



24 July 2020

House Standing Committee on Social Policy and Legal Affairs
PO Box 6022
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Inquiry into family, domestic and sexual violence

The Australian Banking Association (**ABA**) appreciates the opportunity to make this submission to the Parliament of Australia House Standing Committee inquiry into family, domestic and sexual violence. The banking industry is committed to working with government and stakeholders to develop workable and effective strategies and policy solutions to support those impacted by family, domestic and sexual violence related financial abuse.

With the active participation of 22 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators, and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy, and to ensure Australia's banking customers continue to benefit from a stable, competitive accessible banking industry.

1. Introductory comments

Family and Domestic Violence (FDV)¹ is a whole of community issue and requires the collective efforts of government, communities, and the corporate sector, including banks, to respond to the challenges.

The ABA is mindful that across its 18 million customers and 187,000 employees² there will be both perpetrators of, and people impacted by financial abuse. Banks recognise they have an important role in helping both staff and customers impacted by FDV.

For the purpose of this inquiry, the ABA will focus on ways our banks can help prevent and respond to FDV related financial abuse of customers as well as highlighting some of the challenges observed by banks.

2. Forms of violence against women- financial abuse

Terms of reference (e): All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse.

What is financial abuse?

Financial abuse is a "form of family violence that negatively impacts a person financially and undermines their efforts to become economically independent"³⁴.

¹ The term 'family and domestic violence' includes 'domestic violence' and 'family violence' and has been used to reflect the fact different terminology is used across the Australian jurisdictions.

² ABA website, current March 2020 <https://www.ausbanking.org.au/>

³ Camilleri, O., Corrie, T., Moore, S., Restoring Financial Safety: Legal Responses to Economic Abuse, Good Shepherd Australia New Zealand and Wyndham Legal Service, 2015, pp.7

⁴ This submission focusses on FDV related financial abuse. However we note other people such as carers may engage in financial abuse.

Over 2 million Australians have experienced physical or sexual violence from a current or previous cohabitating partner since the age of 15⁵. However, there is limited data specific to financial abuse, with 63% of women experiencing high financial stress also having a history of financial abuse⁶.

The abuser may use violence and intimidation to restrict access to a person's bank accounts, force a person to relinquish control over assets or take out loans, prevent them from working or accessing benefits, withhold living expenses from them or their children, use the transaction description free-text field in electronic transfers to harass / intimidate or abuse, and restrict / monitor access to mobile phones and the internet.

Common consequences of financial abuse include having insufficient funds to meet basic needs, homelessness, the prospect of long-term financial hardship, being forced to pay all joint loan payments, and potentially acquiring a poor credit history from a joint loan. It may also result in a person being prevented from engaging in regular employment.

Obtaining financial independence is the most significant barrier to leaving a FDV relationship, and a lack of financial independence often results in a person returning to that relationship⁷.

The abuse is generally long term and may continue after an individual has left an abusive partner.

An ex-partner may use the financial and legal system to manipulate and control the other party and prolong the financial abuse.⁸

3. Measures to prevent violence against women

Terms of reference (a): Immediate and long-term measures to prevent violence against women and their children, and improve gender equality

Financial abuse and the role of banks

Where a person has experienced financial abuse, they may have difficulty in representing their own interests, resolving issues, managing their financial affairs, and dealing with financial institutions. From a banking perspective financial abuse is complex, and difficult to identify and respond to.

The ABA and member banks have been responding to financial abuse over many years and continually review their approach to ensure it reflects emerging issues, changing community expectations, and legal and regulatory changes.

The ABA consults broadly with consumer groups, government, regulators, and the banking industry through listening to experts and sharing best practice. An ABA subcommittee comprising of representatives from seven banks and seven consumer organisations⁹ (including Financial Counselling Australia, Legal Aid Australia, and Council of the Ageing) meet regularly with the objective of improving customer outcomes by hearing the issues they identify, consulting them on bank issues and working together to find solutions.

Recent examples of this include:

- **Changes to rules to enable a bank account to be opened without standard identification**

Discussions with community organisations (many that offer frontline services to people experiencing FDV) found that opening a bank account independent of the abuser is an essential step to escaping FDV, enabling access to Centrelink payments, FDV grants, and even wages.

⁵ Australian Institute of Health and Welfare 2019 page 8 <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>, with 1 in 6 (17%, or 1.6 million) women and 1 in 16 (6.1%, or 548,000) men had experienced physical and/or sexual violence from a current or previous cohabiting partner.

⁶ 63% of women who were experiencing high financial stress and 24% of women with a disability or long-term health condition had a history of economic abuse, compared to the population average of 15.7% <https://theconversation.com/revealed-the-hidden-problem-of-economic-abuse-in-australia-73764>

⁷ Fiona Macdonald "Spotlight on Economic Abuse: a Literature and Policy review (report: Good Shepherd Youth & Family Service and Kildonan Uniting Care 2012)

⁸ Smallwood, E., Stepping Stones: Legal Barriers to Economic Equality After Family Violence Report, Women's Legal Service Victoria, 2015.

⁹ Via the Consumer Outcomes Group <https://www.ausbanking.org.au/policy/customers/consumer-outcomes-group/>

Abusers may not allow their partner to have their own bank account. When fleeing a violent situation, it may not be possible to collect identification documents, or the perpetrator may withhold them, or they don't show a new address, making it difficult to meet bank identification standards.

The ABA approached and worked with AUSTRAC to make changes to the Anti Money Laundering / Counter Terrorism Financing rules and guidance to allow a customer who can't produce their driver's license or birth certificate, or if their ID shows a different address, alternative identification procedures.

The changes (May 2020) give banks the flexibility to use alternative methods for verifying a customer's identity in circumstances of FDV, while still maintaining due diligence processes to confirm their identity. For example, using a reference from a doctor or manager of a refuge shelter.

This is a good example of regulators, community and business sectors working together to improve outcomes for those experiencing FDV.

- **Responding to abuse in transaction descriptions**

In November 2019, the Commonwealth Bank of Australia (CBA) raised an issue with the ABA they had identified relating to some customers using the free text in the transaction description field of electronic transfers to write messages unrelated to the transaction.

CBA's initial review found that over 8,000 customers in a 3-month period received one or more low value deposits (less than \$1) which contained abusive language in the transaction description field.

Industry briefings were held for ABA member banks to ensure awareness of the issue, and CBA shared their analysis, insights, and technical approach. Further discussions were held to share member bank responses, insights, and responses. Each bank response is based on their customer base and analysis of the issue in their bank. Further industry action is being considered.

In June, the CBA announced a new Acceptable Use of Technology Policy¹⁰ stating it is unacceptable to use digital banking services to stalk, harass or intimidate any person. Any customer found to be using NetBank or the CommBank app to engage in unlawful, defamatory, harassing or threatening conduct, promoting or encouraging physical or mental harm or violence against any person may have their transactions refused or access to digital banking services suspended or discontinued.

The CBA worked with experts, community partners and law enforcement agencies to ensure they were aware of the issue and to develop responses without causing any unintended consequences. CBA used the e-Safety Commissioner's Safety by Design framework as a guide.

This is a good example of a bank identifying an issue and taking the lead to improve outcomes for customers experiencing FDV across the industry.

ABA member response to FDV related financial abuse

The **Banking Code of Practice (BCoP)**¹¹ requires member banks to take extra care with vulnerable customers¹², including those experiencing family or domestic violence.

Extra care includes training staff to act with sensitivity, respect, and compassion, and working with customers to find a suitable way to undertake their banking. Banks will also be respectful of confidentiality, make communications easy, provide guidance to help maintain and regain control of finances, and make referrals to external support where appropriate.

Other BCoP requirements include:

¹⁰ <https://www.commbank.com.au/guidance/newsroom/cba-moves-on-technology-facilitated-abuse-202006.html#:~:text=New%20Acceptable%20Use%20Policy%20makes%20digital%20banking%20safer%20for%20customers.&text=New%20Acceptable%20Use%20Policy%20states,harass%20or%20intimidate%20any%20person.>

¹¹ Banking Code of Practice (BCoP) <https://www.ausbanking.org.au/campaigns/new-banking-code/#The%20Banking%20Code%20of%20Practice>

¹² BCoP Chapter 14

- Not approving a new loan, or an increase, where the borrower does not receive a substantial benefit unless the bank has taken reasonable steps to ensure the borrower/s understand the risks of the loan, why they want the loan, and are satisfied they are not experiencing financial abuse.¹³
- Ending liability for as yet to be drawn loan amounts in certain circumstances¹⁴
- Various protections for those making guarantees including limiting liability, providing certain information, and requiring a minimum of three days to review the guarantee unless additional requirements are met¹⁵.
- Changing joint accounts authorities, at the request of one party, for both to approve withdrawals¹⁶.
- Assisting a joint account holder experiencing financial difficulty without involving the other person initially, if requested¹⁷.

In 2016 the ABA issued the **Industry Guideline: Financial Abuse and Family and Domestic Violence**¹⁸ which outlines a framework for member banks to raise awareness, promote consistent arrangements to support customers, and to encourage best practice across the banking industry.

The guidance explains what FDV and financial abuse are, the impact on the bank / customer relationship, how banks can recognise potential financial abuse, or customers who may be under significant distress and finding it difficult to seek help, and other effects of financial abuse.

It outlines the following principles (and further detail on each) for industry practice:

1. Protect customer confidentiality and safety
2. Make it easier for customers to communicate with the bank
3. Refer customers to external support
4. Help the customer regain control of their finances (including having a bank account independent of the abuser, changing passwords and logins)
5. Recognise financial abuse as a factor contributing to financial hardship
6. Not selling debt to third party debt collection agencies
7. Understand the potential impact of credit reporting and default listing
8. Provide appropriate employee training and awareness of policies
9. Raise customer awareness of policies and procedures
10. Support bank employees who are affected by family and domestic violence

In addition, individual **banks have their own family and domestic violence approaches** and policies, and some have assistance programs.

The Australian Financial Complaints Authority (AFCA), has guidance¹⁹ largely reflecting ABA guidance but with a broader application to non-ABA members.

Measures to respond to challenges in financially separating former partners

As mentioned above, finances can be used as an avenue to intimidate or control individuals. Recognising this the ABA **Industry Guideline: Financial Abuse and Family and Domestic Violence** recommends that banks:

¹³ BCoP Chapter 17 Paragraphs 53-57

¹⁴ BCoP Paragraph 56

¹⁵ BCoP Chapters 25-29

¹⁶ BCoP Chapter 35 para 139

¹⁷ BCoP Chapter 39 Paragraph 159

¹⁸ November 2016: https://www.ausbanking.org.au/wp-content/uploads/2019/05/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence-Nov-2016.pdf

¹⁹ AFCA Joint Facilities and Family Violence <https://www.afca.org.au/what-to-expect/how-we-make-decisions/afca-approaches>



- Work with joint customers separately to manage joint accounts and joint liabilities (not requiring one partner to contact or obtain consent from the other when the bank is aware of financial abuse).
- Accept verbal instructions to require 'two to operate' or put a hold on the account where one party is concerned about joint funds or credit (the bank is required to notify the other account holder). Authorisation of both is required to reverse this.
- Advise customers to seek independent legal or financial advice regarding options available to them.
- Accept a financial hardship request from a joint borrower without the consent of the other, and fast track those requests.
- Where parties are jointly and severally liable, banks will obtain consent of both parties to vary a loan where reasonable.

However, where this is not reasonable, and in certain circumstances, a bank may decide:

- each co-borrower should pay a portion (including none) of the debt in return for a release from the whole debt. Such decisions are on a case-by-case basis
- to pursue one co-borrower for a debt without pursuing the other borrower.
- Investigate circumstances where a customer (an individual, co-borrower or guarantor):
 - is unknowingly responsible for a credit obligation
 - may have been coerced into the credit obligation.

4. Access to services and women's economic independence

Terms of reference (d): The way that health, housing, access to services including legal services, and women's economic independence impact on the ability of women to escape domestic violence.

As previously mentioned, an ex-partner may use the financial and legal system to manipulate and control the other party and prolong financial abuse after the relationship has ended. This is particularly evident where:

- There are joint transaction accounts, joint and several loans, and / or mortgaged assets.
- Mediation or the family court is not accessed or is drawn out delaying financial settlement.
- Court Orders or other settlement agreements are not adhered to and / or there are challenges with changing the bank contracts to reflect the agreed arrangements.

For example, where it is agreed property be split 50:50, and A intends to keep the house and B intends to receive an immediate share of the equity of the house, A will need to pay B 50% of the equity. Issues may include:

- Refinancing the new mortgage contract would require A to be able to meet serviceability requirements for the whole debt (responsible lending requirements), which may be difficult. This may result in the house being sold, delaying settlement.
- One party may refuse to sign the bank contract to facilitate the arrangement. While there are processes for enforcement through courts, these can be expensive and slow.

Every day delay in separating joint finances provides another day of opportunities for financial abuse to occur (including restricting access to finances or eroding the financial position of a person). This can be illustrated by the case studies in the **Appendix**.

As a result, it is essential that people can access the services they need to help them leave an abusive relationship and to separate their finances from the abusive person. These services include:

- Specialist FDV front line services

- Independent financial advice
- Legal advice (including on family law)
- Services and laws that facilitate and enforce separation of joint financial arrangements

These services need to be accessible to all, including those who cannot afford to pay for them, and be timely to limit opportunities for (or continuing) financial abuse as much as possible.

As outlined in **Section 3**, where appropriate, banks advise customers to seek independent advice, provide information regarding where they can get further assistance, and refer customers to external support services. However, it is the customer's choice whether they seek help or not.

Financial counselling funding

The ABA recognises the critical role of financial counselling in helping people reach financial independence.

In early 2019, the ABA submitted a proposal to the Government as part of the Louise Sylvan review into financial counselling. The ABA supports the development of an enduring funding model made up of a fixed level of Government funding and levies on the financial sector and non-financial sector participants that reflect the drivers of financial hardship. This will ensure a sustainable funding base so people suffering real hardship can access critical advice and support.

Mediation services and simple court processes for division of family law property

Without affordable legal assistance, many people, especially women, are more likely to agree to inequitable settlements to avoid the stress and cost of going to court, or to abandon their property claims altogether.

The ABA recognises the critical role of having access to lawyer assisted family law advice and mediation to reach agreement on family law property splits, and to ensure arrangements are executed in a timely way. The ABA supports further developments in this area.

For example, the Legal Aid Commission two-year trial of lawyer assisted mediation to help families divide property after separation (for property pools up to \$500,000) to December 2021²⁰. Under the scheme lawyers support clients through the mediation process, document agreements and filing with the courts. If agreement can't be reached in mediation, lawyers can advise and assist through the court process.

5. Impact of natural disasters and COVID

Terms of reference (i): The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time.

Research²¹ shows there is often a spike in violence against women during major crises and disasters – with many similarities to the current situation and the devastating spread of COVID-19.

ABA member banks are aware of the likelihood of financial abuse, and bank staff are alert to it.

During previous natural disasters (flood, drought, and bushfires) banks observed delays in reporting financial abuse as people secured their immediate needs and addressed their safety first. However, increases in financial abuse have been reported during COVID.

The ABA makes the following observations:

- Many people and their businesses have been under significant financial pressure, with most never having been in financial difficulty before. On June 19 bank customers had deferred over 779,000 loans worth \$236 billion, including over 485,000 mortgages.

²⁰ <https://www.ag.gov.au/sites/default/files/2020-03/WESP-factsheet-lawyer-assisted-property-mediation.PDF>

²¹ <https://www.ourwatch.org.au/resource/our-watch-statement-on-the-covid-19-crisis/>



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- As government support (such as JobKeeper and JobSeeker) and loan deferrals wind down it is expected that more people will be experiencing additional financial stress.

During the current COVID-19 crisis some member banks have reported the following:

- a spike in financial abuse related customer conversations in March and April, reducing as lockdown eased in May and June
- an increase in usage of alternative contact methods such as SMS & webchat, suggesting people did not feel safe having conversations with support services during lockdown
- Examples of COVID-19 initiatives introduced by some individual banks include:
 - making available on-line / chat-bot style engagement for financial abuse
 - customers being able to request 'safe' times to receive calls with banks being sensitive to the customer not necessarily being able to talk / being alone at that time
 - information booklets on financial abuse and COVID after community consultations with FDV experts.
 - directly addressing the link between COVID-19 and increased FDV and financial abuse on bank support websites, encouraging customers to reach out for assistance

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Appendix: Case studies

As outlined in **Section 3**, where banks are aware of FDV they may provide customers with referrals to FDV support services, provide information about how the bank can help, work with the customer to assist them with their finances, and suggest the customer seek independent financial advice.

The following case studies illustrate some of the challenging circumstances faced by banks when assisting customers experiencing FDV. They focus on the financial impact on the customer and do not comment on associated trauma or emotional distress they may be experiencing.

1. Customer coerced into a loan

X and Y have considerable income and assets and apply for an investment loan. X does not appear to be under any duress and staff do not observe any 'red flags'.

The next day X rings the bank and explains it's a FDV situation and X does not want the loan, but is concerned for their safety if Y finds out about the communication with the bank.

The bank declines the loan. However, it is difficult for the bank to explain to Y why the loan wasn't approved without compromising X's safety.

Possible Impact: X could have entered into an unwanted joint loan agreement.

2. Not enough money to leave the relationship

X rang the bank to say they are experiencing abuse and are planning to leave next week when the partner is overseas on business.

The bank asked if they should make the account 'two to sign' but the customer said no as they did not want the partner to know. The next day the partner of X withdrew all the money from the account.

Possible Impacts:

- *Erosion of financial position of the partner who did not withdraw the money*
- *Possible lack of access to money to leave the relationship*

3. No access to money or to pay for basics

X is experiencing FDV and Y insists all X's income is paid into a joint account or mortgage (and X cannot have their own account). The account and mortgage are two to sign for withdrawals / drawdowns.

X receives an inheritance which goes against the mortgage.

X cannot access any funds to leave the relationship, despite being ahead on the mortgage, receiving an inheritance, and paying a salary to the joint account.

The bank offered to help open a separate bank account to deposit salary and provided relevant referrals.

X and Y have a joint transaction account which requires 'two to sign' to authorise withdrawals

Y contacted the bank to say X is abusive and does not allow access to enough money for Y and their children to access essentials (food and bills such as electricity and phone). Y's salary is also paid into that account. The bank cannot reverse 'two to sign' requirement without the consent of both customers.

The bank offered to help open a separate bank account to deposit salary and provided relevant referrals. Y declined saying they had not 'left' the relationship and did not want to upset their partner.

X is experiencing FDV. Her partner does not allow her to have a bank account and holds her identification documents. X fled to a refuge and needs to open a bank account.



X finds each application to replace identification documents takes over two weeks to process and often requires a form of identification to support each request which makes the process slow. It therefore may take months to get enough identification documents to open a bank account. Further complications arise as X requests the new identification documents to be sent to a different non-permanent address.

The refuge director provides a reference to the bank, the bank assesses the money laundering/terrorism financing risk as low and opens the bank account requiring her to present standard identification documents within 90 days.

Impact:

- *Unable to access money to pay for basics or leave the relationship. This may include not being able to access own wages, Centrelink payments, or other monies (such as mortgage drawdown).*
- *Access to funds in joint accounts and to re-draws require agreement of the other partner. The partner may use this to continue to exert control post relationship.*

4. Partner 'frittering / gambling' away joint funds

X called to say that their partner is abusive and is spending their money on a lavish lifestyle / gambling.

The bank asked if X would like to move to a 'two to sign' arrangement on joint accounts and mortgage drawdowns.

X declined, saying they live with the partner and did not want to upset them.

Impact: diminishing of financial position. Once the partners separate X may agree to move to 'two to sign' to prevent further diminishing of financial position. However, this may also restrict X's access to money.

5. One partner making all loan repayments

C's abusive partner D moved out of the family home. C remained in the home with their 3 school aged children. C works part time and earns significantly less than D. They are jointly and severally liable for their mortgage.

D says since C is living in the home C will now have to make all the mortgage repayments and refuses to help with the children's expenses. C decides to make the repayments worried the bank would foreclose and to avoid a poor credit record. However, this did not leave enough money for basics.

Eventually C contacted the bank. The bank agreed hardship arrangements with C moving the loan from principal and interest to interest only until family law settlement.

Impact:

- *Before C contacted the bank: C was making the loan repayments without leaving enough money to cover the basics and each repayment increased Ds equity in the property*
- *After C agrees to a hardship arrangement, the repayments are affordable. However, if D refuses mediation or drags out family law proceedings this situation could last for years and considerably erode both of their financial positions.*

6. Partner refusing to participate in mediation / family court proceedings



X left the home after family violence, and Y remained in the former family home. Y stopped paying the joint mortgage after X left and their joint home loan went into arrears. Y refused to talk to X about selling the home and dividing the proceeds or buying X out.

Eventually X was able to initiate Court proceedings to seek a division of the assets. X said, "My Nanna paid for a barrister for that day."

All of the joint bills such as water, rates and electricity had gone into serious arrears with Y failing to meet any outgoings after separation. "The credit card debt is in my name but Y's admitted it is his fault and Y agreed to be making payments on it, which sometimes Y makes, and other times Y doesn't ... there were several fines that Y got in my car which are meant to be paid at settlement when the house sells."

Despite Y agreeing to an order whereby Y would indemnify X in relation to the debts of the relationship and sell the house to service the remaining debts, Y has failed to comply with the order.

X now has to return to court again, more deeply in debt this time, to seek enforcement of the orders as the bank is not a party to the Court Order, it is limited in its capacity to require Y to make repayments.

B is C's abusive ex-husband. B is continuing to reside in the former family home and refusing to pay the mortgage. B will not agree to sell the home, transfer the home (and mortgage) into his sole name or buy out C's share. There is minimal equity in the home.

C needs to obtain urgent family law orders that would enable the house to be sold and proceeds to be divided. The longer B remains in the home and refuses to pay the mortgage, the less equity will be left to divide.

C may end up with an unsecured debt for which she is jointly responsible if there is a shortfall in paying off the mortgage when the house is eventually sold.

Impact: continuing to accumulate debt and financial stress while trying to arrange a financial settlement with her ex-partner.

7. Not abide by court orders to make mortgage repayments

The family court settlement determined that C will take over the property title and associated mortgage. D must make maintenance payments to support their children. The court also orders that the monies in a joint account be split evenly.

The mortgage and the joint account are both contracts with the bank. The family court cannot change the bank contract. Both parties must agree to variations of the bank contracts. The joint account is currently 'two to sign'.

D refuses to sign changes to the bank contracts. C must go back to court to get the order enforced.

The family court settlement determined that C would continue to live in the family home and D would make mortgage repayments.

D does not make the repayments hoping to force foreclosure on the property. C makes the repayments and discusses hardship arrangement with the bank.

C must go back to court to get the family court order enforced.

The court ordered X and Y to make proportional repayments on the family home where X would live with their children. Y refused to make any repayments.

X needed to sell as could not afford repayments alone. Y burnt down the home before sale (invalidating the insurance). Y went to jail. X lost all equity.

Impact:



- *If hardship is not sought from the bank: Repayments may be made without enough money to cover the basics and each repayment or loans fall into arrears. Debt may pile up. Hardship arrangements agree affordable repayments (where the bank can establish the customer can service the new repayments).*
- *However, it may be in the customers' best interest to sell the property, but both must agree, unless the bank forecloses. It takes time and money for court orders to be enforced and delaying arrangements may erode both partners' financial positions.*

8. Customer returning to an abusive relationship

B was hospitalised for several days after an FDV incident involving her husband of 30 years left her with concussion. Her husband, also the bank's customer, is struggling with his business and is an ice addict.

B requested the bank to hold her new \$100k Line of Credit (just funded for renovations) as she was concerned he would access the funds without her permission.

The bank postponed the loan to allow her time to work through this situation and reassured her the line of credit was on hold. The bank was concerned a dispute from the husband may arise due to the hold.

B decided to return home (advising this isn't the first time she has experienced FDV) citing reasons of it being too disruptive and difficult to leave with the pets and children and took the funds off hold.

Impact of abuse: abuse continues.