



Ministry
of Justice

Assessing Risk of Harm to Children and Parents in Private Law Children Cases

Implementation Plan

June 2020



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Ministerial Foreword



I welcome the publication of the final report on assessing risk of harm to children and parents in private law children cases, and am incredibly grateful to all panel members for the time and expertise they have given MoJ in completing this. I have carefully considered the panel's conclusions and am determined to take action to improve the experience of victims of domestic abuse in our family courts – this plan sets out the first, immediate steps we will take towards doing this.

The panel's report shines a light on the experience of victims of domestic abuse in private law children cases. It is clear that there are long-standing issues across the system as a whole which, for these individuals, have tarnished their experience.

Every year, thousands of cases pass through the private family law system. Research has shown that around 50-60% of child arrangement order cases involve allegations of domestic abuse. In the report, victims of abuse report feeling diminished, sidelined, and put at further risk as a result of the system's failings. It is clear that improvement is needed, and it is crucial, not just for these victims of abuse, but for their children and generations to come that we make the changes necessary to deliver this.

This government has a strong and unwavering commitment to ensure domestic abuse victims are better protected. The Domestic Abuse Bill, which is currently passing through the Commons, will enable us to make some of the immediate changes called for in the Panel's report, alongside other measures which will help to ensure that victims have the confidence to come forward and report their experience, safe in the knowledge that the justice system and other agencies will do everything they can both to protect and support them and their children and pursue their abuser.

As well as this landmark piece of legislation, we have committed to invest more widely in support for victims of domestic abuse, including £35 million being provided alongside the Bill to support victims and their children, and an additional £76 million of extra funding that we announced to support victims of domestic abuse, sexual violence, modern slavery and vulnerable children and their families during the current pandemic.

This Implementation Plan sets out the immediate changes we are making in response to the panel's report, including prohibiting the cross-examination of victims by perpetrators and alleged perpetrators of abuse, and legislating to give victims of domestic abuse a presumption of eligibility for special measures in the family court.

But change needs to go further than this. Many of the problems identified in the report are long-standing, systemic issues which require more fundamental reform. The adversarial nature of our family justice system is an issue which has been highlighted by many of those with direct experience of the system, as a barrier to meaningful reform, both in the panel's report and in previous external reviews of our family courts. I am therefore pleased to announce our commitment in this Implementation Plan to trial a new, investigative approach to private family law children cases, which we plan to implement in our forthcoming Integrated Domestic Abuse Court pilots later this year.

We have worked across the family justice system, and more widely across government, to ensure that the need for change highlighted in this report is recognised and responded to. The Family Justice Board, comprised of senior leaders from across the Family Justice System and jointly chaired by MoJ and DfE ministers, will be tasked with overseeing delivery of this agenda and will publish a more detailed delivery plan later this year.

Together, we are committed to both immediate action and longer-term reform, to ensure the system fully supports those who are victims of domestic abuse or otherwise vulnerable, and delivers the right outcomes for them and their children.



Alex Chalk MP
Parliamentary Under Secretary of State

Design Principles for Private Law Children's Proceedings

Recommendations

The panel recommends that the basic design principles for private law children's proceedings should be:

- A *culture* of safety and protection from harm
- An *approach* which is investigative and problem solving
- *Resources* which are sufficient and used more productively
- With a more *coordinated* approach between the different parts of the system

As well as ensuring that children's needs and wishes are at the centre of private law children proceedings, the panel recommends that procedures be designed with the needs of litigants in person, and domestic abuse and other safeguarding concerns, as central considerations.

The panel recommends that a statement of practice be adopted for cases raising issues of domestic abuse or other risks of harm.

The panel also recommends that the presumption of parental involvement be reviewed urgently in order to address its detrimental effects.

Next steps

In partnership with all key partners in the family justice system **we will design a statement of practice** building on the foundational wording provided by the Panel. We will link into existing cross-system governance groups to ensure that this is effectively implemented and drives cultural change across the system as a whole.

Under the leadership of the Family Justice Board, **we will review the 'presumption of parental involvement'** which applies in certain private law children's proceedings and which requires the court to presume that the involvement of each parent furthers the child's welfare, unless the involvement of that parent would put the child at risk of suffering harm. Our review will take into account that this applies not only to victims of domestic abuse but all children and parents in the private law children's proceedings to which it applies. We recognise that there is further work to do to investigate how the balance is

being met between the welfare of children and parent victims and the rights of children and parents to a family life.

We will pilot the adoption of a more integrated approach between different parts of the justice system as part of the Integrated Domestic Abuse Court (IDAC) pilots (see below).

We are **committed to reducing levels of inconsistency** present in the family justice system and to entrenching best practice in proceedings wherever possible, including working with the Local Family Justice Boards.

Fundamental reform to the Child Arrangements Programme

Recommendations

The family courts should pilot and deliver a reformed Child Arrangements Programme in private law children's cases.

The Child Arrangements Programme should incorporate a procedure for identifying abusive applications and managing them swiftly to a summary conclusion.

Better coordination should be delivered between family courts and criminal courts.

Next steps

We are committed to examining the way the current system can be improved, both in terms of outcomes and in safeguarding the welfare of those involved.

We will **pilot a reformed approach by delivering the 2019 Conservative manifesto commitment to “pilot integrated domestic abuse courts (IDAC) that address criminal and family matters in parallel”**.

We will also **pilot a more investigative approach to the family courts**. In doing so we will explore the extent to which it is possible to move away from the current adversarial system and how to best achieve the three-phase approach recommended by the Panel, alongside the recommendations from the President's Private Law Working Group which argued for improved triage and greater tailoring to the needs of each case, including those which feature abuse and other forms of harm. The learning from these pilots will be used to inform wider reform, led by the Family Justice Board.

Through the IDAC pilots we aim to:

- Reduce trauma for domestic abuse victims, including children, that may be experienced during proceedings;
- Improve outcomes for parent victims of domestic abuse and their children;
- Better coordinate and integrate responses to domestic abuse across criminal and family proceedings; and
- Reduce rates of order breakdown and returns to court in both criminal and family domestic abuse-related proceedings.

Integrated Domestic Abuse Court pilots – further details

The pilots will explore two approaches:

1. **A ‘one family one judge’ approach** in which certain concurrent family and criminal proceedings involving domestic abuse are heard by the same cross-ticketed judge, with the aim of reducing the need for victims to re-tell their stories and promoting a more joined up approach to the handling of such cases between the jurisdictions.
2. **An ‘investigative’ approach to the family courts**. This will explore ways to move away from the current ‘adversarial’ system to adopt the three-phase approach recommended by the panel.

In relation to the concerns around the adversarial nature of proceedings, a more investigative approach will focus on ways to improve gathering and assessing appropriate evidence. Specific emphasis will be placed on ensuring the voice of the child is heard effectively. We will seek to tackle problems more effectively through the better provision and signposting of support services, while a review stage during the pilot will aim to increase long term sustainability and reduce returns to court.

We intend to adopt a phased approach to both pilots. The **first phase** will involve a period of designing and small-scale trialling of potential solutions to aspects of the detailed pilot.

This would be followed by the **second phase**, the full pilot of both approaches, the design of which will take account of the trial findings from the first phase.

The Covid-19 pandemic presents particular challenges to the immediate launch of this pilot. Both the family and criminal courts have had to alter drastically the way in which cases are processed at this time, and the results of any pilot undertaken in such circumstances are likely to be less representative and informative than they would usually be. In addition, courts and practitioners are under considerable pressure to ensure that as many cases as possible are heard at this time. We therefore need to keep the start date of the pilot under review dependent on the duration and impact of Covid-19, but will commence it as soon as it is practical and safe to do so.

We will work with a range of stakeholders to develop our pilot plans further, and then publish additional information and a start date for Phase 1 as soon as the current situation permits.

Enhancing the Voice of the Child

Recommendations

The panel recommends that the range of options for hearing from and advocacy, representation and support for children be explored more fully as part of the work of elaborating and piloting the reformed Child Arrangements Programme.

Next steps

We will **trial a stronger voice of the child**, as part of the inquisitorial approach in the IDAC pilots (above) to ensure children's wishes and views are central to the process.

We will also **re-assess methods of child engagement, working with child psychologists and other experts** to understand more about how and when children want to engage in a process, and provide their own account. In developing this we will draw on the report of the President's Private Law Working Group on this subject, and ask them to advise the Family Justice Reform Implementation Group on achieving reform in this area.

Safety, Support and Security at Court

Recommendations

The Panel made several recommendations in relation to the current **special measures and participation directions**:

- The provisions in the Domestic Abuse Bill concerning special measures in criminal courts for victims of domestic abuse should be extended to family courts. The provisions should apply to all cases in which domestic abuse is alleged.
- The provisions in the Domestic Abuse Bill should be amended to bar direct cross-examination in any family proceedings in which there is evidence of domestic abuse (including abuse being admitted or established), or in which domestic abuse is the subject of proceedings.
- Where there are allegations of domestic abuse, use of special measures should be the norm at any point when the parties are in court together.
- Where there are allegations of domestic abuse, the vulnerability of alleged victims should be assessed in a trauma-aware manner, and the provisions of Part 3A and PD3AA should be applied proactively, including those concerning how the parties are to be questioned and the holding of ground rules hearings. Consideration should be given to participation directions for the alleged perpetrator to give their evidence remotely.
- Initial safeguarding enquires (by Cafcass/Cafcass Cymru) or investigations (under the investigative phase of the reformed process) should include discussions with the parties as to the need for and the type of safety measures parties might require at court.
- A framework of key entitlements to protect adults and children involved in Family Court proceedings should be developed, based on the MoJ Code of Practice for Victims of Crime, to include familiarisation visits and a robust response to breaches of safety and security.

The Panel made a number of recommendations in relation to **the work of specialist domestic abuse advocacy and support services**:

- As a matter of course, IDVAs (Independent Domestic Violence Advocates), domestic abuse advocates and mental health support workers¹ be allowed to accompany the party they are supporting into court.
- Relevant practice directions and guidance be amended to incorporate this provision.
- IDVAs, domestic abuse advocates and mental health support workers be consulted in assessing a party's vulnerability for the purpose of Practice Direction 3AA.

¹ This could cover a range of range of people/support workers who provide mental health support

- An appropriate model and its cost-effectiveness be explored for the provision of specialist support services for both alleged victims and alleged perpetrators of domestic abuse in all family courts.

The Panel recommended that measures be included in the Domestic Abuse Bill to reverse the 'exceptionality' requirement for a section 91(14) order, laid down most clearly in *Re P (Section 91(14) Guidelines)* [1999]. These measures should amend, replace or supplement section 91(14) in an Article 6 compliant way to ensure that the following policy objectives are clearly and explicitly provided for in statute:

- that section 91(14) orders may be made where it is in the best interests of the child to make such an order;
- that section 91(14) orders may be made where the court concludes that the bringing or prolonging of proceedings constitutes domestic abuse against the other parent;
- that it is not necessary to demonstrate repeated applications before the court could properly make such an order;
- that the court may make such an order of its own motion;
- that leave to apply for a child arrangements order (following the imposition of a section 91(14) order) should only be granted where the applicant provides evidence to show that circumstances since the imposition of the order have materially changed, and where the grant of leave would not create a risk of harm to the child or the other parent.

The panel further recommends that the Child Arrangements Programme should incorporate a procedure for identifying abusive applications and managing them swiftly to a summary conclusion. This procedure should include:

- judicial continuity between prior and subsequent applications, and between section 91(14) orders and leave to apply applications;
- the court treating further applications cautiously where there have previously been findings of domestic abuse;
- the court actively considering whether to make a section 91(14) order of its own motion in such cases;
- the court considering of its own motion the making of additional orders granting protection from continuing harassment or abuse (e.g. non-molestation and prohibited steps orders); and
- management of leave to apply applications in order to minimise their effect on the other parent and children.

Next steps

We will **prohibit the cross-examination of victims by perpetrators and alleged perpetrators of abuse as part of the Domestic Abuse Bill**. The prohibition will apply more widely than just those cases involving domestic abuse, and will also apply in

circumstances in which certain offences have been committed such as child abuse and sexual abuse and other violent crimes.

We will introduce a Government amendment to the Domestic Abuse Bill so that victims of domestic abuse will be automatically eligible for special measures in the family court.

The Ministry of Justice and HMCTS will **review the data on special measures requests** using the online C100 service and **assess what more could be done to make parties aware of their right to request special measures.**

We will invite the President of the Family Division to consider **amending practice directions to ensure that IDVAs, domestic abuse advocates and mental health advocates be allowed to accompany the party they are supporting into court.**

We agree that further clarification is required to the law on barring orders, to ensure that the use of s.91(14) is available to parents and children to protect them where further proceedings would risk causing them harm, particularly where proceedings could be a form of continuing domestic abuse. **The Government will immediately explore whether this aim can best be achieved via an amendment to the Domestic Abuse Bill, through other primary legislation, or through non-legislative means.**

Communication, coordination, continuity and consistency

Recommendations

Functioning mechanisms for communication, coordination, continuity and consistency be put in place at national and local levels. The panel considers that national level mechanisms should be established under the auspices of the President of the Family Division. Local level arrangements to implement national mechanisms and processes should be overseen by Designated Family Judges.

Additional training in the family justice system.

Urgent consideration to be given by police forces, together with the Family Court and policy representatives, as to how police disclosure may be funded where parties are not legally aided and are not otherwise able to fund it themselves.

Next steps

The Lord Chief Justice and Senior President of the Tribunals have statutory responsibility for the training of the judiciary in England and Wales. The Judicial College undertakes this duty on their behalf.

The Judicial College welcomes the recommendations relating to training of the judiciary identified in the Panel's report and remains committed to **continually reviewing and improving the impact of training delivered to the judiciary, including magistrates**, as wider initiatives are taken forward and cultural change is embedded. For example, the **College has introduced refreshed training for magistrates**, in line with the rest of the family judiciary, which **involves third sector providers and seeks to improve practice in domestic abuse cases. New materials for family judges addressing domestic abuse issues** are also being piloted as part of training.

We support the **proposals for further training** that address beliefs and cultural issues, as well as the availability of cross-profession training, and will **trial improved guidance and training across the family justice system in England and Wales**.

We are working with the NPCC and other stakeholders to **review guidance for police forces on fees for the disclosure of evidence in relation to cases involving domestic abuse**.

Resourcing

Recommendations

The Panel recommended additional investment in a number of areas:

- The court and judicial resources available for private law children's cases.
- Cafcass and Cafcass Cymru
- The family court estate
- Legal aid
- Funding for specialist assessments.
- Domestic Abuse Perpetrator Programmes in both England and Wales
- Supervised contact centres
- Educational and therapeutic provision relating to domestic abuse for parents in private law children's proceedings
- Specialist domestic abuse and child abuse support services.

Next steps

The government has committed to invest more widely in support for victims of domestic abuse, including £35 million being provided alongside the Domestic Abuse Bill to support victims and their children, and an additional £76 million extra funding we announced to support victims of domestic abuse, sexual violence, modern slavery and vulnerable children and their families during the current pandemic – this includes funding for the IDAC pilots.

The **Civil Legal Aid (Procedure) Regulations 2012** were amended in May 2020 to **widen the evidence requirements for domestic abuse victims who are applying for legal aid**. This makes it easier for victims, or those at risk, of domestic violence to obtain and provide the evidence required to access legal aid, as well as reducing the risk of genuine victims not being able to obtain the required evidence.

We have already announced the **Legal Support Action Plan**, and a number of these commitments explored early intervention and the role technology can play in helping people identify and resolve their legal issues, and **we are committed to carefully considering the case for the expansion of early legal advice**.

MoJ and HMCTS will consider how litigants in person involved in children's private law proceedings can be best supported and empowered.

The Domestic Abuse Perpetrator Programme (DAPP)

Recommendations

A review of the current provision of DAPPs to ensure that they are effectively focused on reducing harm for children and families affected by domestic abuse, and are anchored in the design principles underpinning all the recommendations.

DAPPs should be more widely available in England and Wales and should allow for self-referral for parents in private law children's proceedings.

Next steps

We will convene a steering group consisting of MoJ, Cafcass/Cafcass Cymru, Welsh government, the judiciary, Respect, Welsh Women's Aid, Women's Aid federation for England, and the Domestic Abuse and Victims' Commissioners to **review and evaluate DAPPs, drawing on the existing evaluation and evidence base. The outcome of the review will form the basis of a new commissioning specification, including the need for additional services beyond DAPPs.**

The Steering Group will **assess whether to remove the requirement that a DAPP referral can only be made through a court order and consider allowing perpetrators to self-refer to the DAPP**, both highlighted as shortcomings in the current system.

The Steering Group will also **consider how to make the current DAPP scheme available to women**. This will mean that all perpetrators of abuse who actively want to be rehabilitated can access the support they need to do so.

Social Worker Accreditation

Recommendations

That social workers undertaking assessments for private law children's proceedings in Wales are trained in domestic abuse to Group 3 Violence Against Women, Domestic Abuse and Sexual Violence National Training Framework standard.

That social workers undertaking assessments for private law children's proceedings in England are nationally accredited child and family practitioners.

That the content for the accredited training in Wales and the accreditation exams in England is reviewed by domestic abuse specialists to help ensure the requisite knowledge and skills are sufficiently assessed.

Next steps

MoJ and DFE, together with the Welsh Government, Cafcass, Cafcass Cymru, Local Authority Social Workers and other relevant stakeholders will **work to understand how the recommended accreditation scheme could work and what elements will be required to ensure it can be successful implemented.**

Monitoring and oversight

Recommendations

That the Ministry of Justice work with HMCTS, Cafcass and Cafcass Cymru to develop and implement a consistent and comprehensive method of gathering administrative data on cases raising issues of domestic abuse, child sexual abuse, and other safeguarding concerns.

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 protecting children and victims from domestic abuse and other risks of harm in private law children's proceedings.

That Local Authorities and Welsh Regional Safeguarding Boards include family courts in local learning reviews (in England), child practice reviews (in Wales) and domestic homicide reviews, where the family concerned have been involved in private law children's proceedings. This should include seeking contributions to the review from the Ministry of Justice and Cafcass or Cafcass Cymru, and a review of the family court case file.

Next steps

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 in England and Wales.

Cafcass and Cafcass Cymru have moved case data on to a **secure and anonymised data platform**. The data is available to researchers, subject to application and approval, which could assist with research and in gathering quantitative evidence. Work is currently underway on a **new Cafcass electronic case management system** and as part of this we are considering what additional data could be collected.

MoJ will invite the Home Office (for Domestic Homicide Reviews), DfE (for local learning reviews) and the Welsh Government (for Child Practice Reviews) to work with the Family Court and Cafcass/Cafcass Cymru to agree how the implementation of the recommendations in these areas could be best implemented.

Further research

Recommendations

That the Ministry of Justice commission an independent, systemic, retrospective research study on the implementation of the current CAP, PD12J and section 91(14) in cases in which allegations of domestic abuse, child sexual abuse or other serious offences are raised, to provide a pre-reform baseline prior to the implementation of the reforms recommended by the panel.

The Child Safeguarding Practice Review Panel should conduct a statutory national practice-based review of domestic abuse cases in private law children proceedings, during the next 12 months to provide a baseline, and with a 2–3 year post-reform follow-up to look at practice changes; and that the National Independent Safeguarding Board Wales commission a similar review in Wales.

Any pilots established to test the panel's recommendations for a reformed Child Arrangements Programme be robustly evaluated using both quantitative and qualitative research methods, including the review of court files, orders and judgments.

The remit of the national oversight team recommended to be established above should include the commissioning and/or conduct of prospective and on-going research on the implementation of the reformed system for private law children's matters, and that its funding is sufficient to permit the effective discharge of this function.

Next steps

MoJ is currently **scoping and intends to commission a study on the implementation of the current CAP, PD12J and s.91(14) in cases in which allegations of harm are raised**, as recommended by the panel. This will take into account the gendered nature of domestic abuse and how this intersects with race, class, age and sexuality.

As set out above, the IDAC pilots testing a new approach to the CAP in cases involving domestic abuse will be **fully and robustly evaluated**.

MoJ will invite the Child Safeguarding Practice Review Panel to conduct a statutory national practice-based review of domestic abuse cases in private law children proceedings.



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