

Improving the family court response to domestic abuse

Proposal for a mechanism to monitor and report on domestic abuse in private law children proceedings



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Executive Summary

Domestic abuse is a central issue in private law children proceedings in the family courts. The evidence suggests that allegations of domestic abuse are present in at least half of all such proceedings, with the most recent Cafcass study finding domestic abuse allegations in 62% of cases.¹

Yet the [Ministry of Justice's Harm Panel report](#) found serious structural issues in the way that:

- domestic abuse allegations were handled,
- risk and potential harm to children was assessed, and
- survivors themselves were re-traumatised by the court process.²

These issues are borne out in the Domestic Abuse Commissioner's engagement with survivors, with problems in the family courts the single most common issue that survivors raise.

A further area of concern in the Harm Panel report was the lack of data on key areas of private law family proceedings,³ while the lack transparency (and consequent lack of accountability) in the family courts has been raised by many, including both the current and former President of the Family Division.⁴

The Harm Panel recommended the establishment of a monitoring mechanism within the office of the Domestic Abuse Commissioner (DAC), in partnership with the Victims' Commissioner (VC). This mechanism will help address the serious failings identified in the Harm Panel report, making the courts and outcomes safer for children, through:

- improving data and understanding of how private law children cases involving domestic abuse are treated, and
- providing a means for the voices of survivors and children to be heard.

Better understanding of, and data around, how cases involving allegations of domestic abuse are treated, and how they relate to other safeguarding issues, is urgently needed, and must be central to all private law reforms. The findings of the mechanism must therefore feed into both the current system and the private law reform programme, and lessons learnt from pilot reforms must feed into the mechanism. The findings must also assist in achieving greater consistency for survivors and children (both in the existing and any reformed system) across court areas nationally, and within each court area. We hope the data and recommendations of the mechanism will also help inform the training of the judiciary and all professionals and agencies in the family justice system.

The box below sets out a summary of the proposed vision and aims for the mechanism, together with proposals for the pilot phase of the project. Further detail is included in the body of this paper.

The purpose of this paper is to report on our work to date on establishing the mechanism and inform all those with an interest in improving the family court's response to domestic

¹ Adrienne Barnett (2020), [Domestic abuse and private law children cases, A literature review](#), 20; Cafcass and Women's Aid; CAFCASS, Women's Aid (2016), [Allegations of domestic abuse in child contact cases](#).

² Ministry of Justice (June 2020), [Assessing Risk of Harm to Children and Parents in Private Law Children Cases](#).

³ Ibid, 97-98.

⁴ Sir Andrew McFarlane, President of the Family Division (October 2021), [Confidence and Confidentiality: Transparency in the Family Court](#); and [Submission by Sir James Munby to the President's Transparency Review \(May 2021\)](#).

abuse of our proposals. We are grateful to everyone who has provided input so far, whether through roundtables or one to one conversations. We would particularly like to thank each and every survivor of domestic abuse who has spoken to us or written to us about their experiences.

The next stage will be to prepare a full design for the pilot phase of the mechanism. We are grateful to the Ministry of Justice, Cafcass, Cafcass Cymru, and HMCTS and the judiciary all of whom have offered to work with us in establishing how we get to the data required for the mechanism. We would like to thank Mrs Justice Knowles, who is helpfully compiling detailed feedback from the members of the judiciary who attended our judicial roundtable, which will feed into the design of the mechanism. We anticipate the design will be completed early in 2022, and the pilot phase of the mechanism will commence in late Spring 2022.

Summary of Vision, Aims and Proposed Pilot Phase for the Monitoring and Reporting Mechanism

Vision

The mechanism will help to ensure that the family justice system has a culture of safety and protection from harm, where:

- children's needs and the impact of domestic abuse are central considerations;
- survivors feel able to raise domestic abuse; and
- children and survivors of domestic abuse feel listened to and respected.

Aims

1. Increase understanding, transparency and accountability within the family court on how: allegations of domestic abuse, and children and survivors, are treated; and the longer-term impact on survivors and children.
2. Lead to more consistent and effective application of the key relevant Practice Directions and new Domestic Abuse Act measures, within each court area, and across all court areas.
3. Ensure children and survivors of domestic abuse can feed back on their experiences, and that this feedback is acted upon.
4. Ensure the particular barriers faced by Black and minority ethnic, Deaf and disabled and LGBTQ+ survivors are better understood and addressed, and achieve a better understanding of the different barriers male and female survivors face.
5. The findings and learning from the mechanism inform the private law reform programme, and emerging lessons learnt from the relevant family justice pilots are drawn out and shared.
6. The increased information and understanding from the mechanism, including dissemination of best practice, helps to ensure that all family court professionals have the training and support they need to make the safest possible decisions.

Proposed pilot phase

The pilot phase of the project will consist of:

1. A scoping exercise to assess what data is able to be collected currently from HMCTS, Cafcass, Cafcass Cymru, MoJ, the Legal Aid Agency and the [SAIL databank](#) (and what will be able to be collected once the new private law Core Case Data system is up and running); and
2. A mixed methods monitoring pilot across 3 court areas, to culminate in a report after one year to include the design of a framework and instrument for longer-term monitoring of the family court's response to domestic abuse in private law children's proceedings nationally.

1. Introduction

1.1 Purpose of paper

This paper sets out the proposals of the Domestic Abuse Commissioner (DAC) and Victims' Commissioner for establishing a monitoring and reporting mechanism on the family courts' performance in how survivors of domestic abuse and their children are dealt with in private law children's proceedings.

The paper sets out: the background and context for this work; the overarching vision for the mechanism; a number of specific aims; proposed key priorities for monitoring; and initial proposals for the design of the pilot phase of the mechanism. These are informed by a series of roundtables held by the Domestic Abuse Commissioner with the judiciary, legal sector, academics, children's organisations and the Children's Commissioner's Office, Cafcass and Cafcass Cymru, domestic abuse service organisations (including those specifically supporting male survivors), support workers such as Idvas (Independent Domestic Abuse Advisors), survivors and campaigners and the Family Justice Young People's Board. We are very grateful to everyone who has provided input.

1.2 Background

A monitoring and reporting mechanism was recommended in the [Ministry of Justice's Harm Panel report](#) as follows:

- "That a national monitoring team be established within the office of the Domestic Abuse Commissioner to maintain oversight of and report regularly on the family courts' performance in how victims of domestic abuse and their children are dealt with in private law children's proceedings."

The recommendation was accepted by the Government in their [Harm Panel Implementation Plan](#).⁵

The Commissioners acknowledge the importance of maintaining the independence of the judiciary. They will not seek, through the mechanism, to direct judicial practice, or to review or overturn individual decisions.

1.3 Scope

The Commissioners note the feedback from the roundtables about the need for the monitoring mechanism to cover other family court proceedings in addition to private law children proceedings. We were particularly recommended to consider monitoring proceedings for injunctive relief such as non-molestation orders or occupation orders, as these are often brought in parallel to, or can precipitate, private law children applications. We were told by judges that it would be particularly helpful if the links between the two types of proceedings could be mapped. It is beyond the scope of this paper, which deals only with private law children proceedings, to consider such other proceedings, but we note how useful this information would be in establishing as full a picture as possible of the treatment of domestic abuse in the family courts and will consider this further during the design phase of the mechanism (subject to budgetary and practical constraints).

⁵ The [Harm Panel Implementation Plan](#) states: "We have invited the independent Domestic Abuse Commissioner and Victim's Commissioner to undertake ongoing monitoring of private family law proceedings involving DA victims in the family courts, and for these reports to be published, as part of their role in monitoring the services for victims."

2 Why is the monitoring and reporting mechanism necessary?

2.1 Issues identified in Harm Panel Report

The [Ministry of Justice's Harm Panel report](#), published in June 2020, laid bare, as then Justice Minister Alex Chalk said, “many hard truths about long-standing failings in the family justice system, especially in protecting the survivors of abuse and their children from harm.”⁶ The report set out the issues survivors face in the family courts in detail, issues which are borne out in the correspondence the Domestic Abuse Commissioner’s office receives from survivors. The key issues are:

- **A culture of disbelief** for survivors raising issues of domestic abuse, with a lack of understanding and/or minimisation of domestic abuse by the courts,⁷ and concerns from survivors and their advisors that raising domestic abuse as an issue risks the use of “parental alienation” narratives by parties against whom domestic abuse has been alleged as a counter-claim, leading to a more negative outcome for survivors and children.⁸
- **A pro-contact culture**, with evidence to the Harm Panel suggesting that the presumption of contact is rarely disapplied, and domestic abuse allegations (and the potential trauma/emotional impact on the child of being forced to have contact with an abusive parent, sometimes against their will) not sufficiently taken into account.⁹
- **The retraumatising nature of family proceedings** due to the culture of disbelief, the adversarial nature of proceedings, lack of access to special measures, lack of specialist court support such as IDVAs and repeated abusive applications to court.
- **Inappropriate use of mediation** or other out of court resolution, which is not appropriate for domestic abuse survivors.¹⁰
- **Silo working**, with a lack of join up and communication between the criminal justice system, child safeguarding (public law children’s cases) and the private law family system, and inconsistencies with how those alleging domestic abuse are treated in each system.¹¹
- **Under-resourcing of the family justice system, and lack of availability of legal aid**, both of which are a major impediment to the effective implementation of PD12J, leading to issues including delays caused by listing pressures and the court being unable to dedicate proper time to individual cases.¹²
- **Additional barriers to justice in the family courts for survivors sharing protected characteristics**, particularly ethnic minority survivors, LGBTQ+ survivors, disabled survivors, and survivors with migrant status.¹³

2.2 Domestic abuse as a central issue in private law children proceedings

⁶ Alex Chalk, then Parliamentary Under-Secretary of State for Justice (June 2020), [Statement on the Final Report of the MoJ Expert Panel on Harm in the Family Courts and Implementation Plan](#).

⁷ Ministry of Justice (June 2020), [Assessing Risk of Harm to Children and Parents in Private Law Children Cases](#), 49.

⁸ Ibid, 65.

⁹ Ibid, 4.

¹⁰ Ibid, 89.

¹¹ Ministry of Justice (June 2020), [Assessing Risk of Harm to Children and Parents in Private Law Children Cases](#), 44

¹² Ibid, 85.

¹³ Ibid, 5 and 185.

The need for reform of private law children proceedings has long been recognised and is being driven forward by both government and the judiciary,¹⁴ with particular emphasis given to this work following the Harm Panel report. A key focus of papers published on reform so far is on reducing demand,¹⁵ diverting families away from court where possible,¹⁶ and targeting resources at a minority of the cases where there is greatest risk. The Private Law Advisory Group states that “it is important that scarce resources are targeted to ensure that the most vulnerable children and court users are not disadvantaged. Identifying safeguarding concerns and issues of domestic abuse at an early stage is key to this.”¹⁷ This is understandable given the considerable pressures facing the family courts in light of increases in private law proceedings,¹⁸ the impact of the pandemic, the lack of resources available and the need to reduce damaging delays. The papers also rightly make clear that cases involving allegations of domestic abuse should not be inappropriately diverted out of court.¹⁹

Whilst we welcome a focus on identifying issues of domestic abuse at an early stage in proceedings, we are however concerned that an approach focused on targeting resources at a minority of cases anticipates that risk to children from domestic abuse will be an issue in a minority of proceedings. In fact, the available evidence to date suggests that allegations of domestic abuse are present in at least half of all private law children proceedings, with the most recent study conducted by Cafcass finding domestic abuse allegations present in 62% of cases.²⁰ Further, the Cafcass study found that allegations of domestic abuse were usually accompanied by an additional allegation relevant to safeguarding (with allegations other than domestic abuse recorded in 73% of all cases in the sample studied).²¹ Other recent research has highlighted the link between deprivation and private law applications in England, with 52% of fathers and 54% of mothers living in the two most deprived quintiles of the wider population.²² These data suggest that too great a focus on triaging cases to non-court pathways could lead to cases involving a risk of harm from domestic abuse (or other causes) being wrongly diverted.

It is clear that better understanding of, and data around, how cases involving allegations of domestic abuse are treated, and how they relate to other safeguarding issues, is urgently needed, and must be central to all private law reforms. Reforms that attempt to reduce demand and divert families away from court without such understanding, may increase the risk of harm to children and survivors of domestic abuse. The monitoring and reporting mechanism has an important role to play in this.

2.3 Transparency and the case for data²³

¹⁴ Private Law Working Group (March 2020), [Second Report to the President of the Family Division](#); Private Law Advisory Group (December 2020), [Final report](#).

¹⁵ Private Law Advisory Group (December 2020), [Final report](#), 3.

¹⁶ Private Law Working Group (March 2020), [Second Report to the President of the Family Division](#), 4.

¹⁷ Private Law Advisory Group (December 2020), [Final report](#), 12.

¹⁸ The number of private law applications made in 2019/20 was 46,500, compared to 35,000 in 2007/08: see [Nuffield Family Justice Observatory \(February 2021\), Uncovering private family law: Who’s coming to court in England? Summary](#).

¹⁹ Eg. Private Law Advisory Group (December 2020), [Final report](#), 22.

²⁰ Adrienne Barnett (2020), [Domestic abuse and private law children cases, A literature review](#), 20; Cafcass and Women’s Aid; CAF/CASS, Women’s Aid (2016), [Allegations of domestic abuse in child contact cases](#).

²¹ CAF/CASS, Women’s Aid (2016), [Allegations of domestic abuse in child contact cases](#), 11.

²² See [Nuffield Family Justice Observatory \(February 2021\), Uncovering private family law: Who’s coming to court in England? Summary](#).

²³ We note here the concerns of the Family Justice Young People’s board around ensuring that jigsaw identification (identification of a party from multiple sources of information being pieced together) is not

Effective monitoring and reporting by the Domestic Abuse Commissioner and Victims' Commissioner will also help to increase transparency in the family courts. It is widely acknowledged that such increased transparency is crucial to restore public confidence in the family courts, with the current President of the Family Division, Sir Andrew McFarlane, noting in his recent Transparency Review that: "there needs to be a major shift in culture and process to increase the transparency of the system."²⁴

The importance of improving data collected and made available within the justice system has been widely acknowledged by other agencies within the England and Wales justice system. HMCTS have noted that: "Data is a strategic asset which plays an increasingly important part in the delivery of our roles: supporting the rule of law and access to justice, improving performance and efficiency, driving fairness and promoting transparency."²⁵ We note that there may be concerns around increased data gathering and risks to judicial independence, for example, "by providing governments with a means of 'performance management' of the judicial role."²⁶ However, a recent comparative study on justice system data in Canada, Australia and Ireland "did not identify any robust empirical evidence that showed that greater public availability of data undermined judicial independence."²⁷

We consider that better understanding and greater transparency, driven by effective data gathering on the treatment of domestic abuse allegations, and the experience of survivors and children in the family courts, will be of assistance to all relevant bodies and agencies involved in the family justice system. Better data will help drive improvements in how domestic abuse allegations are handled, how survivors and children are treated in the courts, and will help improve consistency across different courts areas and levels. The information gathered will be able to be used to address the issues noted in the Harm Panel and in the recent Court of Appeal case of *Re H-N*,²⁸ thereby reducing harm to children and survivors of domestic abuse, and driving up public confidence in the family justice system. The importance of data collection has been noted by the President, who has proposed "a scheme of compulsory data collection at the end of each case"²⁹ and we look forward to working closely together on this.

3 Roundtables

Between July and October 2021, the DAC held roundtables with experts from the legal sector, academia, the children's sector, Cafcass, Cafcass Cymru, service organisations supporting domestic abuse survivors (with a separate roundtable for organisations specifically supporting male survivors), survivors, campaigners and members of the FJYPB. We invited feedback on all elements of our proposals for the mechanism. We have also held a number of separate conversations with other professionals and experts. A number of common themes emerged, particularly around: the importance of effective communication;

possible and will ensure that no such identification is possible through any reports of the monitoring and reporting mechanism.

²⁴ Sir Andrew McFarlane, President of the Family Division (October 2021), [Confidence and Confidentiality: Transparency in the Family Court](#).

²⁵ HMCTS (October 2020), Making the most of HMCTS data (HMCTS response to Dr Natalie Byrom (2019) [Digital Justice: HMCTS data strategy and delivering access to justice](#)).

²⁶ Townsend and Weiner (July 2021), ['Justice system data': a comparative study Report and recommendations](#), 86.

²⁷ Townsend and Weiner (July 2021), ['Justice system data': a comparative study Report and recommendations](#), 116.

²⁸ [2021] EWCA Civ 448.

²⁹ Sir Andrew McFarlane, President of the Family Division (October 2021), [Confidence and Confidentiality: Transparency in the Family Court](#).

procedural justice; understanding of domestic abuse (and its impact on children) by judges and lawyers; barriers faced by particular groups; adherence to relevant practice directions; use of experts; and access to information, legal representation and specialist domestic abuse support. A summary of these themes is set out, together with a list of our engagement, at Appendix 2. We also held a roundtable with the judiciary, and their feedback is reflected throughout the paper.

The roundtables provided a great deal of helpful feedback and suggestions, for which we are very grateful, particularly around refining the vision and aims of the mechanism and identifying key priorities for monitoring. These aims and visions, and suggested priorities for monitoring are set out below.

4 Proposals for the monitoring and reporting mechanism

4.1 Vision and Aims

This section sets out our revised proposals for the vision and aims for the monitoring and reporting mechanism. We note that the mechanism will need to be flexible and responsive, adjusting as pilot reforms are rolled out more widely, and so these aims will be reviewed and updated yearly.

Vision

The findings from the mechanism (and actions taken by relevant bodies and agencies in response) will help to ensure that the family justice system has a culture of safety and protection from harm, where:

- children's needs and the impact of domestic abuse are central considerations;
- survivors feel able to raise domestic abuse; and
- children and survivors of domestic abuse feel listened to and respected.

Aims

1. Increase understanding, transparency and accountability within the family court on how: allegations of domestic abuse, and children and survivors, are treated during the court process; and the longer-term impact on survivors and children.
2. Ensure consistent and effective application of the relevant Practice Directions and new Domestic Abuse Act measures,³⁰ within each court area, and across all court areas in cases involving allegations of domestic abuse.
3. Ensure children and survivors of domestic abuse can feed back on their experiences, and that this feedback is acted upon.
4. Ensure that particular barriers faced by Black and minority ethnic, Deaf and disabled and LGBTQ+ survivors are better understood and addressed, and achieve a better understanding of the different barriers male and female survivors face.

³⁰ These are: Practice Directions 3A (MIAM exemption – domestic violence), 3AA (special measures) and 12J (child arrangements & contact orders: domestic abuse and harm), as well as the new DA Act provisions relating to special measures in the family courts (including the prohibition on cross-examination in person).

5. Ensure that the findings and learning from the mechanism inform the private law reform programme, and that emerging lessons learnt from the relevant family justice pilots are drawn out and shared.³¹
6. The increased information and understanding from the mechanism, including dissemination of best practice, helps to ensure that all family court professionals have the training and support they need to make the safest possible decisions.

4.2 Priorities for monitoring

A number of key concerns, recommendations and suggested priorities came through from the roundtables. A detailed summary of these themes is set out at Appendix 2. From these, together with suggestions from the judicial roundtable, we have drawn the suggested key priorities for monitoring. Each priority is set out below, and the key detailed questions to be answered under each category – to generate the data required to monitor these aspects – are set out at Appendix 1. The next step will be to appoint a researcher to produce a detailed design for the pilot phase of the mechanism.

One of the strongest themes to emerge from the roundtables was how important it was that judges should have a good understanding of domestic abuse, and an understanding of the particular barriers facing disabled, Black and minoritized survivors, as well as those with migrant status. Consideration will be given during the design of the mechanism as to how these aspects can best be monitored within each of the below categories.

4.2.1 Legal representation, support and special measures

Participants across many of the roundtables repeatedly emphasised just how important access to both good quality legal representation and specialist domestic abuse support (such as an Idva, or advocate from a specialist by and for organisation) was for survivors of domestic abuse. Despite this, a significant lack of access to such representation and support was cited by roundtable participants (and was also noted in the [DAC's recent report](#) on this issue).³² With respect to legal representation, the importance of solicitors and barristers having a good understanding of domestic abuse was raised repeatedly in our roundtables, including the judicial roundtable. Reliable access to special measures (such as the ability to give evidence over video-link), and timely communication in advance of hearings about whether or not such special measures have been granted, was also cited as critically important to survivors. Yet we heard of special measures not being granted (with no reason given) or, if they were granted, parties being unaware of this ahead of their hearings. The new presumption in favour of special measures introduced by the Domestic Abuse Act was welcomed, along with the prohibition of cross-examination in person, and it was felt that the application of these new measures should be monitored. Survivors, support services and a participant in the judicial roundtable, raised the need for a better understanding of the provision of interpreters and how effective they were in helping survivors put forward their case. Concerns were raised, for example, about interpreters who spoke a different dialect of a

³¹ Relevant pilots would include: (i) the private law reform pilots (the investigative approach, including increased use of out of court mediation, and the one family one judge court pilots); and (ii) the pilot of PD36Q (flexible court practices due to the coronavirus pandemic, including remote hearings, and how best practice can be extended on a permanent basis).

³² Safe Lives (June 2021), commissioned by the Domestic Abuse Commissioner, [Understanding Court Support for Victims of Domestic Abuse](#).

particular language, meaning important nuances were not captured in their translations.

We therefore suggest that access to legal representation, non-legal specialist domestic abuse support and special measures should be monitored (including application of PD3AA and the new DA Act provisions on cross-examination), as well as access to appropriately qualified interpreters.

4.2.2 Pathways into court

The need to better understand the types of applicants that bring private law children proceedings was emphasised,³³ and in particular to capture cases where domestic abuse may be an issue but that do not make it into court. A number of roundtable participants highlighted to us that survivors of domestic abuse may be (wrongly) advised by their lawyers not to bring up their allegations of domestic abuse (for fear of ending up with a worse outcome – for example, because of counter-allegations of ‘parental alienation’ being made). Concerns were also raised about survivors being inappropriately diverted to mediation, with the Mediation Information & Assessment Meeting (MIAM) exemption not being correctly applied, and about the lack of standardised risk assessment tools for mediators to correctly identify abuse cases.

We therefore suggest that characteristics of applicant, respondent and type of application be monitored, along with the use of the MIAM exemption. Consideration should also be given as to whether it is possible to collect data from mediators about the number of cases they have mediated where domestic abuse has been raised by one or both parties, and the outcome. As mentioned in section 1.3 above (Scope), we note the recommendation that we also monitor parallel applications for injunctive proceedings to better understand how these can precipitate child arrangement applications.

4.2.3 How proceedings are conducted

Participants to the roundtables emphasised the importance of monitoring a number of key elements in how proceedings are conducted once allegations of domestic abuse have been raised, to fully understand: whether parties alleging domestic abuse are given a fair hearing, and how risk to a child is assessed. Key to monitoring this is to understand, *inter alia*:

- What type of abuse was alleged?
- Were counter allegations made? (Many participants across in the roundtables raised concerns that counter-allegations of ‘parental alienation’ were being used to silence domestic abuse claims and undermine the voice of the child.)
- What evidence was available to the court in making decisions at each stage?
- Was Practice Direction 12J adhered to?
- Was interim contact ordered?
- What interventions were ordered (if any)?
- How was any fact finding hearing and final hearing conducted? A point was raised in the judicial roundtable around the need for qualitative research around the safest, most effective way of conducting fact-finding hearings

³³ We note the information already available in the two Nuffield Family Justice Observatory reports: Cusworth (2021), *Uncovering private family law: Who’s coming to court in England?*; and Cusworth (2020), *Uncovering private family law: Who’s coming to court in Wales?*

without making hearings too lengthy (which leads to harmful delays to the case).

- Was relevant evidence disclosed by other agencies, particularly the police? The lack of consistency around police disclosure (and the damaging impact of delays where disclosure is not forthcoming) was raised by a number of participants in our roundtables, and especially in our judicial roundtable.
- Were written reasons recorded at all relevant stages by judges (as required by PD12J) and how were these communicated to parties and children? It was noted that at District Judge level, whilst orders made should contain reasons as required by Practice Direction 12J, much of the detail of the reasoning will be contained in oral judgments which are recorded but only transcribed where a request is made (and a fee paid).
- Was an independent expert (s) appointed, and was PD25 adhered to? (Participants to the roundtables raised concerns about the appointment of unqualified experts, including those with a financial interest in the outcome of a case, such as recommending therapy which they themselves then go on to provide. Particular concern was raised with respect to unqualified experts styling themselves 'parental alienation' experts).
- How were children's wishes and feelings ascertained and presented to court?
- What was the role of Cafcass and/or the relevant local authority?

The impact of delays to proceedings and the number of different judges hearing a case was also raised by participants and should be monitored by the mechanism. Full details of questions that the monitoring mechanism should help answer under this category are set out at Appendix 1.

4.2.4 Final orders made and events after the end of proceedings

The mechanism will need to capture the nature of final orders made, and whether and how written reasons were recorded by the judge. In addition, roundtable participants felt strongly that the mechanism should capture events after the end of proceedings, to include:

- Returns to court for breaches of orders and enforcement
- Allegations of abuse post-proceedings
- Cafcass concerns about court ordered contact
- Barring orders (s.91(14) orders) made
- Appeals (permission sought, granted, appeal successful/unsuccessful)

In particular, the survivors' roundtables were keen to capture the impact on survivors and children after the end of proceedings (and this should be captured under 4.2.5 below (experience of survivors, children and young people)).

4.2.5 Experience of survivors, children and young people

Participants in the legal, academic and domestic abuse service organisations roundtables highlighted the need for the mechanism to include feedback on the experiences of survivors, children and young people who are going through/have been through the courts. This is particularly important due to potential gaps in case files, such as lack of written reasons recorded. The majority of survivors and young people we spoke to also agreed strongly that their feedback should form part of the mechanism. Most survivors we spoke to said they would have greatly valued the

chance to feedback to the Domestic Abuse Commissioner, even knowing that she could not intervene in individual cases; they felt strongly incentivised to share their own experiences in order to improve the court process in future for others. One or two mentioned how overwhelming family court proceedings were, so care would need to be taken in eliciting feedback from survivors to avoid adding to this. The survivors we spoke to felt that feedback should be taken at different stages throughout proceedings, and then again at the end of proceedings (and even a year or two afterwards) to present as full a picture as possible. Most survivors said they would have been happy for their children to give feedback on their experiences (assuming they're of an appropriate age), although one survivor felt it would be too much of a burden on the child. Several roundtable participants raised the possibility of also surveying parties to proceedings against whom domestic abuse has been alleged, as better understanding their experiences, choices and views may assist in making courts safer for survivors. Further details of specific questions to be answered in this category are set out at Appendix 1.

4.3 Data required

We recognise that the administrative data currently collected by HMCTS (through the 'Family Man' system), as well as by Cafcass, contains very little of the data required to answer the key questions under each of our priorities for monitoring. However, we consider that it is important to establish the full range of questions which it would be helpful for the mechanism to answer, and work from there to suggest solutions for monitoring within the current data limitations. We also note that HMCTS is developing a new Core Case Data system to gather a much wider range of data on private law family proceedings, and we intend for this paper to influence the development of this system. We are grateful to HMCTS for their engagement with us on this and will be continuing discussions during the design phase of the mechanism.

It was suggested in our roundtables that monitoring of PD12J should involve: (i) the collection of quantitative data to show patterns in the system as a whole; and (ii) a deep dive into a reasonably large sample to analyse qualitatively patterns of decision making, giving examples of good and poor practice, to better understand how cases involving allegations of DA are being approached.

A suggestion was made that there should be a Domestic Abuse Champion in every court (who could be an existing member of HMCTS staff) who monitors the recording of written reasons where decisions are made, as required by PD12J, as well as other aspects relevant to how cases involving domestic abuse are treated. There was significant support for the proposal of a Domestic Abuse Champion in every court, including in the judicial roundtable, although issues of capacity for HMCTS to do this in addition to their current roles were raised, and it was also suggested that such a DA Champion may need to be legally qualified. We consider it important to explore this proposal further as having the relevant data recorded where it is not automatically captured in the current HMCTS data systems will be crucial to the success of the mechanism, and funding should be made available to facilitate this.

The next step in this project will be to appoint a researcher to design a pilot study for the initial phase of the mechanism, along the lines set out below, gathering as much data as is feasible to answer key questions, within a sample area and within budgetary constraints.

All quantitative datasets should be disaggregated by court area and by protected characteristic, and qualitative research should ensure a representative sample, including sufficient representation of protected characteristic groups and across geographical areas.

4.4 Proposals for pilot phase

Given the data limitations referred to above, the initial phase of the mechanism should include:

- (i) a scoping exercise to assess what data is able to be collected currently from HMCTS, Cafcass, MoJ, the Legal Aid Agency and the [SAIL databank](#) (and what will be able to be collected once the new private law Core Case Data system is up and running); and
- (ii) a mixed methods monitoring pilot across three court areas, to culminate in a report after one year to include the design of a framework and instrument for longer-term monitoring of the family court's response to domestic abuse in private law children's proceedings nationally. The pilot will draw on a range of data sources, including: the electronic data management systems held by HMCTS and Cafcass; the SAIL databank; analysis of case files; court observations (subject to the relevant permissions); engagement with victims and survivors (and where possible, children) to seek feedback on their experiences through the family court, as well as engagement with other professionals including solicitors, barristers and specialist support workers such as Idvas. The pilot should aim to report (in the three court areas which it covers) on as many as possible of the key questions listed at Appendix 1 of this paper, subject to feasibility and budgetary constraints, identifying which are the critical questions that need to be monitored nationally. Further discussions are needed on feasibility with the researchers as and when appointed to this project.

Using the framework and instrument designed in the initial phase, there should then be annual reporting on the same datasets each year as set out in the framework, to assess trends and progress.

In addition, the mechanism should include an annual thematic deep dive.

Ideas for what such deep dives might cover include:

- Use of independent experts, and outcomes in cases where these experts are used.
- Experiences of, and barriers faced by, disabled, LGBTQ+, black and minoritized and migrant survivors in the family court.
- Review of mediation services in relation to domestic abuse to ensure that best practice and adequate safeguarding measures are taken.³⁴
- Review of the availability of legal representation, the impact legal representation has on the progress of the case, outcomes, feelings of satisfaction with the court process within represented/unrepresented groups and looking at these issues in relation to differently funded types of representation.

4.5 Advisory Panel

Many participants in the roundtables agreed that a small advisory panel to help steer the mechanism would be useful but cautioned that it should not be too large, and should include representatives of bodies empowered to make changes in the system, such as MoJ, members of the judiciary, HMCTS, Cafcass, as well as a domestic abuse specialist organisation representative, a survivor and an academic

³⁴ Recommended in [IDAS \(2019\), Domestic Abuse and the Family Courts](#).

5. Other related work by the Domestic Abuse Commissioner

For context, the Domestic Abuse Commissioner is also actively working on a number of other areas and projects relevant to family court reform and implementation of the Harm Panel Report. These include:

- The role of the Domestic Abuse Commissioner in seeking to ensure the implementation of the Harm Panel recommendations at pace, including the private law reform pilots.
- The role of the Domestic Abuse Commissioner on the advisory panel of the [Ministry of Justice's presumption of parental involvement review](#).
- The role of the Domestic Abuse Commissioner on the Cafcass Learning and Improvement Board.
- The Commissioner's work, following on from publication of our report commissioned from Safe Lives, [Mapping the provision of court-related domestic abuse support and advocacy across England and Wales](#), to ensure that specialist court-related domestic abuse support is seen as an integral part of the family and criminal justice systems.
- The Commissioner's ongoing work seeking to secure, in the forthcoming Victims' Bill, a statutory duty to provide community-based domestic abuse services, to include specialist court support.
- Advice provision to Safe Lives' new [Domestic Abuse Family Lawyers Training Programme](#).
- Ongoing advice to government on the need to improve accessibility of legal aid to survivors and all going through family court proceedings.

Appendix 1 – Questions to be answered under each priority area for monitoring

The list of key categories below represents an amalgamation of the range of priorities for monitoring suggested to the DAC through roundtables, one to one conversations and written feedback provided. Collection of data in the pilot project and in subsequent years will of course be limited by feasibility and budgetary constraints, but we consider it important in this document to reflect the suggestions made to us as to what needs to be monitored in private law children's proceedings to better understand and address the issues set out in the Harm Panel report.

More granular details such as sample sizes will be undertaken at the detailed project design stage.

The pilot project will scope out and assess what the essential points for data collection are that must be monitored on a yearly basis. Yearly monitoring of data will be accompanied by deep dives, which will give an opportunity to study in detail particular areas of concern.

General points

- The mechanism must gather comparative data – ie. it should gather data on all private law cases, not just private law proceedings involving allegations of domestic abuse, so that different types of cases can be compared.
- All data should be disaggregated by protected characteristic, court and level of judge.
- It will be important for the mixed method pilot to track, if possible, the pathway of survivors and children through the system: before, during and after proceedings where possible. With respect to the qualitative aspects of the research, we suggest a methodology similar to that used in Trinder, Hunter et al (2014), *Litigants in person in private law family proceedings*, Ministry of Justice Analytical Series, where a multi-perspectival approach was adopted, involving observation of the hearing in each case, interviews with the parties and professionals associated with the observed case (subject to consent and availability) and scrutiny of the court file.
- Monitoring of the relevant practice directions (PD3A, PD3AA, cross-examination, PD 25 and PD12J) will be important and are captured in the various categories below.

Category 1: Legal representation, support, special measures (including prohibition of cross-examination in person)

Data sought	Comments
Legal representation	For both / all parties, it would be helpful to have data on representation via: <ul style="list-style-type: none">• Legal aid• partial privately paid representation (for example direct access)• partial pro bono representation• private representation• pro bono representation• unrepresented

	<p>It may not be possible to obtain all this data accurately as the partial representation/full representation category would often change during proceedings but to the extent that it is possible, this would be helpful.</p>
Special measures (PD 3AA, and new Domestic Abuse Act provisions)	<ul style="list-style-type: none"> • Was an application made? • Was it granted? • If it was refused, the reason why? • What measures were provided? • What hearings were they provided for/was there any difference in the measures provided over the course of the case? <p>These may need to be revised when the changes in the DA Act are introduced. Once the changes in the DA Act are introduced, we hope that there may not need to be an application, and that the court would proactively consider what special measures are necessary, in which case, the relevant datasets might be:</p> <p>Were special measures considered?</p> <ul style="list-style-type: none"> • If so, what was provided? • If none were provided, the reason why? • What hearings were they provided for/was there any difference in the measures provided over the course of the case? • Did the survivor request a specific type of special measure, and how often were these provided?
Cross – examination	<ul style="list-style-type: none"> • Was the alleged victim of abuse cross-examined? • Was the new prohibition on direct cross-examination considered? • Under what section of the DA Act did the prohibition arise? • What evidence was provided? • Was a hearing adjourned to provide evidence? • If the prohibition on direct cross-examination was not implemented, the reason for this? <p>The same questions would apply to witnesses / parties against whom domestic abuse has been alleged</p>
IDVA/ISVA (or other domestic abuse support professional)	<ul style="list-style-type: none"> • Number of cases where an IDVA/ISVA (or other support professional) asked to attend hearing • Number of cases where attendance of IDVA/ISVA (or other support professional) was allowed • Number of cases where attendance of IDVA/ISVA (or other support professional) was refused, and why <p>All should be broken down by general IDVA/ISVA support compared to specialist services for Deaf and disabled, black and minoritized women, run by and for the communities they serve.</p>
Interpreters	<ul style="list-style-type: none"> • Were interpreters provided where required?

	<ul style="list-style-type: none"> • What was the gender of the interpreter? • Did the interpreter have an understanding of domestic abuse? • Did the interpreter properly understand the dialect of the survivor?
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Category 2: Pathways into court (mediation, type of application and applicant)

Data sought	Comments
Mediation	<ul style="list-style-type: none"> • Was a MIAM exemption claimed? (PD 3A) • If so, which and was evidence provided? • Was the application rejected for failure to correctly claim mediation exemption? • Were parties ordered to engage in mediation at allocation/gatekeeping stage? • Were the parties ordered to engage in mediation during the proceedings? • Did the parties agree to engage in mediation during the proceedings (and endorsed by the court, for example in recitals)? • For cases in which domestic abuse is alleged, did mediation occur before proceedings were issued? <p>Separately, participants in our roundtables have raised the possibility of whether it is possible to collect data from mediators about the number of cases they have mediated where domestic abuse has been raised by one or both parties, and the outcome. Some of these cases may never make it to court. This would likely fall under a separate 'deep dive.' The types of data to be collected would be:</p> <ul style="list-style-type: none"> • Why mediation took place in these cases (survivor wanted to mediate, they felt they had to in order to appear reasonable, they didn't know they could refuse, they didn't have evidence for an exemption etc.) • The format of mediation (e.g. face-to-face, shuttle, online) • The impact of mediation on the survivor
Type of application	live with / time with / specific issue orders / prohibited steps order / enforcement / variation / other: ...
Applicant	<p>Mother / father / other:...</p> <p>It's estimated about 10% of applications for s. 8 orders are applications from other family members such as grandparents;³⁵ the mechanism will need to be able to disaggregate these.</p>
Respondent	As above

Category 3: How proceedings are conducted

Data sought	Comments
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³⁵ Nuffield Family Justice Observatory, [Uncovering private family law: Who's coming to court in England](#), 9

Safeguarding concerns and allegations of abuse	<ul style="list-style-type: none"> • How often were Cafcass safeguarding checks completed before First Hearing and Dispute Resolution Appointments (FHDRA)? • How often were FHDRA's adjourned because of lack of safeguarding checks? • How often was interim contact ordered before safeguarding checks were complete? <p>The mechanism will need to be able to identify the nature of the safeguarding concern raised (this could include allegations of substance misuse or mental health problems and 'parental alienation') and within DA allegations be able to identify the specific category, the most sensible categories to use would be those in the DA Act.</p>
What type of abuse was alleged?	<p>This should include all different types of abuse alleged, to enable comparison between outcomes.</p> <p>Do contact orders made relate to the type of abuse (eg. matching levels of severity and persistence)? To consider if there is a common language describing different kinds of abuse to enable comparison.</p>
Were counter allegations made?	<p>Did these counter-allegations include allegations of so-called "parental alienation" or "alienating behaviours", and how did this link to outcomes?</p>
Evidence available	<p>Has all relevant evidence from other agencies, including health authorities and police files been disclosed to the court? [PD 19F]</p> <p>Is the child on a child protection plan? Did local authority become involved in proceedings? Were public law proceedings subsequently initiated?</p> <p>Are there any previous disclosures of harm or abuse from the child/family?</p> <p>Are they being supported by any other types of services, and has this been taken into account by the court?</p> <p>Were parental criminal records disclosed to the court?</p>
Consideration of fact finding hearing (FFH)	<ul style="list-style-type: none"> • Was FFH considered? • At what hearing? • How were the allegations set out? Witness statements from parties / C1A / schedule of allegations • If FFH was not ordered, reason why? • Was reason recorded in the order? • Were admissions made? • If so, were these recorded in the order? • If no FFH ordered, what directions were made, e.g. s. 7 report? • Was the Court of Appeal guidance in <i>Re H-N</i> followed?
Interim contact	<ul style="list-style-type: none"> • Was interim contact ordered? • Was it by consent? • If so, were Cafcass safeguarding checks available when interim contact was ordered? If so, what was their recommendation? • Was contact ordered before a FFH, if a FFH was directed?

	<ul style="list-style-type: none"> • What type of contact? Letterbox / telephone / supervised face-face / supported face-face / unsupervised day time / unsupervised overnight • At what stage was interim contact ordered? At first hearing / before FFH / immediately after FFH
FFH	<ul style="list-style-type: none"> • If one was ordered, did it go ahead? • Was there a ground rules hearing before the FFH? • If so, what ground rules were put in place? • Were there ground rules in relation to acceptable cross-examination of an alleged victim of rape? • Nature of the findings? All / partial / non findings made (disaggregated based on who made the allegations in the context of cross-allegations) • Protection put in place for victim following all / partial findings? E.g. non-molestation order / undertakings • Consideration given to paras 32-34 of 12J (steps the court should take in all cases where domestic abuse has occurred)
Use of independent experts (PD 25)	<ul style="list-style-type: none"> • Was an independent expert appointed? • Did they hold a professional qualification/belong to a professional membership body, and, if so, which one?
Interventions	<ul style="list-style-type: none"> • Were any recommended? • Were any ordered? • If not, why not? • If so, what type? • If an intervention was ordered, was it completed?
Final hearings	<ul style="list-style-type: none"> • Did the parties give evidence? • Did the risk assessor (e.g. Cafcass or other experts) give evidence? • How was harm to the child identified?
Child's wishes and feelings	<ul style="list-style-type: none"> • How often are children's views obtained? • How are they obtained? • How were these considered? Welfare report / child met judge / child wrote to judge / child was made party to proceedings • Child and guardian's views aligned? • Where child is party to proceedings, was child represented separately from the guardian? • Were child's wishes and feelings known when interim order was made? • Did final order match child's wishes and feelings?
Length of proceedings	Including time from application to FHDRA / FFH / Dispute Resolution Appointment (DRA) / Final Hearing (FH)
Number of adjourned / ineffective hearings	And reasons why

Category 4: Final orders made and events after the end of proceedings

Data sought	Comments
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Final orders	<ul style="list-style-type: none"> • Made by agreement or contested final hearing? • Type of order made? • Reasons given? • Factors in para 36-37 of 12J considered (Factors to be taken into account when determining whether to make child arrangements orders in all cases where domestic abuse has occurred)? • Additional protection put in place for adult victim of DA? E.g. undertakings / injunction • Para 40 of 12J complied with (ie. "the court should always make clear how its findings on the issue of domestic abuse have influenced its decision on the issue of arrangements for the child")?
Returns to court for breaches of orders & enforcement	<p>How often are contact orders breached?</p> <p>How often is contact requested by one parent, then, upon being ordered, is then not taken up?</p> <p>How often is enforcement ordered?</p>
Abuse post proceedings	How often is ongoing abuse reported post-proceedings?
Cafcass concerns about court ordered contact	<ul style="list-style-type: none"> • Cafcass made a risk assessment under section 16A Children Act 1989 (ie. where they are given cause to suspect the child is at risk of harm)? • Reason? Concern about court ordered contact / other:... • Action taken by court? Nothing / hearing took place but no changes made / contact varied / contact stopped
Barring orders	<ul style="list-style-type: none"> • Application made? • By whom? mother / father / other:.... • Was it granted? • Reason it was granted/refused
Appeal	<ul style="list-style-type: none"> • How often are permissions to appeal sought? By whom (mother/father/child/other) • What is the party appealing? (case management decision/finding/interim order/final order) • Permission to appeal granted? • Appeal successful?

Category 5: Experience of survivors, children and young people (including how many survivors not able to raise DA).

Feedback from survivors, children, and young people should be an integral part of the monitoring and reporting mechanism. It should be included as part of the pilot study in the initial phase, and can be used to fill in gaps in case files (for examples, where survivors did not feel able, or were advised not to, raise allegations of domestic abuse). Feedback should be collected at the beginning, during and after proceedings.

Consideration to be given as to whether parties to proceedings against whom domestic abuse has been alleged should be surveyed so that a better understanding of their experiences and choices can feed into work to make the courts safer for survivors and children.

Feedback from survivors is likely to be sought on:

- The impact on the survivor and child of the proceedings and the final order made (ideally some time after the end of proceedings).
- Structural barriers facing survivors sharing protected characteristics and/or immigration status – including whether it was felt that stereotypical perceptions of a good 'victim' played against the survivor.
- Quality of specialist support (if any)
- Quality of legal representation (if any)
- Did survivor and child understand why decisions were made at all stages?
- Did they feel safe and respected?
- Did they understand how to challenge decisions made (ie. how to appeal orders) and feel able to do so?
- Did the survivor feel able to raise abuse in the first place?
- How did the experience of private law children proceedings compare with any other family court proceedings the survivor was involved in?

Appendix 2 – Details of roundtables held by the Domestic Abuse Commissioner

The following roundtables were held:

- Legal sector and academic specialists
- Children’s organisations, Cafcass, Cafcass Cymru and the children’s commissioner
- Domestic abuse service organisations and survivor campaigners (general)
- Domestic abuse service organisations and survivor campaigners (male survivor focus)
- Family Justice Young People’s board
- Three survivor small group sessions, including a session with black and minoritized survivors.

Full details of attendees is set out at the end of this paper.

We set out below a summary of key themes to emerge from the roundtables. We also held a very helpful roundtable with members of the judiciary – feedback from that roundtable is not included in the summary below, but is reflected throughout the paper.

Key themes to emerge from the roundtables

A number of concerns, recommendations and suggestions for monitoring were discussed during the roundtables. A summary of these discussions is set out below.

1. Recommendations on the vision, aims and design of the mechanism

Safety and protection of children, and survivors of domestic abuse

It was felt strongly that the aims of the mechanism should reflect and centre its ultimate purpose: namely improving the safety, and protection from harm, of children and survivors of domestic abuse in private law family proceedings.

Identifying best practice and feeding into reforms

Many participants in different roundtables highlighted the importance of the findings of the mechanism feeding into the private law reform pilots, as well as being a route through which lessons learnt from the private law reform pilots, and PD36Q pilots, could be drawn out and shared (effectively a feedback loop between the monitoring mechanism and the pilots).

Feeding into judicial training

The issue of judicial training was raised frequently across many of the roundtables. Improvements in the content, frequency and transparency of judicial training was felt by many participants to be a crucial element in improving the response of the family courts to domestic abuse (particularly around understanding the dynamics of domestic abuse, and adherence to relevant practice directions). It was suggested that findings and learning from the monitoring mechanism should feed into judicial training.

Shape of the mechanism

A number of participants highlighted the importance of the monitoring mechanism adapting year to year as greater understanding is achieved and reforms are rolled out. Participants suggested that the first year of the mechanism should include a scoping exercise to assess what data is available, as well as a pilot study covering key issues. There was strong agreement throughout the roundtables that this pilot study should take a ‘360 degree’ mixed methods approach, to include: the electronic data management systems held by HMCTS

and Cafcass (and possibly the Legal Aid Agency); analysis of case files; court observations (subject to the relevant permissions); and engagement with victims and survivors (and where possible, children) to seek feedback on their experiences, as well as engagement with other professionals and support staff.

Scope

A common theme running through a number of roundtables was the need for the monitoring mechanism to cover other family court proceedings in which domestic abuse is an issue, in addition to private law children proceedings, such as public law care or adoption proceedings, financial proceedings, injunction proceedings and transfer of tenancy proceedings. It is beyond the scope of this paper to discuss possible monitoring of other proceedings, but we note the strength of feeling about the need for better understanding of the dynamics of domestic abuse and how they impact these proceedings.

2. Key concerns, recommendations and suggested priorities for monitoring

Communication, understanding and procedural justice

Participants across many of the roundtables repeatedly noted how important it was that survivors who raise allegations of domestic abuse in the family courts feel respected, and feel that their evidence has been appropriately and fairly considered, regardless of the outcome. This was echoed in our children's sector roundtable, and in our engagement with the Family Justice Young People's Board (FJYPB); participants in these roundtables emphasised just how much difference it would make if decisions about children's lives were communicated to them in a way they could understand (even when the decision did not go as they might have wished). An example of best practice was given where a judge wrote a letter to the child in question, using simple language, and explaining what was to happen and why. The young people we spoke to also wished they could have had an opportunity to meet with the judge in their case before the formal hearing.

The strong impression was that improvements in these elements of procedural justice (ie. the perceived fairness of court proceedings),³⁶ would significantly improve the experiences of survivors of domestic abuse and their children going through family court proceedings. Participants emphasised that adherence to relevant practice directions, including PD12J, as well as ease of access to special measures, including those new measures provided for in the Domestic Abuse Act, would help to improve perceptions of procedural justice. A further factor considered necessary for improvements in procedural justice was for all key bodies involved in the family justice system, including the judiciary, to have a better understanding of the nature of domestic abuse and to use this understanding to contextualise other decisions to be made. This is explained further below. Many participants raised the need for more research with survivors and their children (and with parties to proceedings against whom domestic abuse has been alleged) to better understand what a good experience looks like, before it can be effectively monitored.

Understanding of domestic abuse, and barriers faced by particular groups

³⁶ Natalie Byrom summarises the four key elements of procedural justice that emerge from the literature, namely: "whether there are opportunities to participate (voice); whether the authorities are neutral; the degree to which people trust the motives of the authorities; and whether people are treated with dignity and respect during the process". See Natalie Byrom (2019), [Developing the Detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice](#), 19.

The need for a better understanding of domestic abuse within the family justice system came out strongly, particularly from the legal experts roundtable, and the domestic abuse service organisations roundtables. It was particularly emphasised that the barriers to justice faced by Deaf and disabled survivors, and by Black and minoritized survivors need to be better understood and addressed. This came through very strongly in our domestic abuse service organisations roundtable where the nature of these barriers was discussed in detail. The barriers discussed included lack of understanding of the distinct ways that survivors in different communities may experience domestic abuse, prejudice within relevant agencies (for example questioning about someone's immigration status) and lack appropriate specialist support. With respect to Deaf and disabled survivors, a further barrier cited was false perceptions of survivors' parenting capabilities.

The importance of a good understanding of domestic abuse, and how it impacts on decisions to be made about a child's life, came through particularly strongly in the children's roundtable. For example, it was highlighted how important it is to distinguish between risk and harm: ie. to understand the harm already done to a child by a perpetrator of domestic abuse (whose decision to perpetrate domestic abuse is also a parenting choice) and to take that into account when making contact decisions, as well as the risk posed in the future by such contact. The need for specialist risk assessment of perpetrators was also highlighted.

Both the legal expert and domestic abuse service organisations roundtables emphasised strongly the need for better understanding of the gendered dynamics of domestic abuse and just how damaging adoption of gender-neutral frameworks was. Some participants in the male survivors' organisations roundtable felt that the use of the term 'gendered nature of domestic abuse' was unhelpful, reinforcing stereotypes and discouraging male survivors from seeking help. They noted the particular barriers that male survivors face, including around stereotypes of a 'typical' DA victim-survivor. The DAC office's view is that it is helpful and necessary for domestic abuse to be understood as a gendered crime. Men can and do experience abuse and each victim and survivor is entitled to equal support. However, it's important at a policy level to recognise that women are more likely to experience domestic abuse, and also more likely to experience repeated victimisation and to be seriously hurt or killed than male victims of domestic abuse.³⁷ We consider that a gender-informed understanding of domestic abuse is required in the family courts, and that this must include understanding of, and commitment to address, specific barriers to support and justice faced by male survivors.

Practice Directions 12J, 3AA and 25

The importance of monitoring adherence to these Practice Directions was strongly highlighted – particularly at the legal expert and domestic abuse service organisations roundtables, and it was considered that this should be a central focus of the monitoring and reporting mechanism.

Use of experts

Concern about the use of experts in private law children proceedings came through very strongly in a number of roundtables, as well as in separate conversations our office has had. Issues raised include: reliance on unqualified and unregulated experts; lack of compliance with PD25; conflicts of interest (where an expert appointed recommends therapy which the same expert then goes on to provide); lack of understanding by the parties about the

³⁷ Walby, S. and Towers, J. (May 2017) 'Measuring violence to end violence: mainstreaming gender', *Journal of Gender-Based Violence*, vol. 1; Walby, S. and Allen, J. (2004) *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey*. Home Office Research Study 276. London: Home Office.

appointment of an expert (such as the right to object to the appointment of a single joint expert) and the consequences that can flow from this. A particular concern was raised by many about the use of unqualified experts, who make findings of 'parental alienation' (which is not a medical or legal concept), which lead to change of residence. The need was also highlighted, in cases involving findings of domestic abuse, for experts which are specialists in risk assessing perpetrators (not something that the majority of psychologists or psychotherapists are trained in).

Access to specialist (non-legal) support, information and legal representation

The importance of specialist support from a trained domestic abuse support worker, such as an IDVA, was highlighted strongly in both domestic abuse service organisations roundtables. The importance of specialist 'by and for' provision for survivors with protected characteristics was emphasised. A key point made was that access to such support can help to reduce the retraumatising nature of family court proceedings, a point that was also made by the [research the DAC commissioned from Safe Lives](#).³⁸ A point that came across strongly was the need for survivors in the family courts to be able to better understand the family court process, and what they could expect from it – with access to specialist support a means of achieving this.

Survivors we spoke with who did not have English as their first language particularly mentioned the issues with interpreters – they felt that often interpreters may not understand domestic abuse and so may not be able to accurately interpret for them. This was worsened where interpreters spoke in a different dialect from the survivor and failed to capture particular nuances.

The emphasis on the need for access to adequate legal advice and representation in court was unanimous. The legal aid means test threshold was cited as a key barrier, and a further point was made by many that the quality of legal advice, and understanding by legal professionals of domestic abuse, was very important. Examples were given of poor advice being given by solicitors and barristers (such as advice not to raise domestic abuse allegations because the judge wouldn't like it and it could lead to worse outcomes in terms of contact). Participants in the male survivors' organisations group made the point that the indications were that male survivors are currently less able to access both non-legal specialist support and legal advice.

³⁸ Domestic Abuse Commissioner, Safe Lives (June 2021), [Mapping the provision of court-related domestic abuse support and advocacy across England and Wales](#).

Attendees at roundtables held by the Domestic Abuse Commissioner between June and September 2021

In addition to the below attendees, we also held a number of small group sessions with victims and survivors of domestic abuse, and we would like to thank each and every survivor that has spoken with us.

Bar Council	Ministry of Justice
Barnardo's	Natalie Page, #TheCourtSaid
Cafcass	NSPCC
Cafcass Cymru	Nuffield Family Justice Observatory
Claire Throssell	Office of the Children's Commissioner
Claire Waxman	PAI Family Safety Assessments
Cris McCurley	President of the Family Division
Dame Vera Baird QC	Professor Rosemary Hunter
Dr Adrienne Barnett	Refuge
Dr Charlotte Proudman	Respect
Family Justice Young People's Board	Rights of Women
Free Your Mind CIC	Safe and Together Institute
Her Majesty's Court and Tribunal Service	SafeLives
IDAS	Southall Black Sisters
IMKAAN	Standing Together
Jenny Beck QC (Hons)	Stay Safe East
Latin American Women's Rights Service	Stockport Without Abuse
Law Society	Surviving Economic Abuse
Louise Lopez (NIDAS)	Survivors Manchester
Lucy Reed	Victims and survivors of domestic abuse
Mankind	Victoria Hudson, Justice for Family Court Children
Members of the Judiciary sitting at the Family Court of England and Wales	Welsh Women's Aid
Men Reaching Out	Women's Aid Federation England



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