Domestic Abuse Commissioner

Everyday business: Addressing domestic abuse and continuing harm through a family court review and reporting mechanism

October 2025

Domestic Abuse Commissioner

Everyday business: Addressing domestic abuse and continuing harm through a family court review and reporting mechanism

Presented to Parliament pursuant to section 8 (6) of the Domestic Abuse Act 2021

© Crown copyright 2025

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at **commissioner@domesticabusecommissioner.independent.gov.uk**.

ISBN 978-1-5286-6017-4

E03456113 10/25

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of His Majesty's Stationery Office.

Acknowledgements

The Domestic Abuse Commissioner would like to thank:

- The victims and survivors who took part in our focus groups and shared their experiences of the family court with us. Your honesty and insight have been crucial to informing this research

- The domestic abuse support services who worked with victims and survivors to ensure they were able to safely take part in the focus groups and share their views and opinions with us

- Professors Mandy Burton and Rosemary Hunter KC (hon) for their hard work, dedication and expertise throughout the duration of this project

- The three pilot court sites who welcomed the researchers to their courts and the judges, magistrates, Cafcass and Cafcass Cymru Family Court Advisors, who gave their time to be interviewed by the research team

- Our Operational Advisory Board and the Senior Judiciary who gave us invaluable advice throughout the pilot

- The Ministry of Justice and His Majesty's Courts and Tribunal Service, for their continued support throughout the project, ensuring we have been able to complete this vital research

Contents

Foreword

Five years have passed since the publication of the government's Harm Panel report which shed light on the deep-rooted issues within the Family Court in responding to domestic abuse.

I have seen small steps forward in terms of the introduction of Pathfinder Courts, improved guidance for court professionals and heightened activity to raise awareness of domestic abuse. Yet, this new report, drawing on evidence from 300 child arrangement case files, extensive observations of three Family Court sites, interviews with judges and magistrates and focus groups with survivors reveals a disturbing truth: that the level of change required remains largely unfulfilled.

As Domestic Abuse Commissioner for England and Wales, it is my duty to scrutinise the systems that should protect some of the most vulnerable people in society. I have long made clear the reforms needed within family courts to ensure survivors are better protected and supported - and why I am deeply concerned that adult and child victims continue to be put at significant risk.

Despite overwhelming evidence of domestic abuse in most cases —73% in hearings and 87% in case file reviews— my office found evidence of how a pro-contact culture and a failure to recognise abuse contributed to decisions that may have put children in harms way. Affirming what survivors and the domestic abuse sector have long stated.

Survivors repeatedly described how they were dissuaded from raising allegations of domestic abuse as it would have no sway over whether the abusive parent would be granted contact. In nearly half of the cases reviewed, unsupervised overnight contact was ordered. Others said they felt pressured into accepting potentially unsafe child arrangement orders out of fear that if they contested, an even worse outcome would be granted. This is deeply disturbing.

An outdated understanding of domestic abuse amongst some legal professionals frequently saw physical violence and sexual abuse taken more seriously, while coercive and controlling behaviour — which often underpins physical abuse — were often dismissed. This antiquated thinking, coupled with a severe lack of resource and siloed working is leaving many survivors feeling unheard, unsupported, and unprotected.

While this report highlights significant shortcomings, it was encouraging to see pockets of good practice emerging within the family justice system. Some judges, magistrates, solicitors, domestic abuse services and Cafcass staff are working tirelessly under heavy workloads to shield survivors from further harm and to ensure trauma-informed approaches are being integrated into proceedings. These efforts are commendable, but more must be done.

With an ambitious target to halve violence against women and girls within a decade, immediate, meaningful reforms are essential if the family justice system is to play its part in safeguarding victims and supporting the government to achieve this priority. We must see sustainable funding and a firm commitment to a national rollout of Pathfinder Courts across England and Wales, combined with ministers acting to remove the presumption of parental contact, so that decisions are always taken in children's best interest.

This is not just about improving survivors experience of the Family Court — it is about saving and protecting lives. That is why the necessary funding must be provided to the family court review and reporting mechanism pilot to allow for rigorous oversight and continued accountability. Until these steps are taken, the risk to survivors and their children remains very real. It is time for this to change.

Dame Nicole Jacobs

Domestic Abuse Commissioner for England and Wales

1. Introduction

The Domestic Abuse Commissioner hears from survivors of domestic abuse almost every day about their experiences in private family law proceedings. These stories from survivors, mirrored in the voices of the survivors in this report, describe how child arrangements proceedings are traumatic and can result in orders that are harmful to both the non-abusive parent and children.

It is important to note that the Family Court, Cafcass and Cafcass Cymru have made and continue to make considerable advances in their response to domestic abuse. Section 7 of this Executive Summary and Section 6 of the report highlight the good practices we observed in the Family Court Review and Reporting Mechanism (FCRRM) pilot study.

However, the FCRRM pilot found that the four structural barriers identified by the 2020 Harm Panel[1] remain prevalent within private law child arrangements proceedings under section 8 of the Children Act 1989. These are: a pro-contact culture, adversarialism, lack of resources and silo working. Together, they lead to domestic abuse being inadequately identified and responded to by the court, which can result in minimisation of abuse, traumatic court experiences, silencing of children's voices and unsafe orders.

The Commissioner's vision is for a family justice system that has a culture of safety and protection from harm, where children's needs and the impact of domestic abuse are central considerations, and victims and survivors of domestic abuse feel listened to and respected. The FCRRM pilot and its planned expansion are key to understanding how domestic abuse is responded to in the Family Court. The research framework, tested by this pilot, can work to track and promote progress in the realisation of this vision.

1.1 Background

In 2020, the Ministry of Justice published a report, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases*, which has come to be known as the 'Harm Panel' report.[2] The Harm Panel examined how effectively the family courts identified and responded to allegations of domestic abuse in private law child arrangements cases under section 8 of the Children Act 1989. The Panel made recommendations in relation to both the processes and the outcomes for parties and children involved in child arrangements proceedings, and those recommendations were accepted in full by the previous Government.[3]

Alongside recommendations for a new investigative, safety-focused and trauma-informed process for child arrangements applications, the Harm Panel recommended the establishment of a national monitoring mechanism within the office of the Domestic Abuse Commissioner to maintain oversight of and report regularly on the family courts' performance in protecting children and adult victims of domestic abuse and other risks of harm in private law children's proceedings.[4]

This report outlines the pilot of this mechanism, the research findings, and the next steps for the reporting and review process.

---

[1] Hunter, R. Burton, M. and Trinder, L. (2020) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (London: Ministry of Justice). Assessing Risk of Harm to Children and Parents in Private Law Children Cases

[2] Ibid

[3] Ministry of Justice (2020) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan* (London: Ministry of Justice) Assessing Risk of Harm to Children and Parents in Private Law Children Cases - Implementation Plan

[4] Harm Panel Report (note 1), pp.11-12.

1.2 An intensive study at three court sites

To provide a systematic account of how the family courts handle child arrangements cases involving allegations of domestic abuse, and the experiences of parties and professionals in child arrangements cases, the FCRRM pilot gathered and analysed data from three court sites in England and Wales throughout 2024. The dual purpose of this intensive study was to collect baseline data against which future progress can be measured through the FCRRM and to establish the effectiveness of the research methodology piloted in the three courts for the proposed FCRRM rollout.

A detailed review of the methodology adopted can be found in Annex 1 of the main report. In summary, the pilot adopted three approaches to data collection:

- A review of 298 files in child arrangements cases from the three courts – 147 finalised by magistrates and 151 finalised by family judges – closed between 1 January and 31 December 2023.
- Observations of hearings in a sample of live child arrangements cases carried out at each court over a two-week period during March-June 2024.
- Focus groups with domestic abuse survivors in the area of each court, and interviews with judges, magistrates and Cafcass/Cafcass Cymru officers working in each court.

Research for the pilot was conducted by researchers within the Office of the Domestic Abuse Commissioner, under the supervision of two independent academic experts who were commissioned to lead the pilot – Professor Mandy Burton and Professor Rosemary Hunter KC (hon), who were both members of the Harm Panel.

Part A of the main report sets out the baseline findings from the research. Part B of the main report contains proposals for the next phase of the FCRRM.

Part A – Baseline Findings

2. The prevalence of domestic abuse in private law children cases

Domestic abuse was found in 87% of closed case files and 73% of observed cases.

In this pilot study, we identified a file as involving domestic abuse if domestic abuse was raised as an issue either by a party or a professional at any point in the proceedings. In observations, we identified a case as involving domestic abuse if domestic abuse was mentioned either by a party or a professional during the observations.

The prevalence of domestic abuse found in these proceedings demonstrates that domestic abuse is the everyday business of the family courts at all levels in private law children cases.

2.1 Types of domestic abuse

The majority of case files (57%) mentioned two or three types of domestic abuse. This did not vary by the tier of judiciary. Psychological or emotional abuse was the most frequent form of domestic abuse raised (76%), followed by physical abuse (56%).

Cases that involved physical and/or sexual abuse were more likely to be allocated to a judge rather than the magistrates. Our observations, interviews and focus groups confirmed that physical and sexual abuse continue to be assessed as more ‘serious’ than other types of

abuse. By contrast, the seriousness of coercive and controlling behaviour was often missed or downplayed.

Moreover, while the existence of domestic abuse was seen in 73% of the hearings observed, it was only considered to be relevant to determining child arrangements in 42% of hearings. The reasons for this are outlined below.

2.2 Cross-allegations and allegations of parental alienation

In interviews, judges and magistrates said the most typical response to allegations of domestic abuse was denial, followed by cross-allegations of domestic abuse. There was evidence of cross- or counter-allegations of domestic abuse in almost one-quarter of cases in the file sample (22%).

Allegations of parental alienation were much less frequent, with only 9% of files containing evidence of allegations of parental alienation against the mother, and 3% containing evidence of allegations against the father.

2.3 The identification of domestic abuse

There were several sources of evidence of the presence of domestic abuse in the case files, including safeguarding letters, application forms (C100) and the supplemental form used to record allegations of harm and domestic violence (C1A). However, none of these sources was comprehensive. The pilot study found that there is no single reliable source of evidence that domestic abuse is an issue in the case. Furthermore, court forms do not adequately capture the fact or nature of domestic abuse that may be in issue.

3. The courts' responses to domestic abuse – the persistence of structural barriers

3.1 The pro-contact culture

Nearly all survivors said that they were often made to feel that domestic abuse was irrelevant to contact because the professionals indicated that contact would go ahead irrespective of any abuse. Survivors described being discouraged from raising allegations of domestic abuse by Cafcass, the courts, and, sometimes, their own lawyer (if they had one), because contact would be ordered regardless.

> *"…she rang me and said 'Don't worry…I've been doing this for six years, I know what I'm doing'…that gave me confidence, but when I actually met with her…she actually said to me, 'Well, you know, I do know some mums who've been stabbed by dad, and they still get contact, so you might want to prepare yourself'…" (Survivor, Focus Group 7)*

Consistently with what survivors told us, professional interviewees suggested that there is a high threshold for regarding domestic abuse as relevant to child arrangements – for example, only if there is third party evidence or a criminal conviction; only if children have been directly harmed by or witnessed the abuse; not if the parties no longer live in close proximity; and not if abuse is regarded as 'historic' after a few years, or even months. In the latter case, a long-term pattern of coercive and controlling behaviour may be reduced to a small number of decontextualised recent incidents, which consequently have much less force or capacity to influence contact.

The view among most judges and magistrates was that contact for children with both parents should happen except in very rare cases. No contact orders were a 'last resort' and, even in

the worst cases of domestic abuse, judges told us that the door to contact should be left open in some form.

> *"It is rare that the father is so vile that he won't get some contact." (Judge, Interview 18)*

Judges indicated they would make it clear to the parties early on in proceedings that domestic abuse is not a barrier to contact. It would only be relevant to how the contact was arranged, rather than to the principle of whether contact should take place. In observations, both magistrates and judges would urge parties to be more 'child focused' – generally, this meant that the survivor was raising domestic abuse as an issue rather than focusing on a solution for making contact happen.

3.2 Adversarialism

The adversarial process still dominates the litigation of child arrangements cases, particularly where domestic abuse is alleged. Survivors said that either they did not know how to make a case within the rules, or they felt that the perpetrator had advantages in the adversarial process and that it was an uneven contest.

> *"It's all controlled by the strongest person in the room, who is usually the perpetrator." (Survivor, Focus Group 4)*

While the adversarial process is difficult and traumatic for all survivors, navigating it without legal representation presents particular challenges.

3.2.1 The absence of legal representation

In both the observations and the case files, there was an even split between cases with both parties represented (1/3), only one party represented (1/3), or neither party represented (1/3).

Litigants in person (LIPs) often do not understand how to fill out forms, present their case or furnish evidence. Survivors spoke about the difficulties of putting a case together without legal advice.

> *"I went to see if I could get a solicitor but my…, I was literally just over the threshold to get legal aid…so through all the five years of it I was just representing myself…it was really hard to know how to word things." (Survivor, Focus Group 3)*

Judges also commented on the challenges for LIPs in presenting an argument and responding in turn.

Where one party is represented, the adversarial approach also comes under strain as the parties are not equally matched to 'test' the strength of each case.

3.2.2 Fact-finding hearings

The high point of adversarialism in the family courts is the fact-finding hearing (FFH). Under Practice Direction 12J of the Family Procedure Rules, the court is required to hold an FFH to determine contested allegations of domestic abuse where they would be relevant to any child arrangements order the court may make. We know from previous research, however, that FFHs are only held in a small proportion of cases and this was corroborated by our research.

FFHs constituted only 3% of the hearings in our observation sample. In the case files, FFHs were held in only 4% of cases (n=12).

There was widespread agreement among the judiciary in interviews that an FFH, or any contested hearing with evidence, should be avoided if possible. Consistently with these views, survivors in the focus groups described how they were discouraged from asking for

an FFH by the courts and Cafcass. All of the FFHs in the file sample involved physical and/or sexual abuse, reinforcing the sense that physical abuse, rather than coercive and controlling behaviour, is considered most 'serious'.

Where an FFH is held, it is first necessary to identify the contested allegations to be determined. In *Re H-N and Others*,[5] the Court of Appeal accepted that Scott Schedules, which itemise individual allegations of abuse, are not an adequate tool for understanding patterns of abuse in a relationship, particularly for capturing coercive and controlling behaviour. Rather, parties should be directed to file narrative statements setting out their experience of the relationship as a whole. The evidence from judicial interviews and case files, however, is that Scott Schedules are still regularly ordered. This may be in conjunction with narrative statements, but there were very few cases with a narrative statement alone on file. The continuing focus on itemised incidents suggests that procedural barriers continue to exist to the recognition of patterns of abuse and coercive and controlling behaviour.

The outcomes of the majority of FFHs in the file sample (seven of the 12 cases) were that some of the allegations were substantiated. In three cases, all of the allegations were substantiated, while in two, no findings were made.

The binary nature of FFHs means that where allegations of abuse are not substantiated, they are treated as not having occurred and are disregarded for the purposes of welfare decision-making. This can be problematic where a victim of abuse has been unable to prove abuse through the adversarial process. This binary approach also applies where an FFH is not held. Judges noted the decision not to have an FFH is conclusive in itself:

> "*So, you can't proceed on the basis that they might be true or they're probably true, they've either happened or they haven't. If you decide not to have a fact-find and there's no other evidence, then they're treated as not having happened, so you ought to put them out of your mind, absolutely." (Judge, Interview 31)*

It was clear that some mothers in the focus groups and observations did not realise that if they 'chose' (or were advised or pressured) not to raise or pursue allegations early in proceedings or decided against taking the allegations to an FFH, they were then precluded from reintroducing the issues later in the proceedings. The fact that domestic abuse would not be taken into account at all came as a shock.

Overall, whether or not they were represented, survivors said that they had not been able to present their case effectively, either to prove abuse or to argue its relevance to the court's orders. Adversarialism intersects with the pro-contact culture to minimise abuse and exclude it from the court's consideration.

3.3 Resource limitations

Lack of resources throughout the system was a strong theme emerging from both the observations and interviews. As one judge succinctly put it: "Resources are always a key problem" *(Judge, Interview 10).*

3.3.1 Judicial resources

Judges and magistrates were clear that lack of court time and associated delays in cases are significant. This creates pressures to dispose of cases as quickly as possible. Limited judicial resources also impact on judicial continuity, with hearings being listed before any available judge to avoid further delay. Judicial continuity is particularly important in domestic abuse cases in obviating the need for a survivor of abuse to tell their story several times over, and in enabling the judicial officer to become familiar with the case and, hence, to be

[5] *Re H-N and Others (Children) (Domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448 Re H-N and Others (Children) (Domestic Abuse: Finding of fact hearings) - Courts and Tribunals Judiciary

better placed to identify abusive behaviour by a party. In the file sample, however, only 21% of cases with more than one hearing had judicial continuity throughout the case.[6]

3.3.2 Cafcass resources

Limited Cafcass resources impact, for example, on the time available to conduct initial safeguarding interviews with parents, and on the availability of FCAs to attend hearings. In some instances, Cafcass may not have completed safeguarding enquiries due to difficulty in contacting the parents, but there were also cases where it appeared that Cafcass and the courts were trying to limit the amount of time Cafcass had to devote to safeguarding enquiries and that resourcing was at least part of the issue. Magistrates frequently said in interviews that they thought Cafcass was working with insufficient resources, and this was a particular concern for them because of their heavy reliance on input from Cafcass.

3.3.3 The Qualified Legal Representatives (QLR) scheme

Judicial interviews indicated varying availability of QLRs to accept appointments between the three courts. Across all of our observations and the court files, we found only five QLRs in total, all appointed for the LIP father. None were seen acting for LIP mothers and none appeared at all in one of the three courts. Part of the reason for these low numbers was the small proportion of fact-finding and final hearings in both samples, and in those cases in the file sample, only 35% had commenced after the implementation of the scheme, and not all of these cases involved LIPs. More generally, the case files were not a reliable source of evidence for the QLR scheme as the administrative paperwork relating to QLR appointments was not attached to the relevant files. The presence of a QLR was discerned only if they were mentioned in a written judgment, but written judgments were provided in fewer than half of the hearings (24/54).

In the absence of a QLR, there were two alternatives available to prevent abusive cross-examination of or by a victim of domestic abuse: either the judge or legal adviser took over the questioning of or on behalf of the vulnerable party, or cross-examination was avoided altogether.

The predominant approach we observed was for the judge or magistrates to elicit evidence from the parties inquisitorially, asking questions of each of the parties in turn on the matters they considered necessary to inform their welfare decision. While this approach avoids both abusive cross-examination and the awkwardness of the judge acting as both decision-maker and cross-examiner, it does potentially create issues of procedural justice where, as often observed, parties are not given the opportunity to participate by adding any points or questions of their own.

3.3.4 Supervised contact services

Another resource issue that was commonly raised by professionals was the lack of contact centres, particularly for fully supervised contact, which the judiciary noted was not an approach that could be adopted long term. Cafcass interviewees pointed to the difficulty of recommending supervised contact at a contact centre:

"…it entails a cost…a parent would need to commit to paying that and financially be able to manage that for a long period of time." (Cafcass, Interview 13)

In addition to cost barriers, there could also be long waiting lists to find a place, particularly at weekends. Lack of availability of supervised contact services resulted in some judges and magistrates making decisions that they said they would rather not have made, or simply yielding to pragmatism and substituting supported contact or supervision by a family

[6] For cases heard by magistrates, we recorded continuity of legal adviser rather than magistrates.

member, despite this being contra-indicated by the assessed level of risk. This illustrates how lack of resources may contribute to unsafe orders.

3.3.5 Domestic Abuse Perpetrator Programmes

Another resource issue raised by Cafcass, judges and magistrates was the lack of appropriate Domestic Abuse Perpetrator Programmes (DAPPs). Cafcass interviewees commented that the absence of commissioned programmes left them in a weak position when preparing section 7 reports and having to "unpick" whether the perpetrator had genuinely addressed concerns about domestic abuse and "done the work to improve themselves" (Cafcass, Interview 11). In the context of the pro-contact culture, the absence of DAPPs is again conducive to the making of unsafe orders in which the risk posed by a perpetrator of domestic abuse is not addressed.

3.4 Silo working

As noted by the Harm Panel, it has long been observed that there is a lack of a joined-up approach to domestic abuse in cases where there might be overlapping criminal and family proceedings. [7]

Around two-thirds of cases in the file sample included evidence of some kind of previous or concurrent criminal investigation or court proceedings involving the family. Survivors and professionals both talked about the consequences of multiple proceedings that are often overlapping but disconnected. Being part of multiple proceedings creates additional burdens for survivors, and judges and magistrates highlighted the delays in criminal case progression, where the backlog means they are unable to wait for the outcome of criminal trials and possible convictions. On the other hand, where survivors had withdrawn criminal complaints or decisions had been made by police or prosecutors not to proceed, this could disadvantage them in the family court, despite the different considerations involved and differences in the required standard of proof.

Only 13% of cases in the file sample included evidence of a previous Family Law Act injunction, but the suspicion that survivors apply for non-molestation orders (NMOs) to try and gain an advantage in child arrangements proceedings was voiced by some of the professionals interviewed for the research. We also observed cases in which the existence of an NMO and evidence from a prior contested FFH for an NMO, was not seen as relevant to the child arrangements case.

Following the Harm Panel report, the President of the Family Division issued practice guidance clarifying that any party receiving support from an IDVA or ISVA has the right to receive that support during family court hearings.[8] In interviews, all judges and magistrates said they would be happy for survivors to have a domestic abuse worker with them in court. And in the focus groups (which were organised and facilitated by support services) an unsurprisingly high proportion of survivors had been accompanied to court by a support worker. However, we saw very few 'others' accompanying the parties in our observation sample, including only five IDVAs or domestic abuse support workers (alongside seven interpreters, four friends or family members and two McKenzie Friends). There was similarly a very low number of cases in the file sample in which there was evidence of a survivor being accompanied in court by an IDVA or support worker. Thus, while this particular form of silo working seems to have been overcome in theory, it appears that resource limitations on

---

[7] Hunter, R. Burton, M. and Trinder, L. (2020) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (London: Ministry of Justice). Assessing Risk of Harm to Children and Parents in Private Law Children Cases

[8] President of the Family Division, *Practice Guidance: Independent Domestic Violence Advisers and Independent Sexual Violence Advisers (Family Courts)* (6 April 2023), para 7: IDVAs and ISVA Guidance

the capacity of domestic abuse services to provide support for court attendances may impact on its practical effect.

4. The continuing consequences of structural barriers

The Harm Panel report identified that the specific consequences of the structural barriers included:

- Minimisation of abuse
- Traumatic court proceedings
- The silencing of children's voices
- Unsafe orders that exposed children and protective parents to continuing harm

The research for the FCRRM pilot mirrored these findings.

4.1 The minimisation of abuse

> *"I actually had a social worker laugh and say 'anything over two weeks is classed as historical'… It was just too easy for them to go – 'This is warring parents'…and the judge was like, 'Yeah, I've glanced over it and it just, to me, looks like bickering parents'." (Survivor, Focus Group 5)*

Domestic abuse may be minimised by reframing it as 'minor', 'historical', 'mutual', 'parental conflict', or a combination of these. The minimisation of abuse was also accompanied by victim blaming in some cases, based on stereotypes of survivors making false allegations, acting out of jealousy or failing to protect children.

Survivors across all focus groups said that they felt that non-physical abuse was viewed as unimportant as well as being difficult to prove. Survivors' views were consistent with what professionals said about the weight they attached to physical abuse in contrast to other types of abuse. Physical assaults were considered 'real' and 'serious' abuse, while verbal and emotional abuse might be viewed as just the end stages of a 'normal' relationship.

In interviews, both magistrates and judges described parties 'weaponising the kids' and making mutual or 'tit for tat' allegations. Domestic abuse (involving the exercise of power and control by one parent over another) was frequently reframed as (mutual) 'parental conflict'. 'Parental conflict' was identified in 18% of the safeguarding letters on the court files, with all but one of these cases involving some issue of domestic abuse. 'Parental conflict' was particularly likely to be identified by Cafcass where the safeguarding letter also reported cross-allegations of domestic abuse, suggesting that this was seen as the default category in cases with cross-allegations, rather than attempts being made to identify the primary perpetrator. Some judges suggested that raising coercive and controlling behaviour was often a good indicator of 'parental conflict' as it was common for the alleged perpetrator to make counter-allegations of a similar nature.

Other safeguarding issues were identified far less often than domestic abuse in safeguarding letters. The most frequently mentioned other safeguarding issues were parental substance misuse (45%), local authority involvement with the family (37%), father's criminal record (31%), and parental mental health (29%). But, quite often in the observed cases, domestic abuse was not seen as being as important as these other issues.

4.2 Retraumatisation through the court process

> *"The family court system is harrowing. It takes over your life, you can't think about anything else." (Survivor, Focus Group 6)*

The private nature of child arrangements proceedings and the uncertainty of outcomes left many survivors feeling alone and isolated. Even with a lawyer or QLR conducting cross-examination, survivors said that they found the questions asked in cross examination difficult because lawyers seemed to lack empathy for their experiences. They acknowledged that the lawyers doing the cross examination are 'paid to ask questions' but thought that they were allowed to ask anything. Survivors described court proceedings as the most stressful experience of their life, and many had to take time off work due to poor physical and mental health during or following court proceedings.

Following the Harm Panel report and the Domestic Abuse Act 2021, the Family Procedure Rules Part 3A.2A and Practice Direction 3AA now specify that any person alleging that they are a victim of domestic abuse by another party in family proceedings is automatically deemed to be a vulnerable witness who is entitled to participation directions to enable their effective participation in proceedings. The case files were an unreliable source of information about requests for and the use of special measures in child arrangements cases. But in observations, focus groups and interviews, we found that special measures – particularly screens and separate waiting areas - are now routinely provided, although the structure and layout of court buildings and courtrooms could limit their availability and effectiveness.

Survivors in the focus groups had a mixed response to the special measures provided. Some felt that the screens in particular gave them confidence and allowed them to present their case better, whereas others felt that the existence of special measures does little to reduce the trauma of going through family court and being in the same court building and courtroom as their abuser. This was also reflected in observations. One concerning finding was a number of negative comments on requests for screens as 'game-playing', or a 'tactic' to try to gain an advantage in proceedings and, in response to such views, encouragement of parties to decline special measures to 'evidence' lack of 'hostility'.

The Harm Panel also recommended that section 91(14) of the Children Act 1998, which allows the court to make an order barring a party from making a further application for a specified period of time, should become more readily available to victims and survivors of abuse to restrain the making of repeated court applications as a means of abuse. Section 91(14) was raised in four cases that we observed, and in 15 cases in the case file sample. In five of the 15 cases in the files, the court made the section 91(14) order of its own motion and in seven out of the 10 applications, the section 91(14) order was granted.

4.3 Silencing of children's voices

Many survivors in the focus groups expressed their children's and their own dissatisfaction with their interactions with Cafcass when it came to establishing their children's wishes and feelings. Some survivors questioned why children did not have a more direct voice in proceedings and others felt that Cafcass could not get their children's 'true' wishes and feelings in the limited time the Family Court Advisor (FCA) spent with them. It was generally agreed that too little weight was given to the views of teachers and other people who worked daily with the children and who had a good relationship with them.

One way that a child's voice can potentially be magnified in proceedings is to appoint a Children's Guardian under rule 16.4. This, however, is a rarity. Only three per cent of cases in the file sample had a guardian appointed, with almost all of these appointments being in Wales. Magistrates told us that they relied solely on Cafcass for the children's views, and if they felt it was necessary to appoint a guardian, the case would most likely be sent up to a district judge. Judges had more mixed views about appointing guardians, with some feeling that if they had the resources, they would appoint a guardian more routinely. However, others felt that they would avoid appointing guardians due to the added delay this causes for the child.

Some survivors reported that when Cafcass had spoken to their children and told the court that the children said they did not want contact, judges had ignored that and ordered contact anyway. Some questioned why children did not have a more direct voice in proceedings, or recounted children's unsuccessful attempts to communicate with the judge. Many judges expressed the view that older children will 'vote with their feet', and in that situation their views had to be respected because there was little point in ordering contact. However, in the observations, there were cases where older children had been ordered to have contact or even live with a parent whom they did not want to see, and the arrangements had broken down.

Reflecting the Harm Panel's findings, observations suggested that, while the age of the child could be important to the weight given to their views, what the child was saying was a more important factor than age; whether they were saying that they wanted contact or that they did not want contact. If children were saying that they did not want contact, then, consistent with the pro-contact culture, observed hearings suggested that their voices were given little weight.

4.4 Unsafe, unsustainable and harmful orders

Interim orders were made in 53% of the cases in the file sample, final 'time with' orders were included in 67% of cases, and final 'live with' orders in 57%. A comparison of interim and final orders showed a substantial shift from relatively protective interim orders (children living with mothers and almost half having supervised, supported, indirect or no contact with the non-resident parent), to final orders in which those protections were abandoned. Despite domestic abuse being raised in 87% of cases in the file sample, a third (33%) of cases ended with a joint 'live with' order, 44% ended with orders for unsupervised overnight contact and a further 16% prescribed the progression of contact, mostly to unsupervised overnight after a relatively short transition period.

Almost half of final orders were made by consent, but this does not necessarily indicate that they were safe. Parents were often encouraged or pressured to settle, by the court or their own lawyers, in terms of the recommendations in the section 7 report and/or the court's expectations. In focus groups, some survivors said that they felt compelled to accept unsafe orders for fear that contesting would result in an even more unsafe outcome, such as transfer of residence. Conversely, the observations showed that in cases where the parties indicated willingness to agree contact despite there being domestic abuse, this was always seen as praiseworthy.

The file data showed no relationship between the type of 'live with' or 'time with' orders made and whether or not domestic abuse was raised as an issue in the case. Unsupervised overnight contact and progression of contact to unsupervised overnight were just as likely to be ordered in domestic abuse cases as in cases not raising issues of domestic abuse. There was a significant correlation between the 'time with' recommendations made in section 7 reports and the final 'time with' orders, with 59% of section 7 reports recommending unsupervised contact. Domestic abuse was central to the recommendations in only 11% of section 7 reports. In the absence of FFHs to provide a factual basis for the section 7 report, issues of domestic abuse continued only to have the status of allegations, which inevitably diminished their impact and their likelihood of influencing the report's recommendations.

Survivors spoke about the court ordering contact that put them and their children in danger, and felt there was a lack of accountability for decisions that left them and their children unsafe. They also felt that their children's safety was not the focus of judicial decision-making, but that the judges were more concerned with the father's rights to have contact or live with their children.

There was evidence of previous child arrangements proceedings in 31% of court files. This is a very high proportion and has significant resource implications for the family courts.

Given the high proportion of cases raising issues of domestic abuse, making safe and workable orders in those cases might be a contributing factor in reducing the proportion of returns to court.

5. Good practices

One of the aims of the FCRRM pilot was to identify good practices in relation to domestic abuse from the three courts in the study, and to disseminate them more widely. During the course of the research, we noted good practices in observations and in reading the case files, and where they were described by survivors in focus groups. Judges, magistrates and Cafcass officers also described good practices in interviews, although in some instances they appeared to be ideals or aspirations, which were not observed in practice.

Good practices are described in more detail in the main report. As an overview, we found that:

- In some observations and interviews, professionals displayed sophisticated understandings of domestic abuse and were able to see how it was operating in a case.
- In a few observed instances, professionals clearly prioritised safety rather than defaulting to the expectation of contact.
- In one of the FFHs in the case files, the mother had been directed by another judge to file a Scott Schedule before the hearing, but, in their judgment, the judge conducting the hearing made clear that they had looked at the alleged abuse holistically as a pattern of behaviour, rather than considering the items in the Scott Schedule as separate incidents. There were other examples of judges at fact-finding looking at the whole pattern of the alleged perpetrator's behaviour.
- We observed two examples of good practice in ensuring consistency between child arrangements proceedings and other proceedings relating to domestic abuse.
- During the court observations, the researchers noted instances where professionals resisted opportunities to minimise abuse and insisted that it be taken seriously and considered fully.
- In most cases observed, court staff and judiciary did their best to make special measures work as effectively as they could within the limitations of the court building and available equipment. We observed some creative responses to managing the use of screens within the physical infrastructure of the court, and one court had instituted a dedicated position of special measures usher.
- One survivor praised their Cafcass worker for listening to and looking after the children; and one Cafcass officer maintained that if the child is resistant to contact with the perpetrator because of their experiences of domestic abuse, they would do what is best for the child and not force them into any contact that would distress them or the survivor.
- We observed one judge and one magistrate's bench who followed PD12J and refused to accept consent orders presented to them that did not address the risks of continued domestic abuse.

Wider adoption of these practices would not overcome the identified structural barriers, but they would help to promote a culture of safety and protection from harm and the making of safe and sustainable orders in child arrangement cases.

6. Conclusion to Part A

The baseline data gathered for the FCRRM paints a clear picture of the trajectory of domestic abuse cases in child arrangements proceedings. Almost all cases entering the court involve some issue of domestic abuse, and there is some initial recognition of risk, particularly where there are allegations of physical and sexual abuse. Interim orders tend to

be precautionary, special measures requested are likely to be provided, direct cross-examination between litigants in person is avoided, and there is evidence of greater willingness to make section 91(14) orders to restrain repeated, abusive applications, particularly of the court's own motion.

Nevertheless, as proceedings progress, the structural factors of the pro-contact culture, adversarialism, resource limitations and silo working result in most allegations of domestic abuse being treated as marginal or not relevant to the court's decision-making in the child arrangements application. Evidence of abuse is ignored, minimised or dismissed and survivors are discouraged from pursuing allegations. Few fact-finding hearings are held, and those that proceed tend to centre around allegations of physical and/or sexual abuse rather than on patterns of controlling and coercive behaviour. Lack of judicial continuity also makes it difficult or impossible for judicial officers to see patterns of abusive behaviour in the cases before them, and section 7 reports reinforce the marginality of the abuse allegations. Good practices adopted by individual professionals have very little impact on the overall process of attrition.

By the time final orders are made, issues of domestic abuse have fallen by the wayside and there is no discernible relationship between domestic abuse allegations and the final 'live with' or 'time with' orders. As the Harm Panel documented and survivors affirmed in focus groups, however, abuse has often not fallen by the wayside for the children and survivor-parents concerned. In many cases they will continue to live with, have contact with and be harmed by the abusive parent pursuant to the court's orders.

Part B – Next Steps for the Family Court Review and Reporting Mechanism

7. Introduction

Given the findings in this report, the Domestic Abuse Commissioner is convinced of the need for further rollout of the FCRRM. It is essential that an ongoing evidence base and review process be established to track the court's progress in ensuring that proceedings are fair and respond fully to the risks of domestic abuse, and that orders are safe and durable.

As discussed in section 12 of the report, the pilot of the FCRRM has shown that it can systematically and reliably identify the nature and impact of domestic abuse in cases before the court. It can detail the responses of the court process, trace the outcomes of processes in the orders made, understand the experiences of survivors, and identify and promote good practices, which may lead to improvement in survivors' satisfaction with court processes and outcomes. Areas for adjustment and improvement in the methodology have also been identified for implementation in the next phase of the FCRRM.

The Domestic Abuse Commissioner makes a number of recommendations in relation to the next steps of the FCRRM. These include recommendations regarding the future process, scope and data access for the FCRRM, as well as improvements to the collection and recording of Family Court administrative data. Additional recommendations concern Family Court practices and processes to facilitate the next phase of the FCRRM.

8. Recommendations

Please note, where recommendations or sections are referred to in square brackets below, these refer to the main report.

Phase 2 of the FCRRM

1. The Ministry of Justice should commit resource and funding to a second phase of the FCRRM. [Recommendation 1]

2. Phase 2 should include the following:

    a) Pathfinder court sites, as well as Child Arrangements Programme courts [Recommendation 2]
    b) Financial remedy cases as well as child arrangement cases [Recommendation 3]
    c) In addition to comprehensive data gathering from a sample of courts, engagement in thematic 'deep dives' into areas identified as being of particular concern in the handling of domestic abuse cases, such as:
        i. identifying domestic abuse as an issue, in safeguarding reports and otherwise
        ii. the process prior to, during and after fact-finding hearings
        iii. section 7 reports
        iv. the role of lawyers in supporting clients who are alleged victims or perpetrators of domestic abuse
        v. intersections of domestic abuse with ethnicity, immigration status, disability and/or health status. [Section 8]
    d) The participation of children, facilitated by a robust ethical framework established for this purpose. [Recommendation 16]
    e) Interviews with Legal Advisers to the magistrates alongside judges, magistrates and Cafcass/Cafcass Cymru Family Court Advisers. [Section 12.3]
    f) A general privileged access agreement between the Domestic Abuse Commissioner, the Ministry of Justice and HMCTS, or a continuation of the data sharing agreements established during the pilot, to enable access without delay to case files for analysis. [Recommendation 15]

Data collection and Court forms

3. The Ministry of Justice should create an analytics team focused on overseeing and analysing Family Court data and making that data publicly available. This team should:
    a) have input into the ultimate design of the Core Case Data system (CCD)[9]
    b) provide data analysis to inform family justice policy and strategies
    c) publish reports going beyond the basic Family Court data currently available, and
    d) be the single point of contact for and facilitate access to Family Court data for independent research. [Recommendation 11]

4. Data should be routinely collected on:
    a) the presence of domestic abuse concerns and

[9] The Domestic Abuse Commissioner is aware that HMCTS is planning to introduce a new Core Case Data System (CCD) for the Family Court to replace FamilyMan, their current case management system. Rather than relying on manual entry of limited data from forms, directions and orders, as FamilyMan does, CCD will incorporate a much wider range of information about family court cases gathered directly from electronic forms and case management records. This will substantially increase the data available on family court proceedings. However, the pilot of this new system revealed a need for further development and its introduction has been delayed.

b) the type(s) of domestic abuse raised

by the new Core Case Data system from online forms, safeguarding letters and section 7 reports [Recommendation 4]

5. Future data collection focusing on domestic abuse in the family justice system should record allegations that are not endorsed by professional judgement as well as those that are.

   Data should disaggregate between:
   a) allegations by the mother against the father
   b) allegations by the father against the mother
   c) allegations by either party against a same sex partner
   d) allegations by either party against third parties, and
   e) allegations judged to be relevant by Cafcass England, Cafcass Cymru and the court. [Recommendation 5]

6. The C1A form should be revised as follows:
   a) The categories of abuse in Section 2 should be extended to include 'coercive and controlling behaviour', 'stalking', 'harassment' and 'honour-based abuse'.
   b) The categories should be listed in alphabetical order: 'coercive and controlling behaviour', 'emotional', 'financial', 'harassment', 'honour-based abuse', 'physical', 'psychological', 'sexual', 'stalking'. The placement of coercive and controlling behaviour at the beginning of the list is also appropriate given its status as an overarching description that might encompass all of the other forms of abuse as tactics of control and coercion.
   c) The list of orders in Section 2 should be extended to include Female Genital Mutilation Protection Order.
   d) The table on p.3 of the form should not be a grid with rows and columns but rather should only have columns (or the columns should be converted into rows) with space for narrative answers.
   e) Likewise, the response section on p.9 of the form should not be set out in the form of an itemised list but should be a single text box allowing for a narrative response.
   f) References in the Notes to Section 2 to 'incidents' and 'individual incidents' should be removed, and instead the guidance should encourage the person completing the form to describe holistically the nature and extent of the abusive behaviour they allege, and how they believe it has impacted on the children. [Recommendation 6]

7. The C100 form should be revised as follows:
   a) The ethnicity of parties and children in proceedings should be routinely recorded as part of the C100 form, and also routinely recorded by professionals in reports, using established ONS ethnicity categories for consistency and comparison. [Recommendation 7]
   b) A general question about disability within the meaning of the Equality Act 2010 together with a dropdown list of types of disability and health conditions should be included in the C100 form for both parties and children, to increase understanding of prevalence in the court population and assist the court and Cafcass/Cafcass Cymru in the handling of individual cases. [Recommendation 8]

8. The recording of special measures should be revised as follows:

a) Tick-boxes for requests for special measures on the C100 and C1A forms should be harmonised.
b) Hearing record templates be built into the Core Case Data system to include tick boxes for whether:
    i. either of the parties was provided with a secure/separate waiting area
    ii. a screen was provided in court for either of the parties
    iii. either of the parties attended remotely
    iv. either of the parties was accompanied by an IDVA or DA support worker
    v. either of the parties was accompanied by an intermediary
    vi. an interpreter was present for either of the parties
    vii. any other special measures were in place for either of the parties
    viii. a QLR was present for either of the parties
    ix. either of the parties was legally aided. [Recommendation 9]

E03456113
978-1-5286-6017-4