

## **OPEN LETTER**

**7 February 2020**

To the Secretary of State for Justice, Robert Buckland QC MP

To the Parliamentary Under-Secretary of State for Justice, Chris Philp MP

To the Ministry of Justice

To the President of the Family Division, Sir Andrew McFarlane

To the Family Justice Council

To the Judicial Appointments Commission

We are a group of concerned family and human rights lawyers and women's rights organisations who support this letter.

We welcome the recent High Court appeal decision, [\*JH v MF\* \[2020\] EWHC 86 \(Fam\)](#) of Ms Justice Russell (dated 21 January 2020) which overturned the decision of HHJ Tolson QC (dated 8 August 2019) after identifying a series of errors in HHJ Tolson QC's judgment. It has shone a spotlight on the problems faced by victims of domestic abuse and sexual violence when trying to protect themselves and their children in the Family Court. We welcome Ms Justice Russell's recommendations for the family judiciary to undergo training on consent and domestic abuse.

We are concerned however that training alone will not fix the problem. We are aware that other family judges hold similar "out-dated" views. There are wider systemic issues including some lack of understanding of domestic abuse and serious sexual assault, and a failure to apply the practice directions to afford victims a fair trial. This is despite training and clear rules. It leaves children and women at risk of serious harm and undermines the credibility of our legal system. Increasingly, the courts are no longer seen as a safe place for women who have been abused.

The Ministry of Justice and Family Justice Council are conducting on-going reviews into the treatment of domestic abuse and the application of Practice Direction 12J by the Family Court. However, Mr Justice Cobb identified the urgent need for training of the judiciary in his report on and revision of PD 12J in 2016, which has still not been adopted. Judges' failure to ensure best practice is maintained could put children in a situation of further harm if contact is ordered between a parent who is a perpetrator of violence and a child.

This case has shown that immediate action is needed to try to alleviate some of the issues raised by *JH v MF* while the outcomes of those reviews are awaited.

The media attention on this case has resulted in women contacting some of the signatories to this letter with their experiences of HHJ Tolson QC and other judges who have expressed similar attitudes. Their concerns have included attitudes about sexual violence as seen in *JH v MF*, professional assessment of abusive parents being disregarded without reason and failure to provide special measures during hearings. We are concerned that ongoing cases involving domestic abuse and sexual violence are being heard by HHJ Tolson QC. Rights of Women will be raising a formal complaint about the judge to the Judicial Conduct Investigations Office.

The attitudes expressed by the judge in this case impact upon the credibility of the judiciary and calls into question the integrity of the Family Courts. Arguably, it has undermined the rule of law and the principle that justice must be seen to be done.

The President of the Family Division has spoken about cases that are reported in the media but in relation to which he is unable to call for the court file and see what has happened in that particular case<sup>1</sup>. We suggest this case provides an opportunity for the President to do that and we are willing to discuss with the women who have come forward if they are happy for the President to review their case.

This letter is supported by the London Victims' Commissioner, the Domestic Abuse Commissioner and the National Victims' Commissioner.

**We hereby call for the following course of action:**

1. Immediate action is taken to appoint appropriately trained domestic abuse champions in each Family Court to ensure that (a) judicial understanding of domestic and sexual abuse also takes account of the specific impact on minority and other vulnerable women and children, (b) correct procedures are followed including special measures and

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<sup>1</sup> [Domestic Abuse and the Family Court, speech by The President of the Family Division, 19<sup>th</sup> Nov 2019](#)

PD12J; (c) that there is accountability and monitoring where there are procedural errors and a failure to apply the correct definitions of domestic abuse, which could inform future training. This would provide a cost effective mechanism to safeguard victims pending the Ministry of Justice and Family Justice Council reviews and collect some much needed insight into differing judicial and court practice without privacy being impacted

2. Rigorous training in 2020 for all family law judges on the appropriate approach to take when considering domestic abuse and serious sexual assault allegations to include specific training on how perpetrators and victims of trauma often present when giving evidence, the meaning of consent and free will, and how to identify all forms of abuse.
3. That this letter and the judgment of *JH v MF* are considered by the family law inquiry into private law children and domestic abuse.
4. The President should take steps to review HHJ Tolson QC's ongoing cases in which domestic and sexual violence have been raised.

We are asking other family law and human rights professionals or women's rights organisations to add their voice. For ease please feel free to reply to this letter indicating your wish to sign with a simple 'yes' . We will collate all signatures by the end of the week so look forward to hearing from you.

**The signatories are:**

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Asian Women's Resource Centre  
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Women and Girls Network  
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Southall Black Sisters  
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