Ministry of Justice

Review of the Presumption of Parental Involvement

Final Report

October 2025

Ministry
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Executive Summary

Introduction

Most parents who separate make arrangements for their children between themselves. However, for a variety of reasons, some parents use the support of the court to do so. Private law children cases are court cases between two or more private individuals to resolve a dispute relating to children. In some of these cases, the Children Act 1989 provides that the courts must presume that, unless the contrary is shown, the involvement of a parent in a child's life will further that child's welfare. This is known as the presumption of parental involvement ('the presumption'). It only applies to a parent who can be involved in the child's life in a way that does not put the child at risk of suffering harm – and even if it does initially apply to a parent, it can be rebutted (so it does not apply) if there is evidence that the parent's involvement will not further the child's welfare.

The Expert Panel on Assessing Risk of Harm to Children and Parents in Private Law Children Cases ('the Harm Panel') published a report in 2020 which looked at evidence from those with personal and professional experience of the family court. The Harm Panel recommended that the presumption be "reviewed urgently in order to address its detrimental effects" (MoJ, 2020a, p. 175). In November 2020 the Ministry of Justice (MoJ) officially launched the Review of the Presumption of Parental Involvement ('the Review'), which focused on understanding how courts in England and Wales apply the statutory presumption and the impact on child welfare of the courts' application of these provisions.

Following the completion of the Presumption Review, the Deputy Prime Minister has announced his intention, when parliamentary time allows, to amend the Children Act 1989 to remove the presumption of parental involvement.

The Review

The evidence gathering phase of the Review involved three externally commissioned research projects, which are published alongside this summary:

- **Literature review** – considered 32 academic papers and 23 grey literature[1] publications to produce a summary on the impact that harm and parental involvement have on child welfare

[1] Grey literature refers to a range of different information that is produced outside of traditional academic publishing channels. It includes research produced by governments, charities and third sector organisations, working papers etc.

- **Qualitative research** – explored the experiences of 19 Black, Asian and ethnic minority parents who had been involved in child arrangement cases, and 10 parents whose cases involved alleged child sexual abuse
- **Analysis of court judgments** – looked at the application and use of the presumption in 245 unpublished court judgments and magistrates' written facts and reasons

The Review team also ran several workshops with family justice stakeholders and carried out some additional synthesis of published evidence. This was conducted in the summer of 2023. No evidence or statistics published after April 2024 have been included in this report.

Despite efforts to be as comprehensive as possible, there are limitations to the Review:

- The Review encountered several challenges regarding availability, access and quality of data on the family justice system. These included the variable quality of data, difficulty accessing administrative data, difficulty accessing electronic court files, variable levels of detail in written judgments, and a lack of published judgments.
- Much of the evidence used reflected experiences that occurred before the publication of the Harm Panel Report in 2020. More recent work to improve the experiences of children and families who go to court was not well captured in the evidence.
- It was not possible to statistically estimate how the presumption was applied across all decisions, or the role the presumption played in individual decisions.
- The Review involved only limited engagement with children, with the majority of the evidence focused on adult's views.

How are the courts applying the presumption?

The evidence gathered suggested that the presumption, and the exceptions to it, were not routinely referenced by judges and magistrates when making decisions about contested child arrangements orders. When it was referenced, the presumption was highlighted as one of several factors the court must consider, while child welfare remained the central consideration. The presumption may have factored into earlier decisions made by the court that were not referenced in written or oral judgments at the end of a case. It may have also played a role in cases where parents reached full or partial decisions by consent.

There was a general consensus across the evidence gathered which supports the following findings:

- The most likely outcome of child arrangements cases was for some form of involvement between a child and both of their parents – generally unsupervised and face-to-face. This was true even in cases involving allegations of domestic abuse or

harm. Orders for no involvement or substantially restricted involvement (such as supervised or indirect contact) were not routinely made by the courts.
- There was some evidence, largely from qualitative studies, that in cases with indicators of high risk, including convictions, protection orders and findings of harm, courts still pursued or ordered direct involvement between children and the 'perpetrator' parent.
- There was little evidence about the lives of children and families following proceedings, or how orders worked for these families after they left court.
- The courts' approach to allegations could result in a minimisation of domestic abuse, especially where courts deemed the abuse less serious or historic.

Evidence suggested that the design and practice of the wider family justice system did, in fact, promote parental involvement at every stage of a child arrangements case. The courts' approach to promoting involvement by seeking all possible avenues to support it – referred to as the 'no stone unturned' approach by participants in the Review's stakeholder workshops – was embedded into the practice of the family justice system. The statutory presumption of parental involvement was not the only relevant factor here. Case law considering parties' rights under the European Convention on Human Rights (ECHR), for example, was found to place a 'positive duty' on judges to promote contact between a child and their parent and required the court to consider all alternatives before ordering no involvement.

What is the impact on child welfare of the courts' application of the presumption?

The evidence reviewed was clear that, where there is no risk of harm to the child, involvement of both parents following separation generally had a positive impact on child welfare. Most of the evidence explored the involvement of non-resident fathers and compared shared care and sole care arrangements. Studies generally found that lower levels of father-child involvement were associated with worse child welfare outcomes. However, many of these studies did not consider family characteristics or the experiences of children. Where studies did control for relevant characteristics, such as family income, exposure to parental conflict, or the quality of the parent-child relationship, the difference in child welfare outcomes between children living in shared care arrangements and those living in sole care arrangements disappeared.

Little evidence was identified in the Review about the impact on child welfare where the outcome of a court order was that a child would have no involvement or substantially limited involvement with a parent (such as indirect contact). The lack of a clear evidence base about the long-term outcomes of different forms of involvement ordered by the court was concerning.

Where a parent posed a risk, or had harmed a child, the evidence suggested that involvement with that parent might not further the child's welfare. Such involvement could leave children at ongoing risk of harm, with both short- and long-term implications for their lives. The high incidence of orders for direct contact, and qualitative evidence that courts sometimes ordered direct involvement even in cases with indicators of high risk, suggested that courts were ordering direct contact between children and parents who caused, or posed a risk of, harm to their child. Such decisions can have lifelong negative impacts on children.

The evidence in the Review indicated that children's views were not always considered. If children were engaged, it was often late in proceedings and the courts appeared to take a 'selective' approach to listening to children's voices, where the voices of older children and children supportive of parental involvement tended to be amplified more than those of other children.

Conclusions

The evidence the Review identified suggested that courts take a 'no stone unturned' approach and are intrinsically geared towards fostering involvement for a child with both their parents after separation. For some children, such decisions could further their welfare. However, where a parent poses a risk, or has caused harm to a child, children's welfare was not always supported by parental involvement. The apparent high incidence of orders where there were indicators of risk suggested that the courts were ordering direct contact between children and parents who have caused or pose a risk of harm.

Evidence around judicial decision-making suggested that the presumption was not routinely referenced by judges and magistrates when they made decisions about contested child arrangements orders. When it was referenced, the presumption was highlighted as only one of a number of factors the court must consider when making child arrangements orders.

However, the Review's evidence suggested that, in practical terms, assumptions about child welfare could drive decision-making and an individualised focus on the welfare of each child could be lost. Whilst family justice practitioners generally made every effort to centre child welfare across their practice, the evidence of the Review suggested that system practice and the resulting court decisions could leave children at ongoing risk of harm.

Glossary of terms

This section provides a summary of key terms and definitions used in this report. The terminology and definitions used here may differ from those used in the research reports published alongside this Review. This reflects the differing nature of each report.

Cafcass: the Children and Family Court Advisory and Support Service, which provides independent advice to the family courts in England about what is safe for children and in their best interests. The role of Cafcass's Family Court Advisers is to:

- safeguard and promote the welfare of children
- give advice to the family courts
- make provision for children to be represented
- provide information, advice and support to children and their families.

In Wales this function is provided by Cafcass Cymru.

Child(ren): the Children Act 1989 defines a child as anyone under the age of 18. However, provisions in the Children Act mean that courts will not usually make a Section 8 order (which includes a child arrangements order) for children who have reached the age of 16. Therefore, this report uses the term 'child' broadly to mean children under the age of 16, though some references to children, or children and young people, may include 16- and 17-year-olds.

Child arrangements orders: these are orders made under section 8 of the Children Act 1989. Child arrangements orders can regulate arrangements relating to (a) with whom a child is to live, spend time or otherwise have contact and (b) when a child is to live, spend time or otherwise have contact with any person. A specific division of time, which does not have to be equal, may or may not be set out in such orders.

Child welfare: in this report, child welfare means a child's physical, emotional, social and psychological needs. It includes physical and emotional needs and wellbeing; safety, including protection from abuse, neglect or other harm; domestic, family and personal relationships; securing rights and entitlements; and educational, social and economic wellbeing.

Domestic abuse: the most up-to-date definition of domestic abuse used in England and Wales is provided in the Domestic Abuse Act 2021. This states that domestic abuse is an incident, or series of incidents, of abusive behaviour between two people who are aged 16 or over, and who have been in an intimate personal relationship with each other or are family members (for example because they are, or have been, married to each other or

because they are relatives). Behaviour is abusive if it consists of physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse, or psychological, emotional or other abuse. According to the Domestic Abuse Act 2021, a child who sees, hears, or experiences the effects of domestic abuse involving a person (or two people) to whom the child is related is a victim of domestic abuse in their own right.

Fact-finding hearing: this is a type of hearing where a judge or magistrate considers allegations made by parties to determine if alleged incident(s) or pattern(s) of abusive behaviour took place.

Harm: in this report (drawing on the Children Act 1989), harm means the ill-treatment or the impairment of the health or development of the child including, for example, impairment suffered from seeing or hearing the ill-treatment of another. 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical (such as emotional, psychological, or financial).

Given its context, this Review is focused on harms that are caused to the child by the actions of their parent(s).

Indirect contact: where contact between a child and their parent is not face-to-face (which would be classed as direct contact) and is usually mediated by others, such as the parent sending letters, cards and/or presents to the child, or to a third party to be passed onto the child.

Judgment: this sets out the decision made by a judge and a summary of factors considered by the judge when reaching their decision. Many judgments are made orally (spoken) at the time of the hearing and can be transcribed (written down) at a later date if a written record is required. Others may be issued only in writing, often at a later date than the hearing date.

Parental involvement: drawing on the definition of parental involvement in the Children Act 1989, this refers to any involvement of a parent in a child's life, whether direct (such as the child seeing the parent face-to-face) or indirect. Direct involvement might be supervised or supported (such as via a contact centre) or unsupervised.

Parental responsibility: Section 3 of the Children Act 1989 states that 'parental responsibility' means "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". Some people automatically have parental responsibility for a child. For example, where parents were married or in a civil partnership at the time of the child's birth, they both have parental responsibility for the child. If they were not married or in a civil partnership, the mother has parental responsibility, and the father can acquire parental responsibility in the ways set out in the Children Act 1989. The court has various powers to make, vary or discharge

orders in relation to who has parental responsibility for a child. When the court is considering whether to make such orders, it has to consider whether the presumption applies.

Practice Direction: The Family Practice Directions lay out the procedures to be followed in the Family Division of the High Court, the Family Court and family hearings in magistrates' courts. For example, Practice Direction 12J applies to family proceedings where domestic abuse has been alleged or admitted.

Presumption of parental involvement (also referred to in this report as 'the presumption'): refers to Sections 1(2A), (2B) and (6) of the Children Act 1989 which requires courts, in certain cases, to presume that, unless the contrary is shown, the involvement of a parent (to whom section 1(6) applies) in a child's life will further that child's welfare. The legal basis of the presumption is laid out in more detail in Section 1.1 and the flowchart that follows it.

Prohibited steps order: an order made under section 8 of the Children Act 1989, this prevents a parent (in meeting their parental responsibility for a child) from taking a step, or action of a kind specified in the order, without the consent of the court.

Private law children cases: these are court cases between two or more private individuals who are trying to resolve a dispute in relation to a child. This is often where parents have split up and there is a disagreement about with whom the children should live and have contact or otherwise spend time. A range of different types of court order can be applied for, including 'Section 8' orders (defined below), parental responsibility, financial applications and special guardianship orders.

The vast majority of applications in private law children cases are brought by parents for Section 8 orders. Private law children cases can also involve applications from grandparents, siblings and other relatives or people connected to the child.

Public law cases: these are applications made to court, usually by local authorities, to seek to protect a child and ensure they get the care they need. In these cases, the child is automatically a party to the court application and is usually represented by a Children's Guardian appointed by Cafcass or Cafcass Cymru to represent their interests.

A range of different orders can be applied for. The main types are care or supervision orders which determine whether the child should be looked after or supervised by the local authority, and an emergency protection order which allows an individual or local authority to take a child away from a place where they are in immediate danger to a place of safety.

Section 7 reports: (named after the relevant section in the Children Act 1989) these are ordered by the court to provide information relating to a child's welfare. They are usually

produced by a Family Court Adviser from Cafcass or Cafcass Cymru, or sometimes by a local authority social worker. The report, which is often informed by discussions with or observations of the child in question, will explore the issues in dispute in some depth and the impact they may have on the child's welfare. The report often provides recommendations to the court on what decisions would be in the best interests of the child.

In Pathfinder areas, the new Child Impact Report is usually ordered.[2]

Section 8 order: refers to all orders made under section 8 of the Children Act 1989.These are child arrangements orders (defined above), specific issue orders (defined below) and prohibited steps orders (defined above).

Specific issue order: made under section 8 of the Children Act 1989, this order can be used to determine a specific question about a child's upbringing that has arisen, or may arise, in connection with any aspect of parental responsibility for a child (such as whether to change a child's surname, where the child should go to school or in connection with the child undergoing medical treatment).

Supervised contact: where contact between a child and parent is observed on a one-to-one basis, either by a trained professional (a qualified social worker or trained contact supervisor) who makes detailed notes, or by another person agreed by the courts (perhaps a family member) at an agreed location.

Supported contact: provides neutral ground for children to spend time with parents or family members they do not live with. It is used in situations where the risk factors are low and there is no requirement for detailed reports to be made, beyond recording the date and time of the sessions. It usually takes place with other families in the room at a contact centre but may also take place in another location such as a family member's house or in the community.

Written facts and reasons: this is the document that must be provided when magistrates make decisions in the family court. It should include the decision itself and the information or law on which any decision was based.

[2] The Pathfinder Pilots are a new approach to resolving child arrangements cases in court. In the Pathfinder courts, the usual Child Arrangements Program is suspended and replaced with a revised process. This process is outlined in Practice Direction 36Z.

1. Introduction

1.1. The presumption of parental involvement

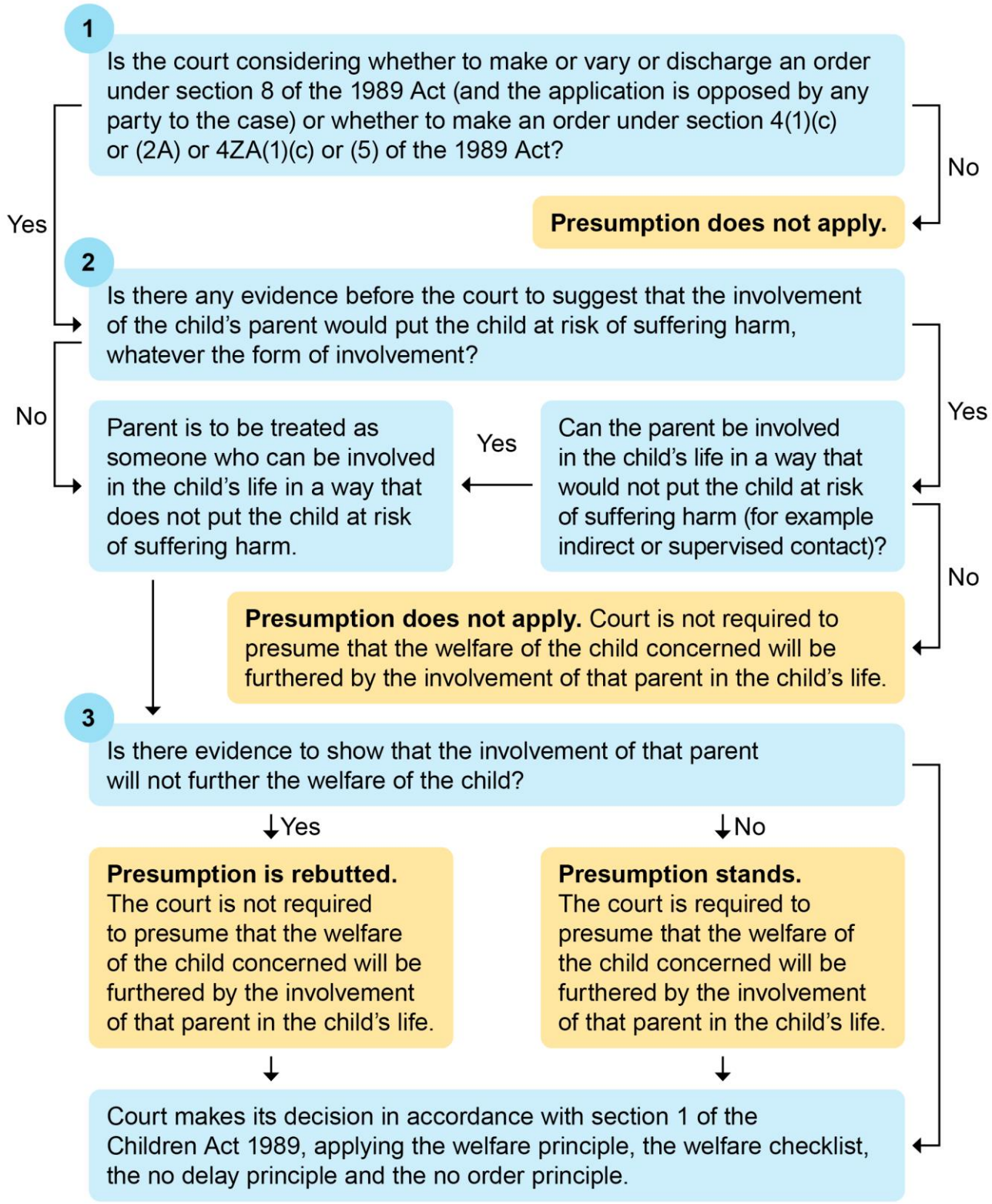
When parents come to the court to make arrangements for their children, the court has powers to make various orders under the Children Act 1989. The most common orders made are child arrangements orders, in which the courts make decisions about the involvement of a parent in a child's life. When a court in England or Wales is considering whether to make a child arrangements order, it must consider what is known as 'the presumption of parental involvement', which is referred to in this report as 'the presumption'.

The presumption was inserted into legislation by the Children and Families Act 2014, which amended section 1 of the Children Act 1989. It applies in certain types of court proceedings, including those for a child arrangements order. This legislation states that the court will presume that the involvement of a parent in a child's life will further the child's welfare unless there is evidence to the contrary. The presumption only initially applies to a parent who can be involved in a child's life in a way that does not put the child at risk or harm. Even if the presumption does initially apply to a parent, it can be rebutted if there is evidence to show that the parent's involvement would not further the child's welfare. This rebuttal is often referred to as 'the exception' to the presumption. This decision-making process, which the court is required to follow, is outlined in figure 1.

The term 'involvement' is defined in section 1(2B) of the Children Act 1989 to mean involvement of some kind, either direct or indirect, but not any particular division of a child's time. It follows that there is no absolute presumption that a child should live with both of their parents, nor a presumption that there must be certain forms or amounts of contact or time spent living with either parent.

As with all decisions about a child's upbringing, the child's welfare must be the court's paramount consideration – that is, it must take priority over any other factor in a case. This is known as the 'welfare paramountcy principle' or 'the welfare principle' and is contained within section 1(1) of the Children Act 1989. There are many factors which are relevant to a child's welfare, not just the rebuttable presumption that their welfare will be furthered by parental involvement.

Figure 1: Presumption decision making flow chart



When deciding whether to make a section 8 order in a case where one party opposes the making of the order, the court will consider a list of factors in section 1(3) of the Children Act 1989, known as 'the welfare checklist'. The factors on the checklist that must be taken into account include the ascertainable wishes and feelings of the child concerned (considered in light of the child's age and understanding); the child's physical, emotional and educational needs; the likely effect on the child of any change in circumstances; how capable each parent is of meeting the child's needs; and any harm the child has suffered or is at risk of suffering, which could include any harm from seeing or hearing the ill-treatment of another.

Case law that has developed over time also reinforces the importance of children having a relationship with both parents. It has placed a 'positive duty' on judges to promote involvement between a child and their parent, requiring the court to consider all alternatives before ordering no involvement (for further discussion of the various cases, see Kaganas, 2018 and MoJ, 2020a). This includes judgments from the European Court of Human Rights in relation to Article 8 of ECHR, which protects the right to private and family life.

1.2. The Expert Panel on harm in private law children cases

In May 2019, following concerns about the experiences of domestic abuse survivors in the family courts, the MoJ announced a public call for evidence that received over 1200 responses from individuals and organisations. MoJ convened an expert panel made up of victims' representatives, senior judiciary, legal practitioners and leading academics. The findings of this panel (referred to in this report as the 'Harm Panel') were published in the June 2020 report *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (MoJ, 2020a).

Although the presumption of parental involvement was supported by some professionals, the panel received sufficient evidence to conclude that, in the cohort of cases described in submissions, the presumption reinforced a "pro-contact culture" and detracted from the court's focus on the child's individual welfare and safety (MoJ, 2020a, p. 174). Views were expressed that the exception to the presumption was not being sufficiently considered, with the effect that children and victim parents were being left at risk of, or actually suffering, significant harm (MoJ, 2020a). The Harm Panel therefore recommended that "the presumption of parental involvement be reviewed urgently in order to address its detrimental effects" (MoJ, 2020a, p. 175).

1.3. The Review

In November 2020, MoJ officially launched the Review of the Presumption of Parental Involvement (MoJ, 2020b). The Review was split into two phases. The first was an evidence gathering phase. The second phase drew all of the evidence together to identify key themes.

The evidence gathering phase involved three externally commissioned research projects, the collection of additional evidence through engagement with frontline family justice professionals and a wider review of the existing evidence on this topic.

The Review team extends its appreciation to all individuals and organisations who contributed to the Presumption Review. Their insights and engagement were instrumental in shaping the evidence base and informing the Review's findings.

1.4. Report structure

This report is structured around the core questions of the Review and the key themes that emerged during the evidence gathering phase. Chapter 2 provides a detailed account of how the Review was undertaken. Chapters 3 and 4 present the main findings of the Review.

Chapter 3 discusses the application of the presumption in final decisions of the court, the nature of orders made by the court, the impact of the presumption throughout proceedings on groups with different characteristics, and the court's ability to understand risks to children.

Chapter 4 considers the impact of parental involvement and harm on child welfare, the role of children within proceedings and how this evidence can help understand the impact of the court's application of the presumption on child welfare.

1.5. A note on language in this report

As far as possible, this report uses the language outlined in the Children Act 1989 and used routinely by the courts. However, attempts have also been made to reflect the language used by those with lived experience where this is relevant.

Generally, this report uses the term 'parental involvement' rather than 'contact'. This refers to any involvement a parent can have with a child and includes face-to-face contact, supervised/supported contact or 'indirect' contact, such as through electronic means or letters. This reflects the definition of 'involvement' in section 1(2B) of the Children Act

1989. In some instances, the term ‘contact’ may, however, be used. This may be where this term was used by participants or in evidence included in the Review. It may also be in cases where the term ‘contact’ is more appropriate, such as in reference to direct or indirect contact between a parent and child, child contact centres or supervised/supported contact.

Reference is often made to ‘the court’s’ approach to decision making or to the ‘court’s’ practice’. Usually, ‘the court’ is used to refer to the family justice system as a whole, rather than a specific part of the system. This does not mean the evidence applied to the whole system equally, but rather that the theme discussed is systemic in some way. When the report is referring to a specific part of the system such as the judiciary, Cafcass, Cafcass Cymru or His Majesty's Courts and Tribunals Service (HMCTS), this is clearly stated.

Whilst the presumption applies in a broader range of cases, in this Review, for simplicity, reference is usually made to child arrangements proceedings. These form the majority of private law applications, and the majority of evidence considered here is based on this case type. At times, references to child arrangements proceedings in this Review will encompass other types of private law applications (such as prohibited steps orders, specific issue orders and orders for parental responsibility). However, the difference between the various application types is not relevant to the conclusions about the presumption being drawn.

When discussing harm, this report considers findings of harm (where a court has determined a factual basis for the perpetration of harm), allegations of harm (where one party has been accused of perpetrating harm), and risk of harm (where an incident of harm may or may not have occurred but there is an ongoing likelihood of harm in the future). These may be distinguished where relevant to the findings, or references to harm may encompass any or all of these.

This report uses the terms ‘victim’ (to refer to those affected by domestic abuse or other serious harm) and ‘perpetrator’ (to refer to those who have caused domestic abuse or other serious harm). Generally, use of these terms refers to alleged victims/perpetrators as well as those where a finding of fact or criminal conviction has been made by the court. Using ‘victim’ and ‘perpetrator’ is not intended to disregard the legal process through which all allegations should be addressed, or to assume that all allegations made are true. Rather, their use seeks to reflect the language used in research studies and the experiences of individuals who have taken part in research (including the research commissioned for this Review). In some cases, the evidence does not specify whether findings have been made by the court (where the allegation was made in family or civil cases), or whether the individual was convicted of the alleged offence (where the allegation relates to a criminal offence).

Whilst the use of 'victim' and 'perpetrator' is gender neutral in this report, the Review recognises that domestic abuse is a gendered crime and, while both males and females can perpetrate domestic abuse and both can be victims, substantial research and statistical evidence demonstrates the higher prevalence and severity of abuse inflicted by male against female intimate partners (see for instance, Office for National Statistics [ONS], 2023).

When discussing ethnicity, this report generally refers to specific ethnicities and communities. However, the term 'ethnic minorities' may be used to refer to all ethnic groups except the White British group. This reflects current government practice on writing about ethnicity.[3] This may differ from the terminology used in the research reports published alongside this report in support of the Review. Notably, in the qualitative research, the Race Equality Foundation preferred to use the term Black, Asian and Minority Ethnic (BAME) when referring collectively to all ethnic groups except the White British group. When referring to the title of that research report, the language will reflect that used by the authors, the Race Equality Foundation and We Stand.

1.6. Use of evidence in this report

This report is based on a range of evidence sources gathered during the course of the Review (further details are provided in chapter 2). The report uses 'the Review's judgment analysis', 'the Review's qualitative research' and 'the Review's literature review' when referring to findings from the three projects commissioned for the Review. When discussing findings from the literature review, this report directs readers to relevant sections of the published report. This report refers to 'stakeholder workshops' when discussing findings from the workshops held with frontline stakeholders. When discussing findings from the Harm Panel's final report (MoJ, 2020a) and the accompanying literature review (Barnett, 2020), reference is generally made to these reports rather than to individual studies included within them. However, where one study is of particular relevance, this is referenced individually to provide the necessary detail. The report draws on a range of published research from both academic and 'grey literature'. This is cited in place as appropriate.

[3] See: https://www.ethnicity-facts-figures.service.gov.uk/style-guide/writing-about-ethnicity/

2. How the Review was undertaken

2.1. Terms of Reference

The Terms of Reference for the Review were set out by MoJ in November 2020. They state that the Review was to consider:

> How courts are applying sections 1(2A), (2B) and (6) of the Children Act 1989, which together require courts to presume, in child arrangements and certain other private law children proceedings, that involvement of a parent in the child's life will further the child's welfare, unless there is evidence to suggest that involvement of that parent would put the child at risk of suffering harm, and to define involvement as "involvement of some kind, either direct or indirect, but not any particular division of a child's time"; and the impacts on children's welfare of the courts' application of these provisions (MoJ, 2020b).

The Review was split into two phases.

2.2. Phase One

Building on the evidence from the Harm Panel, Phase One gathered empirical evidence on the court's application of the presumption and explored evidence about child welfare in different circumstances. Three research projects were commissioned to independent research contractors to explore these themes. In addition, policy workshops were held with frontline professionals and third sector organisations to capture insights, provide context and consolidate empirical evidence from the formal research strands.

To guide this phase of the Review, MoJ appointed an Advisory Group, made up of diverse representatives from across the family justice system, including those who work with families, victims and children. The following organisations were represented on the Advisory Group:

- Families Need Fathers (since renamed Both Parents Matter)
- Women's Aid Federation of England (Women's Aid)
- Cafcass
- Cafcass Cymru
- Her Honour Judge Michelle Corbett
- Nicole Jacobs, Domestic Abuse Commissioner
- Lord Justice Peter Jackson

- Welsh Children's Commissioner's Office (until July 2022)
- Resolution

The Review team are grateful for the Advisory Group's input, while noting that the findings presented in this report have not been endorsed by the Advisory Group and may not represent individual members' views. The Advisory Group did not provide advice on any policy recommendations arising from the Review.[4]

Initial evidence gathering

Phase One of the Review took considerably longer than anticipated. Early in the Review, the Covid-19 pandemic prevented in-person access to courts to conduct the planned review of court files. This caused a delay to the research and meant that the three projects had to be completed sequentially. Further delay was caused by unexpected challenges accessing court files and the complexity of completing research with court files (for more detail, see section 2.4).

Academic think pieces

Following early delays to the evidence-gathering phase, MoJ commissioned three teams of academics to each present a 'think piece' to the Advisory Group on the scope of the Review. The aim was to challenge MoJ's research proposals and provoke further thought on the issues the Review needed to address, the questions it should consider and the proposed research methods. The think pieces provided challenge from the distinct perspectives of human rights, child protection and family law. The think pieces were then discussed with the Advisory Group and changes to the proposed scope and design of the Review were agreed and taken forward by MoJ.

Externally commissioned research

Three research projects were commissioned from independent research contractors with the relevant experience to complete each project.

A literature review was conducted by Alma Economics, exploring existing evidence on the impact that harm and parental involvement have on child welfare across a range of contexts. This was conducted between June and August 2021. In total, Alma Economics reviewed 32 academic papers and 23 studies from grey literature. This evidence was subsequently synthesised into a report authored by MoJ social researchers.

A qualitative research project was conducted by the Race Equality Foundation in partnership with We Stand (formerly known as Mosac) to explore the experiences of two

[4] Due to concerns of judicial independence, the judicial members of the Advisory Group did not advise on or review the project "Private Family Court Cases: Experiences of Black, Asian and Minority Ethnic Parents and Parents in Cases of Alleged Child Sexual Abuse".

groups of parents who are less often heard in family justice research. This project aimed to understand:

- how Black, Asian and minority ethnic parents' personal and cultural characteristics impacted their experiences of the Child Arrangements Programme[5] and the court's application of the presumption in their case
- how allegations of child sexual abuse impacted parents' experiences of the Child Arrangements Programme and the court's application of the presumption in their case.

This research took place between June and November 2022. Interviews were conducted with 19 parents from Black, Asian and minority ethnic backgrounds (10 mothers and 9 fathers) by the Race Equality Foundation and with 10 mothers who had been involved in cases where sexual abuse had been alleged or proven in partnership with We Stand.[6]

Originally, this project also intended to understand the experience of D/deaf and disabled parents. However, following engagement with organisations providing support to D/deaf and disabled parents in family courts, it was not possible to identify a partner organisation who supported enough parents in private law children cases. The organisations identified at that time tended to support parents almost exclusively in public law cases.

The National Centre for Social Research (NatCen) undertook an analysis of unpublished court judgments and magistrates' written facts and reasons. This work explored the application and use of the presumption and risk of harm exception in relevant private law children cases. Data were collected from 245 judgments and written facts and reasons from cases that closed between 1 January 2019 and 31 December 2022 from seven courts in England and one court in Wales.[7] NatCen undertook a feasibility stage between March and November 2022, followed by a full analysis between February and June 2023.

The reports for each research strand, including relevant technical reports, are published alongside this Review. The findings of the feasibility study conducted by NatCen are also published as an annex to the main research report for that project.

[5] The Child Arrangements Program is the procedure the court follows in, for example, proceedings for a child arrangements order. It is outlined in Practice Direction 12B. This procedure has now been suspended in a small number of pilot courts who are operating a new process known as Pathfinder.

[6] This sample were all female because the majority of non-abusing parents and carers supported by We Stand are female. One male client was identified as a potential participant but due to ongoing proceedings was unable to participate in the study.

[7] Nine courts (one per region) participated in this study, although in one court, no eligible files were found.

Additional evidence gathering

Policy workshops

Alongside the formal research strands, seven online stakeholder workshops were held to provide additional insight and context to the findings. They were recorded and the transcripts and workshop notes were analysed. Workshops were held with members of the judiciary, Family Court Advisers from Cafcass and Cafcass Cymru and barristers and solicitors with experience of child arrangements cases. These workshops explored professional experiences of the application of the presumption and their perspectives on the impact this application has on child welfare. Workshops were also held with third sector organisations providing support to: separating parents, D/deaf and disabled parents, victims of child sexual abuse and victims of domestic abuse. The aim was to collect evidence about the experience of court users who were not well represented in the evidence base or formal research strands.

It was not possible to arrange frontline professionals' workshops with local authority social workers or magistrates with experience of child arrangements cases given competing demands, resource and time pressures in those professions. The Review team reached out to organisations supporting parents from LGBTQ+ backgrounds, young parents, migrant parents and fathers but they did not participate in workshops.

As policy-focused events, these workshops were not formal research and so were not subject to full thematic analysis and quality assurance. Whilst they are not discussed as an evidence strand for this Review in their own right, they are used to contextualise the findings from the research evidence with insight from frontline practice. The experiences and views collected represent only the views of those involved in the workshops and not necessarily the views of all individuals in those roles.

Identification of published judgments

The judgment analysis project completed by NatCen considered transcribed judgments and written facts and reasons, most of which will not have been published. Existing research has considered the use of the presumption in published judgments between June 2014 and June 2017 (Kaganas, 2018). To gain further insight into published judgments, the Review team conducted a small-scale review of 20 reported judgments (referred to in this report as "the small-scale review of published judgments"), which were identified through a search of case law in the National Archives and engagement with the Review's Advisory Group. All were published between 2017 and 2023 and involved cases in which the presumption should have been considered. This was not a systematic search and so does not include all relevant judgments published within this timeframe. Therefore, no conclusions were drawn solely from this analysis at any stage.

Additional evidence synthesis

Alma Economics completed the literature search in August 2021. Given the breadth of questions that they were tasked with exploring, and the targeted nature of their approach,

some evidence gaps remained following completion of this project. Further evidence gaps for the Review were identified by members of the Advisory Group and the Review team. The main evidence gaps were distilled into a further set of research questions to be addressed through additional evidence synthesis projects undertaken by the Review team. These were:

- What is the existing evidence on how the courts are applying the presumption?
- How does the impact on child welfare differ depending on whether parental involvement is ordered by the court or agreed outside the court?
- What is the impact on child welfare of different restrictive child arrangements orders (including no involvement, supervised/supported contact, or indirect contact)?
- What works to understand the risk of harm a parent may pose to the child?
- What is the impact on a child's welfare if their wishes and feelings are not appropriately heard by the court?
- What is the impact on a child's welfare if the court makes a decision on parental involvement that is contrary to their wishes and feelings?

These evidence synthesis projects were small scale and targeted, involving searches of academic and grey literature databases, supplemented with key papers identified by members of the Advisory Group. Generally, the team focused on evidence from England and Wales given the focus of the Review. However, some research has been included from comparable jurisdictions where this is appropriate. Best efforts have been made to ensure that no critical piece of evidence has been missed. Whilst the Review team had access to a wide range of academic journals, they did not have access to the complete array of publications, meaning that this is not a fully exhaustive review of academic literature on these subjects. These projects were undertaken over the summer of 2023. Some additional papers and statistics were added during the drafting process, but this did not involve further detailed searches of the literature. No evidence or statistics have been included since April 2024. Any research or statistics published after this date have not been included in this report.

2.3. Phase Two

The second phase of the Review drew together the findings of the primary research with the additional evidence gathered. Using the Terms of Reference for the Review, key themes emerging from the evidence were identified, interrogated and developed into the findings presented here.

Following completion of the evidence-gathering stage, the Review team held two 'challenge panel' events. The aim of these events was to explore the findings of the research and challenge the Review team's interpretation of the evidence from different

perspectives. The first was held on 17 July 2023 with members of the Advisory Group and the second was held on 9 August 2023 with members of the Family Justice Young People's Board (FJYPB). These panels provided further evidence and different perspectives which helped refine the findings outlined in this report.

Members of the FJYPB included in the second challenge panel all had personal experience of child arrangements cases where there were issues of domestic abuse or other harms. Given the experiences of these children and young people, it is possible that they were engaging with this work at least a few years following the conclusion of their cases. This means that some of the experiences described by members may refer to court practice prior to the introduction of the presumption in legislation in 2014 or practice that is considered out of date. Nevertheless, the children and young people involved in this event provided vital insight into the experiences of children and young people in these types of family court cases.

2.4. Access, availability and quality of family justice data

The Review encountered several challenges regarding the availability, access and quality of data on the family justice system. These challenges resulted in significant delays to the completion of the Review and, in some areas, have limited the conclusions drawn. This section discusses these challenges and the impact they had on completion of the Review. Most relate to completion of the judgment analysis project and this section should be read alongside the research report and the accompanying feasibility study and technical annex.

Data access

Initially, access to data was a significant barrier to completion of the judgment analysis project. Due to the sensitivity of case files and the information held within them, access to these documents is protected by legislation and internal HMCTS and MoJ security policies. According to family court rules (Practice Direction 12G), it is not a potential contempt of court to disclose any documents contained within case files for the purposes of 'approved research projects'.[8] Despite this, it was difficult to identify a clear process for requesting permission and gaining access to electronic case files.[9] When trying to access electronic case files, there were several instances where advice and instructions changed. This resulted in delays, with multiple avenues and approaches being explored before it was possible to identify an appropriate and secure mechanism for access. These access

[8] This project was first designated an approved research project by the President of the Family Division in March 2022, and again in January 2023 to reflect the revised approach.

[9] Access to paper court files was found to be more straight forward. However, since the COVID-19 pandemic most private law children case files are held electronically. Although this move pre-dated the pandemic in some courts, a clear process for agreeing access to electronic files did not exist when this research began.

challenges resulted in the project initially concluding after the feasibility stage, before being re-scoped to include analysis of judgments and written facts and reasons only.

Access to family justice administrative data was also a challenge when beginning this research. FamilyMan, the courts' administrative data system, was used as the primary sampling frame for the judgment analysis project. Initially, NatCen were going to request access to this dataset to complete the sampling analysis themselves and to conduct analysis at the end of the project to compare the achieved sample to the national population of cases. However, family court data that could be accessed by external researchers through the Data First program did not include case numbers and so it could not be used as a sampling framework. As a result, MoJ analysts were required to create an anonymised case database that could be shared with NatCen to create the sample. Timescales to access FamilyMan data through Data First also meant it was not possible to compare the achieved sample to the total population of cases as intended.

Due to the sensitive and personal information relating to court users, family justice data is rightly difficult to access. However, there are instances in which it is beneficial to the public for data to be accessed and used, such as for audits and research, providing that principles such as confidentiality and anonymity are preserved. The trade-off between transparency and confidentiality was clearly laid out by Sir Andrew McFarlane, President of the Family Division, following a review of the family justice system (McFarlane, 2021) and subsequent guidance for judges was published in 2024.[10] It is crucial to improve the availability and quality of data so that proper evidence can inform developments to the family justice system, while maintaining the confidentiality of parties and children in court files and data, and restricting information to those with legitimate reasons for accessing it.

Data availability and quality

There has been a push in recent years to use administrative data in research to evidence policy questions, particularly with the partnerships between Administrative Data Research UK (ADR), the Economic and Social Research Council (ESRC), UK Research and Innovation (UKRI) and the government. Using administrative data for research has huge potential but also limitations (Bedston et al., 2019; Broadhurst et al., 2021; Johnson et al., 2020). One key limitation which affected this Review is that administrative data is, by nature, not designed for research. It is data used for organisational purposes, and as such, often does not contain information needed to answer research questions.

A main challenge was the absence of data about the nature of cases. Whilst FamilyMan included information on what happened during a case (such as the applications and orders made), it did not include all the information on cases that was of interest to the researchers. For example, whilst FamilyMan included the legal order made at the end of a case, it did not contain accessible information on the order's content and the specific child

[10] Publication-of-Judgments-Practice-Guidance-JUNE-2024-1.docx

arrangements made. As a result, it could not be used to calculate the proportion of all private law cases that ended with certain outcomes, such as orders for no parental involvement, nor the case features which were associated with these outcomes.

These challenges, whilst not unique to family court data, make it challenging for researchers to address core policy questions about the family justice system. For many of the research questions the Review sought to address, the researchers had to rely on documentary data within the court files. However, court files also created many of the same problems for the researchers as administrative data sets. They are not designed or stored with research in mind. This problem was borne out in the judgment analysis project, which faced challenges due to the inconsistent filing practices between courts. The project faced difficulties in locating relevant case files and locating the required documents, despite using FamilyMan to identify cases in which required documents should be expected.

Similarly, documents within files can vary in their usefulness for research. For example, when reviewing judgments and written facts and reasons, the NatCen team found that documents varied substantially in their detail and quality. As noted in the final report, these documents are purposively written and are not designed as detailed summaries of the case, rather, as explanations of the decisions made at a hearing. Often judgments are handed down orally and, whilst some are subsequently transcribed and published, many more are not. This makes quantifying and analysing these documents difficult and resource intensive and ultimately resulted in a patchy dataset.

These challenges, which are not unique to the Review or to the family justice system, prevented the Review from being able to comprehensively address core questions.

2.5. Robustness and limitations of the evidence

The Review drew on a wide range of evidence to inform its conclusions, including empirical research commissioned specifically for this Review alongside wider evidence already in the public domain. There are, however, key limitations with the evidence collected.

It was not possible to statistically quantify, at a population level, the proportion of cases in which the presumption, or the exception to it, were discussed in judgments or written facts and reasons. Nor was it possible to explore statistically how harm (allegations or findings) related to the application of the presumption or the outcome for children of court decisions. The judgment analysis research is strongly limited by the sample NatCen were able to generate. The final sample is very small compared to the total number of private law children cases going through the system each year. Additionally, over half of the judgments/written facts and reasons included were written facts and reasons from one

court, meaning the findings largely represent the decisions of one bench of magistrates. This creates a sample bias and limits the extent to which findings can be extrapolated from this research to all private law children cases. For further discussion of this issue, see the final report and feasibility study for the MoJ judgment analysis project.

In addition, much of the research included in the Review is based on point-in-time studies that review a small number of cases, or the experience of a small number of participants. Only a limited number of studies consider data on the total population of private law children cases over a number of years (for example Cusworth et al., 2020 and Cusworth et al., 2021a provide insight into the population of court users in private law across Wales and England, respectively).[11] Therefore, it is generally not possible to draw conclusions about the exact proportion of cases, children or families, that experience a certain issue. However, by drawing on a range of different studies that have approached the same issue from different angles, this report can reliably comment on the nature of an issue.

Partly as a result of this lack of data, much of the research on this topic is qualitative in nature and draws on the experiences of parents, children and young people, or professionals. The qualitative research completed for the Review was based on the experiences of a small number of parents (19 ethnic minority parents and 10 parents involved in cases involving allegations of child sexual abuse). Despite best efforts, it was only possible to engage one Welsh parent in this research, and so this study can only comment on the experience of a small number of parents in English courts.

Qualitative research is a vital tool that allows for an in-depth exploration of how the family justice system is experienced by different people. However, individual qualitative studies are often based on the experiences and perceptions of a small number of people and do not represent the views or experiences of all individuals who have been through the family court. In addition, they reflect participants' perceptions of their experiences at a moment in time with a researcher; they may not reflect the 'facts' of the case as understood by the court, nor the views of all individuals involved in the case. Not all individuals are equally likely to take part in research – individuals with particularly negative or, conversely, positive views of the system may, for instance, be more or less willing to participate.

Much of the evidence included in the Review is based on cases, or experiences of court proceedings, prior to the publication of the Harm Panel report. Some referenced cases prior to the introduction of the presumption into legislation and other significant changes brought about by the Children and Families Act 2014. This limitation largely reflects the challenge of completing ethical and robust research on complex issues and the timescales required to complete and publish such research. Whilst the Review included the most up-

[11] Most of these studies have been completed by the Family Justice Data Partnership on behalf of the Nuffield Family Justice Observatory (NFJO) as part of their "Uncovering Private Family Law" series. See Saied-Tessier (2023) for a summary of this work.

to-date evidence available during the summer of 2023 when the main body of evidence was gathered, procedures and practice have developed in recent years, the impact of which may not be fully reflected in the evidence presented in the Review. Any research or statistics published after April 2024 when this report was drafted have not been included in this report.

Moreover, neither the literature review, nor the additional evidence considered by this research, were based on a fully systematic search approach. Best efforts have been made to ensure that no critical piece of evidence has been missed, including consideration of research gaps by the Advisory Group and peer reviewers. However, not all relevant evidence will have been included in the Review.

A final limitation is the extent of direct engagement with children and young people about whom these decisions are made. This is because of the challenges of engaging children and young people with experience of these issues in research. Much of the research considered as part of the Review was conducted with adults and focuses on their perception of the views, feelings and best interest of children and young people. However, in the time available, efforts were made to give weight to the voice of children and young people through engagement with the FJYPB, and to seek out research that was based upon direct engagement with children and young people.

There are limitations to the Review, and not all questions were fully answered. Throughout the Review, conclusions are not based on a single piece of evidence but rather consider the evidence presented as a whole. This does not mean that every piece of evidence reviewed confirmed these conclusions, nor is every piece used to confirm every conclusion reached. But it does mean, that the Review presents a comprehensive overview of how courts were applying the presumption, and its exception, and the impact this can have upon child welfare.

3. How are the courts applying the presumption?

3.1. Application of the presumption in final decisions

Evidence on judicial decision-making in private law children cases was found to be scarce. Many cases did not involve a written judgment. Of those that did, judgments were not routinely published except in the higher courts (the High Court, Court of Appeal and Supreme Court), which represent only a tiny proportion of private law children cases. Therefore, work considering published judgments, or any written judgment, reflected only a small proportion of all decisions or orders made.

The Review located only a small number of studies, including the Review's judgment analysis project, that considered how judges and magistrates use the presumption when making decisions in child arrangements cases. The evidence gathered for the Review suggested that the presumption and its exception were not routinely referenced by judges and magistrates when making decisions about contested child arrangements orders. When it was referenced, the presumption was highlighted as one of several factors the court must consider, and child welfare remained the central consideration.

Studies that analysed published and unpublished judgments found that reference to the presumption by judges and magistrates was not routine. The judgment analysis project found that only 56 of 233 judgments and written facts and reasons for final hearings referenced the presumption or risk of harm exception directly or indirectly.[12] Similarly, Kaganas (2018) found that only one-third (10 out of 30) of the published judgments examined referred to the presumption or its exception. Both studies had significant limitations. The samples were very small and are not representative of the total number of private law children cases going through the system each year.

When the presumption was mentioned in decision making, studies suggested that it was only mentioned briefly and usually when the court was setting out the legal framework on which it made its decision (Kaganas, 2018; Presumption Review Judgment Analysis; small-scale review of published judgments). At this stage, the presumption was referenced in conjunction with the court's other duties to consider the welfare principle, the 'welfare checklist', Practice Direction 12J, and case law. At the same time, the Review found evidence of cases where courts have clearly noted that the presumption is 'rebuttable',

[12] NatCen considered an indirect reference to the presumption to include a discussion of involvement with both parents being beneficial to a child's welfare and upbringing, or nearly always being in a child's best interest.

having regard to 'the totality of evidence before the court' (see, for example D v E (Termination of Parental Responsibility) [2021] EWFC 37) and that the court chiefly considered the child's welfare, in particular whether there is a risk of harm to the child.

Qualitative evidence found similar conclusions. These studies explored the experiences of professionals and parents involved in family court cases. They consistently reported a perception from participants that the presumption was rarely mentioned and had little material impact on the outcomes of final hearings (Harwood, 2021; MoJ, 2020a; Presumption Review Qualitative Research). On the other hand, studies with professionals reported that the presumption acted as a helpful reminder to parents and the court of the importance of both parents' involvement in a child's life (Harwood, 2021; MoJ, 2020a). The workshops with family justice professionals found a similar mix of perspectives; however, there was general agreement that the presumption has had little effect on decision-making since its introduction.

As discussed, this research is not necessarily representative. Moreover, the Review was unable to explore how the presumption may have influenced decisions earlier within the case. Nevertheless, piecing together the research outlined above suggested that the presumption, and the associated decision-making process outlined within sections 1(2A), (2B), (6) and (7) of the Children Act 1989, were not routinely expressly referenced by judges and magistrates when making decisions about contested child arrangements orders. When it was referenced, it appeared that the presumption was, appropriately, highlighted as one of a number of factors the court must consider when making child arrangements orders and that child welfare remains the central consideration.

3.2. Nature of orders made by the courts

In 2023, over 90,000 child arrangements orders were granted as final orders in England and Wales along with a further 21,000 prohibited steps or specific issue orders and over 1000 orders for parental responsibility (MoJ, 2024).[13] Whilst there were data on the type of order made, data about the content of the order, and what actual arrangements are made in court, was not routinely recorded.

To understand the nature of orders granted, studies have reviewed court case files and files held by other partners, such as Cafcass or Cafcass Cymru.[14] There was broad consensus across these studies that the most likely orders were for some form of involvement between a child and both of their parents – generally unsupervised and face-to-face (Cafcass & Women's Aid, 2017; Harding & Newnham, 2015; Hunt & MacLeod,

[13] Multiple orders, including multiple child arrangements orders, can be made within a case. So, data on the number of orders made will not reflect the number of cases disposed.

[14] For a summary of these studies, please see the literature review supporting the Harm Panel (Barnett, 2020).

2008; Perry & Rainey, 2007). This finding was also supported by the research and stakeholder workshops undertaken for this Review. The Review's judgment analysis found that the most common order described was for unsupervised and overnight involvement.

In contrast, research suggested that final orders that restricted parental involvement (such as orders for supervised/supported contact or indirect contact) or orders that resulted in a child having no contact with one of their parents were rare (Cafcass & Women's Aid, 2017; Choudhry, 2019; Harding & Newnham, 2015; Hunt & MacLeod, 2008; Perry & Rainey, 2007). This was supported by the judgment analysis project and stakeholder engagement events. Cafcass and Cafcass Cymru both confirmed that regular internal audits largely supported the finding that final orders for no involvement are very rare. Although the research was clear that orders for no contact were rare, research with case files found that orders for only indirect contact were more common than orders for supervised contact (Cafcass & Women's Aid, 2017; Hunt & MacLeod, 2008; Review's Judgment Analysis). During the stakeholder workshops, frontline staff suggested this was due to challenges with accessing and funding such services or concerns that supervised contact is not an appropriate solution in the long-term (see also, Cordis Bright, 2023).

Studies found that restricted forms of involvement or no involvement were more likely to be ordered where domestic abuse and/or another risk of harm was a factor within a case than in cases without such risks (Cafcass & Women's Aid, 2017; Harding & Newnham, 2015; Hunt & MacLeod, 2008; Perry & Rainey, 2007). However, they also found the most common outcome for cases involving allegations of domestic abuse and/or other risk of harm was still for unsupervised involvement to be ordered. Even in cases where there were indicators of high risk, including convictions, protection orders and findings of harm, studies found that courts still pursued or ordered direct involvement between children and the perpetrator parent (Barnett, 2020; Choudhry, 2019; Coy et al., 2015; Harding & Newnham, 2015; MoJ, 2020a; Review's Qualitative Research). This finding was also supported by some of the parents who participated in the qualitative research led by the Race Equality Foundation as well as frontline professionals at the stakeholder workshops.

The findings presented above are based on small scale studies that are not statistically representative and represent a fraction of cases that come through the courts. In particular, the sample from the Review's judgment analysis project was largely based on the decisions of a single bench of magistrates. Therefore, the studies discussed in this section cannot be used to determine the statistical proportions of cases that ended with different child arrangements. Nevertheless, the consistent narrative across a range of studies, over time and using different methods, can be used to conclude that the outcome of court cases was usually for children to spend time with both parents and that orders placing very strict restrictions on parental involvement permanently were relatively uncommon.

It is important to note that research using court case files found that the majority of child arrangements cases ultimately ended with an order made with the agreement of all parties or where the most pertinent issues – such as whether or not the child would have involvement with both parents – were agreed by the parties (Cafcass & Women's Aid, 2017; Harding & Newnham, 2015; Hunt & Macleod, 2008; Perry & Rainey, 2007). When the court is invited to make an order by consent, the presumption does not apply. However, the detail of the order should be reviewed by a judge or magistrate, who must have the child's welfare as their paramount consideration when deciding whether to make the order sought. Therefore, any consent order granted by a judge or magistrate would suggest the court believed the outcome was supportive of the child's welfare.

Research found, however, that courts may not have always scrutinised the nature of consent orders fully (Barnett 2014, Hunter & Barnett 2013). Other research reported that parents could feel coerced by the system or the other parent to agree to arrangements they did not necessarily feel were safe (Barnett, 2020; MoJ, 2020a; Reviews Qualitative Research). Some evidence suggested that the presumption may have played a role in this coercion or in earlier decisions made by the courts. For example, Harwood (2021) found that judges felt the presumption could support litigants in person to reach agreement and that they would often mention it to parties and professionals at the start of a case to stress the importance of children having a relationship with both parents. However, the Review was unable to identify conclusive evidence about the role the presumption played earlier in proceedings including where cased resolved by consent.

Some stakeholders involved in the Review suggested that no involvement between a child and their parent was more common than research on final orders suggested. They suggested that this could be a result of the parent who was seeking involvement subsequently disengaging with the court process for a variety of reasons. The Review identified very little evidence about the proportion of cases in which this occurred. One study that did consider this issue found that, of a total of 39 (out of 308 cases analysed) cases that ended with the child having no contact at all with their parent, half were withdrawn and two fifths were effectively abandoned by the parent seeking contact (Hunt & Macleod, 2008).

Concern is sometimes raised that, whilst the court may order involvement between a child and their parent, it might not happen. The evidence base covering post-court outcomes for children was found to be limited. Whilst the evidence was clear that arrangements can and do break down, the Review found no evidence to suggest that child arrangements orders were routinely disregarded by the resident parent. Rather orders appeared to be followed initially until some issue or crisis forced the order to break down or the case to return to court (Cafcass, 2016; Halliday, Green & Marsh, 2017; Hunt & Macleod, 2008; Trinder et al., 2013).

3.3. Impact of the presumption throughout proceedings

The Review found that the presumption was not expressly referenced on a regular basis when judges and magistrates made decisions about contested child arrangements orders. However, there was also clear evidence that court practice, culture, case law and legislation came together to create an approach that was focused on facilitating the involvement of both parents in a child's life. The term 'no stone unturned' was used at a stakeholder workshop to describe this approach. Similar ideas were expressed elsewhere. The Harm Panel referred to this as the 'pro-contact culture' and found that courts had a 'deep-seated' and 'systematic' commitment to maintaining contact between children and their parents (MoJ, 2020a).

In making any decision about a child's upbringing, the court must balance different legislative provisions (such as the presumption), as interpreted by the courts over time (case law), and apply them to the facts of the case in order to reach a conclusion, with the child's welfare as its paramount consideration. Legal research has found that these factors, alongside the presumption, have developed over time to reinforce the role of the court in supporting children to have a relationship with both parents. This research found that case law has placed a 'positive duty' on judges to promote involvement between a child and their parent (Barnett, 2020; Kaganas, 2018; MoJ, 2020a) and that human rights discourse has resulted in the family court positioning its role as protecting a 'perpetrator's' right to family life (Choudhry, 2019).

Research and engagement with professionals identified that the culture of the family court created a system that defined child welfare as almost invariably requiring contact with the non-resident parent (MoJ, 2020a). For instance, practitioners interviewed by Harwood (2021) discussed the importance court professionals placed on ensuring children had a relationship with both parents. Many professionals engaged by Harwood were opposed to a presumption against involvement in cases of domestic abuse as they felt this would run contrary to children's rights and children's welfare. During the Review's stakeholder workshops, frontline professionals and organisations supporting parents felt that the court always worked towards contact between a child and their parents.

Research with parents, often mothers who were victims of domestic abuse, found that they felt pressured and coerced by professionals into agreeing to contact irrespective of the circumstances in their case (Barnett, 2020; Birchall & Choudhry, 2018; Review's qualitative research; Thiara & Gill, 2012). Similarly, research with legal representatives found they would often advise mothers to agree to some form of contact to appear 'reasonable' or to avoid 'losing' their case (Barnett, 2014). Research with mothers also reflected this (Birchall & Choudhry, 2018; Choudhry, 2019; Review's qualitative research; Thiara & Gill, 2012). Professionals at the Review's stakeholder workshops discussed how 'systematic pressure' on parents to agree to contact, even in risky situations, shifted the

focus of the case away from the child towards brokering an agreement with the parents to get some form of involvement.

Research consistently reported that mothers felt the pursuit of contact, or a father's right to contact, dominated their case (Barnett, 2014; Birchall, 2022; Birchall & Choudhry, 2018; Choudhry, 2019; Review's qualitative research). Mothers reported feeling, from the outset, that the outcome of their case was presumed to be involvement for both parents, regardless of their situation. They saw this as the court prioritising the involvement of a father, or the 'right' for him to see his children, over concerns about child welfare. This caused a lot of fear and anxiety for mothers who had raised concerns about harm.

At the same time, a small volume of research reported the experiences of fathers who felt they had to 'fight' for contact with their children and that the court process itself undermined the presumption. Research by Hine and Roy (2023, p. 8) described fathers' "all-encompassing despair" at having to "fight" for time with their children in the family courts. Other research found fathers felt their needs as a father and the importance of their involvement were not always considered equally in the court process (Review's qualitative research).

Although experiences differed, and some parents felt that the court process did not support children spending time with both parents, the evidence reviewed points towards a court system geared towards fostering involvement for children with both parents after separation. For some families, this can be positive. Some professionals and parents engaged in research have reported the positive impacts of a firm reinforcement that involvement with both parents is in the child's best interests (MoJ, 2020a; Harwood, 2021; Review's qualitative research). However, where there were concerns or allegations about a risk of harm within a case, the 'no stone unturned' approach could be detrimental to the child's welfare in some cases.

Numerous socio-legal studies, summarised by Barnett (2020), identified how the courts' strong focus on parental involvement led to domestic abuse being marginalised within child arrangements cases and created a negative perception of mothers who raised concerns about contact. In particular, research found that the court tended to disregard older, or what they viewed as less serious, incidences of domestic abuse (often non-physical forms of abuse) and deemed them irrelevant to orders on parental involvement (Barnett, 2014; Birchall & Choudhry, 2018; MoJ, 2020a). This led to victims of domestic abuse feeling disbelieved and afraid through court proceedings (Domestic Abuse Commissioner, 2023; MoJ, 2020a; Review's qualitative research).

The evidence did raise instances of good practice, where parents and victims of domestic abuse felt supported, understood, and heard by the court. For example, one mother who participated in the Review's qualitative research described how the judge had seriously considered the domestic abuse she and her children faced and the positive impact this

had on her case. Further, since the publication of the Harm Panel's report, significant changes in practice and guidance have been introduced (for further information see the Harm Panel "Implementation Plan: Delivery Update" (MoJ, 2023)). However, there was limited evidence about the impacts that these changes have had on the experience of children and families.

3.4. Impact of the presumption on different groups

This section explores the evidence identified from cases involving parties with different characteristics and focuses on gender, ethnicity and disability. Whilst effort was made to explore other characteristics, sufficient evidence was not available. Due to a lack of data, it was not possible to quantify the impact of characteristics on court outcomes. The research described in this section explores the experiences of family court users and outlines the perspectives of organisations that provide support to parents.

Gender

Research with women identified the different and sometimes contradictory expectations that were placed on them as mothers by the court system. Findings suggested that women's emotions were heavily scrutinised by the court, with women being criticised for being too emotional or not emotional enough depending on their demeaner (Barnett, 2020; Birchall, 2022; Choudhry, 2019; MoJ, 2020a; Review's qualitative research). Female victims of domestic abuse faced a similar contradiction in treatment. Mothers who were resistant to the involvement of the child's father could be seen by the system as 'implacably hostile' or 'alienating', whilst also being chastised for failing to leave an abusive partner and thus failing to protect their children from abuse (Barnett, 2020; MoJ, 2020a).

This contradiction appeared to create suspicion of mothers who raised allegations of harm: "the default position of many of the professionals, including children's social care, Cafcass/Cymru and the courts in child arrangements cases, was to treat allegations with a high level of suspicion" (MoJ, 2020a, p. 49). In contrast, qualitative evidence suggested that fathers seeking contact were seen in a sympathetic light and received more leeway than mothers, especially when unrepresented (Barnett, 2020; Birchall, 2022; Birchall & Choudhry, 2018; Choudhry, 2019; Thiara & Gill, 2012). The treatment of mothers in court led to some feeling that the court superseded their right to safety and any concerns for the safety of their children in favour of a father's 'right to contact' (Choudry, 2019; Review's Qualitative research; Thiara & Gill, 2012).

The Review also found that fathers felt subject to stereotypes and gender bias, although research that explored fathers' experiences of child arrangements cases was more limited. Research with fathers found that some felt there was a systematic bias towards resident parents and against them as fathers (Hine & Roy, 2023). In the Review's qualitative research, fathers reported feeling that the stereotypes they faced in general society – for

instance, that fathers are less important as carers than mothers – were reflected in the court process. Research and engagement with male victims of domestic abuse has also identified challenges men can face when bringing allegations to court. This included disbelief by courts and other justice system organisations, especially as a result of assumptions about what a 'typical' victim looks like (Domestic Abuse Commissioner, 2023; Hine & Roy, 2023; MoJ, 2020a).

Ethnicity

Research with mothers and fathers from ethnic minority backgrounds reported racial stereotypes being used by family court professionals (Thiara and Gill, 2012 and the Review's qualitative research). Across both studies, South Asian women felt that they were stereotyped by family court practitioners as subdued and submissive, and therefore, vulnerable parents. African-Caribbean women, on the other hand, felt that that they were viewed by the court as strong and independent and, as a result, could not be victims of domestic abuse. Women and men from African-Caribbean backgrounds also reported that professionals normalised domestic abuse in Black relationships due to stereotypes about violent Black men and normalised a lack of Black fathers' involvement with their children due to stereotypes about how Black men behave in marriages. South Asian mothers reported that South Asian fathers were viewed more sympathetically by the family court, seeing them as family-minded and committed to family culture.

Disability

The Review team engaged a small number of organisations who support D/deaf and disabled parents in family court (in both public and private law proceedings) in a stakeholder workshop. Participants at this event raised concerns with how disability was viewed by the wider family justice system, suggesting that disabled parenting was more heavily scrutinised and judged. They felt that this would often result in parents being involved in public law proceedings, such as care proceedings, rather than parents being able to remain in or enter the private law system where the presumption applies.

For disabled mothers who were also victims of domestic abuse, the organisations reported that a perpetrator parent was often seen as the safer parent compared to a mother with a disability. In cases where children were removed from their mother's care, the organisations flagged that mothers could struggle to remain meaningfully involved in their child's life due to the additional challenges they faced. The organisations also raised issues of women's medical records being used against them by both the court and the perpetrator. They reported that victim mothers' concerns about the use of their medical records could lead to them being afraid to share their disability. This included fear around asking for appropriate special measures to be made to assist their participation in the court proceedings, for fear of their disability being used against them.

For parents (both mothers and fathers) with a learning disability, the support organisations argued that the system started from an assumption that they cannot parent. They felt that

the bar of being a 'good enough parent'[15] was set much higher for parents with a learning disability and that parents who required support were seen as unable to care for their children. This meant children were taken straight into the public law system with no support offered to parents for the child to remain in their care.

3.5. Courts' ability to understand the risk to children

In order to make the decisions outlined in the preceding sections, courts must make challenging decisions that can involve understanding allegations of harm and potential risks children. In many cases, allegations are made by one party about the other and those allegations are disputed. The task for the court is to decide whether the allegations have a direct bearing on the child welfare decisions that must be made, and if so, whether the party has provided sufficient evidence for those allegations to be found by the court to be true (that is, for the court to make "findings of fact").

The evidence explored in the Review identified significant challenges for parties to prove allegations of domestic abuse and other risk of harm to children. The Harm Panel found the courts' approach to allegations results in a 'systematic minimisation' of domestic abuse (MoJ, 2020a). This could lead to domestic abuse not being seen as an issue relevant to the court's decision on child arrangements, with fact-finding hearings not being ordered (Barnett, 2020; Domestic Abuse Commissioner, 2023; MoJ, 2020a). This was particularly the case where the court deemed the domestic abuse to be 'less serious' or 'historic' and therefore not an issue that would affect decisions on child arrangements (Barnett, 2014; MoJ, 2020a; Burton, 2021; also supported by views from some stakeholder workshops). The studies reviewed suggested that the courts focused on recent incidents of serious physical abuse but overlooked more hidden forms of abuse, such as coercive controlling behaviours, financial or emotional abuse.

Where a fact-finding hearing was ordered, it could be very challenging for parties to prove their allegations. This was particularly the case where parties alleged 'hidden harms', such as coercive and controlling behaviour or sexual abuse (including child sexual abuse), or where parties were unrepresented or had to fund evidence gathering (such as reports or testing) themselves (see for instance Trinder et al., 2014 or Organ and Sigafoos, 2018). Evidence suggested that courts expected victims to provide corroborating evidence of abuse, such as police reports (MoJ, 2020a; Harwood, 2018; Review's qualitative research). This was found to be a significant obstacle to proving abuse, as, for a variety of reasons, many victims do not report it (MoJ, 2020a). In the case of child sexual abuse, the Harm Panel suggested "courts impose even higher corroboration requirements" (MoJ,

[15] Good enough parenting is a term sometimes used within child protection cases to refer to parenting that, although not perfect (as no parent is perfect) it is good enough to prevent the child from suffering serious harm.

2020a, p. 96). They found that courts generally did not accept expert opinion or disclosure by the child to the parent making the allegation. Yet, research was clear that very little child sexual abuse comes to the attention of statutory authorities (Allnock, Miller & Baker, 2019; Scott, 2023). This suggested that many families would not have access to the sort of evidence expected by the court.

> Unless you have it in black and white, which I'm sure many sexual abuse cases don't have, or you have that police evidence, things like that, even at that stage, you know, I was told that even if they have a certain amount of evidence, because he has PR [parental responsibility], because he's their father, he may still get contact anyway.
>
> **Mother – Presumption Review Qualitative Research, child sexual abuse strand**

Research has also identified challenges that parents can face in defending themselves against allegations, especially when not represented (Hine and Roy, 2023; MoJ, 2020a;). Fear of false allegations was often reported as a reason for which victims did not raise or withdrew allegations in child arrangements cases (see for instance Barnett, 2020; MoJ, 2020a).

Where findings were not made, or not pursued by the victim, the Harm Panel found that this could leave children and victim parents at risk (MoJ, 2020a). The Panel stated that while the court proceeded on the basis that the alleged abuse had not occurred, the absence of findings did not necessarily mean the absence of risk. This concern was also raised by frontline professionals who attended the Review's stakeholder workshops, as they felt it could leave the court without a full understanding of the child's circumstances and could result in practitioners and the court being closed off to new risks.

3.6. Summary

Evidence around judicial decision-making suggested that the presumption was not expressly referenced by judges and magistrates on a routine basis when making decisions about contested child arrangements orders. When it was referenced, it appeared that the presumption was highlighted as only one of a number of factors the court considered when making a child arrangements orders, and that child welfare remained the central consideration. The Children Act 1989 is clear that child welfare should be the court's paramount consideration. From the Review evidence, it did appear that the decision-making steps inherent in section 1(2A) and (6)) of the Children Act 1989 were not expressly referred to by courts when they made final decisions, though it may have factored into earlier decisions made by the court (or the parties) that were not referenced in written or oral justifications.

Although limitations in the evidence meant it was not possible to robustly comment on the proportion of cases that resolved with different forms of child arrangements, the evidence was consistent in finding that most cases resolved with some form of involvement between children and both of their parents. Most often, this was unsupervised and allowed parents and children to spend time together. Orders for highly restrictive forms of involvement, or no involvement were, in contrast, rare.

In line with the presumption, where there was a risk of harm (generally the studies available were not able to establish if findings had been made by the court), more restrictive forms of parental involvement, or no involvement, were more likely to be ordered. However, whilst these orders were more likely to be made in cases involving a risk of harm, the most likely order remained unsupervised direct contact. There was evidence that even in cases where there were indicators of high-risk, parental involvement, including direct contact, was often still pursued. This raises a concern about whether courts are sufficiently considering the risk of harm to which children may be exposed.

The evidence highlighted that the court system was intrinsically geared towards fostering children's involvement with both parents after separation. The 'no stone unturned' approach permeated proceedings, and evidence suggested this can have a negative impact on parents (particularly mothers) and children in cases where there was a risk, or allegations, of harm. The courts' approach to risk, and the requirements established by law and practice to make findings on allegations, did not appear to align with the reality of harms many children and victim parents face. The Review was not able to firmly distinguish the role of the presumption within the 'no-stone unturned' approach. In particular, the Review could not establish whether decisions earlier in a case, or professionals discussing the presumption with parties at earlier stages of the case, influenced the parties when reaching an agreement. Nevertheless, the presumption did appear to be part of a system and structure that prioritised involvement between children and both parents.

4. What is the impact on child welfare of the courts' application of the presumption?

This section outlines the evidence identified on the impact parental involvement has on child welfare in different circumstances. Much of the evidence is drawn from the literature review conducted by Alma Economics and drafted by MoJ government social researchers. Where this is the case, the relevant section of the literature review is cited rather than repeating the citations included in the report.

4.1. Frequency of involvement

In general, the evidence identified was clear that the involvement of both parents following separation has a positive impact on child welfare (literature review, section 5.1). Much of this evidence came from studies about the post-separation involvement of non-resident fathers, with lower levels of involvement from fathers (such as 'sole care' arrangements)[16] generally associated with worse child welfare outcomes, and higher levels of involvement from fathers (such as 'shared care arrangements')[17] generally associated with better child welfare outcomes (literature review, section 5.1, see also Steinbach & Augustijn, 2022; Steinbach, Augustijn & Corkadi, 2020). This suggested that court orders providing for children to spend substantial time with both of their parents furthered their welfare.

A key limitation of this evidence was the lack of a consistent definition of 'shared care'. Some studies defined children spending 25 per cent of their time with the non-resident parent as 'shared care', which, by other definitions, was considered 'sole care'. This made it difficult to establish the amount of time children were required to spend with each parent to ensure the most positive welfare outcomes. In addition, many studies lacked consideration of socioeconomic and ethnic diversity and did not control for child and family characteristics (literature review, section 5.3). Where studies did control for relevant characteristics, such as parental conflict and family income, the difference between outcomes for children living in shared care arrangements and children living in sole care arrangements disappeared (Steinbach & Augustijn, 2022; Steinbach, Augustijn & Corkadi,

[16] Sole care arrangements: where the child lives with one parent for most of their time and spends a limited amount of time or no time with their other parent (sometimes referred to as the 'non-resident parent').

[17] Shared care arrangements: the child spends time living with each of their parents separately. In practice the child may spend more time living with one parent, but most definitions require the child to spend at least 25 per cent of their time with each parent to be considdered 'shared care'.

2020). This suggested that the positive outcomes for child welfare seen in many studies on shared care arrangements may have related more to the characteristics of families that chose and were able to successfully implement these arrangements, rather than the inherent welfare benefits of the arrangements.

This is particularly relevant when thinking about court-ordered parental involvement. Research exploring the characteristics of families who come to court has found:

- Families in private law proceedings were more likely to live in more deprived areas of England and Wales (Cusworth et al., 2020, 2021a)
- Adults who are Black or who have mixed or multiple ethnicities were overrepresented in private law proceedings (Alrouh et al., 2022; North et al., 2022)
- Adults in private law proceedings were more likely to experience or develop mental health problems (Cusworth et al., 2021b; Griffiths et al., 2022)
- The prevalence of allegations of domestic abuse in child arrangements cases was considerably higher than in the general population (see Barnett, 2020 and ONS, 2023)

Therefore, children with court-ordered parental involvement may not see the same outcomes as children living in families who do not need to use the courts.

Whilst the amount of time that children and parents spend together was clearly important, the quality of a parent and child's relationship appeared to have a larger impact on welfare outcomes for children. Studies found high-quality father-child relationships were associated with positive outcomes for child welfare across a range of measures (literature review, section 5.1).[18] Children and young people reported higher levels of satisfaction when contact was child-focused and enjoyable (Fortin, Hunt & Scanlan, 2012; Lapierre, Côté, & Lessard, 2022). When a child felt their parent was not focused on them, this could be seen as an absence of that parent's emotional involvement in their relationship, which could have negative impacts on children's welfare (see also MoJ, 2020a).

> I go to my dad's Wednesday night and Friday night. Daddy always tells us how much he fought for us or how much money he paid someone called a barrister. He doesn't get up in the morning to make us breakfast. The courts didn't really seem to care about that.
>
> **Young person – *In Our Shoes* (FJYPB, 2021: 35)**

[18] High quality father-child relationships were those characterised, among other things, by reliability, closeness, warmth, involvement in daily activities, and setting boundaries (literature review, section 5.1).

4.2. Impact of risk of harm

Domestic abuse and other safeguarding concerns were identified as significant factors in child arrangements cases. Estimates suggested that at least half of cases involved some concern or allegation about domestic abuse, with many also including other risks of harm to children (Barnett, 2020; Cafcass & Women's Aid, 2017). Whist this Review included a focus on domestic abuse as one of the most cited risks of harm to children, it also examined a range of other harms that children involved in child arrangements cases may face. Many of the harms considered are perhaps more readily associated with child protection. However, research has identified blurred boundaries between the public and private law systems, with many cases found to involve similar risks or hybrid elements of both systems (Bainham, 2013; Harding & Newnham, 2017).

Child abuse and neglect

Where a parent posed a risk, or caused harm to a child, the evidence collected suggested that parental involvement did not necessarily further child welfare and could leave children at ongoing risk of harm, with both short- and long-term implications for their life course. The Review's literature review found that involvement with abusive and/or neglectful parents could lead to the continuation of abuse/neglect and to the development and escalation of internalising and externalising symptoms in the child (literature review, section 5.2).

Previously it had been accepted that some forms of harm, such as sexual and physical abuse, resulted in worse child welfare outcomes than others, such as neglect. However, evidence identified during the Review challenged this 'hierarchy of harm' and suggested instead that all child harms have the potential to have significant negative impacts on child welfare (see for instance Coughlan et al., 2022). The impact of harm on child welfare could be affected by several factors, including the severity of harm and length of time the child is affected by the harm. However, this relationship was not found to be straightforward. Severe acts of harm, such as physical violence, severe acute stress or trauma, or severe neglect were found to have significant effects on child welfare. At the same time, less immediately severe but long-lasting harm, such as chronic neglect, were also found to have a substantial impact on child welfare and, in some cases, could be more damaging than isolated incidents of physical abuse (for full discussion, see literature review, section 4.2). Research has found that the impact of harm on children can mitigated by other characteristics such as support networks (for example, familial bonds beyond parents) or worsened by increased vulnerabilities (Asmussen et al., 2020).

Domestic abuse

Historically, it was assumed that domestic abuse was a risk factor for other forms of child maltreatment, or that only physical acts of violence to children posed a risk to their welfare (Katz, 2016). Many studies have found the family courts have relied on this understanding

(see for instance Barnett, 2020 and MoJ, 2020a). However, more recent evidence has concluded that children are harmed directly by domestic abuse, even if they do not see or are not physically affected by violence (literature review, section 4.1). This understanding is now reflected in law in the Domestic Abuse Act 2021 and in Practice Direction 12J, supplementing the Family Procedure Rules 2010.

Rather than domestic abuse ceasing when parents separate, the evidence reviewed found that ongoing parent-child involvement, and sometimes court involvement to make child arrangements, could become a site of ongoing abuse for both the victim parent and children for many families (Barnett, 2020; Katz, Nikupeteri & Laitinen, 2020; Lapierre, Côté, & Lessard, 2022). Research identified that involvement with an abusive parent can result in a range of negative outcomes for children, including negative effects on their development, their behaviour and their mental and physical health, including the risk of homicide (literature review section 5.2; Barnett, 2020).

Whilst the evidence concluded that domestic abuse poses a risk of harm to children directly, a number of studies identified in the literature review also explored the co-occurrence of domestic abuse and other forms of harm to children (literature review, section 4.2). Although the studies reviewed differed in the extent of this overlap, all agreed that children who experienced domestic abuse were at greater risk of direct physical assault, child homicide, emotional abuse and sexual abuse, as well as being more likely to have a family member with a history of mental illness, substance abuse and/or imprisonment. Given the extent of agreement in the literature they reviewed, Barnett (2020) went on to argue that that domestic abuse and child abuse should not be considered discrete categories.

Parental conflict

The Review also found a large body of literature that considered the impact of parental involvement on child welfare in situations where there were high levels of parental conflict. Disagreements in relationships are normal, especially around separation, and not necessarily problematic when resolved constructively. However, the evidence identified across the Review found that when parents were entrenched in conflict that was “frequent, intense, and poorly resolved”, it was likely to have a negative impact on child welfare (Harold et al., 2016, p. 6). Nonetheless, the evidence differed on whether shared care arrangements in situations of high inter-parental conflict resulted in better or worse welfare outcomes for children (literature review, section 5.2).

The main limitation in the literature on parental conflict was that most studies did not use a single definition of parental conflict or adequately distinguish it from domestic abuse (literature review, section 5.3). It has become increasingly understood that a central component of domestic abuse is the power and control a perpetrator seeks to establish over the victim, which may or may not involve the use of violence (Stark, 2007; Katz, Nikupeteri & Laitinen 2020; Katz, 2016). Many studies defined conflict as a series of

conflictual behaviours (such as shouting, becoming withdrawn or physical fighting) that were 'not domestic abuse'. However, they did not define how conflict behaviours were distinguished from patterns of behaviour that seek to assert and maintain control over a victim. Such studies may have included coercive and controlling behaviour within their definition of parental conflict, presenting a significant limitation in understanding the impact of conflict on child welfare.

These definitional discrepancies also created challenges for the courts when making decisions on parental involvement. The Harm Panel found that family court professionals' ability to identify power and control dynamics were highly inconsistent, and this, alongside other factors, could result in domestic abuse being misidentified, or 'reframed', by the court as 'high conflict' or 'mutually abusive relationships' (MoJ, 2020a). They found that this resulted in courts focusing on encouraging co-operation between parents rather than on the protection of the child and victim-parent, which could leave children and parents at risk.

4.3. Impact of restricted forms of involvement

Supervised and supported contact

The Review found a mixed picture on whether contact centres[19] were able to support safe and good quality contact between children and their parents. Studies in England and Wales, as well as internationally, found that contact centres enabled some children to develop positive relationships with parents they did not live with. For other children, however, these studies found that despite contact being supervised or supported, children continued to experience ongoing abuse (Aris, Harrison & Humphreys, 2002; Cordis Bright, 2023; literature review, section 6.3; Sheehan et al., 2005). The differences identified may relate to differing levels of supervision and safeguarding across contact centres. Research found that safeguarding levels at contact centres could be mismatched to the needs of the families that used them, especially those with a history of coercive control and other forms of 'less visible' abuse (literature review, section 6.3 and Cordis Bright, 2023).

Other factors that affected children's experiences of contact centres related to how children were involved in decision making and the facilities available. Research suggested that children's ability to decide whether and how contact visits occurred significantly affected their welfare (Cordis Bright, 2023; Sheehan et al., 2005), and they experienced stress and anxiety when their views were disregarded (Sheehan et al., 2005). Research also found facilities within contact centres can impact upon children's welfare. Generally, contact centres catered to younger children, including toys and activities designed to

[19] Contact centres provide a place or service to enable children to spend time with parent(s) and/or family members they do not live with. They can be run privately, by local authority children's services, or by a charitable organisation. Many contact centres are accredited by the National Association of Child Contact Centres (NACCC) and any contact ordered by the court should be in a NACCC accredited centre. However, there is no requirement for contact services to be accredited.

entertain children and facilitate child-focused involvement during visits (Aris, Harrison & Humphreys, 2002; Perry & Rainey, 2007). These facilities tended to enhance the experience for younger children but often did not meet the needs of older children and young people (Fortin, Hunt & Scanlan, 2012; Sheehan et al., 2005; Perry & Rainey, 2007).

Indirect parental involvement

Little research was identified that focused specifically on the impact of indirect parental involvement on children (literature review, section 5.3). The lack of attention to this topic likely reflected the very rare use of these orders by the courts (as discussed in chapter 3). However, a small number of papers did note that the practical arrangements of indirect parental involvement could be very difficult to maintain, with children not necessarily receiving letters or gifts sent from their non-resident parent nor having access to telephone or video calls with them as the court intended (Perry & Rainey, 2007; Harwood, 2018).

Research on the use of digital contact in both public and private law settings found that online communication supported some children and parents to maintain a relationship when they did not live together and could support non-resident parents to be more involved in their child's day-to-day activities (Iyer et al., 2020b). This evidence suggested that children and young people were generally used to digital forms of communication, and many were better able to engage naturally by online means (Iyer et al., 2020a; b; Neil, Copson & Sorensen, 2020). However, the research evidence also identified challenges with this sort of involvement. For example, children could find digital contact distressing or emotionally challenging, especially where relationships with family members were poor, emotional abuse continued or conflict existed between their parents (Iyer et al., 2020b; Neil, Copson & Sorensen, 2020). In some cases, research suggested that children were left feeling unsafe due to concerns that digital clues could be used to find where they live (Neil, Copson & Sorensen, 2020).

4.4. No parental involvement

Little evidence was found that focused specifically on welfare outcomes for children where the effect of a child arrangements order is that they have no involvement with a parent. The research included in the literature review tended to focus on comparisons between children cared for primarily by one parent (such as sole care arrangements) and children cared for either in intact families or in shared care arrangements (see literature review section 5.1 for detailed discussion). Therefore, the Review did not have evidence about the long-term welfare outcomes of children in different circumstances where the effect of a court order is that they have no involvement with a parent.

The Review did consider research on children and young people's experience of unwanted parental involvement. One study found that where children and young people had contact with a parent they did not want, or that was not on their terms, some reported negative

experiences including bedwetting and nightmares before the contact (Holt, 2018). Another found that whilst the children and young people interviewed held the ideal that contact with both of their parents was very important for children, where there was an abusive parent-child relationship, they felt contact should not take place and no contact was better for child welfare than bad contact (Fortin, Hunt and Scanlan, 2012). Both studies found that some children wanted to, or indeed did, end their contact with an abusive parent. Similarly, some of the children who participated in research with Lapierre, Côté, & Lessard (2022) were pleased to have limited or no contact with their abusive fathers.

The Review was unable to identify any longitudinal studies that explored the outcomes for children following child arrangements cases and the different outcomes that may be associated with different forms of court and non-court ordered parental involvement. Without such longitudinal research, the system is left without a clear understanding of the potential outcomes for children's welfare, where the effect of a court order is that they have no involvement with a parent.

4.5. Children's ability to shape child arrangements

The research identified was clear that many children and young people wanted to have their voices heard when their parents separated (Barnett, 2020; Jones, 2023; Roe, 2021; Symonds et al., 2022). These studies reported that children whose voices were heard, and who had their views respected, were left feeling empowered and were generally happier with their lives and arrangements following separation or court. On the other hand, they suggested that children who felt they had not been listened to were left feeling distressed.

Evidence on children's participation in proceedings was limited, but, over time, has consistently pointed to the frequent exclusion of children from decision-making processes (Barnett, 2020; Hargreaves et al., 2024; May & Smart, 2004; Holt, 2018; Roe, 2021). In evidence given to the Review, many frontline professionals felt that the culture in family courts was changing and there was increasingly a focus on how children can be involved in proceedings, including in the Pathfinder courts. Research by Jones (2023) did suggest that there have been some improvements in the Pathfinder courts but that children reported wanting more choice about how they engaged in proceedings.

When children were engaged in proceedings, they did not always feel 'heard'. Studies suggested that older children, or children who wanted involvement with both of their parents, were most likely to have their voice heard and for their views to correlate to the decision of the court (literature review, section 6.2). On the other hand, the voices of younger children or children who were reluctant to have contact with a parent were more hidden (Barnett, 2020). In particular, research found that children's descriptions of abuse (both as witnesses and direct victims) were often minimised or ignored (Macdonald, 2017).

Decisions on whether children should participate in proceedings were largely taken for them by adults. Generally, evidence pointed to concerns about involving children in parental disputes, manipulation of the child's voice by an adult – usually the parent they spend the most time with – and the child's age as the main reasons that adults may be concerned about children's views influencing the outcome of the court process (Barnett, 2020; Bell, 2016; Cashmore & Parkinson, 2008; Holt, 2018; Jones, 2023; Macdonald, 2017; May & Smart, 2004; Toros, 2021).

Ascertaining children's wishes and feelings, particularly those of younger children, is challenging. Children's views are usually relayed to the court by a professional (such as a Family Court Adviser or social worker). It can take time for professionals to build a relationship with children to allow them to feel comfortable and able to express their views, something that was found to be not always available in a stretched court system (MoJ, 2020a; Jones, 2023; Roe, 2021). The Review found limited evidence about what works in terms of listening to the voices of children in proceedings. This was one of the key objectives of the literature review, but no evidence was identified by the literature review team (literature review, section 6.2). Young people who participated in the Review's challenge panel event suggested that professionals should not jump straight into discussions but start by drawing or listening to music; something to help build a relationship of trust and get to know the child.

4.6. Public law comparisons

The Review found very little evidence about the impacts that specific types of court-ordered involvement had on child welfare. To provide wider context, the Review also explored the impact of contact (or 'family time') on children in public law contexts (such as those in foster care, kinship care arrangements or adopted children). Given its focus, the Review has not conducted an extensive review of this literature. Rather, a small number of papers were identified through engagement with stakeholders to provide additional insight.

Similar to the research on private law discussed in the preceding sections, research with children in a public law context found that contact with birth families was important and often wanted by children (Iyer et al., 2020a; Neil, Beek & Ward, 2013). Contact with birth families could have a positive impact on children and young people, including supporting them to understand their sense of self, self-worth and their heritage (Iyer et al., 2020a; Neil, Beek & Ward, 2013). The latter was found to be particularly important for ethnic minority children, or children from mixed ethnic backgrounds (Iyer et al., 2020a). However, there was no simple causal relationship identified between the frequency of contact with birth families and children's welfare (Iyer et al., 2020a; Neil, Beek & Ward, 2013). Instead, the reviewed evidence indicated that the quality of contact, rather than quantity, was the key consideration in promoting and protecting child welfare (Iyer et al., 2020a; Neil, 2018;

Neil, Beek & Ward, 2013). Like the evidence on private law cases, the evidence on contact for children in public law placements generally concluded that children wanted a choice about who they maintained contact with and when that contact happened, although it found they did not want to be entirely responsible for decisions (Iyer et al., 2020a). However, the evidence also found that children were less comfortable with, or even, opposed to, contact with hostile or abusive relatives, or those they had no connection with (Neil, Beek & Ward, 2013). Across all of the studies reviewed on contact in a public law context, there was a consistent finding that contact should be focused on the individual needs and wishes of the child involved and that generalised approaches were not good at supporting child welfare (Barnett-Jones & Manning, 2021; Iyer et al., 2020b; Neil, 2018; Neil, Copson & Sorensen, 2020).

4.7. Summary

As discussed in chapter 3, most child arrangements cases ended with orders that provided for children to spend time with both of their parents. The evidence suggested that, for a lot of children, such decisions could further their welfare, with higher levels of involvement generally associated with better child welfare outcomes. At the same time, evidence pointed to quality, rather than quantity, of time spent between parent and child as the factor that mattered most for improving child outcomes. This did not always appear to be a focus of court decisions.

Where a parent posed a risk of harm, however, the evidence was clear that child welfare was not always supported by parental involvement. Ongoing involvement with a parent who posed a risk of harm could lead to a range of negative consequences over the child's life course. The apparent high incidence of orders for direct parental involvement in the context of allegations of domestic abuse and other indicators of harm, as discussed in chapter 3, suggested that decisions made by the court in some cases did leave children at risk of negative welfare outcomes. Unfortunately, the evidence and data were not robust enough to estimate the proportion of children this affected, or the extent of risk faced by children.

Whilst the potential for negative outcomes of harm was clear, there was no single defined child welfare outcome of individual harms, or of different types of parental involvement. The impacts on child welfare was found to be affected by a range of different situations and factors. The impact of harm on children could be mitigated by characteristics such as support networks (for example, familial bonds beyond parents), and the impacts of certain arrangements could be worsened by increased vulnerabilities. This highlighted the importance of decisions that are tailored to the individual needs of a child, as opposed to a 'one-size-fits-all' approach.

Evidence further pointed to a systematic approach of ‘selective listening’ to children, where their voices were amplified if they aligned with the court’s view (usually when they wanted contact with a parent), but were dismissed or minimised when their views differed (usually when they did not want contact with a parent). This appeared to be based on a general assumption that children need involvement with both parents and are likely to change their minds as they get older.

The lack of clear evidence about the child welfare outcomes of different forms of parental involvement ordered by the court was concerning. Courts are required to make complex decisions and, in many cases, judges and magistrates are forced to weigh the potential harm of involvement with a parent who poses a risk of harm against the potential harm of not being able to have a relationship with that parent. Without a clear understanding of the potential impacts of their decisions, the courts’ application of the presumption may rely on an understanding which does not capture the nuances of potential for harm.

5. Conclusion

The Review has drawn on a wide range of evidence to inform its conclusions, including empirical research commissioned specifically for this Review, wider evidence already in the public domain and engagement with family justice stakeholders. Whilst there are important limitations to its findings, the Review has developed a picture of how the statutory presumption was used in decision making. Nevertheless, given the volume and complexity of decisions made every day in the family courts, the Review could not, nor did it seek to, reflect the experiences of all those who have come to court.

The evidence the Review has identified around judicial decision-making demonstrated that the presumption was not routinely expressly referenced by judges and magistrates when making decisions about contested child arrangements orders. When it was referenced, the presumption was highlighted as one of several factors the court had considered. It did not appear to be the core determining factor. Rather, child welfare remained the central consideration. Whilst the Children Act 1989 is clear that child welfare should be the court's paramount consideration, the decision-making steps inherent in section 1(2A) and (6) of the Children Act 1989 were not routinely expressly referred to by courts when they made final decisions.

Nevertheless, the Review found evidence that courts took a 'no stone unturned' approach and were intrinsically geared towards fostering involvement for a child with both parents after separation. Most cases resolved with an order for some form of involvement between a child and both of their parents, most often direct unsupervised contact. Significant effort was made across proceedings to encourage this, and many cases appeared to resolve, at least partially, by agreement of the parties. The statutory presumption appeared to play a role in this 'no-stone unturned' approach but was not the only relevant factor here. Rather, court practice, culture, case law and legislation have come together to create an approach focused on facilitating the involvement of both parents in a child's life.

The evidence identified on child welfare suggested that, for a lot of children, such decisions could further their welfare. However, where a parent posed a risk, or had caused harm to a child, children's welfare was not always supported by parental involvement. The apparent high incidence of orders where there were indicators of risk, alongside qualitative evidence that cases with indicators of high risk still ended with orders for direct involvement, suggested that courts were ordering direct contact between children and parents who caused or posed a risk of harm.

Judges and magistrates are required to make complex decisions that weigh the potential risk of harm to a child posed by a parent's involvement against the potential long-term

impacts of growing up without a relationship with that parent. The Children Act 1989 outlines multiple stages for the courts to consider the risk of harm a parent can pose and requires the court to consider the individual circumstances of the child. However, the Review's evidence suggested that decision-making in the family court was driven by assumptions about child welfare being furthered by the involvement of a parent, meaning that an individualised focus on the specific child's welfare could be lost.

Whilst the Review made clear that many children benefitted from contact with both of their parents, this stance was not appropriate when a child was at risk. Moreover, children at risk of harm from one or both parents were significantly over-represented in the family court. Decisions about their welfare must be made on the basis of the individual circumstances of the child, including an understanding of the potential harms to their physical and emotional wellbeing. The evidence of the Review suggested that practice in the family justice system and the decisions made by courts could leave children at ongoing risk of harm.

The research considered during this Review suggested that practices and procedures created a barrier to courts having the required information at the right time to understand the risk children face. Evidence of clear risk could be hard for parties to establish, especially where they are unrepresented or have additional vulnerabilities. 'Hidden' harms, such as domestic abuse or child sexual abuse, were identified as particularly hard for parties to establish and court practitioners may not have always fully understood the impacts these harms can have on child welfare. Evidence on child participation in private law proceedings pointed to a lack of routine participation of children in proceedings and a selective approach to hearing and responding to their views. The evidence suggested that courts were then left with a partial picture of the child's life when determining the type and frequency of parental involvement, and potentially risked the court being unable to effectively assess potential harms.

6. Next steps

Since the publication of the Harm Panel report in 2020, the MoJ has been committed to improving the ways in which the family justice system assesses risk to the child and determines the role that a child's parents play in their life. This is an enormously important, and complicated, project.

Having considered the evidence in this Review, the Government has made the decision to repeal the presumption of parental involvement in the Children Act 1989. This Review makes clear that the presumption is not the driving force behind the 'no-stone unturned' culture of the family court, and it is important to note that, irrespective of the statutory presumption, caselaw relating to Article 8 of the ECHR (rights to a private and family life) requires the court to consider all alternatives before ordering no involvement between a child and their parent(s).

Nevertheless, the Government considers that repeal of the presumption is an important step in addressing the pro-contact culture. The child's welfare will remain the court's paramount consideration, and the welfare checklist in section 1(3) of the Children Act 1989, with its focus on the individual needs and specific family circumstances of each child, will continue to be a central pillar of court decision-making.

Since the Review was launched, the new Pathfinder approach has significantly changed private family law proceedings in some areas, with a particular focus on putting children as individuals, and their safety, at the heart of family court proceedings. The Pathfinder courts launched as a pilot in Dorset and North Wales in February 2022 before being expanded. They are now operating across all family courts in Wales, and in England are operating in Dorset, Birmingham and West Yorkshire.

In these areas the Pathfinder model replaces the Child Arrangements Programme (CAP). Delivering a more investigative and less adversarial approach, with a key focus on supporting domestic abuse victims and enhancing the voice of the child, Pathfinder fundamentally amends the way that the court gathers information on risk from the initial application. Early research and evaluation of the pilots has been positive, suggesting that courts are listening more to children, and early information gathering is improving case progression.[20] The re-shaping of how the family court operates under the Pathfinder model is a significant step towards supporting the court to fully receive information and understand risk in child arrangements proceedings. The model currently operates in six

20 See Private Law Pathfinder Pilot: process evaluation and financial analysis - GOV.UK and Children and young people's experiences of participation in private proceedings in the family courts | GOV.WALES

court areas, which will be expanded to four further areas by Spring 2026, including Wolverhampton, Stoke-on-Trent, Worcester, Hampshire and the Isle of Wight.

As Chapter 2 makes clear, the Review encountered several challenges regarding the availability, access and quality of data on the family justice system. Specifically, a lack of available information from transcribed judgments and written facts and reasons prevented the Review from being able to understand how risk was associated with different levels and types of parental involvement. The Review also identified a lack of evidence about the child welfare outcomes of different forms of parental involvement ordered by the court.

Greater transparency and access to data are key to being able to analyse the workings of the family court system and evaluate changes and improvements. The approach to transparency in the family courts is committed to promoting open justice while ensuring the anonymity of those involved to enable effective public scrutiny and strengthen confidence in judicial decisions. Since January 2025, new measures have been introduced across England and Wales encouraging courts to make Transparency Orders, where journalists or legal bloggers have attended hearings. These orders provide a clear framework for journalists and legal bloggers to know what they are able to report on, balancing enhanced transparency with the protection of vulnerable children and families. The Government has also begun work to support the judiciary on increasing the number of family court judgments that are published in anonymised form.

Family courts play a critical role in the lives of children – and in the lives of the adults that those children become. We hope that, taken together, these measures will provide the courts with clearer evidence and enable them to make safer decisions.

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