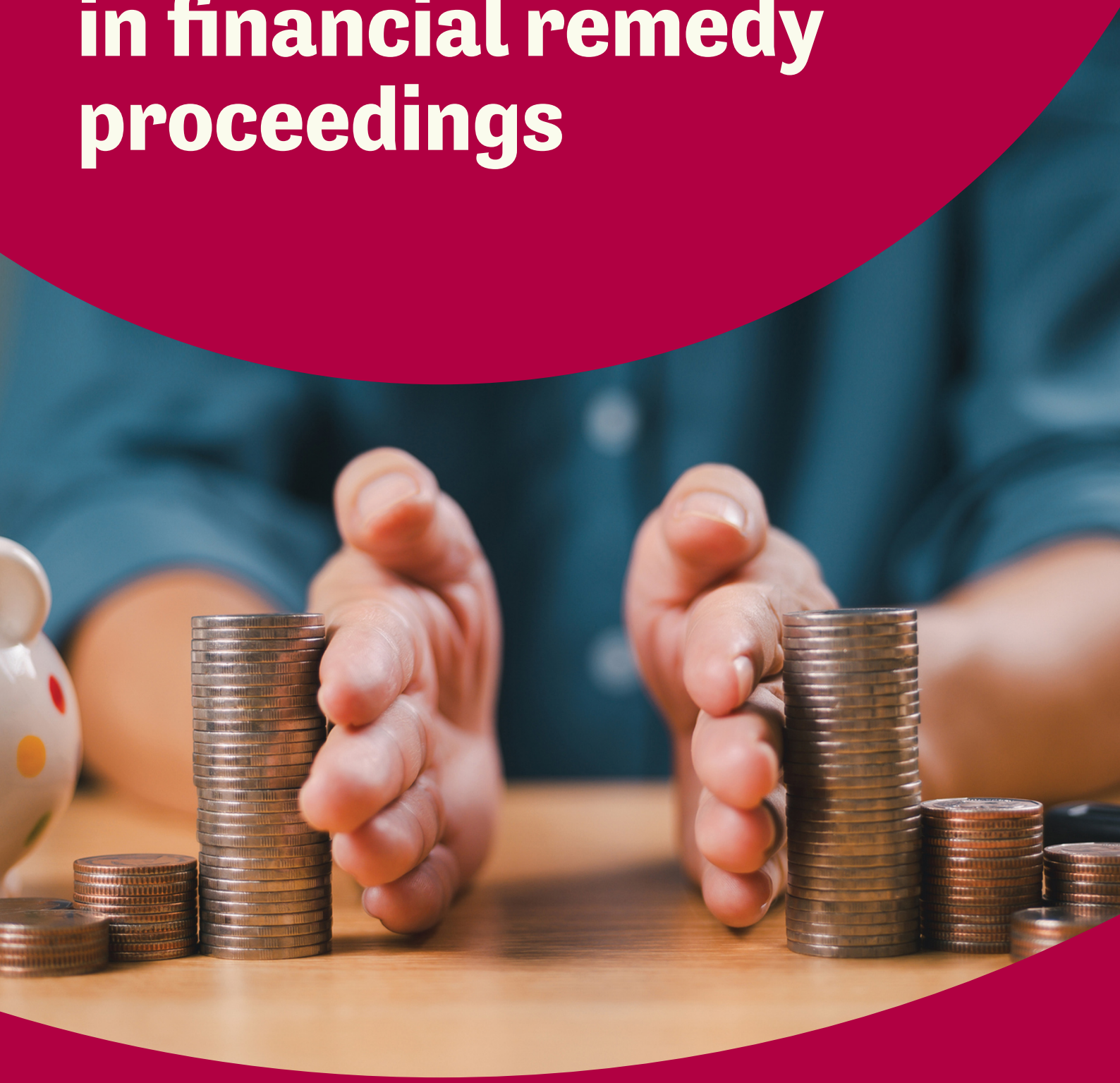
RESOLUTION REPORT

Domestic abuse in financial remedy proceedings



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Foreword

This is a groundbreaking report into the interplay between domestic abuse and the treatment of finances on separation and divorce. The report comprises Resolution's research, analysis, and proposals for legal and procedural change. It has been an18-month project to get to the point where we can make recommendations, but we recognise that the work in this area is only just beginning.

Family justice professionals have long been familiar with litigants that attempt to prevent their former partners from receiving a fair financial settlement on separation. Withholding funds, hiding assets, delaying, bullying, and breaching court orders are persistent problems that professionals must grapple with. However, it is only following recent developments we have come to understand that these behaviours are post separation domestic abuse.

I invite everyone who works in this area to read the experiences of the victim-survivors. Every one of us can point to cases we are dealing with at any one time which are beset with these issues. It is so powerful to see these descriptions brought together, and to see that these accounts are supported by professional concern. I thank the victim-survivors for being willing to share their experiences at such a difficult time in their lives.

This report voices a powerful call for change from professionals. Resolution recognises that any change must take into account that the family justice system is underfunded, and resources are already stretched. It is also recognised that any changes which increase delays in the court system will do more harm than good for victim-survivors. However, we all know that so many of the people we are trying to help are or have been subject to domestic abuse. If anything, this makes addressing domestic abuse an even higher priority. This pressing issue needs to be brought into focus, so we can ask what we can do to make sure victim-survivors are protected and the outcomes they receive are fairer. Whilst we continue to ignore the elephant in the room, we fail to protect some of the most vulnerable litigants in the family justice system.

As Chair of Resolution it has been inspiring to see how much work has gone into this project. On behalf of Resolution, I would like to thank all the contributors for the many hours, days and even weeks of time they have spent conducting this research and developing this policy in line with our Vision for Family Justice.[1] This has involved co-operation across a network of Resolution Committees, as well as contributions and effort from many stakeholders in the area.

Resolution will now be liaising with policymakers, senior judiciary, and other stakeholders, including the FLBA, to seek to implement these recommendations. I hope that every professional who reads this report will work with us and do their part to help us bring about positive change.

Grant Cameron
Chair of Resolution

Endorsements

"I congratulate Resolution on this significant contribution to the ongoing discussion of how, and in what circumstances, processes and outcomes in the Financial Remedies Court can be improved for victims of domestic abuse. It is clear from the results of the survey put out by Resolution as a precursor to this report that a very significant number of those professionals responding believe that procedural and cultural improvements should be considered further."

"The FLBA recognises the long-term impact of domestic abuse and is supportive of a wide-ranging and detailed assessment of the areas of law and procedure that would benefit from a 'cultural shift' to acknowledge and reduce that impact."

"The FLBA looks forward to working with Resolution to consolidate the hard work, time and effort which has gone into producing this report, and to offer support to bring about many of the achievable aims and objectives which the report identifies so comprehensively. The FLBA will contribute, as a key stakeholder, to this ongoing and important debate."

James Roberts KC
Chair of the FLBA (on behalf of FLBA Money and Property Sub-Committee)

"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

"Resolution's report could not be timelier. The government has made a commitment to halve violence against women and girls in the next decade. This must include a distinct strategy for tackling economic abuse, which is currently being used by abusers to devastate the lives of 5.5 million UK women."

"Victim-survivors tell us all the time that domestic abusers are weaponsing divorce and financial remedy proceedings to coerce and control, with no safeguards in place to prevent this form of abuse. This is further compounded by restrictive legal aid means tests and a scarcity of legal aid solicitors, which forces victim-survivors to navigate complex proceedings without legal advice or support. Even more, they are forced to face the abuser alone."

"Despite the devastating impact of economic abuse, the courts currently fail to consider this when determining the division of assets. These prospects are even worse for cohabiting victim-survivors who have no legal rights or protections based on their relationship status. As a result of these failures, victim-survivors are left without the means to become free from a dangerous abuser and rebuild their lives post separation."

"We support the report's recommendations to amend existing civil court rules and procedures to consider economic abuse, to properly safeguard victim-survivors, and enforce court orders. We also support its calls for the government to improve victim-survivors' access to legal advice and representation, and urgently repair a broken legal aid system. These proposed changes will help deliver fairer outcomes for victim-survivors."

Sam Smethers
Interim CEO of Surviving Economic Abuse

Executive summary

The research

In mid-2023 Resolution convened a multi-disciplinary working party. It comprised specialist family law solicitors and barristers, representatives from the Family Law Bar Association (FLBA), family law academics, independent financial advisors and domestic abuse charities.

Resolution resolved to consider the relationship between domestic abuse and the division of finances on separation and/or divorce/dissolution (hereafter 'divorce'), and how domestic abuse is addressed in other financial proceedings.

The working party commissioned a survey to understand the reported incidence of domestic abuse, and to consider what impact any abuse has on the outcome. That survey was open to all family law professionals; it was shared on social media and distributed by Resolution and the FLBA to their members. The survey received 526 full responses. The working party then sent out a follow-up questionnaire to professionals who volunteered to share further insights asking them to give examples from their practice about where they had concerns, and what they thought should change. The results of the survey and questionnaire are in the report.

The report reveals that c.80% of professionals believe domestic abuse and specifically economic abuse is not sufficiently taken into account in financial remedy proceedings. Professionals are even more concerned when it comes to unmarried families – 85% said it is not sufficiently taken into account in Schedule 1 (awards for parents of children) and 87% said it is not sufficiently taken into account where the parties have cohabited but not been married. Resolution has long said that the law needs to recognise that cohabiting families are still families. This report supports the call for family law remedies for every type of family.

Professionals voiced strong concern about the lack of availability of legal aid for victim-survivors, and the accessibility of funds, especially family money, to pay victim-survivors' legal fees. Failure to disclose assets and breaching court orders were persistent issues of concern. Finally, Resolution received personal accounts from victim-survivors who consider they have experienced ongoing domestic abuse whilst trying to divide the family finances.

Resolution's research was followed up with a workshop at the National Resolution Conference in May 2024. An Economic Abuse Summit was then convened in June 2024, where professionals debated proposals to consider what would be workable in practice. The aim was to achieve fairer outcomes, as well as to reduce abuse, from the point of separation until court orders are enacted.

Recommendations

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. In order to create this cultural shift, 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 to include consideration of:
  - an amendment to the overriding objective in Part 1 so that dealing with a case *'justly'* in r1.1(2) includes *'ensuring the parties are safeguarded from domestic abuse'*;
  - an amendment to Part 9 so that every case management decision in applications for a financial remedy is conducted in a way that will safeguard the parties from domestic abuse;
  - whether the court's case management powers can be better used where a party fails to provide full and frank disclosure in pre-proceedings correspondence or Non-Court Dispute Resolution (NCDR); and
  - an amendment to the costs rules in Part 28 to try to reduce the proceedings themselves being used as a form of abuse.
- It should be made clear as a matter of law that the duty of full and frank disclosure starts when parties start to engage in NCDR or negotiations i.e. that this duty will usually start before any court proceedings.
- Where (i) there is ongoing economic abuse by failure to disclose a party's finances within a reasonable timeframe; and/or (ii) a party does not have security that interim maintenance, bills associated with the family home and/or legal services payments are agreed (in cases where resources allow); and/or (iii) there are allegations of ongoing

domestic abuse, the balance shifts away from any form of NCDR continuing (at least without directions from the court to ensure disclosure is provided).

- The Institute of Family Law Arbitrators (IFLA) 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 so as 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, including consideration of the need for a review of the law and procedure relating to interim financial remedies.
- A review of the legislation relating to Legal Services Payment Orders (LSPOs) should take place as soon as possible, 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.
  - Pending this review, there needs to be greater awareness among the profession and the judiciary, that where there are sufficient resources for both parties to be represented but one party is being denied access to it for their legal fees and is forced into borrowing at a high rate of interest, this may be because of an abusive dynamic.
- 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. This should both clarify the current law around conduct and improve practice and procedure to better protect victim-survivors.

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)). Such a procedure would stop victim-survivors being required to give their evidence to the court more than once, as this can be re-traumatising for the victim-survivor. It would also save costs and court resources.

Resolution is clear 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. Resolution supports the aims of achieving fairer outcomes for victim-survivors, helping people reach agreement without litigation, and not over-burdening the already stretched court system.

"The Domestic Abuse Act 2021 finally recognised economic and financial abuse as forms of abuse. Victims must be protected in Financial Remedy courts, and we appreciate Resolution's extensive research and recommendations on this issue."

"We agree that a cultural change is essential to protect these parties and prevent abusers from using the court process to continue their abuse. However, this progress will be limited without increased legal aid rates to ensure the long-term sustainability of the family legal aid sector. The report echoes our call for changes to the means test and thresholds. We also urge the government to increase fees for the Qualified Legal Representative Scheme to prevent victims from being cross-examined by their abusers."

"Protecting domestic abuse victims at all stages of the family court process is crucial. These vulnerable individuals often face court proceedings without representation. We look forward to supporting Resolution in the next stage of their report."

The Law Society

Report

In this report, whenever the term domestic abuse is used, it means all forms of domestic abuse (as defined by s1 of the Domestic Abuse Act 2021) unless it specifically states to the contrary.

Domestic abuse is defined at s1(3) of the Domestic Abuse Act 2021 as follows:

'Behaviour is "abusive" if it consists of any of the following':

(a) physical or sexual abuse;
(b) violent or threatening behaviour;
(c) controlling or coercive behaviour;
(d) economic abuse (see subsection (4));
(e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.'

Economic abuse is defined at s1(4) of the Domestic Abuse Act 2021 as follows:

'any behaviour that has a substantial adverse effect on the [victim]'s ability to (a) acquire, use or maintain money or other property, or (b) obtain goods or services'.

Introduction

Resolution is a membership body representing 6,500 family justice professionals, all promoting a non-confrontational approach to resolving family issues, and campaigning for better laws and support for families undergoing family change.

In mid-2023 Resolution convened a multi-disciplinary working party. It comprised specialist family law solicitors and barristers, representatives from the FLBA, family law academics, independent financial advisors and domestic abuse charities.

The working party was convened following the Domestic Abuse Act 2021 coming into force, the significant advances in the Family Court's understanding of domestic abuse in recent years, and the landmark cases of *Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings)*[2] and *Re K*[3] relating to private law children proceedings. There has also been a large increase in the number of personal protection orders being made since 2011 (with the number of applications in the latest quarter for which there are published figures almost double those made since the series of statistics began in 2011).[4]

As a result, Resolution resolved to consider the relationship between domestic abuse and the division of finances on separation and/or divorce/dissolution (hereafter 'divorce' shall be used to encompass both)[5], and how domestic abuse is addressed in other financial proceedings.

> *"The working party was convened following the **Domestic Abuse Act 2021** coming into force and the significant advances in the Family Court's understanding of domestic abuse in recent years."*

Experiences of victim-survivors

During this process, Resolution received these descriptions from victim-survivors who consider that they have experienced ongoing domestic abuse whilst trying to divide the family finances.

Resolution recognises that people of all genders can be subjected to domestic abuse from their partner and the recommendations made in this report are made to protect all victim-survivors. However, it is well documented that the majority of domestic abuse is perpetrated by men against women, so much of the research has identified the experiences of women. The identity of the victim-survivors has been kept anonymous:

A. *I fled the matrimonial home because my husband repeatedly strangled me, threw objects at me, raped, and threatened to kill me. I believe he would have killed me if I had stayed. I am too frightened to apply for an occupation order and feel that doing so will put me at further risk. He is now occupying our house, but I have to continue paying towards it otherwise my credit rating will be damaged. I also have to pay my own rent. My ex has no incentive to settle. I have been advised that the abuse I have experienced in the marriage is not going to impact the outcome of the case. He has provided a Form E but it is meaningless as half of his documents are missing. I went to a MIAM and the mediator said that mediation was not appropriate due to domestic abuse, but the Judge has now adjourned the case for us to try mediation before returning to Court.*

B. *My ex-husband and I had arbitration to resolve our finances. The arbitrator made an award saying that the house should be sold with the proceeds going to me. However, we have never managed to agree the terms of the order and now my ex is saying that circumstances have changed and the award is no longer appropriate. He is refusing to sell the house and as we do not have a court order, I am struggling to enforce the award. It is a living nightmare and has been terrible for my mental health. I can't see any end in sight.*

C. *... the whole process has been deeply traumatic and exhausting. From separation it has taken four years, as it required enforcement proceedings. My ex repeatedly breached orders, lied, and got away with it. It was a game to him, and the court was completely unequipped to protect me from this financial abuse. The emotional and financial detriment to me has been severe and will be long lasting.*

D. *I was pressured by my ex to try mediation. We were in mediation for over a year. My lawyer said there was not enough information about the finances for her to advise me on a settlement, but we made offers. Now I think all of that was a delaying tactic by him because he now says the business (which used to be my business) has gone bust. I am under huge financial pressure. I applied for a LSPO and the judge made a pound for pound order so my ex stopped instructing lawyers. I cannot afford further legal cost and he isn't paying any maintenance ...*

E. *Eighteen months before separation, my husband persuaded me to sell our previous home and put all of my personal savings and investments into a new family home. On separation, I was forced to leave the new family home – I cannot safely stay in it with my husband, but nor can I stay in it alone as I cannot financially maintain it myself. My husband has refused to sell or agree to re-mortgage whilst we went through the process of resolving our finances. He also repeatedly threatened to stop paying the mortgage and other associated costs. I am now forced to live in a small rental property in a different town (many miles away from where I have lived for all of my life). I have lost my job and my support network. The Deputy District Judge at the first hearing seemed to pick up on the coercive and controlling behaviour I had experienced, but did not seem to have the power to do anything about it.*

Survey and follow-up questionnaire

The working party commissioned a survey to understand the reported incidence of domestic abuse between the parties in financial remedy cases and to consider what impact any such abuse has on outcome. The survey also asked questions about proceedings involving cohabitants and separated parents. The survey was open for six weeks at the start of 2024. It asked questions about domestic abuse generally, and economic abuse specifically.

The survey was distributed by Resolution and the FLBA to their members. It was also shared on social media by Resolution, the FLBA, members of the working party and other professionals.

Whilst the identity of the professional respondents to the survey was kept anonymous, it asked in which area of the England and Wales the professional was based to see if there were regional variations. The responses indicated that regional differences did not exist.

In March 2024, the working party sent out a follow-up questionnaire to the professionals who had volunteered in the original survey to share further insights. The follow-up questionnaire was open for six weeks in the lead up to the changes to the Family Procedure Rules 2010 relating to NCDR which came into effect on 29 April 2024.[6] The follow-up questionnaire asked professionals to give examples from their practice of when they had been concerned about the law, or how it was applied, and the impact on the outcome of the case. Finally, professionals were asked what change or proposal they would like to see to achieve fairer outcomes.

Who responded to the survey

The survey attracted 526 full responses. That is a high response rate for a legal policy survey. The results are therefore considered to be representative of the views of Resolution's members. The biggest group of responses was from solicitors working in family law, but the respondents came from a wide cross-section of family justice professionals.

Please indicate your involvement in the family justice system:

Answer choice	Response percent	Response total
Barrister	26.2%	138
Solicitor	57.4%	302
Legal Executive	4.6%	24
IFA	0.0%	0
Financial Planner	1.3%	7
Mediator	2.1%	11
Other family justice professional (please specify)	8.4%	44
Answered		526

In respect of the 'other' family justice professionals, there were six judges, several paralegals, trainees, divorce coaches, and mediators.

The reported incidence of domestic abuse

There is a significant disparity between how often respondent professionals identified domestic abuse (and also specifically economic abuse) as an issue between separating couples when resolving their finances, and how often it was raised in court proceedings.

Three quarters of professionals said it was evident between the couple in more than 21% of cases.

How often has domestic abuse in the parties' relationship been evident as an issue when assisting parties to resolve their finances during cases with which you have been involved over the last 3 years?

More than 80%	8.7%
61% to 80%	15.4%
41% to 60%	26.2%
21% to 40%	24.7%

Almost two thirds of professionals considered economic abuse was evident as an issue between the parties in more than 21% of their cases.

How often has economic abuse specifically in the parties' relationship been evident as an issue when assisting parties to resolve their finances during cases with which you have been involved over the last 3 years?

More than 80%	6.3%
61% to 80%	11.2%
41% to 60%	22.6%
21% to 40%	25.1%

The high levels of domestic abuse amongst separating couples identified in the survey is consistent with the findings of other research:

Hitchings, Miles and Woodward, Assembling the jigsaw puzzle: Financial settlement on divorce (2013)[7]

- alleged conduct amounting to domestic abuse described in divorce paperwork in 25% of consent order cases and 38% of contested cases.

Hitchings et al, Fair Shares?[8] (2023) page 355

- 29% of divorcees cited abusive or controlling behaviour as a reason for the split. Women much more likely (41%) than men (16%) to mention abuse.

Despite the high proportion of cases in which domestic abuse has been identified, the largest group of responses (almost 30%) reported that domestic abuse had only been raised as an issue in fewer than 10% of their issued financial remedy proceedings.

How often has domestic abuse in the parties' relationship been raised as an issue in the proceedings?

	Percentage of replies
21% to 40%	18.8%
10% to 20%	18.6%
Fewer than 10%	29.1%

Likewise, the largest group of responses (32.7%) reported that economic abuse had been raised as an issue in fewer than 10% of their issued financial remedy proceedings.

How often has economic abuse in the parties' relationship been raised as an issue in the proceedings?

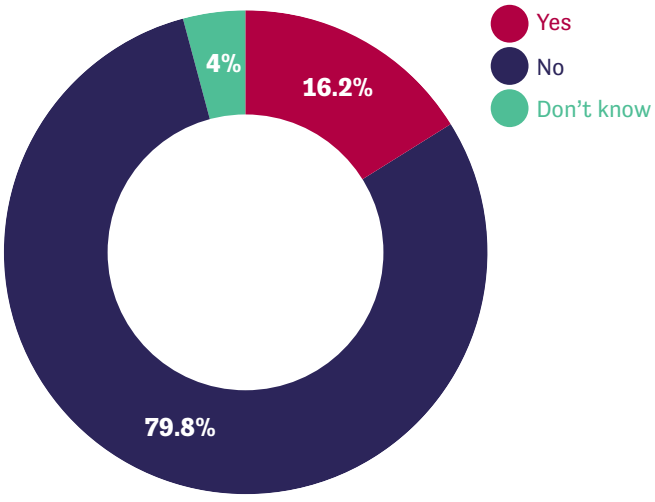
	Percentage of replies
21% to 40%	18.8%
10% to 20%	20.0%
Fewer than 10%	32.7%

It was expected that there would be a difference between the incidence of domestic abuse and how often it is raised in issued financial remedy proceedings, given the statutory test is that conduct should only be taken into account if *'it is such that it would in the opinion of the court be inequitable to disregard it'.* In *Tsvetkov v Khayrova*[9] Peel J stated at [43] (ii) that the conduct 'threshold' has *'consistently been set at a high or exceptional level' and in N v J*[10] *the same judge stated at [2] that 'conduct' is, in accordance with both statute and case law, only to be taken into account if it is of a highly exceptional nature.'*

Professional concern – domestic abuse

However, the survey found there is overwhelming professional concern that the long-term impact of domestic abuse is not sufficiently considered in financial proceedings between separating couples and parents. In respect of married couples and civil partners, 79.8% said domestic abuse is not sufficiently taken into account in financial remedy proceedings; whereas only 16.2% were satisfied it was sufficiently taken into account. The survey asked:

Do you think the long-term impact of domestic abuse generally (not limited to economic abuse) is sufficiently taken into account in proceedings, relating to married, or civil partners?



Resolution received the following examples of explanations as to why professionals have a concern:

- *I am concerned by the general approach of the Court to what conduct is relevant in financial remedy proceedings. There seems to be little understanding on the Northern Circuit of the long term debilitating effects of being subjected to domestic abuse, including financial abuse and coercive and controlling behaviour and their impact in respect of a party's ability to achieve independence in terms of finding work and being able to support themselves as well as a failure to understand that the result of being subjected to this behaviour may have led to acceptance of a certain way of living during the marriage because there was no alternative.* – Northern Circuit
- *During a financial remedy hearing, the Judge indicated that he would not take into account an allegation of marital rape as conduct.* – Northern Ireland

The email sent with the survey encouraged people who did not know the answer to a question, (because they were not practicing in a particular field) to select 'do not know' rather than guess at the response. Many respondents said they 'do not know' in response to questions about Schedule 1 proceedings, and cohabitation cases pursuant to TLATA, which is why the response group is smaller.

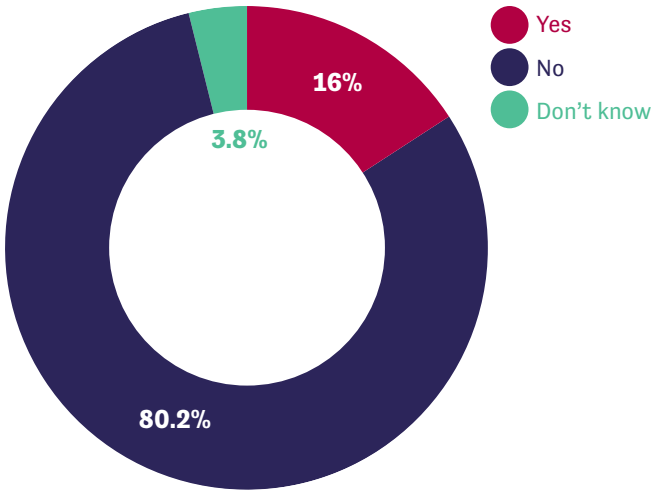
Schedule 1: Of the 333 professionals who responded in respect of Schedule 1 proceedings, 85% said the long-term impact of domestic abuse is not sufficiently taken into account.

TLATA: Of the 337 professionals who responded in respect of proceedings involving cohabitees, 87% said the long-term impact of domestic abuse is not sufficiently taken into account.

Professional concern – economic abuse

There was also very significant professional concern that the long-term impact of economic abuse specifically was not sufficiently taken into account in proceedings involving married or civil partners and/or cohabiting couples and parents. The survey asked:

Do you think the long-term impact of economic abuse specifically is sufficiently taken into account in proceedings, relating to married, or civil partners?



80.2% of the respondents said that economic abuse is not sufficiently taken into account.

Schedule 1: Of the 341 of professionals who responded in respect of Schedule 1 proceedings, 87% said the long-term impact of economic abuse is not sufficiently taken into account.

TLATA: Of the 369 professionals who responded in respect of proceedings between cohabiting couples, 90% said the long-term impact of economic abuse is not sufficiently taken into account.

> ***In respect of married couples and civil partners, 79.8% said domestic abuse is not sufficiently taken into account in financial remedy proceedings; whereas only 16.2% were satisfied it was sufficiently taken into account.***

Funding

Likewise, there was overwhelming concern about the ability of domestic abuse victim-survivors to access financial resources to instruct a lawyer to help resolve their finances.

Legal aid: Of the 459 people who responded, 90% said there was insufficient access to legal aid for victim-survivors in these proceedings.

The lack of a functional legal aid system generated the greatest concern amongst professionals. Legal aid is fundamental to a fair justice system and underpins the rule of law. It is the only provision that can properly level the playing field between victim-survivor and perpetrator in cases where parties cannot afford legal advice and representation.

Legal aid is notionally available for victim-survivors of domestic abuse in financial remedy, Schedule 1 and TLATA cases. However, due to the victim-survivors requiring prescribed evidence of domestic abuse, needing to pass the merits test, and then having to have very limited means (capital and income) to pass the means test, it is rarely available in reality.

The last government conducted a review of the means test and proposed a slight increase to both the capital and income limits.[11] At the proposed new limits a person would not pass the *means* test if they had over £11,000 'disposable capital' or £185,000 'non-disposable capital' (i.e. equity held in a property and therefore not accessible). The proposed new gross income limit was £34,950 per annum, irrespective of dependants, debt or other outgoings.

Even at the proposed new limits, the gap between victim-survivors who would be eligible for legal aid and those who can afford to pay for any meaningful level of advice and representation is vast. Large numbers of victim-survivors have the required evidence of domestic abuse but do not pass the means test and cannot afford representation, so have no option but to represent themselves in court.

Further, the legal aid rates paid to lawyers for conducting financial remedy, Schedule 1 and TLATA cases are so low that most firms can no longer afford to offer this service. Consequently, research by both the Law Society[12] and LexisNexis[13] has identified there are now legal aid deserts around the country where victim-survivors who qualify for legal aid are unable to find a law firm willing to take on their case. Rights of Women (a women's legal charity) reported speaking to many victim-survivors every year who are eligible for legal aid but unable to find a lawyer. At the Resolution National Conference in March 2024, we asked a room of over 120 family lawyers if any of them still provided legal aid for financial remedy cases at their firms; just one solicitor raised their hand.

Legal Services Payment Orders: LSPOs may be made under s22ZA of the Matrimonial Causes Act 1973 (or costs allowances may be made at common law) for one party to pay the legal fees of the other party.

Of the 405 people who responded to our survey, 73% said the current test for the Family Court to make such orders is not appropriate in cases where there is domestic abuse.

Withholding access to assets falls within the definition of domestic abuse pursuant to s1(4) of the Domestic Abuse Act 2021: *"any behaviour that has a substantial adverse effect on the [victim]'s ability to (a) acquire, use or maintain money or other property, or (b) obtain goods or services"* (emphasis added).

Resolution is concerned the impact of the test for the making of such orders as set out both in the statute and thereafter by Mostyn J in *Rubin v Rubin*[14] is incompatible with the statutory definition of domestic abuse. Section 22ZA requires that the applicant '*would not reasonably be able*' to obtain legal services by another means, including '*would not reasonably be able*' to obtain a loan, or by granting a charge over their assets. The test applicable at common law is similar. The impact of these requirements is that even when there is money that has been generated during the parties' marriage, but it is held in the other person's name, the applicant may – depending on an individual judge's interpretation of the word '*reasonably*' – be forced to rely on litigation loans with interest rates that may be over 20%.[15]

Applicants must also provide detailed accounts of what they anticipate they will need by way of legal funding in order to make an application to Court, which is then often reduced by the judge making the order. If the application for the LSPO is made at the outset of proceedings any order will only last until the FDR Appointment (or at best a directions hearing thereafter) and so the application will then need to be renewed if agreement has not been reached. These applications are also expensive, often disproportionately so, and there can also be a long wait before the application is heard. During all that time, the party controlling the money can spend freely on their own legal fees without scrutiny, gaining the advantage of extra time to formulate their case and understand the likely outcome. At the same time the victim-survivor (who in any event may have less understanding of the family finances)[16] cannot get advice, unless their lawyer is willing to act on credit.

Two of the respondents to the follow-up questionnaire gave examples of the impact of this on their clients:

- *My client was forced to leave the family home and move into rented accommodation due to domestic abuse from her husband. He remains living at the family home, he withdrew significant sums from the joint account, and sold the car my client had previously used. The other side also has access to funds from their business, and there are transactions in the disclosure showing them using those funds for their own legal fees. Despite that, he refused to contribute towards my client's fees, so she was forced to apply for a litigation loan. One litigation loan application was refused, but one was accepted. My client has now had to borrow a sum, which might not see her past the FDR (given the other side's approach to the case) and the interest rate is about 20%. My client's income does not cover her needs, and she has a significant debt in her name, whilst the other side who has now spent the family money is able to use the business assets to fund their legal advice. The progress has been slow, with all the pressure being on the person who suffered domestic abuse because she cannot access family money for her fees.* – London
- *I have a client whose husband was charged with ABH and coercive control of her and two of the children. He eventually pleaded guilty, with the charges being reduced to only herself and the eldest child and coercive control being dropped. H was the main breadwinner and has his own company; W is a shareholder and director. H has done everything to exert financial control over W, including from an employment perspective, has done the usual of trying to reduce his income by going off sick, hidden money and spent what is left. W has had to take a loan to meet legal fees, which has now been exhausted. W's costs in finances as applicant around £40,000 with counsel's fees. H's costs in finances as respondent around £104,000 with counsel's fees on his Form H1. H has depleted the matrimonial pot by saying he's having to borrow money that he's claiming needs to be repaid to his family for his legal costs. W has been powerless to stop it.* – Midlands

Although case law recognises a distinction between matrimonial and non-matrimonial property (with only the former in practice subject to the sharing principle), the court has recourse to all assets when meeting the parties' *needs*. Resolution supports the principle that enabling the financially weaker party, and especially victim-survivors, to be represented in these proceedings constitutes a *need*. Therefore, the court should have recourse to the funds held by one of the parties first.

Continuing domestic abuse during financial proceedings

In the survey, professionals were asked to think about problems they have encountered in their cases in the last three years which have involved domestic abuse, including economic abuse. The results identified that a failure to comply with the duty to give full and frank disclosure was a consistent theme. Such a failure is a barrier to effective resolution. Whilst this has always been an issue in this type of proceedings, it is only now being understood that this is also a form of economic abuse. In the survey, we did not differentiate between non-disclosure during NCDR or in court proceedings.[17]

The majority of respondents (42%) said that between 21% - 60% of their cases involved non-disclosure.

How often have you come across a case where a party is failing to comply with disclosure requirements?

	Percentage of replies
41% to 60%	20.2%
21% to 40%	21.7%
10% to 20%	18.4%

These were two examples of how this creates unfairness for victim-survivors in the responses to the follow-up questionnaire:

- *Disclosure – or lack of it - in NCDR. The whole process of attaining a clear picture is so open to economic abuse. Dragging things out over months, not being transparent, and using the process to wear the other party down. One party having all the knowledge, and the assets. The other party powerless and unable to settle as they don't have a full picture. I think it's a huge issue – and worry it's about to get a LOT worse.* – London and South-East
- *... a party refusing to engage with negotiations, refusing to provide disclosure, even choosing to act in person despite being able to afford legal fees. It makes things take longer and more expensive for the client, and there seem to be absolutely no penalties for this behaviour. It can clearly be a form of ongoing abuse and has a terrible effect on a domestic abuse survivor.* – Western Circuit

The results also identified that failure to comply with a final court order was a consistent theme:

How often do you come across a case where a party fails to comply with a final court order?

	Percentage of replies
21% to 40%	17.7%
10% to 20%	20.9%
Fewer than 10%	26.4%

In the follow-up questionnaire, Resolution received the following description of the problem:

- *Enforcement – timescales for houses going on the market, assets to be sold, payments to be made. At this point often my clients have literally no money left, and the costs of enforcing both emotionally and financially are high.* – London

These complaints are consistent with the Law Commission report on the Enforcement of Family Financial Remedy Orders (2016)[18] and the report from UK Finance, a representative organisation for finance institutions, *From Control to Financial Freedom* (2024).[19] UK Finance identified that the failure to comply with financial remedy court orders allows economic abuse to continue to be perpetrated:

There are clear guidelines provided by the Court about the implications of not upholding a Family Court Order. However, despite the seriousness of breaching the Court Order and the threat of being in contempt, some perpetrators continue to abuse the victim-survivor by using a range of delaying tactics including failure to:

- *engage with the lender,*
- *provide the necessary finance documentation to the Court,* and
- *complete the necessary steps required to sell the family home.*

*"In the survey, professionals were asked to think about problems they have encountered in their cases in the last three years which have involved **domestic abuse**, including **economic abuse**. The results identified that a failure to comply with the duty to give full and frank disclosure was a consistent theme."*

Economic Abuse Summit

October 2024

At the Resolution National Conference in Manchester on 17 May 2024, the participants in a workshop (which included more than 120 family law barristers, solicitors and mediators) were invited to consider what changes would improve outcomes for their clients who are victim-survivors.

The main changes proposed were for victim-survivors to have access to funds for legal advice and representation either through legal aid, or through money generated during the marriage pursuant to a LSPO. A couple of participants also gave examples of victim-survivors being pressured into remaining in a mediation process whilst they were experiencing ongoing economic abuse. A discussion followed about how Resolution as an organisation can support mediators and others to be alert to those risks and consider whether the mediation, or other NCDR, should be moderated or stopped.

Subsequently, on 25 June 2024, Resolution convened an *Economic Abuse Summit* to consider proposals for change, and to assist Resolution in determining its recommendations. The Law Commission attended and observed this meeting.

At the *Economic Abuse Summit* there was a discussion about whether and if so, how domestic abuse should be taken into account in respect of outcomes in the division of the parties' assets and periodical payments. Resolution did not set out to make final recommendations on that question in this report. This is an ongoing question which the Law Commission is already considering. The Law Commission's scoping report into possible reform of s25, and the research findings of the *Fair Shares?* report about the impact of domestic abuse on financial remedies, are both due to be published shortly after the publication of this report. Both will inform Resolution's position.

Resolution has heard concerns expressed both by lawyers and the judiciary that the court system would not be able to cope if there were any changes that *could* negatively impact on settlement rates. It acknowledges that the level of resources available to the system is seen as a big constraint on its ability to take the issue of domestic abuse into account.

However, at every stage of this project the working party has found overwhelming consensus that there needs to be a cultural shift to stop domestic abuse from continuing (or beginning) post-separation. This abuse is occurring not only through negotiations, NCDR and during court proceedings but also after proceedings have concluded by the failure to implement final orders. That such abuse exists was recognised by Master Bell in Northern Ireland in *G v G (Needs, Discovery and Coercive Control)*:[20]

[94] Coercive control may not simply be seen in the marriage relationship prior to the separation of the parties. Judges hearing cases in which coercive control becomes an issue will, of course, bear in mind that the litigation process itself may be being used as a means of coercive control by one spouse against the other. There is a risk in such circumstances that, if a court does not act to prevent the abuse of its processes, trauma will be induced upon a party by the court experience itself.

Resolution's concern that the system is being used to perpetrate ongoing economic abuse is consistent with an article by Judith Crisp, Rosemary Hunter and Emma Hitchings for the Financial Remedy Journal[21] and the research of Dr Kathryn Royal's meta-analysis conducted for Surviving Economic Abuse in December 2022.[22] That analysis categorised methods of economic abuse, and Resolution notes that these categories reflect the same issues that have been raised as a concern in this work:

- *Not paying child support regularly or reliably, or not in full*
- *Manipulating the amount of child support paid (e.g. through misreporting of earnings or voluntarily leaving employment)*
- *Refusal to pay alimony [i.e. spousal maintenance], paying it unreliably or manipulating the amount paid*
- *Using the court system (including divorce or family courts), for example repeatedly bringing cases, delaying hearings or otherwise leading to excessive court costs for victim-survivors*
- *Refusal to comply with court orders, including protection or financial orders, or around transferring property or goods into the victim-survivor's name.*

Resolution acknowledges that this is not an easy issue for professionals and the judiciary. Perpetrators frequently make mirror allegations and victim-survivors sometimes fight back, with the result that the professional is usually faced with both people claiming they are the victim of abuse. The danger is that we hold preconceived ideas that victim-survivors should appear totally blameless, and therefore if they have fought back the professional considers the parties to be both as bad as each other. This misunderstanding of the domestic abuse dynamic compounds the harm to the victim-survivor as it leaves them vulnerable. The key for the professional is to look at the underlying reality of which party has control.

Statutory reform of s25(2)(g) of the Matrimonial Causes Act 1973?

October 2024

Section 25(2)(g) provides that the court will have regard to the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

There is no doubt that conduct as referred to in s25(2)(g) can include domestic abuse in any forms, including economic abuse.

Domestic abuse falls into the first of the four categories of conduct identified by Mostyn J in *OG v AG (Financial Remedies: Conduct)*[23] at [34], namely the "*gross and obvious personal misconduct meted out by one party against the other, normally, but not necessarily, during the marriage*."
Two examples were given, which might be said to represent different ends of the spectrum of seriousness:

- *a husband stabbed his wife; the resulting injury impaired her earning capacity*[24] *"was properly reflected in the discretionary disposition made in the wife's favour."*
- *Miller/McFarlane*[25] *in which "Mrs Miller alleged that Mr Miller had unjustifiably ended the marriage discarding her in favour of another woman. Therefore, she argued that Mr Miller should not be permitted to argue that their marriage was short. This argument was rejected by the House of Lords which held that the conduct in question, although greatly distressing to Mrs Miller, should not find independent reflection in the court's decision."*

In terms of economic abuse, in *OG v AG (Financial Remedies: Conduct)* Mostyn J went on to say at [35] "*If one party economically oppresses the other for selfish or malicious reasons then, provided the high standard of 'inequitable to disregard' is met, it may be reflected in the substantive award*."

The issue of conduct has been considered by the High Court twice in the last year in *Tsvetkov v Khayrova*[26] and *N v J*[27] (both decisions of Peel J, the National Lead Judge of the Financial Remedies Court). Both cases state that in order to be a relevant consideration in the financial remedies application, the conduct complained of must:

- Be at a high or exceptional level; and
- Have an identifiable (even if not always easily measurable) negative financial impact caused by the act/omission.

These two decisions also made it clear that unless there is an arguable case – fully particularised in a party's Form E – that those two hurdles can be surmounted, the court should make an order at the First Appointment preventing a party raising the issue of conduct at any further stage in the proceedings (unless new evidence comes to light subsequently which should then be subject to similar judicial scrutiny).

The concerns expressed to Resolution's working party about where the law currently stands on this issue were that:

- Practitioners are not clear at what point domestic abuse is sufficiently serious to be considered by the court to be relevant conduct;
- The '*obvious and gross*' hurdle is set too high if it does not capture those cases in which findings of serious domestic abuse have been made in other proceedings and/or the perpetrator has received a criminal conviction;
- The apparent preponderant view of judges hearing financial remedy applications as to what domestic abuse crosses this threshold does not reflect the general view of society that all forms of domestic abuse are repugnant, and the better understanding we now have of the long-term impact on victims;
- The requirement for there to be a causative link between the act/omission and an identifiable negative financial consequence is not contained within s25(2)(g), and there are examples of cases in which conduct has been taken into account by the court notwithstanding there was no adverse financial consequence;
- Victim-survivors who experienced domestic abuse in their relationship may well have had less opportunity to accumulate assets or develop their earning capacity in an abusive relationship. The *Fair Shares?* research due shortly after this report has been published will provide research into that issue;
- The requirement to evidence a causative link to an adverse financial consequence fails to recognise that there is international research that shows that a history of domestic abuse in the relationship is correlated with poorer short-term and long-term financial outcomes for women.[28] There is also research produced by the Home Office which reveals that the cost to the economy from lost output alone, arising from time off work and reduced productivity due to domestic abuse, is £14 billion a year.[29] In 2019 Women's Aid[30] reported 56.1% of victim-survivors said that domestic abuse had impacted their ability to work, and over two-fifths felt the abuse had negatively impacted their long-term employment prospects and earnings. The concession in case law that such adverse financial consequence may not be '*easily measurable*' therefore does not go far enough. It may be impossible to measure the financial consequences at the time of a final hearing.

Professionals are concerned that the consequence of the above is that parties are dissuaded from pursuing (or 'running') conduct when it may be perfectly proper for them to do so, and the outcome would be better for them if they did. It also acts as a barrier for victims to be able to plead facts which might be influential in the assessment of how the other s25 factors are considered.

These may be a few of many reasons why there is a marked difference between the number of cases in which domestic abuse is *evident* as an issue within proceedings and the number of cases in which it is *raised* in proceedings, as set out above. There is a perception that conduct cases are *difficult* cases to run – i.e. expensive and risky – even where the facts have been established in other proceedings, and/or the abuse is serious.

It is a daunting prospect for victim-survivors to invite litigation about this issue at a First Appointment, where the Court may only have 30 or 45 minutes to deal with numerous case management decisions including this issue. At this stage, the financial landscape may be far from clear, disclosure is often not complete, and there may be inequality of access to matrimonial capital to meet legal fees.

It is noted that conduct is the only statutory factor where a process exists specifically to eliminate it at an early stage.[31] One example of perceived unfairness provided by one respondent was a judge refusing to allow a wife to run a case reliant on husband's conduct (which related to the domestic abuse she had experienced during their marriage), whilst leaving the husband's claim of an unmatched special contribution to be litigated. It is difficult to run and prove a case of conduct, but it is also difficult to run and prove a case of special contribution. The concern is that this early case management decision *may* lead to an unbalanced consideration as the court at final hearing is not considering *all* of the circumstances.

At the time of drafting, the Australian Federal Government is consulting on a proposed amendment to legislation[32] that would see family violence taken into account in how separating couples' property is divided, and maintenance is awarded. The explanatory memorandum states:

"The Australian government is consulting on a proposed amendment to their legislation that would see domestic abuse taken into account in how separating couple's property is divided in the Family Law Amendment Bill (No. 2) 2023:

Recognising the financial impact of family violence in property settlements

Currently, the Family Law Act does not identify how the financial impact of family violence can be considered in property settlements. This is left to case law, which says the financial impact of family violence is only considered when it makes it very difficult for a person to contribute to the property pool.

Part 1 of Schedule 1 of the exposure draft introduces new principles that would enable the court to consider the effect of:

- *family violence, economic or financial abuse on each party's ability to contribute to the property pool,* and
- *family violence on the current and future circumstances of a party (such as the need for a party to access ongoing medical care or therapy, or limited income earning capacity).*

It is important to understand that, if these principles become law, it will mean that the financial impact of conduct involving family violence, economic abuse and financial abuse may be considered in the process of determining how property should be divided between the parties. It does not mean that family law courts will punish the conduct, rather that they may account for the impact of the conduct in determining a just and equitable property split."

Australia is a different jurisdiction and one where there is more of an emphasis on quantifying respective contributions, rather than analysing needs. Nevertheless, it will be interesting to see whether the proposed change opens the floodgates to much greater levels of litigation, which has often been the fear in this jurisdiction. That point ignores the question of whether the most vulnerable litigants should be paying the price of controlling the floodgates.

The issue of legislative change was the subject of debate at the *Economic Abuse Summit*. One school of thought is that MCA 1973 s25(2) as currently drafted provides sufficient flexibility to enable the court to reflect society's increased understanding about the long-term, and the often immeasurable, financial cost of domestic abuse. There were people who thought there was no issue with the way the statute is drafted. Another school of thought was that legislative change would ensure that courts are required to consider specifically the issue of domestic abuse, and the harm that flows from it. Two points cut through:

1. It was suggested that instead of trying to analyse outcomes where there has been domestic abuse through the prism of s25(2)(g) that it would be better to start afresh with a new sub-section. For example, a sub-section that says:

s25(2)(i): "*any harm suffered by a party as a result of domestic abuse*".

2. It was recognised that the majority of separating couples do not receive specialist legal advice, as set out in the *Fair Shares?* research. Therefore, the legislation should be driven by the needs of this majority, rather than the few who can afford specialist lawyers. One way to do that would be for there to be specific mention in the statute that domestic abuse should have an impact.

Resolution has also received these other proposals for change to the follow-up questionnaire, which it will continue to consider as it considers this area:

- *... it should still be a high bar for conduct, but a little lower than at present...*
- *... the judiciary need to be more aware of the implications of domestic abuse on victims from a financial perspective. They need to be able to recognise the behaviours more and use them when considering situations, not simply focus on the figures that are being put forward and take them as gospel.*
- *Better education for Judges at all levels including by victims' groups such as Women's Aid. This applies to education on the various impacts on victims of domestic abuse, financial abuse and coercive control. Also, education on how victims can react during abuse, and how they may present at Court.*

Resolution is clear that the current approach of some courts to s25(2)(g) of the Matrimonial Causes Act 1973 i.e. *conduct* is creating some outcomes where victim-survivors are left vulnerable. That issue could be for a number of reasons, for example, the interpretation of the guidance in *Tsvetkov v Khayrova* and *N v J* in an overly restrictive way, the requirements in those cases, or the way the statute is drafted.

This report does not set out to achieve a final recommendation about how to resolve that complicated issue. There is no immediate clear way forward. Resolution supports the aims of achieving fairer outcomes for victim-survivors, helping people reach agreement without litigation, and not over-burdening the already stretched court system.

Resolution will continue to consider this issue by using its network of committees, liaising with other stakeholders, and considering the developing research in this area from the *Fair Shares?* Project and the ongoing work of the Law Commission.

Recommendations

Resolution makes the following recommendations to better protect and meet the needs of victim-survivors.[33] The aim is to reduce the post-separation domestic abuse, from the point of separation until the parties' finances are resolved by implementation of a final court order.

Resolution calls for a cultural shift from every professional – from mediators, early neutral evaluators, arbitrators, barristers, solicitors and the judiciary – to improve practice in this complex area.

Resolution wishes to make clear that it has heard examples of good, insightful, and safe practice from all types of family justice professional and the judiciary. However, there is much more that can be done by all to protect victim-survivors from ongoing abuse during this period.

Tackling non-disclosure at the outset

A failure by a party to comply with their obligation to give full and frank disclosure always impacts negotiations, and the ability to settle proceedings. The Domestic Abuse Act 2021 now makes it clear that such behaviour is also a form of economic abuse. It is recognised that for professionals, it is easier to identify this form of abuse when a party has failed to engage or provide any disclosure whatsoever, than a party who appears to comply, but the reality is they are not disclosing the true financial picture.

Where a party has failed to provide full and frank disclosure in pre-proceedings correspondence or NCDR, Resolution invites further consideration of whether the court's case management powers can be better utilised. For example, by:

i. costs orders and unless orders being introduced against a party who is purporting to engage in NCDR but has failed to provide full and frank disclosure during that process (there would need to be appropriate safeguards to protect vulnerable parties who cannot comply);

ii. costs orders and unless orders being made against a party who has failed to provide full and frank disclosure in accordance with a court order; this could be achieved by amending the two Efficiency Statements;

iii. introducing a streamlined procedure for third party disclosure orders to be made either:

A. in boxwork on a paper application;

B. at ineffective First Appointments; or

C. upon application for a short hearing to be held at short notice upon evidence of failure to provide disclosure;

iv. amendment to the Efficiency Statement in Financial Remedy proceedings below High Court level so that the limit on the length of questionnaires in financial remedy cases clearly does not apply to cases of non-disclosure, although with direction that the use of this provision should be undertaken responsibly; and

D. co-operation from other agencies (e.g. HMRC, CMS, loan providers) routinely to provide any financial information they hold.

These proposals could help reduce the volume of ineffective court hearings and late adjournments, which waste court time and result in increased costs.

NCDR

NCDR is an evolving voluntary option which requires the engagement of both participants. It can be appropriate in some domestic abuse situations, provided that the victim-survivor can make an informed choice about the different processes with appropriate safeguards and support in place. It is important that all professionals engaged in NCDR constantly keep in mind their first consideration is to do no harm.

Resolution's position is that a victim-survivor of domestic abuse should never be put in the position of being forced to go to (or having no real alternative but to go to) NCDR, rather than to court. However, the informed choice of process provides autonomy for the victim-survivor and the use of NCDR is not automatically precluded or necessarily ruled out in every case where there has been abuse. Since the framework of domestic abuse is controlling and coercive behaviour and the perpetrator may continue to behave in this way during the resolution of the dispute, all family justice professionals need to be aware of the risks and trained to recognise domestic abuse in all its forms.

For all victim-survivors considering the option of NCDR there needs to be robust and continuing assessments of:

i. **Risk**: Family justice professionals need to recognise that knowledge of domestic abuse of any kind, including current and historic abuse, may not be disclosed by and/or apparent to the victim-survivor; and

ii. **Suitability**: The capacity and suitability of an NCDR participant to take an active part in the process, including being able to speak and to negotiate on their own behalf. As a guide, the professional must consider whether the NCDR participant can disagree, challenge, and speak up for themselves without feeling threatened, intimidated or worried about reprisals during or after the NCDR process; and

iii. **Safeguards**: The professionals must ensure there are appropriate safeguards in place within the NCDR process to make it safe for the individuals concerned. This is an ongoing process and the need for safeguards required may change during the NCDR process, depending on what becomes apparent during the course of NCDR.

Those conducting the NCDR must be alert, and where appropriate should stop the NCDR if there is concern that it is being used as a delaying tactic, or as a means of exerting pressure on victim-survivors to agree unfair settlements.[34] Resolution has received examples from professionals who were concerned that NCDR was not appropriate, or should have been stopped, because there was ongoing economic abuse. Resolution has also heard examples of perpetrators agreeing to mediation but refusing the option to have lawyers supporting the participants at the mediation meetings or not agreeing to the option to bring an independent evaluator (such as for an Early Neutral Evaluation) into the process for a specific purpose, ostensibly on the grounds of costs, but actually because they consider they have an advantage from the dynamics of mediation. There has been other research where the participants have had concerns about the ability of the mediator to be able to manage the power dynamics of abusive relationships.[35] There is also a risk of abuse in arbitration and/or private FDRs, to which professionals need to be alert.

Resolution seeks confirmation that the court will respect a decision made by a mediator who has given an exemption from NCDR at a MIAM due to domestic abuse; this is a stringent test that mediators do not take lightly. The court is invited to respect those decisions so victim-survivors are not re-traumatised by having to explain again why they cannot participate in NCDR (both in the FM5 and when at court), or even directed to try NCDR again. Resolution also calls for confirmation that domestic abuse is a valid exemption from the requirements of the pre-application protocol.[36] Victim-survivors should also not be faced with the prospect of a costs order being made against them if they consider they are unable to engage in NCDR due to domestic abuse.

There was consensus at the *Economic Abuse Summit*, that in any form of NCDR, where:

- there has not been full disclosure of a party's finances within a reasonable timeframe; or
- where a party does not have security that interim maintenance, bills associated with the family home and legal services payments are agreed (in cases where resources allow); or
- there are allegations by that party of other forms of ongoing domestic abuse;

the balance would shift away from that NCDR continuing, at least without directions from the court to ensure the disclosure is provided. Resolution would suggest that point is reached after say four weeks of failure to provide disclosure (absent extenuating circumstances) in most cases, or six weeks in cases where the finances are particularly complicated.

Resolution also recommends that it should be made clear, as a matter of law, that the duty of full and frank disclosure starts when the parties start to engage in NCDR or negotiations i.e. that this duty will usually start prior to proceedings.

Resolution has heard concern about delays in converting the arbitral award, or binding heads of agreement reached at or after a Private FDR, into a final financial remedy order, being used as a means of continuing domestic abuse. From the amount of professionals who have said they have a case where this happened, this issue seems to be occurring not infrequently. The concern raised is that the party with the finances uses the delay created pending a sealed court order to pressure the victim-survivor to agree different terms, and this can include stopping all forms of interim support and ignoring dates in the award/heads for the payment of lump sums. At its extreme, this leaves the victim-survivor unable to move on, meet their needs or have the funds available to re-instruct their lawyers to apply for the order to be made (and thereafter for it to be enforced).

Resolution seeks to work with the National Lead Judges and IFLA to develop a procedure that will see a swifter process to ensure that victim-survivors (or indeed any receiving party) will not be left vulnerable. This could include:

- A mention hearing automatically being listed (and given a priority listing) within 28 days of an arbitration award being delivered in every case where financial proceedings have been issued.[37] It is recommended that an order made in advance of or at a First Appointment staying the proceedings for arbitration should include that a mention hearing is to be listed for a date within 28 days of the award being delivered and that the 'lead party' is responsible for notifying the court and securing the listing.
- A cultural shift by professionals and arbitrators so that the default position is that the arbitrator will be instructed (and remunerated) to draft the order where there have been concerns about sufficient interim support, domestic abuse, high levels of tension between the parties, or one party not having access to resources to return the matter to court in the event of agreement not being reached about the terms of the order.
- Development of an expeditated/simpler version of the procedure set out by Mostyn J in *A v A (Arbitration: Guidance)*[38] as to how to obtain a court order, to recognise the fact that the economically weaker party may not have access to funds to re-instruct lawyers at this point.

Resolution supports interest accruing on unpaid arbitration awards to prevent this abuse.

Supporting a cultural shift (once proceedings have commenced)

Resolution seeks to co-operate with the Lead Judges to amend the two Efficiency Statements to include reference to the need to ensure that financial remedy proceedings are not misused by perpetrators to facilitate ongoing abuse. This would support the general cultural shift needed to address post-separation domestic abuse.

Resolution recommends there should be consideration of amendments to the Family Procedure Rules 2010 as follows:

- An amendment to the overriding objective in Part 1 so that dealing with a case '*justly*' in r1.1(2) includes '*ensuring the parties are safeguarded from domestic abuse*'; and
- An amendment to Part 9 so that every case management decision in applications for a financial remedy is conducted in a way that will safeguard the parties from domestic abuse.

MPS/Interim arrangements

Resolution is aware of widespread concern regarding parties failing financially to support the other party at the point of separation, both as a way of forcing victim-survivors to agree to unfair proposals, and as a means of continuing to perpetrate economic abuse. Resolution recommends that:

i. it is clarified whether interest can accrue on maintenance and interim maintenance, pursuant to *Mann v Mann*[39] and if not, whether there should be an amendment to the legislation to allow accrual;

ii. the Efficiency Statement for cases below High Court level be amended to provide for a longer listing for a combined First Appointment and the hearing of interim applications where a party applies for MPS and/or a LSPO. As to the former this would allow a judge to be able to make orders that household bills, rent, mortgage payments and other living expenses are paid at the first opportunity. This should include ordering indemnities where appropriate (as per CH v WH (*Power to Order Indemnity*)).[40] Ultimately this should reduce the need for separate interim hearings saving court time and costs;

iii. where an application for MPS/LSPO is made it should be listed within six weeks; and

iv. the court should specifically consider how to avoid a situation where household bills in joint names, or the sole name of the weaker financial party, go into arrears as the impact on a party's credit rating can be long-lasting. In the event a party's credit rating is affected, this should be considered capable of being a future need, which may be reflected in an enhanced final award.

Resolution calls for consideration of a review of the law and procedure relating to interim financial remedies.

Resolution will also carefully consider the anticipated research and proposals made by Surviving Economic Abuse in respect of joint mortgages being used to perpetrate economic abuse.[41]

Legal Services Payment Orders

All judges and practitioners in this field should be aware that where there are resources available, but the respondent has declined to provide the applicant with funds to meet their legal fees, there *may* be abusive dynamics at play. That is not to suggest that in every case where a LSPO application is made there is domestic abuse (there may be genuine disputes as to what is reasonable/affordable), but the denial of available funds for legal fees *can* be a form of post-separation economic abuse.

Resolution is calling for a change to Matrimonial Causes Act 1973 s22ZA to make it compatible with the provisions of the Domestic Abuse Act 2021. Resolution's view is that:

- preventing a former partner from having representation in financial remedy proceedings by withholding available funds, especially those generated within the marriage; and
- forcing the weaker financial party to take on high interest litigation loans or other commercial debts

can fall within the definition of economic abuse set out in the Domestic Abuse Act 2021.

Resolution calls for the Law Commission and/or Parliament to revisit the wording in s22ZA ss(3) and (4):

(3) *The court must not make an order under this section unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.*

(4) *For the purposes of subsection (3), the court must be satisfied, in particular, that –*

(a) *the applicant is not reasonably able to secure a loan to pay for the services*, and

(b) *the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.*

Pending review of the legislation, Resolution recommends:

i. it should be recognised that making applications for credit cards and commercial loans may impact a party's credit rating.[42] Securing unaffordable commercial loans and credit cards and failing to keep up with the repayments will impact a party's credit rating and have implications for their financial well-being. The practice of requiring applicants potentially to damage their credit rating in this way before being able to apply for a LSPO should cease immediately;

ii. requiring an applicant to take on commercial loans and credit cards in the absence of full and frank disclosure is unreasonable because they cannot be advised of the risk of accepting such a loan;

iii. the court should direct that the respondent should be liable for the interest on the litigation loan, in circumstances where they had funds but declined to make them available, as per *Rubin v Rubin*[43] at [13] (viii):

If a litigation loan is offered at a very high rate of interest it is not reasonable to expect the applicant to take it unless the respondent has undertaken to meet the loan interest, if the court later considers it just to make that order.;

iv. when there is money to meet the financially weaker party's legal fees and the other side refuses to release the funds, the cost of the application should be borne by the party holding the funds. Instructing a solicitor to make full applications to specialist loan providers is time consuming and expensive. It can cost between £5,000 to £10,000 depending on the firm;

v. the court should recognise that specialist loan providers require disclosure from the other party to consider whether they will provide funding. Therefore, these applications can usually only take place once proceedings are issued. This has an impact on the ability of the victim-survivor to engage in NCDR;

vi. the (so-called) pound-for-pound approach should not be adopted when considering the quantification of the LSPO, in cases involving allegations of domestic abuse and non-disclosure. Vulnerable clients often require more extensive advice and support. Further, it often costs more to seek disclosure and advise clients who do not know the scale of resources, than it does to withhold information and ignore requests for disclosure. Such orders also risk the financially stronger party deliberately using their legal advisers less or not at all; and

vii. solicitors should not be required to act on credit when acting for victim-survivors; it puts a huge strain on the relationship between the client and their legal team. Therefore, the court should not leave victim-survivors in that position after LSPO hearings.

Changes to legal aid

In respect of legal aid for victim-survivors in financial remedy, Schedule 1 and TLATA cases, the capital and income thresholds should be significantly increased so that the gap between victim-survivors who are eligible for legal aid and those who can afford to pay for legal representation privately is substantially reduced. In addition, Resolution makes the following specific proposals:

i. applicants for legal aid in receipt of Universal Credit should be passported through the income and capital assessments;

ii. Housing Benefit payments should be disregarded for the purposes of the income assessment;

iii. the whole value of the primary residence should be disregarded for the purposes of the capital assessment;

iv. there should be a mandatory disregard in relation to inaccessible capital;

v. consideration should be given to a cap on overall contribution out of a person's total income;

vi. the means test thresholds and disregard figures need to be updated and uprated on an annual and index-linked basis; a three to five-year period is too long in light of the current economic climate and cost of living/inflation projections;

vii. there needs to be a realistic expectation in terms of evidence of means requirements. The proposal to stop passporting the majority of Universal Credit recipients will make the administration of legal help too complex and even less sustainable;

viii. legal aid providers should be able to claim a fee for preparing a case for means assessment, especially for controlled work and/or there should be a simplified means test for family help (lower and higher); and

ix. there needs to be an increase in rates payable to family legal aid providers across the board and to provide more parity between private law and public law payment schemes. This would make it more economically viable for legal aid lawyers to act for victim-survivors in financial remedy, Schedule 1 and TLATA cases. Without this, there is a real risk that the remaining providers will be driven away, creating further legal aid deserts.

“There needs to be an increase in rates payable to family legal aid providers across the board. This would make it more economically viable for legal aid lawyers to act for victim-survivors in financial remedy, Schedule 1 and TLATA cases.”

resolution

Enforcement

It is well known that there are issues with enforcing financial remedy orders. The Law Commission reported on this issue in 2016, and UK Finance has identified the same issue in 2024.

Resolution received the following proposal in its follow-up work: *It seems ludicrous to me that there is no automatic penalty for not complying with final orders – that the only way to enforce is to go back to court. It would make sense to have the enforcement tied in at the point the decisions are made*.

Resolution can see no detriment to any party in having the consequences of non-compliance determined at the point of final order. At least in cases where there is a history of failing to disclose assets, or defaulting on payments we recommend the following:

i. the consequences of failing to comply with the order should be negotiated, or determined as part of the final order;

ii. there should be fallback and enforcement clauses in the body of the final order, this would move the onus to the party seeking to vary the order rather than the person seeking compliance with it to return matters to court; and

iii. final court orders should contain information making it clear the order is not automatically enforced, and what steps litigants need to take to enforce the order.

Resolution calls for the government to enact the proposals made by the Law Commission in 2016 to:

i. extend existing methods of enforcement to make the debtor's pension, joint bank accounts held with third parties, and money that the debtor will receive in the future available to discharge the debt; and

ii. introduce more effective coercive (not punitive) orders such as allowing the court to disqualify the debtor from driving and/or seizure of passports if in breach.

Moreover, if enforcement proceedings seem likely because of how the respondent has behaved during the proceedings, the applicant should have certainty that they can continue to be represented in enforcement proceedings and this will not reduce the sum they have for their housing for example. It is suggested that the court should consider making an additional capital award to the applicant at the final hearing, specifically for the legal costs of enforcement (i.e. an enforcement fund).[44] If the applicant does not have to rely on that fund for enforcement, it can then be repaid to the respondent.

Costs

There has been consensus across our work that costs orders should be made both to deter a party from using court proceedings as a way of perpetrating abuse, and to compensate a victim-survivor whose costs have been unreasonably increased due to domestic abuse. Resolution received the following ideas:

- Professionals conduct and awareness: *There needs to be more support for victims through court. There is a handful of our profession who continue to represent clients in a very litigious and volatile way that facilitates the domestic abuse. There needs to be more restrictions in place to prevent legal representatives from being able to play a part in the abuse ... There should be more costs implications for litigants and also solicitors who do not act within the code and who facilitate the abuse*.
- Costs: *... the obvious financial effect of domestic abuse is the costs of the proceedings which might not otherwise have been necessary. More willingness to make costs orders if the court finds existence of domestic abuse has made NCDR unsuitable. Often the costs are a sizeable part of the dispute ...*

The working party considered various different proposals. It was agreed that if NCDR was not possible due to domestic abuse and more expensive court proceedings were necessary, there should be costs consequences for the perpetrator. However, it was not considered safe to make a proposal that one party loses their costs protection, because we heard examples of perpetrators attending MIAMs claiming to be the victim of domestic abuse.

The current rules also do not contain an explicit recognition that the litigation per se can be a form of abuse. If the court was specifically directed to consider whether a costs order could be made as a result of this behaviour, this would be highlighted for the benefit of victims, practitioners and the judiciary, and would also act as a deterrent for perpetrators.

Resolution invites the Family Procedure Rule Committee to consider whether the rules in respect of costs orders could be amended to reduce the abuse from the proceedings themselves. For example, the rules at FPR r28.3(7) could be amended to include a new subsection (bb), enabling victim-survivors to recover the increased costs of litigation consequent upon domestic abuse:

(7) In deciding what order (if any) to make under paragraph (6), the court must have regard to –

(aa) any failure by a party, without good reason, to –

(i) attend a MIAM (as defined in rule 3.1); or

(ii) attend non-court dispute resolution;

(a) any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;

(b) any open offer to settle made by a party;

(bb) any use by a party of litigation, failure to provide financial disclosure or failure to engage in NCDR, as a form of domestic abuse, as defined in the Domestic Abuse 2021;

(c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;

(e) any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and

(f) the financial effect on the parties of any costs order.

Practice Direction

There has been wide agreement that financial remedy cases would benefit from an explanatory Practice Direction setting out the approach where there is domestic abuse, or where there are allegations of abuse. Currently, litigants and lawyers are not clear about what domestic abuse would cross the threshold of inequitable to disregard, and how to quantify the impact if it does cross the threshold. There have been references to the need for clarification and guidance since *S v S (Non-Matrimonial Property: Conduct)*[45] and *K v L*.[46] This has hitherto been resisted to allow the court wide discretion, but this discretion is now creating uncertainty. The Practice Direction could also deal with changes to procedure to ensure that the proceedings are not facilitating abuse.

A Practice Direction could deal with the following:

i. provide clarification that all forms of domestic abuse can cross the statutory threshold of conduct that it is inequitable to disregard, including physical and sexual abuse, violent and threatening behaviour, controlling and coercive behaviour, economic abuse, psychological, emotional and other abuse. The definitions should be included within the Practice Direction (rather than just refer to the Domestic Abuse Act 2021) to make it clear and accessible for litigants in person;

ii. confirm, perhaps by examples, what domestic abuse would cross the threshold either by reference to the abuse itself or by reference to the long-term impact;

iii. set out how conduct that it is inequitable to disregard could impact on the outcome of needs and/or sharing cases;

iv. in all cases where there are allegations of economic abuse, or a failure to comply with orders, (and where funds allow) provide that orders for payment of maintenance, legal services

funding and even child maintenance, should be for the largest sum to be paid that is affordable i.e. payments should be capitalised where possible. If it not possible to capitalise the sum completely, it should be directed that sums are paid in yearly, or six-monthly intervals in advance;

v. set out the relevant case management principles which should be applied. Resolution recommends some of the proposals contained in this report could form part of the Practice Direction;

vi. set out that there be automatic disclosure of findings of domestic abuse in other proceedings into financial remedy proceedings, including the judge in the financial remedy proceedings being able to decide whether a Schedule of Allegations and other evidence from Children Act 1989 and Family Law Act 1996 proceedings should be disclosed into these proceedings;

vii. set out that the court should take into account that:

1. perpetrators should not be able to achieve a better financial outcome because of previous domestic abuse, or ongoing abuse in the proceedings; and

2. the court should be cautious of analysis of expenditure from bank statements where there are allegations of economic abuse as historic spending may not reflect fairness or needs.

The benefit of a Practice Direction is that it does not require statutory change, and it could be implemented more quickly to clarify the current law and improve procedure to protect victim-survivors.

Resolution would welcome the opportunity to contribute to a Practice Direction.

Next steps

Resolution hopes that this report will form the building blocks for ongoing and future policy development in this important area. We look forward to discussing our working party's recommendations and how they may be taken forward with the Ministry of Justice, Family Procedure Rule Committee, the Lead Judges of the Financial Remedies Court and other senior FRC judiciary, and other stakeholders (including the FLBA, UK Finance, Surviving Economic Abuse, and Rights of Women) as soon as possible.

It should be said that several contributors at the *Economic Abuse Summit* and in the follow-up questionnaire, suggested that there should be time-limits, or targets, imposed on how quickly the court should determine cases where there are allegations of domestic abuse, effectively a fast-track. Resolution supports the principle of swift resolution for all litigants, and especially for victim-survivors; the anticipated introduction of fast-track cases in some Financial Remedy Zones in (so-called) 'small money' cases may give some opportunity for this to be considered. However, Resolution recognises that it is not an easy prospect to ask the Court to resolve cases more swiftly in the over-burdened court system, where so many cases are thought to involve allegations of domestic abuse, without additional government funding. It may be that there is more capacity in the FRC for listing targets in respect of interim remedies, which in turn would prevent the ongoing abuse during attempts to resolve the final outcome (whether by negotiation, NCDR, or proceedings). In that way, the court could further support victim-survivors to engage in NCDR to resolve these proceedings if they wish.

In cases involving concurrent sets of proceedings, and allegations of domestic abuse which are sufficiently serious, Resolution recommends the creation of a procedure for a consolidated fact-finding hearing. Such a hearing should determine the relevant factual allegations for any Children Act, Family Law Act and Financial Remedy proceedings in one hearing. This would be consistent with '*active case management*' (which the court must do to further the overriding objective) at FPR 2010 r1.4(2)(j) namely '*dealing with as many aspects of the case as it can on the same occasion*'. Importantly, this would mean victim-survivors are not re-traumatised by having to give their account on multiple occasions, and court resources are spared. Resolution also seeks to engage with the IFLA to help develop a safe, appropriate, combined fact-finding arbitration procedure.

This report did not consider the impact of domestic abuse during the marriage/civil partnership on how pension assets are shared. Resolution awaits the further analysis of the *Fair Shares?* research due in autumn 2024; the research will show findings in relation to pensions for domestic abuse survivors, including their pension wealth, pension arrangements on divorce and longer-term outcomes.

Resolution intends to look at this area again in two – five years' time to see if there has been any improvement for victim-survivors.

> *"**Resolution** hopes that this report will form the building blocks for ongoing and **future policy development** in this important area."*

October 2024

Issues outside the scope of this report

There were four areas of concern raised within and with the working party which were beyond the scope of this report:

1. **Cohabiting couples** – if anything, our research identified that professionals are even more concerned about the plight of unmarried victim-survivors, than those who at least have some protection by being married. Resolution was pleased to see cohabitation reform included in the Labour Party manifesto ahead of the recent General Election. We look forward to working with policy makers as work on this commitment progresses, including in relation to how the needs of victim-survivors of domestic abuse should be addressed.

2. **Schedule 1** – Resolution also calls for a review of the legislative framework in the Children Act 1989 Schedule 1 to provide a better legislative safety net for the children of those left most vulnerable on relationship breakdown. That review should encompass the impact of domestic abuse on the parents and children.

3. **Discovery of evidence that reveals the other party has not disclosed assets** – Resolution found that practitioners are concerned about the impact of the decision in *Imerman*[47] in light of the increased understanding that failure to disclose can be a form of domestic abuse. Resolution is concerned about the impact of this decision, which pre-dates the more recent greater understanding of economic abuse, but recognises that any return to 'self-help' being permissible could only be done alongside similar developments in other areas of the law.

4. **Child maintenance** – Resolution has long called for improvements to the child maintenance system. The current system is complicated, and ineffective as evidenced by the scale of the arrears and non-compliance. Resolution also recognises that the current system can leave applicants vulnerable in circumstances where the respondent does not have a regular PAYE income. These issues are all likely to be associated with cases of economic abuse.

Give us your views

If you have any feedback on any of the recommendations in this report, please send it to communications@resolution.org.uk, with a clear subject line 'Domestic abuse in Financial Remedy'.

Contributors

The recommendations in this report are made by Resolution, not by the individuals who have contributed to this work. Not every comment or recommendation received universal agreement at the *Economic Abuse Summit*, or from other contributors.

This project was led by **Olivia Piercy** of Hunters Law and **Anita Mehta** of 4PB, who chaired Resolution's working party and the Economic Abuse Summit. They represent Resolution's Domestic Abuse Committee, and the Financial Remedy, Pensions and Tax Committee respectively. Their work was supported by **Rachel Rogers**, Resolution's Head of Policy.

Resolution, and the Chairs of the working party, thank all the members and contributors to the working party without whom this work would not have been possible. Particular thanks to **Nicholas Allen KC**, **Claire Blakemore**, **Charles Hale KC**, **Samantha Hillas KC**, **Geoffrey Kingscote KC**, **Professor Emma Hitchings**, and **Professor Rosemary Hunter KC (Hon)** for the time given to assist the working party.

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2. [2021] 2 FLR 1116
3. [2022] 2 FLR 1064
4. https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023
5. Dissolution of civil partnerships is governed by the Civil Partnerships 2004. However the statutory factors considered in this report are identical whether the proceedings are brought under the Matrimonial Causes Act 1973 or this Act and the applicable principles are the same (*Lawrence v Gallagher* [2012] 2 FLR 643 and N v J [2024] EWFC 184).
6. Those changes require the court to encourage parties to use NCDR, by *inter alia* introducing a new requirement that parties set out their views on NCDR, and make in financial remedy cases a failure (without good reason) to attend NCDR an express reason for the court to consider making a costs order.
7. https://research-information.bris.ac.uk/en/publications/assembling-the-jigsaw-puzzle-financial-settlement-on-divorce
8. https://www.nuffieldfoundation.org/wp-content/uploads/2021/03/Fair-Shares-report-final.pdf
9. [2024] 1 FLR 937
10. [2024] EWFC 184
11. https://www.gov.uk/government/consultations/legal-aid-means-test-review/legal-aid-means-test-review
12. https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts
13. https://www.lexisnexis.co.uk/research-and-reports/legal-aid-deserts-report.html
14. [2014] 2 FLR 1018
15. At the time of drafting, rates of two of the biggest lenders are 26.82% (but when APR is taken into account 29.4%), and 20% (but when APR is taken into account 23%).
16 The *Fair Shares?* research will consider the data on this issue.
17. As noted above responses to both the survey and the follow-up questionnaire were received prior to the changes to the rules about NCDR coming into force on 29 April 2024.
18. https://lawcom.gov.uk/project/enforcement-of-family-financial-orders/
19. https://www.ukfinance.org.uk/policy-and-guidance/reports-and-publications/control-financial-freedom-report
20. [2024] NI Master 5
21. https://financialremediesjournal.com/content/domestic-abuse-in-financial-remedy-cases.b1ffe8527ad844c48f61ec7603d2de64.htm
22. https://survivingeconomicabuse.org/wp-content/uploads/2022/11/SEA_Economic-Abuse-A-Global-Perspective.pdf
23. [2021] 1 FLR 1105
24. Although not cited in the judgment this may have been a reference to *H v H (Financial Relief: Attempted Murder as Conduct)* [2006] 1 FLR 990
25. [2006] 1 FLR 1186
26. [2024] 1 FLR 937
27. [2024] EWFC 184
28. R Kaspiew et al, *Domestic and Family Violence and Parenting: Mixed Method Insights into Impact and Support Needs: Final Report* (Australian Institute of Family Studies and Australian National Research Organisation for Women's Safety, 2017) and B Felhberg and C Millward, 'Family Violence and Financial Outcomes After Parental Separation' in A Hayes and D Higgins (eds) *Families, Policy and the Law: Selected essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014)
29. Home Office research report, January 2019 – The economic and social costs of domestic abuse - The economic and social costs of domestic abuse (publishing.service.gov.uk)
30. Women's Aid (2019) The Domestic Abuse Report 2019: The Economics of Abuse. Bristol: Women's Aid - Evidence Hub: The Economics of Abuse 2019 - Women's Aid (womensaid.org.uk)
31. It has been suggested the court may not be able to make an order preventing a party who pleads a statutory factor (here conduct) from being able to rely upon it given (i) the court has a statutory duty to consider all the s25 factors at a final hearing (emphasised to be a '*meticulous duty*' in *Wyatt v Vince* [2015] 1 FLR 972 per Lord Wilson at [27]); and (ii) rules contained in a statutory instrument (here the Financial Procedure Rules 2010) which allow a court to decide which issues need investigation and hearing and which do not (r1.4(2)(c)(i)) and/or exclude an issue from consideration (r4.1(3)(l)) cannot change substantive law unless permitted to do so by statute *(Dunhill (A Protected Party By Her Litigation Friend Tasker) v Burgin (Nos 1 and 2)* [2014] UKSC 18) and there is no such permission in the Matrimonial Causes Act 1973. Peel J rejected the first of these arguments in *The Financial Remedies Court: A Year in Review* published by the Financial Remedies Journal on 27th September 2023 - https://financialremediesjournal.com/content/the-financial-remedies-court-a-year-in-review.2b6d5c48715f4d45ab6c641dbae20da4.htm
32. The Family Law Amendment Bill (No. 2) 2023
33. These recommendations relate to the resolution of financial remedies issues and/or proceedings save for those relating to legal aid which also relate to Schedule 1 and TLATA.
34. An example of the standards for protecting victim-survivors is contained in the Family Mediation Council (FMC) Mediation Information and Assessment Meeting (MIAM) Standards of 1 October 2022.
35. See Barlow et al, *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* (2017) Palgrave Macmillan. See also, Jon Symonds et al, *Separating families: Experiences of separation and support* (2022) NFJO
36. Annexed to FPR PD9A – Application for a Financial Remedy
37. At present, some Judges list a directions hearing for (say) three or four weeks after a private FDR, but this depends on the Court.
38. [2021] EWHC 1889 (Fam)
39. [2017] 1 FLR 559
40. [2018] 1 FLR 495
41. *Locked into a mortgage, locked out of my home': How perpetrators use joint mortgages as a form of economic abuse and how to stop them*
42. Impact on an individual's credit rating will depend on their personal financial circumstances. For example, if the individual is missing payments on other their mortgage and bills, and has made other applications for credit, at the time, requiring them to make applications for other commercial loans could have a negative impact on their rating. Whereas, if the person has a good payment record on their bills and has not applied for credit in the last few years it is unlikely to have an impact.
43. [2014] 2 FLR 1018
44. See, for example, *M v F* [2018] EWFC 35 per Mostyn J
45. [2007] 1 FLR 1496
46. [2010] EWCA Civ 125
47. *Imerman v Tchenguiz and Others* [2010] 2 FLR 814

Get in touch

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