



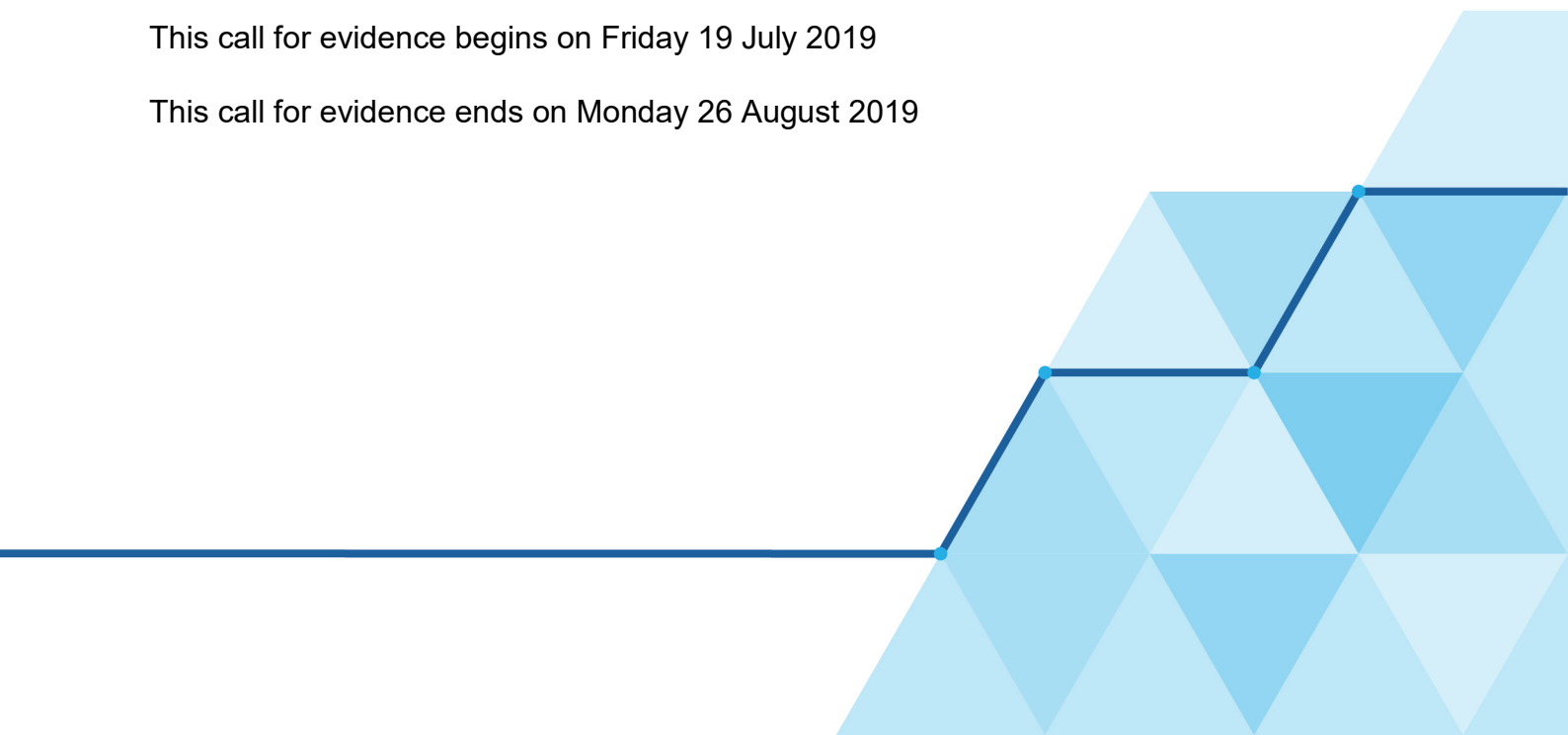
Ministry
of Justice

Call for Evidence

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

This call for evidence begins on Friday 19 July 2019

This call for evidence ends on Monday 26 August 2019





Ministry
of Justice

How effectively do the family courts respond to allegations of domestic abuse and serious offences in private law children cases, having regard to both the process and outcomes for the parties and the children?

A call for evidence produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings>

About this call for evidence

To: The panel invites the submission of evidence on how effectively the family courts respond to allegations of domestic abuse and other serious offences in private law children proceedings, having regard to both the process and outcomes for parties and children.

It is open to any person or organisation who can offer insight or evidence based on their personal or professional experiences.

Duration: From 19/07/19 to 26/08/19

Enquiries (including requests for the paper in an alternative format) to:

Lauren Wray
Ministry of Justice
5 Wellington Place
Leeds
LS1 4AP

Tel: 07784 274880

Email: Lauren.wray1@justice.gov.uk

How to respond:

This call for evidence is accessible online at <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings>. However, if you would prefer to send a written submission, please send your response by 26/08/19 to:

Lauren Wray
Ministry of Justice
5 Wellington Place
Leeds
LS1 4AP

Tel: 07784 274880

Email: Lauren.wray1@justice.gov.uk

Additional ways to feed in your views:

A series of stakeholder meetings is also taking place as part of this call for evidence. For further information please use the “Enquiries” contact details above.

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Foreword

On 21 May 2019 the Ministry of Justice (MOJ) announced a public call for evidence steered by a panel of experts from across family justice, to gather evidence on how the family courts protect children and parents in private law children cases concerning domestic abuse and other serious offences. The inaugural panel meeting took place on Friday 14 June 2019, marking the start for the three-month call for evidence. The panel members are drawn from key organisations from across family justice including the Judiciary, academia, social care, policy officials and third sector organisations. A primary responsibility of this panel is to gather evidence from individuals and organisations who have experienced this area of family justice either in a personal or professional capacity. This written call for evidence is one of the ways in which the panel are seeking contributions for their consideration.

The call for evidence will specifically focus on the application of Practice Direction 12J, Practice Direction 3AA, The Family Procedure Rules Part 3A, and s.91(14) orders, and will build a more detailed understanding of any harm caused to parents and/or children during or following private law children proceedings. The overarching aim of the call for evidence is to better understand how effectively the family courts respond to allegations of domestic abuse and other serious offences in private law children cases, having regard to both the process and outcomes for the parties and the children.

Melissa Case and Nicola Hewer

Panel Co-Chairs

Introduction

The panel invites the submission of evidence on how effectively the family courts respond to allegations of domestic abuse and other serious offences in cases involving disputes between parents about arrangements for their children following separation (known as 'private law children cases').

The panel would like to hear from people who have direct experience as parties in private law cases, as well as from those who provide support services to parents involved in such cases, and from professionals who practise in such cases.

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

In order to understand how the courts work in practice, the panel has identified specific areas for inquiry including:

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

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The definition of domestic abuse in Practice Direction 12J is:

Domestic abuse includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment.

‘Abandonment’ refers to the practice whereby a husband, in England and Wales, deliberately abandons or “strands” his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother.

‘Coercive behaviour’ means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.

‘Controlling behaviour’ means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Questionnaire

This call for evidence is accessible via questionnaire which can be completed and returned online at <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings>. However, if you would prefer to send your responses to the panel via email or post, please see the contact details on the “about this call for evidence” page.

All questions in this questionnaire are optional. Please answer as many or as few questions as you like.

Confidentiality

The Ministry of Justice must comply with the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004. This means that information provided in response to this Call for Evidence may be published or disclosed in accordance with these laws and regulations.

The Ministry may be subject to Freedom of Information requests for the information provided in this Call for Evidence. Respondents should be aware that the information they have provided may be released under this Act. **Any individual responses will be fully anonymised. Neither individual names or organisations will be identified (unless organisations provide consent to do so on page 16).**

The FOIA includes a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. If you want your responses to be treated as confidential, please explain why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

Please do not include the names of any individuals. If you do so, we will remove such names from responses, although we will not make other material changes. It is not possible to enter into a discussion about individual cases in the Review, nor use it as a means of appealing against existing court decisions, but general expressions of opinion are acceptable.

The Ministry will process your personal data in accordance with the DPA. This means your personal data will not be disclosed to third parties.

Section 1 - Your experience of private family law children proceedings

This question is for parents who have been to the family court because of a dispute about arrangements for their children after they have separated (known as 'private law children proceedings').

1. Please tell us in your own words about how the family court responded to allegations of domestic abuse or other serious offences in your case, and/or the effects on you and/or your children.

[Textbox will expand]

2. Was your experience in the family court:

In 2018-2019

In 2014-2017

Before 2014

[Please select all that apply]

Section 2 - Raising allegations of domestic abuse or other serious offences in private law children proceedings

3. Are there any difficulties in raising the issue of domestic abuse or other serious offences against a parent or child, in private law children proceedings? What helps victims of abuse or other offences to raise the issue or might discourage them from doing so?

Section 3 - Children's voices

4. How are children's voices taken into account in private law children proceedings where there are allegations of domestic abuse or other serious offences? Do children feel heard in these cases? What helps or obstructs children being heard?

Section 4 - The procedure where domestic abuse raised

When allegations of domestic abuse are raised by a parent in cases relating to child arrangements, the way the court should respond to the allegations is set out in a part of the Family Procedure Rules called Practice Direction 12J. This Practice Direction says that the judge should first decide whether the allegations would make a difference to any orders the Judge might make about the children. If so, and if the other parent does not agree with the allegations, the court should hold a 'fact-finding hearing' to decide whether the allegations are true. If domestic abuse is found to have occurred, the court should get information about the risk of future harm, and only make orders which will keep both the child and the parent they live with safe.

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5. Fact-finding hearings

5. Are fact-finding hearings held when they should be? If they are not held, what reasons are given?

6. Risk assessment

6. Where domestic abuse is found to have occurred, how is future risk assessed and by whom? Is risk assessed only in relation to children, or also in relation to the non-abusive parent?

7. The impact of Practice Direction 12J

7. How effective is Practice Direction 12J in protecting children and victims of domestic abuse from harm?

The next three questions are designed for people responding to the questionnaire who have knowledge and experience of multiple proceedings in the family courts.

8. Challenges and variation in implementing Practice Direction 12J

8. What are the challenges for courts in implementing PD12J? Is it implemented consistently? If not, how and why do judges vary in their implementation of the Practice Direction.

9. The presumption of parental involvement

Section 1(2A) of the Children Act 1989 says that the family court is to presume that the involvement of a parent in the child's life will further the child's welfare, unless that would put the child at risk of suffering harm. This was added to the Children Act in 2014.

9. What has been the impact of the presumption of parental involvement in cases where domestic abuse is alleged? How is the presumption applied or disapplied in these cases?

10. Orders

10. Where domestic abuse is found to have occurred, to what extent do the child arrangement orders made by the court differ from orders made in cases not involving domestic abuse?

Section 5 - Safety and protection at court for victims of domestic abuse and other serious offences

Part 3A and Practice Direction 3AA of the Family Procedure Rules specify the procedure the family court should follow in relation to 'vulnerable' parties and witnesses.

11. Requests for safety measures

11. What is the experience of victims of domestic abuse or other serious offences in requesting arrangements to protect their safety at court?

Please tell us about experiences where safety measures have been provided and where they have not been provided, and when this occurred.

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12. Vulnerable witnesses

12. Do family courts make the right decisions about whether an alleged victim of domestic abuse or other serious offences is vulnerable? What helps or hinders the court in making these decisions?

13. Direct cross-examination

When people go to court without a lawyer, they may be required to ask questions directly of the other party, or to face direct questioning by the other party. This can have a serious impact where one of the parties has been abusive towards the other or committed another serious offence against them.

13. What is the experience of victims of domestic abuse and other serious offences of being directly cross-examined by their alleged abuser/alleged perpetrator? What is their experience of having to ask questions of their alleged abuser/perpetrator?

Please tell us about experiences where direct cross-examination was allowed or required and when this occurred, as well as experiences where direct cross-examination was avoided in some way – please specify how and when this occurred.

The next two questions are designed for people responding to the questionnaire who have knowledge and experience of multiple proceedings in the family courts.

14. The implementation of FPR Part 3A and Practice Direction 3AA

14. What are the challenges for courts in implementing FPR Part 3A and PD3AA? Are they implemented consistently? If not, how and why are they inconsistent?

15. The impact of FPR Part 3A and Practice Direction 3AA

15. How effective are these provisions in protecting victims of domestic abuse and other serious harms from harm in private law children proceedings?

Section 6 - Repeated applications to the family court in the context of domestic abuse

Repeated applications by a parent for the family court to make orders in relation to their children, or to vary or enforce orders that have been made, can have the effect of harassing the other parent while also having adverse effects on the children. Section 91(14) of the Children Act 1989 gives the court the power to prevent a parent from making any further applications without first obtaining the permission of the court. If that parent asks the court's permission to make another application, it is known as seeking 'leave to apply'.

16. Repeated applications as a form of abuse

16. What evidence is there of repeated applications in relation to children being used as a form of abuse, harassment or control of the other parent?

17. Making s.91(14) orders

17. Under what circumstances do family courts make orders under s.91(14)?

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18. Leave to apply applications

18. How do courts deal with applications for leave to apply following a s.91(14) order?

Is the other party always given the opportunity to respond to the application? Are applications heard by the same judge who made the original order? In what circumstances are courts willing to grant leave?

The next two questions are designed for people responding to the questionnaire who have knowledge and experience of multiple proceedings in the family courts.

19. The implementation of s.91(14)

19. What are the challenges for courts in applying s.91(14), including applications for leave to apply? Is there consistency in decision-making? If not, how and why do inconsistencies arise?

20. The impact of s.91(14)

20. How effective are s.91(14) orders in protecting children and non-abusive parents from harm?

Section 7 - Outcomes for children

21. The impact of court orders on children and parents.

21. What evidence is there of children and parents suffering harm as a result of orders made in private law children proceedings, where there has been domestic abuse or other serious offences against a parent or child? (This can include harm to a parent caused by a child arrangement orders which requires them to interact with the other parent in order to facilitate contact).

Please give details of the type(s) of harm that have occurred, when the harm occurred, the type(s) of orders made and whether they were made by agreement between the parties or their lawyers, or a decision of the court.

What effects are caused by child arrangement orders where a victim parent must interact/communicate with an abusive parent in order to facilitate contact that a court has ordered?

22. The impact of domestic abuse

22. What evidence is there about the risk of harm to children in continuing to have a relationship – or in not having a relationship – with a domestically abusive parent (including a parent who has exercised coercive control over the family)?

23. Other serious crimes

23. What evidence is there about the risk of harm to children in continuing to have a relationship – or in not having a relationship – with a parent who has committed other serious offences against the other parent or a child, such as child abuse, rape, sexual assault or murder?

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Section 8 - Any other comments

24. Are there any examples of good practices in the family courts or which the family courts could adopt (perhaps from other areas of law)?

25. Do you wish to make any other comments on the matters being considered by the panel?

Thank you for contributing to this call for evidence.

About you

Please use this section to tell us about yourself. **This section is optional.**

Whilst the Ministry of Justice may be subject to Freedom of Information requests for the information provided within this Call for Evidence, no personal information will be published and all responses will be fully anonymised.

Full name	
Job title or capacity in which you are responding to this call for evidence (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
We may name or quote organisations who have contributed to this call for evidence, please tick this box if you consent to us doing so.	<input type="checkbox"/> (please tick box if you agree to your organisation being named or quoted)
Email (optional)	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 26/08/19 to:

Lauren Wray
Ministry of Justice
5 Wellington Place
Leeds
LS1 4AP

Tel: 07784 274880

Email: Lauren.wray1@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the call for evidence process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this call for evidence can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

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