



Justice Committee call for written evidence on court capacity Response from the Domestic Abuse Commissioner for England and Wales

The Committee is considering evidence on the following points

- The impact of Covid-19 on court sitting days and the backlog of cases, including whether the one-off additional funding and 4,500 additional days provided for 2020/21 is sufficient and staffing and recruitment issues;
- Practical experience of delay in Crown and other courts among lawyers, witnesses, victims and defendants and whether there is appropriate access to justice;
- The extent to which courts have appropriate capacity post-Covid-19, including the extent to which courtrooms are idle across England and Wales;
- Long-term solutions to reduce delay in cases coming to trial, including the move to the digital transformation of the court estate

Role of the Domestic Abuse Commissioner

The Domestic Abuse Bill will establish in law the office of the Domestic Abuse Commissioner, to provide public leadership on domestic abuse issues and play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales.

The role of the Commissioner is to encourage good practice in preventing domestic abuse; identifying victims and survivors, and perpetrators of domestic abuse, as well as children affected by domestic abuse; and improving the protection and provision of support to people affected by domestic abuse from agencies and government.

Background

The Covid-19 pandemic, and the necessary public health measures that have followed, have created a conducive context for domestic abuse. For many this has led to an escalation of domestic abuse and has closed routes for victims and survivors to safely escape during this period and for perpetrators to be held to account.

Research undertaken by Women's Aid has found that two thirds of survivors who were currently experiencing abuse reported that their abuser used lockdown restrictions and the Covid-19 pandemic and its consequence as part of the abuse.¹

¹ Davidge, S (Women's Aid), A Perfect Storm, August 2020: <https://www.womensaid.org.uk/wp-content/uploads/2020/08/A-Perfect-Storm-August-2020-1.pdf>

Lockdown restrictions and the fear of spreading the Covid-19 virus have made it more difficult for women to seek support or leave their abuser during lockdown. The same research from Women's Aid also found that over three quarters of survivors (78,3%, 36 out of 46) living with an abuser said they felt they could not leave or get away because of the pandemic.² During the full lockdown period (23 March to 31 May 2020) there was a 42% reduction in the number of refuge vacancies.³ This has largely been down to a lack of move on accommodation for those already in refuge; a lack of interpreters during the pandemic; a fear of spreading the virus in communal accommodation; and a lack of PPE for refuge staff and residents during this period.

People subject to domestic abuse face a significant number of barriers to accessing and navigating the criminal justice system, including the court system. Many of these issues have been further exacerbated by the Covid-19 pandemic. Prior to the pandemic, there was already a significant backlog of criminal cases awaiting trial, and as a result, huge delays faced by survivors in accessing justice. The HM Crown Prosecution Service Inspectorate report into the CPS response to the Covid-19 pandemic between 16 March to 8 May 2020 found that in the magistrates' courts, live case numbers increased by 35,000 during this period.⁴ The backlog in the Crown Court has increased by more than 1,700 cases in this ten-week period. The same report also estimated that trial backlogs in the magistrates' courts have increased by 32% between the beginning of March and early May, from 12,100 to 16,000. In the Crown Court, the estimated increase is 43% (from 17,400 to 24,900).

Survivors of domestic abuse must be at the forefront of recovery planning to reduce and clear court backlog. I strongly welcome the opportunity to respond to this consultation to provide evidence on the impact of court capacity on survivors of domestic abuse and the solutions required to ensure that people subject to domestic abuse are able to access and navigate the justice system in a timely manner and in a way that minimises further harm moving forward.

The impact of Covid-19 on court sitting days and the backlog of cases, including whether the one-off additional funding and 4,500 additional days provided for 2020/21 is sufficient and staffing and recruitment issues.

The Covid-19 pandemic has significantly reduced the number of court sitting days available for cases relating to domestic abuse and we have heard reports of significant backlogs across England and Wales. At the start of the pandemic most cases, with the exemption of custody cases, were adjourned. We have heard reports

² Davidge, S (Women's Aid), A Perfect Storm, August 2020: <https://www.womensaid.org.uk/wp-content/uploads/2020/08/A-Perfect-Storm-August-2020-1.pdf>

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⁴ HM Crown Prosecution Service Inspectorate, CPS response to Covid-19: 16 March to 8 May 2020. An inspection of the CPS during the period prior to and during the national lockdown, (June 2020): <https://www.justiceinspectors.gov.uk/hmcpis/wp-content/uploads/sites/3/2020/06/2020-06-24-COVID-19.pdf>

that the backlog of domestic abuse cases is particularly significantly in the crown court compared to the magistrates' court.

We have been particularly concerned to hear reports that defendants who receive a postal requisition, or a magistrates' court summons, and would normally have their cases heard in the magistrate's court within a four to six-week period, are waiting for periods of up to twelve weeks before their case is heard in court. These cases are often deemed to be less serious and therefore there are no bail conditions applied. While we welcome the Home Office's proposals to make changes to the Bail Act to address this issue, for now, large numbers of domestic abuse perpetrators are not subject to bail conditions. This creates a highly dangerous situation for victims of domestic abuse, and further delays in listing these cases during this period has placed victims at an even greater risk of harm.

During the Covid-19 pandemic there has also been a decrease in the number of people remanded in custody awaiting trial in order to help mitigate the health risk posed to the prison populations by the virus, as well as avoiding a breach of the 56-day custody time limit in the magistrate courts. This has led to heightened levels of risk and fear for victims and survivors of domestic abuse who have reported a crime and may well contribute to others not reporting at all. Furthermore, we have concerningly received reports of cases which having had bail conditions initially applied, due to administrative adjournments during this period, these bail conditions have been missed and therefore not recorded on PNC, again placing victims and survivors in greater danger.

Practical experience of delay in Crown and other courts among lawyers, witnesses, victims and defendants and whether there is appropriate access to justice

As outlined above we have heard reports that there are particularly significant delays in the Crown court, as they were closed completely during the full lockdown period, with the exemption of custody cases. As these courts have been opening, they are being prioritised for custody cases to avoid these cases breaching their 56-day custody limits.⁵ As a result, there have been a number of delays to domestic abuse cases where the defendant has not been placed in custody, with some cases not listed until late 2021. There are already high attrition rates with regards to the prosecution of domestic abuse cases. Long delays for a court date are likely to compound this problem.

In addition to the barriers for victims and survivors to access justice as a result of court delays, specialist domestic abuse services that provide support to people who are subject to domestic abuse have had to operate a reduced service during this period, largely as a result of high demand and public health measures. This has significantly impacted the ability of survivors to access justice during this period.

⁵ HM Crown Prosecution Service Inspectorate, *CPS response to Covid-19: 16 March to 8 May 2020. An inspection of the CPS during the period prior to and during the national lockdown*, (June 2020): <https://www.justiceinspectors.gov.uk/hmcpsi/wp-content/uploads/sites/3/2020/06/2020-06-24-COVID-19.pdf>

In addition, vital support provided by translators and intermediaries to survivors of domestic abuse navigating the court system, which was already difficult to arrange pre-pandemic, has been operating a more limited service as a result of Covid-19.⁶ This has particularly been the case for female translators, who due to the highly gendered nature of domestic abuse, are vital to help support survivors and ensure that their needs are sensitively met. There have been reports that there is often no one available to translate at short notice and so survivors have been told to come back on another day to report a crime or to arrange their own interpreter.⁷

The extent to which courts have appropriate capacity post-Covid-19, including the extent to which courtrooms are idle across England and Wales

Specialist Domestic Abuse Courts (SDAC) operate across many areas of England and Wales to provide survivors of domestic abuse with the support needed to help successfully access and navigate the court system. They are specially adapted magistrates' courts hearings which seek to increase the number of successful prosecutions and improve safety for victims.

Key features of the SDAC:⁸

- Identification of cases by trained police officers who are able to carry out a full risk assessment
- The provision of Independent Domestic Violence Advocates (IDVAs) to provide a point of contact for the court and involve, and advocate for, victims and survivors in decisions affecting them and their children. They will help familiarise victims and survivors with the court setting and accompany them in court. The Domestic Commissioners' office is currently in the process of commissioning research on the provision of court-based IDVAs across England and Wales and would welcome the opportunity to share these findings with the Justice Committee.
- Criminal justice staff who are specially trained in the dynamics of domestic abuse.
- Clustering of domestic abuse cases to help better facilitate the provision of specialist services.
- Court facilities that support victims and survivors to provide their best evidence, including separate entrances, exits and waiting facilities.

⁶ End Violence Against Women, Imkaan, Centre for Women's Justice, Rights of Women and Rape Crisis England and Wales, *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) in England & Wales*, (August 2020), <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Access-to-Justice-for-Women-Girls-during-Covid-19-Pandemic.pdf>

⁷ End Violence Against Women, Imkaan, Centre for Women's Justice, Rights of Women and Rape Crisis England and Wales, *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) in England & Wales*, (August 2020), <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Access-to-Justice-for-Women-Girls-during-Covid-19-Pandemic.pdf>

⁸ Vera Baird, *Specialist Domestic Violence Courts- How special are they?*, (July, 2018). https://sigbi.org/lichfield/files/2020/05/OPCC_037_Specialist-domestic-violence-courts-Court-Observers-Panel-A4-booklet-2018-V2.pdf

- Multi-agency partnership working, linking the SDACs and local Community Safety Partnerships.

To help reduce the backlog and manage issues of capacity there are a number of areas around the country where court capacity, that would ordinarily be used for a SDAC, is being allocated to non-domestic abuse cases. There are also examples of areas, where in an attempt to reduce the backlog, domestic abuse cases are not being clustered together and heard in a SDAC. The Domestic Abuse Commissioner strongly recommends that specialist domestic abuse courts are reinstated as a matter of urgency and are not deprioritised in an attempt to maximise court capacity during this period

Another key measure to help reduce the backlog is to move cases to courts outside of their local justice area. This presents a number of key issues for survivors of domestic abuse in terms of accessing justice. As outlined above, given the nature of domestic abuse and the adversarial nature of the court system, it is essential that survivors of domestic abuse are able to access a range of specialist support services in order to help navigate the criminal justice system and provide the best account of their evidence. Requiring survivors to travel long distances to attend a court hearing makes it much less likely that they will be able to continue to access support from the specialist local domestic abuse service throughout the process. This local specialist support could include an IDVA service and specialist by and for domestic abuse services.

Long-term solutions to reduce delay in cases coming to trial, including the move to the digital transformation of the court estate

Section 28 (s.28) of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) allows vulnerable and intimidated witnesses to video record their cross-examination before the trial. This forms part of a range of measures to support vulnerable or intimidated victims and witnesses to give their best evidence and help reduce some of the anxiety of attending court. Section 28 was piloted in Leeds, Liverpool and Kingston-upon-Thames Crown Courts from December 2013 for child witnesses under the age of 16 and those eligible for assistance by reason of disability. During the Covid-19 pandemic we have seen an acceleration in the roll out of this practice in the Crown Court for witnesses who are considered to be especially vulnerable, particularly across the South-East of England. The Domestic Abuse Commissioner strongly recommends ensuring that this provision is made available to all victims and survivors of domestic abuse across England and Wales in order to support them to provide their best evidence, as well as helping to reduce delays in cases coming to trial. Currently the use of pre-record evidence is more prevalent in the Crown court. The Domestic Abuse Commissioner recommends that further investment is provided to magistrates' courts in particular to provide the digital resources needed to allow for this provision and the training of staff to operate new facilities. Furthermore, while the use of pre-record evidence is an essential feature to help provide support to victims and survivors accessing the justice system, it should still be the cases that people in this situation should be given the choice to provide evidence in person.

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