



domestic
abuse
commissioner

The Family Court and domestic abuse: achieving cultural change

EXECUTIVE SUMMARY JULY 2023

Introduction



The Family Court's response to domestic abuse is a key piece of the puzzle when considering the national response to domestic abuse as a whole. Improving the family justice system's response to domestic abuse is a priority for the Domestic Abuse Commissioner. The Commissioner's vision is for a family justice system that has a culture of safety and protection from harm, where children's needs and the impact of domestic abuse are central considerations, and victims and survivors of domestic abuse feel listened to and respected.

It is important to recognise that the Family Court has made considerable progress since the publication of the Harm Panel report in 2020,¹ most notably with the following measures:

- Pilot Pathfinder Courts in North Wales and Dorset were established to improve information sharing between agencies such as the police, local authorities and the courts; to provide better support and safer outcomes for child and adult victims and survivors; and introduce a problem-solving approach that places the child at the centre of family cases;²
- Restrictions on the use of intimate images in family proceedings were established in the judgment of *Re M*;³
- The prohibition of cross-examination by a defendant within all family proceedings;⁴
- The Qualified Legal Representative (QLR) scheme was established to assist with appointing QLR's to conduct cross-examination in family proceedings;⁵ and
- Independent Domestic Violence Advocates (IDVAs) and Independent Sexual Violence Advocates (ISVAs) were permitted access to the Family Court.⁶

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

2 Welsh government (3 March 2022), [North Wales Family Court pilots new approach for supporting separated families who come to court | GOV.WALES](#) Ministry of Justice (8 March 2022), [Pioneering approach in family courts to support domestic abuse victims better - GOV.UK \(www.gov.uk\)](#)

3 *M (A child: Private Law Children Proceedings: Case Management: Intimate images)* [2022] EWHC 986 (Fam).

4 Section 65 of the Domestic Abuse Act 2021, as implemented by Practice Direction 3AB.

5 Sections 65 and 66 of the Domestic Abuse Act 2021.

6 Practice Direction 27C of the Family Procedure Rules.



Purpose of the Report

However, this report identified a number of continuing major issues for survivors of domestic abuse going through private family law children proceedings: a lack of holistic support; a culture of disbelief; the minimisation of domestic abuse; the absence of the voice of the child; and the harmful effects current practice has on children.

This report shines a light on the concerns raised directly to the Commissioner and seeks to identify such change and will propose a range of practical recommendations, such as: the creation of a new role (Domestic Abuse Best Practice Lead); the need for improved access to legal aid; and further development of specialist court support.

The report also builds on the Commissioner's previous report *Improving the Family Court Response to Domestic Abuse* and will set out in detail the planned pilot for the Family Court Monitoring and Reporting Mechanism (FCMRM). A Monitoring and Reporting Mechanism for the Family Court was recommended in the Ministry of Justice's Harm Panel report. The report also sets out the Commissioner's position on so-called 'parental' alienation and offers a positive child-centric model for the Family Court which draws on the legal provisions established to protect the child.

The report draws from existing research, including: analysis of correspondence received by the Commissioner from victims and survivors of domestic abuse; a range of roundtables with practitioners, experts, adult and child victims and survivors, campaigners; and a survey of solicitors, chartered legal executives and barristers.

Details of the full methodology, analysis and findings can be found in the Accompanying Methodology Report on the Commissioner's website: <https://domesticabusecommissioner.uk/>

Recommendations

RECOMMENDATION 1

The monitoring mechanism recommended by the Harm Panel, that is being established within the Office of the Domestic Abuse Commissioner and in partnership with the Victims' Commissioner, must continue to be allocated sufficient funding both for its pilot phase and, subsequently, for its national roll out. In this way it will be able to operate on an annual basis. A pilot phase of the monitoring mechanism is scheduled to commence in late 2023 and to run for 12 months, the funding for which is confirmed. Funding following the pilot phase should be considered at the earliest opportunity.

The Ministry of Justice should provide the Domestic Abuse Commissioner with a proposal on how learning from the Family Court Monitoring and Reporting Mechanism will feed into existing governance and policy development for the Family Court.

The monitoring mechanism aims to increase the transparency and accountability of the Family Court in responding to allegations of domestic abuse, to identify and disseminate best practices in doing so, and to ensure consistency in delivering safer processes and achieving better outcomes for child and adult victims of domestic abuse.

A pilot phase of the monitoring mechanism is scheduled to commence in late 2023 and to run for 12 months. The goals will be to scope a range of potential data sources and methods of data collection and to provide baseline data on how domestic abuse is being dealt with in private law children cases. Based on this information, recommendations for the final design of the ongoing national monitoring mechanism will be made.

The pilot phase for the FCMRM has two strands:

(a)–a scoping exercise: to determine the scope of available data sources and data access processes;

(b)–an intensive court study: to gather and analyse data from three court sites to test alternative methods of data gathering and provide a systematic account of how those courts handle domestic abuse cases.

The pilot phase will result in a report which will make recommendations for the design of the national monitoring mechanism. This report will suggest what data should be collected on an annual basis, report on the existing administrative data sets, make recommendations in relation to those data sets and consider what other data sources should be used to provide nationally representative data. The final report will also detail the findings of the intensive court study and place this research in the context of previous research as well as current developments in private family law cases which involve allegations of domestic abuse. The report will underpin future national policy recommendations by the Commissioner.

RECOMMENDATION 2

The government should establish, and provide appropriate funding for a new role of Domestic Abuse Best Practice Lead in every Family Court area within His Majesty’s Courts and Tribunals Services. This role should drive forward the cultural change recommended by the Harm Panel through:

- improving compliance with key rules and guidance;
- improving communication with local domestic abuse support services;
- improving understanding of domestic abuse within the court; and
- driving best practice to ensure a trauma-informed family justice system, with a national and consistent approach.

The creation of a new role of Domestic Abuse Best Practice Lead in every court area will help bring about and sustain change in the Family Court.

This role, if properly funded and embraced by court staff and judiciary, would significantly improve procedural justice for adult and child victims and survivors of domestic abuse. The role would facilitate, enhance and embed the changes to which the government has committed in their implementation plan following the Harm Panel Report, including enhancing the voice of the child.⁷

RECOMMENDATION 3

The Pathfinder Courts have had extremely positive feedback and have shown to be effective at engaging with domestic abuse and realising the ambitions of the Domestic Abuse Act 2021. **As such, the Commissioner recommends the Ministry of Justice develop and deliver an ambitious plan to consolidate the best learning from the Pathfinder Courts, as well as from strong local practice elsewhere in England, Wales, and internationally to inform future practice, delivery, and policy development.**

The Commissioner also recommends Pathfinder Courts should be resourced appropriately as part of wider efforts to roll out nationally. This is reflective of their capacity to effectively engage with domestic abuse owing to expertise, abuse-informed methodology and child-centric approach to cases.

Pilot Pathfinder Courts in North Wales and Dorset have been established to: improve information sharing between agencies such as the police, local authorities and the courts; provide better support and safer outcomes for child and adult victims and survivors; and introduce a problem-solving approach that places the child at the centre.^{8 9} The Pathfinder Courts have been handling private family law cases since early 2022 and formal evaluations of the pilot are pending.

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

⁸ Welsh government (3 March 2022), [North Wales Family Court pilots new approach for supporting separated families who come to court | GOV.WALES](#)

⁹ Ministry of Justice (8 March 2022), [Pioneering approach in family courts to support domestic abuse victims better - GOV.UK \(www.gov.uk\)](#)



The Commissioner is aware that much of the praise generated by Pathfinder Courts is due to the reduced adversarial approach to private family law cases, an emphasis on the child and an abuse-informed approach to cases. In addition to this, the provision of holistic support for parties throughout proceedings has also been extremely beneficial in reducing the stress of the Family Court for families.

RECOMMENDATION 4

The Commissioner recommends that the Ministry of Justice and Family Justice Board work with the Commissioner to capitalise on existing work, such as the Pathfinder Courts, to further strengthen the consideration and understanding of the voice of the child when domestic abuse is raised by drawing from the principles presented in this report.

It is crucial to state that these principles are intended to operate:

- Within the wider recommendations made with respect to cultural reform of the Family Court; and
- As soon as allegations of domestic abuse are raised within private family law proceedings.

From the Commissioner's engagement with victims and survivors, practitioners, and the specialist domestic abuse sector, it is clear that child-centricity and ensuring the voice of the child is heard in a meaningful way is prioritised across the board.

The Commissioner has drawn together relevant positive duties to safeguard the child by designing a child-centric framework to apply to private family law proceedings where domestic abuse is alleged. This has been developed from best practice in the UK and the USA to capitalise on existing progress made by the Family Court.

Post-separation abuse can take multiple forms, including methods which weaponize children and instrumentalise the Family Court. There will be a range of typologies which the Family Court will be presented with when allegations of domestic abuse are raised. Employing the principles set out below, the complexities of such allegations must be considered and ascertained to ensure that children and adult victims of domestic abuse are appropriately safeguarded.

Principle 1: Considering duties to safeguard the child

The Commissioner acknowledges the range of welfare principles, legal commitments and relevant laws which should be read and applied in a way which maximises the provision of



protection the Family Court offers to child victims and survivors of domestic abuse as highlighted in the Harm Panel Report.¹⁰

Principle 2: Child-centric examination of a domestic abuse allegation

When an allegation of domestic abuse is raised, the Family Court should pause and then take the appropriate time required to investigate the allegation. At present, the law would require this if ascertaining domestic abuse is relevant to child welfare issues before the court, as per Practice Direction 12J. **The Commissioner contends that domestic abuse will always be a relevant issue in relation to the welfare of the child.** Given the passage of the Domestic Abuse Act 2021, the Commissioner expects section 3 to be a fundamental safeguarding provision in relation to vulnerable children.

Principle 3: Understanding the presentation of the child (Resistance, Reluctance, Refusal).

To successfully practice principle 2, there must be a comprehensive understanding of the presentation of the child. There is a spectrum of responses which are to be reasonably expected from a child when their parents separate. This depends on a number of factors, including how

old the child is, the relationship they have and enjoy with each parent, and their established pattern of care and schedule. The following terms encompass the range of behaviours which can be exhibited by children: Reluctance – Resistance – Refusal (RRR Model).¹¹

RECOMMENDATION 5

The Commissioner recommends greater transparency and consistency across the whole family justice system, so that a full culture-change programme of training on domestic abuse is provided. This extends to and includes the judiciary, magistrates, magistrates’ legal advisors, Cafcass officials, and local authority social workers, and specialist domestic abuse services.

Training oversight of the family justice system should sit under the Domestic Abuse Positive Outcomes for Children of the Family Justice Board. The Commissioner should be invited to attend the Family Justice Board to discuss and engage on training for all agencies and services in the family justice system.

¹⁰ Ministry of Justice (June 2020), [Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan, 25-26.](#)

¹¹ National Council of Juvenile and Family Court Judges (2022), Revised Chapter Four: Families and Children, [Revised-MC-Chapter-Four-Dec.-2022-FINAL.pdf.pdf \(ncjfcj.org\)](#), 19.

RECOMMENDATION 6

Funding should be made available by the Ministry of Justice for specialist domestic abuse training. This training should include the impact of domestic abuse on child and adult victims and survivors; in this respect it should include at a minimum the following elements identified as crucial in our roundtables:

- the nature of coercive control;
- the gendered dynamics of domestic abuse;
- the tactics a perpetrator will use to gain control and dominance over a survivor; and
- how Family Court applications can be used to perpetrate post-separation abuse.

The training should include input from the domestic abuse specialist sector. Furthermore, it could be linked into the new Statement of Practice that is being developed in fulfilment of the Harm Panel recommendations to cover all key agencies and professionals in the family justice system.¹² The Commissioner would welcome continued engagement from all relevant family justice agencies, in particular the Judicial College and Cafcass on training.

We understand that most individuals working across the family justice system will have undergone mandatory domestic abuse training as part of their role. The Judiciary, Cafcass and Cafcass Cymru have further developed and improved their training provision since the publication of the Harm Panel report.

The Commissioner has welcomed the opportunity to sit on Cafcass' Learning and Improvement Board, engagement with Cafcass Cymru, as well as opportunities to meet with the Judicial College to discuss their training plans for judges on domestic abuse.

At present, the extent of this training still varies, with there being no consistency between the types of training delivered. In order to achieve long-term cultural change, it is crucial that lawyers, judiciary, magistrates, magistrates' legal advisors, Cafcass officials and social workers regularly undertake trauma-informed training to ensure that they have an up-to-date understanding of the nuances of domestic abuse.

RECOMMENDATION 7

Every survivor going through the Family Court should have access to a specialist domestic abuse support worker. The Ministry of Justice should explore options for investment into these roles for both the delivery of the role, but also for the professional development of the role.

This must not come at the expense of wider community-based services funding. There should also be consideration on preventing additional burden to local authorities; rather, additional, long-term ringfenced funding is needed to provide these IDVA or other specialist support workers. The Ministry of Justice should absorb learning from the Pathfinder Courts in order to improve delivery.

Research commissioned by the Commissioner, and conducted by SafeLives, found over 70 percent of domestic abuse victims and survivors

¹² Ministry of Justice (June 2020), [Assessing Risk of Harm to Children and Parents in Private Law Children Cases](#), 73

did not receive specialist, formal, support through the Family Court and of these victims and survivors almost 90 percent were not aware support was available.¹³ This is despite specialist support in court being the most common answer given by victims and survivors when asked what improves their experiences of going through court.¹⁴ There are very few specialist Family Court IDVAs or community-based domestic abuse specialists due to a lack of specialist funding for these roles.

A dedicated, specialist Family Court IDVA will better understand the complexities of proceedings, how the courts work in their area, and have a good understanding of how proceedings can escalate risk for victims and survivors. The Commissioner is of the view that they will support the family justice system as a whole given their knowledge, expertise and training.

RECOMMENDATION 8

The Qualified Legal Representative scheme should be fully and appropriately resourced in order to ensure effective implementation.

The prohibition of cross-examination provisions contained within the Domestic Abuse Act 2021 came into force on 21 July 2022 and has barred cross-examination by a defendant within all family proceedings commencing from the same date.¹⁵ The underlying objective was to address the victim's re-traumatisation in being cross-examined by their abuser.

We understand the QLR Scheme has had limited success, likely owing to the low rates of pay, compounded by QLR advocates not being able

to recover travel or other reasonable expenses. This effectively renders the Scheme redundant in more remote areas of England and Wales, as travel costs may significantly offset, or even outweigh, the remuneration. This is demonstrated by both the national shortage of QLRs and those who signed up for the scheme leaving given the poor rate of remuneration.

RECOMMENDATION 9

The government should remove the means test for legal aid for all victims and survivors of domestic abuse going through private family law proceedings.

This would enable any party raising allegations of domestic abuse to receive legal representation throughout their proceedings and provide critical support for the victim or survivor to navigate the complex legal system.

To avoid legal advice deserts, the Commissioner supports the recommendation made by the Commission for Legal Aid (a cross-party initiative formed by the All-Party Parliamentary Group on Legal Aid) for the government to carry out a review into legal aid fee schemes to help ensure that individuals who are eligible for legal aid are able to access the legal representation they need.¹⁶ This extends to and includes all parties within proceedings.

The application process for legal aid is complex, requiring victims and survivors to provide extensive evidence of their finances. It can also be extremely challenging for victims and survivors to provide additional and / or supplementary information and / or documents, particularly where their passports may have been confiscated by a perpetrator, or where

¹³ Domestic Abuse Commissioner, Safe Lives (June 2021), [Understanding Court Support for Victims of Domestic Abuse](#), 19

¹⁴ Ibid, 7.

¹⁵ Section 65 of the Domestic Abuse Act 2021, as implemented by Practice Direction 3AB.

¹⁶ The Westminster Commission on Legal Aid (October 2021) [Inquiry into the Sustainability and Recovery of the Legal Aid Sector](#)

access to their bank accounts or joint assets were restricted throughout the course of their relationship. The present process of applying for legal aid is prohibitively challenging, particularly given the compromised state and heightened stress levels of those attempting to understand the complex guidance.

The changes in the scope of legal aid in private family law proceedings have led to a substantial change in the pattern of legal representation. In the 12 months, to 31 December 2022, the proportion of disposals in private law cases where neither the applicant nor the respondent had legal representation was 39 percent, whilst the proportion where both had legal representation was 19 percent.¹⁷ Litigating in person is rarely appropriate in domestic abuse cases due to the complexity of these cases and the re-traumatisation which victims and survivors experience in having to litigate against their perpetrators.

RECOMMENDATION 10

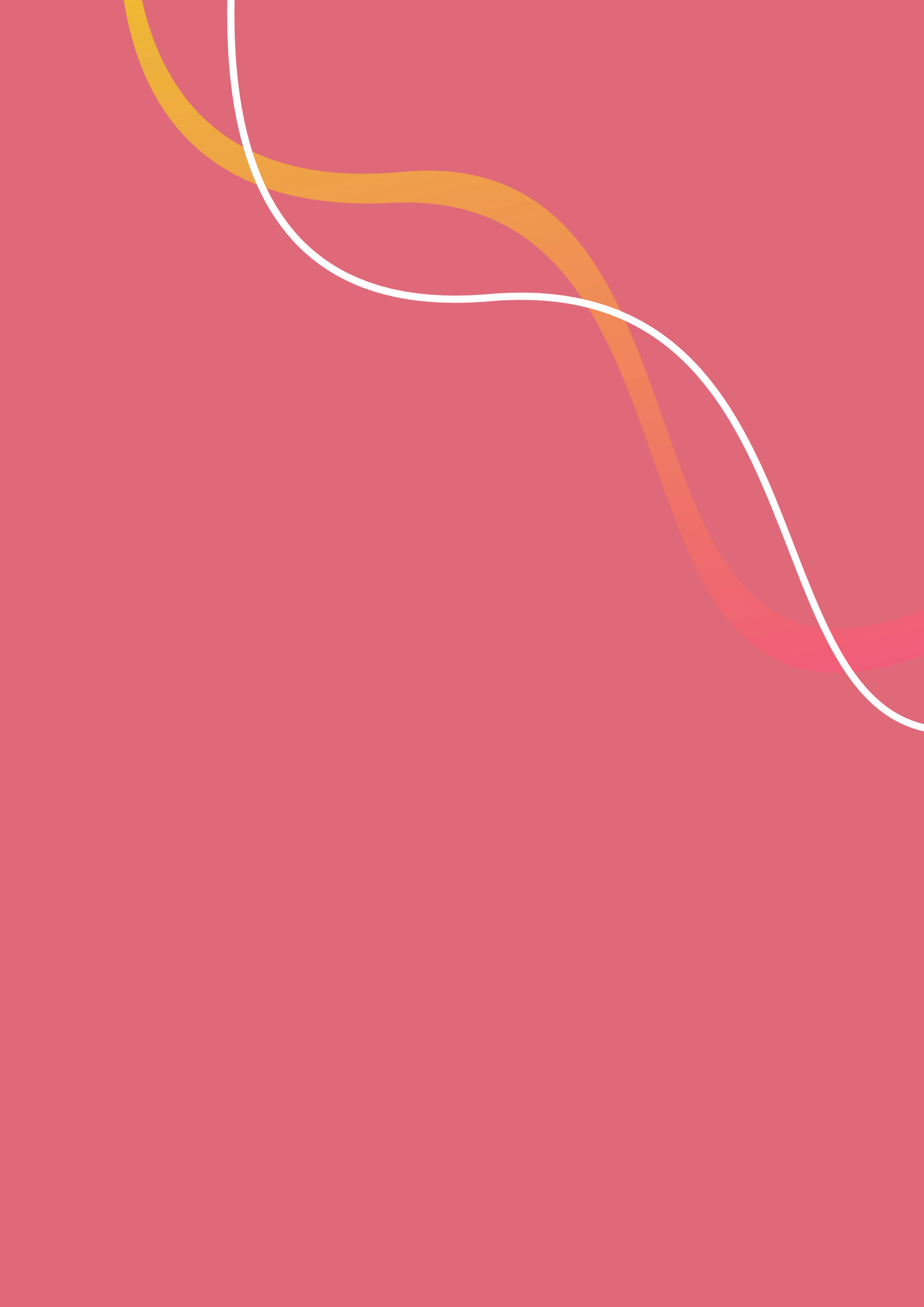
The Commissioner recommends the Ministry of Justice consult with her Office, the specialist domestic abuse sector, the relevant regulatory bodies, NHS England, NHS Wales, and the specialist children’s sector to develop a stricter definition of psychologist. The Ministry of Justice should identify an appropriate legislative opportunity to implement this definition.

The use of experts in the Family Court is governed by Practice Direction 25B. There is currently no requirement for an expert to be regulated by an external regulatory or supervisory body; rather, a case-by-case approach is taken.

The Commissioner holds significant concerns about the use of experts who are asked to draft reports for the court alleging that a child has been subjected to so-called ‘parental’ alienation, with these reports then being relied on by the judge. These unregulated experts are able to charge considerable fees for these reports, as such, the marketisation of the practice is likely to encourage further activity.

The Commissioner urges Parliament to direct for stricter regulation of the term psychologist, as indicated by the President of the Family Division in *Re C* [2023] as the correct authority to do so. The Commissioner offers to assist Parliament with their approach to this and encourages engagement with the domestic abuse sector to ensure that unregulated experts are appropriately screened, without compromising access to the Family Court for domestic abuse experts who may function in other roles.

¹⁷ Family Court Statistics Quarterly: October to December 2022, [Family Court Statistics Quarterly: October to December 2022 – GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2022)





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