



Ministry
of Justice

Assessing risk of harm to children and parents in private law children cases

Progress Update

Ministry of Justice, Family and Criminal Justice Policy Directorate
2019



Acknowledgements

The Ministry of Justice would like to thank the panel of experts who have worked conscientiously on designing and implementing this call for evidence.

Great appreciation is also extended to the organisations who facilitated engagement with individuals who had personal experience of family justice; Women's Aid, Welsh Women's Aid, Respect, Southall Black Sisters, and Cafcass Family Justice Young People's board on behalf of the panel; this allowed their voices to be heard in a way that supported and protected their needs.

Dr Adrienne Barnett of Brunel University also deserves thanks for supporting the call for evidence with a comprehensive review of literature and case law, which has been integral to building a better understanding of the issues.

Finally, the Ministry of Justice would also like to thank the 1,200+ respondents to the call for written evidence and those who attended the roundtable and focus group sessions. Without these individuals taking the time and having the courage to share their experiences, we would not be in such a strong position to reflect on the operation of the family court when dealing with the difficult issues of domestic abuse and serious harm, and to take steps to effect positive change.

The authors

This report has been written by members of the panel leading the call for evidence with the support of the Ministry of Justice:

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Foreword

Every day family court Judges and Magistrates make difficult decisions in highly emotive cases, many of which involve allegations of harm or abuse. Some of the most vulnerable in our society come before the family court and it is crucial that the system is able to protect them. The legal framework set out in the Children Act 1989 requires that the court's paramount consideration is the welfare of the child. However, concerns have been raised about how the family court system recognises and responds to allegations of, and proven, harm to children and victim parents in the field of private law children proceedings.

On 21 May 2019 the Ministry of Justice (MOJ) announced a public call for evidence steered by a panel of experts from across family justice, to gather evidence on how the family court protects children and parents in private law children cases involving concerns about domestic abuse and other serious offences. The aim of this work was better to understand the experiences of those involved in such proceedings, identify any systemic issues and build a more robust evidence base to inform improvements.

The panel members leading this call for evidence were drawn from key organisations from across family justice including the Judiciary, academia, social care, policy officials and third sector organisations. They were responsible for coordinating the call for evidence seeking contributions from individuals and organisations who have experienced this area of family justice either in a personal or professional capacity.

This progress update details the steps that they have taken to gather such evidence. The panel continues to work through the wealth of evidence gathered and will provide a report in the coming months.

Melissa Case and Nicola Hewer

Panel Co-Chairs

Introduction

This call for evidence sought to build a better understanding of the effectiveness with which the family court identifies and responds to allegations of domestic abuse and other serious harm in cases involving disputes between parents about arrangements for their children following separation (known as ‘private law children proceedings’). It aimed to build a more robust evidence base in relation to both the process and outcomes for the parties and children involved in such proceedings.

The panel identified specific areas for inquiry in order to understand how the court works in practice and to build a more detailed understanding of any harm caused to parents and/or children during or following private law children proceedings. The call for evidence therefore specifically focused on the application of particular procedures and orders currently in place or available to help protect vulnerable people within family court proceedings. It looked into:

- How Practice Direction 12J is being applied in practice, and its outcomes and impact for children and parents, including its interaction with the presumption of parental involvement in s.1(2A) of the Children Act 1989;
- How FPR Part 3A and Practice Direction 3AA are being applied in practice, and their outcomes and impact in cases involving domestic abuse or other serious offences against parties and/or children;
- How s.91(14) of the Children Act 1989 is being applied in practice, and its outcomes and impact in cases involving domestic abuse;
- In each case, the challenges of implementing these provisions and the nature and causes of any inconsistency and inadequacy in their operation;
- The risk of harm to children and non-abusive parents in continuing to have a relationship and contact with a parent who has been domestically abusive (including coercive and controlling behaviour) or who has committed other serious offences against the other parent or a child such as child abuse, rape, sexual assault or murder.

In order to ensure contributions were sought in the time available from as many people as possible with relevant personal and professional experiences of such proceedings, the panel leading the call for evidence designed a mixed-method approach. This included an in-depth literature review including a review of case law; a public call for written evidence; a series of roundtable events with professionals working within family justice; and a series of focus groups with individuals who have had direct experience of these proceedings.

The panel were particularly keen to receive evidence of any harm caused to children and/or parents during or following private law children proceedings, where there are allegations and/or evidence of domestic abuse or of other crimes creating a risk of harm to children or parents (such as child abuse, rape, sexual assault or murder).

1. The objectives

The overarching research question for this call for evidence was:

“How effectively do the family courts respond to allegations of domestic abuse and other risk of harm to children and parent victims in private law children proceedings, having regard to both the process and outcomes for the parties and the children.”

The objectives of the call for evidence were:

- To understand how Practice Direction 12J,¹ Practice Direction 3AA, Part 3A FPR 2010,² and s.91(14) orders³ are being applied in practice and their impact, including the interaction of these Practice Directions with the risk of harm exception to the presumption of parental involvement;
- To understand the challenges relating to the application of the Practice Directions and s.91(14) orders;
- To explore the nature of any inconsistency in the application of the provisions;
- To understand the risk of harm to children and parent victims in continuing to have a relationship with a parent, or to be caused through contact orders to continue to have interaction with a parent perpetrator, where there is evidence of domestic abuse, including coercive and controlling behaviour, or other conduct that poses a risk of harm to a child or parent.
- To interpret the evidence gathered and make recommendations for next steps.

¹ **Practice direction 12J** sets out the procedure for members of the judiciary dealing with child arrangements cases where domestic abuse is alleged, and provides for special measures in proceedings involving children.

² **Part 3A** and **Practice direction 3AA** sets out the recommended procedure for judges dealing with vulnerable persons in family proceedings (including protected parties and those with concerns in relation to domestic abuse). It provides for special measures to ensure that the participation and quality of evidence of parties is not diminished.

³ **Orders pursuant to Section 91(14) Children Act 1989**: ‘barring orders’ prevent a party from making further court applications without prior permission of the court.

2. The approach

The panel designed their evidence gathering programme with the primary emphasis on hearing from those with personal and professional experience of private law children proceedings where there were allegations of domestic abuse or other serious harm. Due to the importance and urgency of this work, the panel were tasked with gathering evidence within three months. To ensure that there was ample opportunity for individuals and organisations to contribute to the call for evidence in the short time frame provided, the panel chose to carry out a research review, issue a call for written evidence, and hold roundtable events and focus groups.

2.1 Research review

As part of this call for evidence, a review of the available research on the risks to children and parents involved in private law children cases of domestic abuse, and how these risks are managed by the family court, was commissioned. Dr Adrienne Barnett of Brunel University led the review of research and case law on behalf of the panel. The scope of this research review, the specific topics for consideration, and the key research studies to be included were formulated in consultation with members of the panel.

The research review encompasses three broad themes:

- Children’s and parents’ experiences of domestic abuse before and after parental separation;
- Children’s and parents’ experiences of family court proceedings and decision-making in the context of domestic abuse;
- How the family court system responds to and manage domestic abuse in private law children cases, including how the courts apply Practice Direction 12J (PD12J), enforce contact orders and manage abusive litigation.

The literature reviewed included a wide variety of research studies published in research reports, monographs and academic journal articles. These include large-scale quantitative studies based on surveys and Cafcass or court records; qualitative studies using interviews, focus groups, case studies and observation; literature reviews; retrospective studies; studies both in the UK and other jurisdictions; and longitudinal research. The full literature review and an accompanying summary will be made available alongside the panel’s final report.

2.2 The call for written evidence

A fundamental aim of the call for written evidence was to ensure that evidence could be gathered from a broad range of individuals and organisations with experience of private law cases involving allegations of domestic abuse and other serious offences posing a risk of harm to children and/or victim parents. The call for evidence consisted of an in-depth questionnaire which was made available to the public online for a six-week period.⁴ Copies were also made available in English and Welsh and were accepted via email or hard copy in the post.

The panel devised the questions within the call for evidence in a way which was designed to be accessible to members of the public whilst also inviting views from professionals within family justice on the more technical aspects. The questions were structured in eight key sections inviting information in relation to respondent's experience of:

- Private law children proceedings in general;
- Raising allegations of domestic abuse or other serious offences in private law children proceedings;
- Children's voices within these proceedings;
- The procedure where domestic abuse is raised;
- Safety and protection at court for victims of domestic abuse and other serious offences;
- Repeated applications to the family court in the context of domestic abuse and other serious offences;
- The outcomes for children and victim parents involved in such proceedings.
- Any other information, experiences, or recommendations that the respondent wanted to share.

The written call for evidence received over 1,200 responses from individuals and organisations across England and Wales. Of these the vast majority (80%) were from individuals with personal experience of these proceedings and 9% were from those with professional/practical experience in family court. 63% of submissions were from those who identified themselves as mothers or mothers' family members, whilst 17% were from fathers or fathers' family members.

The submissions to the call for evidence provided a compelling insight into the process and outcomes for those involved in private law children proceedings. They have been analysed

⁴ The call for evidence was available online from 19th of July to the 26th of August 2019.

thematically and the themes discussed and agreed by the panel as a whole. Although it was not possible to conduct a programme of systematic research in the time available, the panel is confident that collectively, the submissions received provide a firm evidence base to inform clear recommendations for improvement.

2.3 Roundtables

The panel held a series of three roundtable events for those with professional and practical experience of family justice, particularly domestic abuse cases. The first roundtable event was held in London and invited members of the judiciary and court system to share their experiences in relation to the research questions, including any suggestions for improvements. The second roundtable event was also held in London and invited a broader range of practitioners to share their experiences, including those working within social care, domestic abuse support services, the third sector, Cafcass, the legal sector, and other relevant services. The final roundtable event was held in Cardiff and also invited practitioners and professionals from across family justice with a focus on how the system operates in Wales.

The roundtable approach was selected to generate discussion between representatives in different roles to gain a more in-depth understanding of the realities, challenges, and opportunities for improvement within private law children proceedings. Each of the roundtable sessions was audio recorded, transcribed, and thematically analysed.

2.4 Focus groups

In order to gather evidence from individuals who have direct personal experience of private law children proceedings where there are allegations of domestic abuse or other harm, the panel held a series of focus groups across England and Wales.

In total ten sessions were held with different cohorts of individuals to ensure a broad range of experiences and perspectives were captured. Sessions were held with mothers who had been involved in such proceedings as victims of domestic abuse and other serious harms; including a session specifically for women from BAME backgrounds; fathers who had been involved in proceedings either as a victim of domestic abuse or as an individual who had been subject to allegations made against them; and children who had been party to such proceedings.

Given the sensitivities of the topic in question, these focus groups were facilitated with the help of third sector organisations working within family justice who could offer specialist support to the participants before, during and after the sessions. These included Women's

Aid, Welsh Women's Aid, Respect, Cafcass Family Justice Young Peoples' Board, and Southall Black Sisters. Each session was attended by a panel member for support and oversight, was recorded and a note taken. These records were then evaluated thematically as part of the evidence gathering process.

3. Emerging themes & next steps

Initial analysis of the evidence gathered shows a high level of consistency between the different elements of the panel's work. Whilst the 1,200 respondents to the written call for evidence were from a broad range of perspectives, there were clear parallels in the experiences reported. Many of these submissions pointed to challenges faced within the family justice system in the application of Practice Direction 12J, the use of Section 91(14) orders and FPR Part 3A, and Practice Direction 3AA. Evidence from the roundtable events and focus groups, echoed these concerns whilst offering suggestions for potential improvements to the processes. The evidence from the written call and from the roundtables and focus groups resonate with the main messages identified in the literature review.

The evidence gathered highlights systemic issues in relation to how risk is identified and managed which need to be addressed to ensure that victims and children involved in these proceedings are better protected from further harm. Much of this evidence relates to both the experience of the family justice process and to the outcomes it delivers. For example, many respondents who were victims of abuse felt that their experience of family court process (including but not limited to direct cross-examination by their abuser) was degrading and re-traumatising. In respect of outcomes, respondents often raised concerns about how the family court prioritised the child's relationship with a non-resident parent over the welfare of the child and the risks to which this could expose the child and other parent.

3.1 Next steps

The panel have concluded the evidence gathering stage and are now engaged in further analysis of the wealth of data gathered. The evidence is being analysed against each of the objectives to identify difficulties with the current practices within family justice, the outcomes for parties to private law children proceedings, and potential improvements.

The panel will be carrying out reflective engagement with key stakeholders as part of the further analysis stage. This will provide the opportunity for the panel to discuss their provisional findings with stakeholders in detail to ensure a better collective understanding of the issues whilst ensuring greater collaboration across the organisations involved in private law children proceedings.

It is crucial that the panel can dedicate sufficient time to fully considering the vast amount of evidence gathered. They are continuing to work through and analyse this evidence and aim to publish a report outlining their findings in the coming months.



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