuse on each child. This type of working needs to be expanded, and it must be built on to incorporate a clear understanding of post-separation abuse within financial proceedings.”*

*“It is also vital that the Family Court recognises economic abuse as domestic abuse, in line with the law, and acts accordingly. The findings in this report underline the urgent need for an abuse-informed Family Court to fulfil the ambitions of the Domestic Abuse Act 2021, including recognising children as victims in their own right.”*

**Nicole Jacobs**

**Domestic Abuse Commissioner**

- Financial thresholds and requirements for legal aid are reviewed, so that victim-survivors can more easily access legal aid to which they are otherwise entitled as such victim-survivors in financial remedy, Children Act 1989 Schedule 1 (Schedule 1) Trust of Land and Appointments of Trustees Act 1996 (TLATA) cases.
- Legal aid rates in this area are increased, to make it commercially viable for legal aid providers to act for victim-survivors in these types of proceedings.
- Lead Judges and the legal profession should co-operate, to ensure that the consequences of any non-compliance with a financial remedy order should be decided at the time of the making of the order, especially if enforcement proceedings seem likely.
- The Government should introduce, at the earliest opportunity, the Law Commission’s 2016 recommendations to extend existing methods of enforcement and introduce new types of enforcement orders.
- An explanatory Practice Direction should be issued, in consultation with Resolution and others, setting out the approach in financial remedy proceedings where there is ongoing, or where there are allegations of, domestic abuse.

Resolution also supports the introduction of a procedure for a consolidated fact-finding hearing in cases before the Family Court if domestic abuse is likely to be a relevant factor in multiple proceedings (Children Act 1989, and/or domestic abuse injunctive applications, and/or financial remedy applications (when sufficiently serious)).

## Get in touch

Resolution is a membership organisation for professionals working in family law. Please note our office hours are 9am – 5.30pm, Monday to Friday.

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