



safe child contact **saves lives**

Two years, too long: Mapping action on the Harm Panel's findings

women's aid
until women & children are safe

Author

Written by Jenny Birchall, Women's Aid

With contributions from survivors of domestic abuse and the specialist services supporting them.

June 2022

Acknowledgements

With many thanks to the survivors and services whose experiences brought this report to life, and to staff at Women's Aid for their help in compiling this report.

Please cite this report as:

Women's Aid. (2022) *Two years, too long: Mapping action on the harm panel's findings*.
Bristol: Women's Aid

Women's Aid

Women's Aid is the national charity working to end domestic abuse against women and children. Over the past 47 years, Women's Aid has been at the forefront of shaping and coordinating responses to domestic abuse through practice, research and policy. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs. We are a federation of just under 170 organisations which provide just under 300 local lifesaving services to women and children across the country. We provide expert training, qualifications and consultancy to a range of agencies and professionals working with survivors or commissioning domestic abuse services, and award a National Quality Mark for services which meet our quality standards. We hold the largest national data set on domestic abuse, and use research and evidence to inform all of our work. Our campaigns achieve change in policy, practice and awareness, encouraging healthy relationships and helping to build a future where domestic abuse is no longer tolerated.

Our support services, which include our Live Chat Helpline, the Survivors' Forum, the No Woman Turned Away Project, the Survivor's Handbook, Love Respect (our dedicated website for young people in their first relationships), the national Women's Aid Directory and our advocacy projects, help thousands of women and children every year.

www.womensaid.org.uk

Foreword

Reforming the family courts to ensure the safety of survivors and their children is a key priority for me as the Domestic Abuse Commissioner for England and Wales.

Since my appointment I have found the single most common issue which survivors have raised with me has been the family justice system. I hear from survivors about the family courts on a daily basis.

The Women's Aid Child First campaign was crucial in obtaining commitment from the Government to review private family law proceedings. It is thanks to this campaign, underpinned by the voices and experiences of victims and survivors, that we are seeing such an extensive commitment to reform by the government and the judiciary.

As noted in this report, there has been a great deal of progress in the last two years since the publication of the Harm Panel.

The Domestic Abuse Act 2021 has implemented the provision of special measures for all victims and survivors of domestic abuse in the Family Court and prohibited the cross-examination of victims and survivors by their perpetrators.

We have also seen the launch of the Pathfinder Pilots in Dorset and North Wales, which are exploring a more inquisitorial approach in private family law proceedings.

My office has been working to establish a monitoring and reporting mechanism, which seeks to gather data how domestic abuse allegations are being dealt with within the family court, including whether special measures are being provided for victims and survivors, whether practice directions are being followed and whether the voices of children and survivors are being heard throughout the proceedings.

Having worked with stakeholders across the legal sector, judiciary, domestic abuse sector, children's sector and victims and survivors to establish what the monitoring and oversight mechanism should look like, my office will shortly be launching the pilot stage of the mechanism, with a view to implementing this across all court areas.

Through this, I hope to identify where improvements are required, as well as disseminating best practice being adopted by different court areas.

Whilst it is important to celebrate the progress we have made so far, there is still a lot of work to be done to ensure that children and survivors are truly safe and being heard in the family court.

As this report highlights, coercive and controlling behaviour remains widely misunderstood, with professionals and agencies minimising the impact of this form of abuse on victims and survivors and their children.



The pro-contact culture in the family court continues to put many children at risk of harm, with children being forced to see their abusive parent despite vocalising their lack of desire to have contact.

Many victims and survivors struggle to access support throughout proceedings, whether this be from lawyers, caseworkers, or specialist IDVAs, leaving them to navigate the complex legal system alone. This is particularly onerous for migrant women, for whom English is a second language.

I wholly support the recommendations made in this report and believe that their implementation will help to push us closer to achieving a family justice system which works for all victims and survivors of domestic abuse and their children.

A handwritten signature in black ink, reading "Nicole Jacobs". The signature is written in a cursive, flowing style.

The Domestic Abuse Commissioner for England and Wales, Nicole Jacobs

Contents

Foreword	3
Executive summary	6
1. Introduction	14
The Harm Panel	14
The aim of this report	18
Methodology	19
2. What progress has been made?	20
Domestic Abuse Act provisions	20
Pathfinder pilots	21
The Domestic Abuse Commissioner’s monitoring and reporting mechanism	21
Review of the presumption of parental involvement	22
Review of domestic abuse perpetrator programmes	22
Cafcass domestic abuse learning and improvement plan	22
Positive case law	23
3. What work is still to be done?	24
3.1 Understanding of domestic abuse and its impact needs to be stronger among family court professionals	25
3.2 Survivors are not automatically seen as eligible for the special measures to which they are entitled	32
3.3 The pro-contact culture in the family courts remains strong	33
3.4 Children’s voices, wishes and feelings are still not being listened to	35
3.5 An underlying culture of misogyny, mother-blaming and victim-blaming continues in the family courts	38
3.6 Women continue to be accused of ‘parental alienation’ when they raise valid concerns around domestic abuse and child safety	40
3.7 Survivors’ intersectional identities and experiences are not understood or addressed	43
3.8 Survivors continue to face barriers to accessing legal aid and incur huge debts as a result of family proceedings	47
3.9 The expertise of specialist support services needs to be valued and utilised by the family courts	48
3.10 The Covid-19 pandemic has exacerbated the challenges facing survivors in the family courts	49
3.11 Family court proceedings continue to be trauma-inducing, rather than trauma-aware	52
4. A call to action	54

Executive summary

In 2019, three years after the launch of Women's Aid's *Child First* campaign,¹ which began by highlighting the tragic stories of 19 children and two women killed by perpetrators of domestic abuse in circumstances related to unsafe child contact, the Ministry of Justice announced that an expert panel would be set up to assess the risk of harm to children and parents in private law children's cases. The panel was made up of a range of experts including academics, the judiciary and legal profession, children's social work and domestic abuse sector organisations, including Women's Aid.² The task of the panel, which became known as the Harm Panel, was to assess how the family courts are responding to allegations of domestic abuse and other risks of harm to children and parent victims in private law children proceedings. The aim was to better understand the experiences of those involved in proceedings, identify any systemic issues and build a more robust evidence base to inform improvements. The panel's call for evidence was answered by over 1,000 organisations and individuals. This evidence was then analysed and informed the panel's final report, which was published in June 2020.³

What did the Harm Panel find?

The evidence submitted to the panel *"unveiled deep-seated and systemic problems with how the family courts identify, assess and manage risk to children and adults."*⁴ These problems were arising from four overarching, systemic barriers to the family courts' ability to respond consistently and effectively to domestic abuse and other serious forms of harm:

1. Resource constraints affecting all aspects of private law proceedings.
2. The pro-contact culture in the courts and the minimisation of abuse.
3. The problem of silo working and a lack of coordination between the courts and other agencies and organisations dealing with domestic abuse.
4. The problem of an adversarial system.

The Harm Report made a number of recommendations to address the systemic problems it had identified. If implemented, the recommendations offered the potential to transform private law child arrangements proceedings to centre the needs and wishes of children, within a trauma aware system that recognises and addresses domestic abuse and other serious safeguarding concerns.

1 www.womensaid.org.uk/childfirst/

2 www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases

3 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice [Available online](#)

4 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 39 [Available online](#)

When the Harm Report was published, the co-chairs of the panel stated that: *“The publication of this report will ensure that victims of harm will have their voices heard, and that someone acts upon it”*.⁵ In response to the Harm Panel’s findings and recommendations, the government published an implementation plan in June 2020.⁶ This set out “the first, immediate steps” to address some of the concerns raised in the Harm Report.⁷

What progress has been made?

Two years later, there have been some welcome developments. These include provisions in the Domestic Abuse Act which have the potential to improve the experiences of survivors and their children in court. The Pathfinder pilots will generate learning around a new approach which aims to improve information sharing between agencies so that victims are not forced to re-tell traumatic experiences, and improve opportunities for the voices of children to be listened to at every stage of the process. The Domestic Abuse Commissioner’s monitoring and reporting mechanism pilot has the potential to be developed into a national system that generates much needed data, increases accountability and transparency, and promotes learning and good practice. The government has set up reviews of the legal presumption of parental involvement and domestic abuse perpetrator programmes (DAPPs).

Despite these developments however, two years after the Harm Report’s publication, survivors of domestic abuse continue to tell us that the family courts are failing them and their children. Not enough has been done to work towards the transformed system that the Harm Panel recommended, and there is evidence of progress stalling and even reversing, since the publication of the Harm Report. We asked survivors of domestic abuse who have been involved in private law children proceeding since June 2020 to tell us about their experiences. We also asked the specialist services supporting these women to tell us what changes they have observed in the last two years.⁸

What are survivors and specialist services telling us?

We heard from twenty-one survivors from across England who have been engaged in a private law children case since June 2020. We also heard from ten specialist support services who have been supporting survivors and their children around family court issues since June 2020. They told us that:

- The optimism and hope they felt after the Harm Report’s publication has been eroded during the last two years, with the lack of progress on actioning the report’s findings leaving them disillusioned and disappointed.

5 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 14 [Available online](#)

6 Ministry of Justice (2020). *Assessing risk of harm to children and parents in private law children cases: Implementation plan*. Ministry of Justice [Available online](#)

7 Ministry of Justice (2020). *Assessing risk of harm to children and parents in private law children cases: Implementation plan*. Ministry of Justice, p. 2 [Available online](#)

8 See section one for a discussion of our methodology and sample

- Many family court professionals' understanding of coercive and controlling behaviour and perpetrators' use of family proceedings as a form of post-separation abuse is still inadequate. Survivors feel their experiences have been minimised and ignored, and that as mothers they are trapped within a continuum of blame, facing contradictory accusations both of failing to protect their children from the perpetrator, and failing to facilitate contact between child and perpetrator.
- The pro-contact culture in the family courts is as strong as ever, and children's voices, wishes and feelings continue to be ignored. Children continue to be traumatised and harmed by being forced to have unsafe contact with an abusive parent. This trauma can be long lasting and severe in its impact.
- Survivors continue to be accused of "parental alienation" or "alienating behaviours" when they raise concerns about unsafe contact between a child and an abusive parent. Several of the survivors we spoke to had had their children removed from them as a result.
- Recent Court of Appeal case law and guidance for judges and magistrates⁹ has left survivors feeling disappointed and disheartened. They fear that progress on improving the way domestic abuse is understood and dealt with in the family courts is stalling or even reversing.

Understanding of domestic abuse and its impact needs to be stronger among family court professionals

The survivors and services in our sample strongly felt that understanding of the complexities and dynamics of domestic abuse, and particularly of coercive control, is still not good enough. The impact of coercive control on survivors and on children is not fully recognised, and this is leading to orders for unsafe child contact being made. There are also clear gaps around the ways perpetrators use coercive and controlling behaviour as a strategy after separation, and during court proceedings themselves.

"I feel there's such a lot of work to be done with judges, magistrates and legal advisers around domestic abuse and the history of the case they're looking at. Not just the physical aspects, but the coercive and controlling behaviour, and how proceedings are used as a means of control and abuse." (Family court and children's support worker, Women's Aid member service).

Survivors are not automatically seen as eligible for the special measures to which they are entitled

The experiences of some survivors and services contributing to this report suggest that some better practice is happening around special measures in some courts. However, the experiences of others demonstrate that courts are not always proactively considering or offering the special measures outlined in the Domestic Abuse Act.

"I made lots of requests for screens and separate waiting areas. They were all ignored. I was always told by the court 'the judge will decide that' and I never got a decision from him." (Survivor of domestic abuse in court 2020-21)

⁹ This [case law](#) and [guidance](#) is discussed in more detail in section 3.1

The pro-contact culture in the family courts remains strong

Echoing the findings of the Harm Report, survivors and support services in our sample thought that the pro-contact culture was still a key driving factor behind private law children proceedings. One survivor told us:

"The contact decision was decided in minutes. My barrister told the judge my daughter was having nightmares, panic attacks and stress symptoms. He just said: 'contact is always in the best interests of the child'." (Survivor of domestic abuse in court 2020-22)

Children's voices, wishes and feelings are still not being listened to

All of the survivors contributing to this report felt that their children's voices, wishes or feelings had not been listened to or acted upon. We heard about younger children exhibiting non-verbal symptoms of trauma that were not taken seriously by family court professionals, and older children who were able to speak about their wishes and feelings, but were ignored.

"Children do walk on eggshells, children are directly affected, whether they are present in the home, whether they are present in the room where domestic abuse is happening. This whole not considering what children are experiencing – there's so much more work to be done." (Family court and children's support worker, Women's Aid member service)

An underlying culture of misogyny, mother-blaming and victim-blaming continues in the family courts

The survivors we spoke to told us that they felt blamed by the courts in a number of different ways. Some described being labelled overprotective or mentally unstable, because they raised concerns about unsafe child contact. Some felt simultaneously blamed for the abuse that they and their children had experienced, and for not encouraging contact between child and perpetrator. Some women felt that they had been judged harshly because they were articulate, educated, had researched their rights and advocated for them. Meanwhile, the abusive, disruptive or controlling behaviours of fathers who were perpetrators of domestic abuse were minimised or overlooked.

"If you look at the comments about me in the judgment I would class it as subtle misogyny. They don't like outspoken women. They don't like women who know their rights. You're too persistent. But mothers will be assertive to protect their children – it's their instinct." (Survivor of domestic abuse in court 2020-21)

Women continue to be accused of "parental alienation" when they raise valid concerns around domestic abuse and child safety

The Harm Report found that "perpetrators were sometimes allowed to raise counter allegations of parental alienation and that these were taken seriously, even when there was little or no supporting evidence."¹⁰ All of the survivors contributing to our report had either been accused of "parental alienation" or "alienating behaviours" themselves, or had feared that they would face allegations after raising concerns about their children's safety. Several had had their children removed from them as a result of allegations by the perpetrator.

¹⁰ Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 62-63 [Available online](#)

"My story started with my daughter disclosing abuse by her father, and finished with me losing her and being told to seek treatment for parental alienation." (Survivor of domestic abuse in court 2020-21)

Survivors' intersectional identities and experiences are not understood or addressed

The support services contributing to this report discussed the experiences of survivors who face structural discrimination and inequality based on their intersectional identities. In particular, they raised concerns about the extra barriers faced by Black and minoritised women, women with no recourse to public funds, women whose first language is not English, and Deaf and disabled women. Some of these barriers centre around a lack of accessibility, and the courts' failures to put measures in place to ensure that all parties can participate equally. Others are caused by limited understanding and awareness of the particular forms of harm these survivors have experienced, and the ways that structural discrimination impacts on their interactions with family court processes and professionals.

Survivors continue to face barriers to accessing legal aid and incur huge debts as a result of family proceedings

In the two years since the Harm Report noted the crippling financial impacts of private law family proceedings on survivors of domestic abuse, the economic barriers faced by survivors in accessing justice for their children remain. We heard from women who had "fallen through the gaps" for legal aid, and from others who had incurred huge debts as a result of their efforts to protect their children from unsafe contact with abusive fathers.

"So controlling and manipulative was my ex-husband, that not only have I been slapped with a penal notice which could send me to prison, but I, on benefits with an income of less than £10,000 a year, have been ordered to pay my ex-husband's court fees. I can't afford to put my heating on, and I'm now £30,000 in debt due to all my court hearings." (Survivor of domestic abuse in court 2020)

The expertise of specialist support services needs to be valued and utilised by the family courts

While the Harm Report discussed the importance of a consistent and inclusive approach to the provision of victim support services as part of private law children proceedings,¹¹ the specialist support services we spoke to told us about missed opportunities to support survivors and their children in the courts. They also commented that they did not feel their expertise was being utilised as part of training for family court professionals.

"We have to really fight to be in these spaces. Often perpetrators raise concerns about an IDVA or ISVA¹² being in the room, and this adds additional stress to the victim who has to really argue that she needs that support." (Representative of a 'by and for' organisation supporting Black and minoritised women and children)

11 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 178 [Available online](#)

12 Independent Domestic Violence Advocate (IDVA) and Independent Sexual Violence Advocate (ISVA)

The Covid-19 pandemic has exacerbated the challenges facing survivors in the family courts

The pandemic has resulted in large case backlogs in the family courts, and has presented particular challenges around safeguarding children from abuse and ensuring that survivors can access family justice. It has exacerbated many of the problems highlighted by the Harm Report – particularly around perpetrators' strategies of power and control – as well as creating new ones. Survivors and services discussed the benefits and drawbacks of remote and hybrid hearings for different groups of survivors, and emphasised the importance of choice and flexibility.

Family court proceedings continue to be trauma-inducing, rather than trauma-aware

The Harm Report called for a safety-focused, trauma-aware child arrangements programme. However, the survivors and services in our sample told us that two years on, private law children proceedings continue to be a source of re-traumatisation and distress for survivors of domestic abuse, and the decisions that are being made continue to traumatise children, ignoring their wishes and feelings and placing them in situations of danger.

"We are prisoners doing our time. My son has to 'take care' of his volatile dad and lives in fear of upsetting him. I am a shell of the person I used to be, I am still in shock from the trauma I have endured from both my ex and from the courts." (Survivor of domestic abuse in court 2021-22)

What needs to change?

"I felt like the Harm Report could have been written about my case, but despite it being such a fantastic resource I feel its impact has been minimal, with me being advised to not even mention it to my judge because he would find it 'insulting' as it was 'only guidance not law'. I sadly know the barrister who told me this was correct in this view too." (Survivor of domestic abuse in court 2021-22)

Exacerbated by the impact of the Covid-19 pandemic, the continuing failures of the family courts to address domestic abuse have left the survivors we spoke to feeling disappointed, disillusioned, unheard and unprotected. The experiences included in this report show that during the last two years, survivors of domestic abuse have continued to be disbelieved, children have continued to be forced into unsafe contact arrangements with abusive parents, perpetrators have continued to use child arrangement proceedings as a form of post-separation abuse, and family court professionals have not been held accountable for their poor decision making and the trauma it has caused.

Two years on, we are calling on the government, the Family Justice Board, the President of the Family Division of the High Court, the Judicial College, Her Majesty's Courts and Tribunals Service (HMCTS) and Cafcass to scale up and reinvigorate plans to implement the Harm Panel's recommendations in full. Among our priority recommendations for change are:

- The government should urgently amend Section 1(2A) of the Children Act 1989, to make clear that the presumption of parental involvement does not apply in cases involving allegations of domestic abuse or other forms of serious harm.
- The Judicial College should work collaboratively with specialist domestic abuse organisations to improve judicial understanding and awareness around domestic abuse, and all agencies with responsibility for training family court professionals should work together on the multi-disciplinary training recommended by the Harm Panel. This training must have a specific focus on coercive and controlling behaviour, including the ways that perpetrators utilise private law children proceedings as part of this behaviour.
- Learning and best practice from the Pathfinder pilots should be developed and considered as a priority, so that it can be channelled into the development of a trauma informed, child centred, investigative approach to private law child arrangements that encourages information sharing between agencies and can be replicated in courts across the country. The roll out of this approach should be a key priority for the government, who should ensure that it is adequately and sustainably funded.
- Enhanced action is needed by the government, the judiciary, and HMCTS to ensure that the newly introduced provisions around special measures in the family courts are understood and implemented at ground level.
- The pilot phase of the monitoring and reporting mechanism developed by the offices of the Domestic Abuse Commissioner and the Victims' Commissioner should be adequately resourced, supported and learnt from, in order to develop a sustainable longer term mechanism that can drive the transparency, accountability and learning needed to improve the family courts' response to domestic abuse and other forms of serious harm.
- The government should ensure that any new domestic abuse perpetrator programme commissioning approach is effectively focused on reducing harm for children and families affected by domestic abuse, is trauma aware, puts survivors' and children's safety and needs at the centre, and recognises the need for accreditation, consistency and quality assurance.
- The government should prioritise the Harm Panel's recommendations around the additional investment needed across a range of areas. This should include ensuring that resource constraints do not act as a driver to discourage fact finding hearings and adequate consideration of domestic abuse allegations. The government should also act on the Harm Panel's recommendation that legal aid be made available to both alleged perpetrators and victims of domestic abuse, in the best interests of the child.
- Urgent action is needed by the government, Family Division of the High Court, the Judicial College, Magistrates Association and Cafcass to ensure that family court professionals are aware of, and able to identify, allegations of "parental alienation" being made by perpetrators to undermine, obscure and deflect from their own domestic abuse or other forms of serious harm.

- Family court professionals should draw on the expertise of ‘by and for’ specialist domestic abuse support services in order to gain a better understanding of the specific experiences and needs of survivors and children from marginalised and minoritised groups, and the government must provide ring-fenced funding for these services.
- Women’s Aid calls on the Lord Chief Justice, Family Division of the High Court and the government to develop a transparent process where complaints about poor decision making in cases involving domestic abuse or other forms of serious harm can be considered without cost to vulnerable victims and survivors.

We invite all family justice actors to come together and work collaboratively to action not just the commitments in the government’s implementation plan, but all of the recommendations we discuss in this report. Only then will we achieve the system that we all want to see – one that is fair, safe, accountable, and truly puts children first.

1. Introduction

In 2016, Women's Aid launched the *Child First: Safe Child Contact Saves Lives* campaign,¹³ which calls on the government, all family court professionals, and involved agencies to make the family court process safer for women and child survivors of domestic abuse. We launched the campaign with our Nineteen Child Homicides report, which highlighted the tragic stories of 19 children and two women killed by perpetrators of domestic abuse in circumstances related to unsafe child contact over a ten year period.¹⁴ Survivors of domestic abuse told us that the family courts and child contact were their number one concern and a source of distress and trauma for both them and their children. Six years later, our campaign has seen a number of welcome developments, including some key provisions in the Domestic Abuse Act 2021 which will help to make family proceedings safer for survivors. However, we continue to hear from survivors on a regular basis about the problems they face in the courts. Progress has been far too slow.

In response to the ongoing concerns about the family courts' handling of cases involving domestic abuse and other forms of serious harm, in 2019, the Ministry of Justice announced that an expert panel would be set up to assess the risk of harm to children and parents in private law children's cases. The panel was made up of experts including academics, the judiciary and legal profession, children's social work and domestic abuse sector organisations, including Women's Aid.¹⁵

The Harm Panel

The Harm Panel's task was to assess how the family courts are responding to allegations of domestic abuse and other risks of harm to children and parent victims in private law children proceedings. The aim was to better understand the experiences of those involved in proceedings, identify any systemic issues and build a more robust evidence base to inform improvements. The panel would look at the effectiveness of legislation and guidance, including the Children's Act 1989¹⁶ and Practice Direction 12J.¹⁷

The panel's work included a call for evidence which was answered by over 1,000 organisations and individuals. This evidence was then analysed and is discussed in the panel's final report – what we now know as the 'Harm Report' – which was published in June 2020.

13 www.womensaid.org.uk/childfirst/

14 Women's Aid (2016). *Nineteen child homicides*. Bristol: Women's Aid [Available online](#)

15 www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases

16 <https://www.legislation.gov.uk/ukpga/1989/41/contents>

17 https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j

What did the Harm Report say?

The Harm Report concluded that the family courts in England and Wales do not effectively protect many child and adult victims of domestic abuse from further harm. The panel stated that:

*"We received many accounts of allegations of domestic abuse being minimised, ignored, side-lined, or disbelieved. Respondents reported difficulties in raising allegations of domestic abuse and in having those allegations treated as relevant to the court's consideration of child arrangements. A strong theme in submissions was that the voices of children experiencing domestic abuse and child sexual abuse are not sufficiently heard by family courts. Many submissions reported that court proceedings had not provided protection from further harm for children or adult victims of abuse, but had made things worse, with abuse being continued through court-ordered contact arrangements. Some victims of abuse reported that they and their children had suffered long-term physical, psychological, emotional and financial harm."*¹⁸

The report identified four overarching, systemic barriers to the family courts' ability to respond consistently and effectively to domestic abuse and other serious offences:

1. Resource constraints affecting all aspects of private law proceedings.
2. The pro-contact culture in the courts and the minimisation of abuse.
3. The problem of silo working and a lack of coordination between the courts and other agencies and organisations dealing with domestic abuse.
4. The problem of an adversarial system.

It went on to put forward some landmark recommendations to transform private law child arrangements procedures, putting the safety of children and survivors at the centre of this response. The recommendations were grouped into the following areas:

The design principles for private children's law proceedings

The panel recommended that proceedings should be designed so that they:

- Are safety focused and trauma aware.
- Take an investigative and problem solving approach.
- Have the required resources, and use resources productively.
- Work in coordination with connected systems, processes and services.

Proceedings should be designed with the needs and wishes of children at the centre, and with the needs of litigants in person, domestic abuse and other serious safeguarding concerns as central considerations.

¹⁸ Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 40 [Available online](#)

A consistent and ethical approach to cases raising issues of domestic abuse and other risks of harm

The panel recommended that a statement of practice should be adopted for cases raising issues of domestic abuse or other risks of harm, in order to ensure fairness and consistency, and build on and embed good practice.

An urgent review of the presumption of parental involvement

An urgent review should be conducted of the presumption of parental involvement contained in Section 1(2A) of the Children Act 1989, in order to address its detrimental effects in cases of domestic abuse and other forms of serious harm.

A reformed Child Arrangements Programme for private law children cases

The panel recommended that family courts should pilot and deliver a reformed programme in private law children cases, which incorporates the design principles of safety-focused, trauma aware and taking a problem-solving approach.

Enhancing the voice of the child

A range of options for hearing from children, together with advocacy, representation and support for children, should be explored more fully as part of the work to create a reformed child arrangements programme.

Safety and security at court

The panel recommended the introduction of provisions as part of the Domestic Abuse Bill to improve survivors' safety in family courts, including special measures and prohibiting cross-examination in any family proceedings involving allegations of domestic abuse. Other recommendations included that initial safeguarding should include discussions with the parties about the type of safety measures parties they might require, and the development of a framework of key entitlements to protect adults and children involved in family proceedings.

Additionally, the panel stressed that independent domestic violence advocates (IDVAs), domestic abuse advocates and mental health support workers should be allowed to accompany the party they are supporting into court, and that practice directions and guidance should be amended to incorporate this provision. It highlighted the need to explore options for the provision of specialist support services for both alleged victims and alleged perpetrators of domestic abuse in family courts, and it made several recommendations to ensure that abusive applications could be identified and managed swiftly to a summary conclusion.

Communication, coordination, continuity and consistency

The panel recommended a number of ways in which mechanisms for better communication, coordination, continuity and consistency could be put into place at national and local levels. The aim of these mechanisms would be to ensure consistency between proceedings, and make sure that family courts in private law children cases are aware and take account of other proceedings concerning the same family, sharing relevant information. The panel also

recommended that urgent consideration should be given by police forces, the courts and policy makers, into how police disclosure could be funded where parties are not legally aided and are not otherwise able to fund it themselves.

Resource issues

Recommendations were made for additional investment in a range of areas across family justice, including:

- Court and judicial resources
- Cafcass and Cafcass Cymru
- The family court estate
- Legal aid
- Funding for specialist assessments
- Domestic abuse perpetrator programmes in England and Wales
- Supervised contact centres
- Educational and therapeutic provision relating to domestic abuse for parents in private law children proceedings
- Specialist domestic abuse and child abuse support services

A review of domestic abuse perpetrator programmes (DAPPs)

The panel found that DAPPs should be more widely available in England and Wales and should allow for self-referral in private law children's proceedings. It recommended 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 panel's design principles.

Training

The panel noted that existing training has been undermined or neutralised by the pro-contact culture in the family courts, the adversarial approach, silo working, and limited resources. It recommended a wide range of training for all participants in the family justice system, including a cultural change programme. It put forward a list of key areas of knowledge that family court professionals require, and suggested that training is conducted on a multi-disciplinary basis across all professions and agencies within the family justice system, to ensure a consistent approach.

Social worker accreditation

The panel identified a significant weakness in the knowledge and skills of social workers who are undertaking risk assessments and other related direct work with children and their families where domestic abuse is alleged, suspected or known. It made a number of recommendations to help build the skills and expertise of these social workers, including ensuring that they are nationally accredited child and family practitioners.

Monitoring and oversight

In order to provide the monitoring and oversight needed to ensure that private law children's proceedings operate effectively to protect all children and adult victims of domestic abuse and other serious offences from harm, the panel recommended three measures:

- The Ministry of Justice (MoJ), Cafcass and Cafcass Cymru should 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.
- A national monitoring team should 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.
- Local authorities should 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.

Further research

The panel made a number of recommendations to respond to the need for further systematic, quantitative data on the process and outcomes of family courts' responses to cases raising allegations of domestic abuse, and the impact of court proceedings on children.

The aim of this report

When the Harm Report was published, the co-chairs of the panel stated that: *"The publication of this report will ensure that victims of harm will have their voices heard, and that someone acts upon it"*.¹⁹ This report aims to map the progress that has occurred over the last two years to learn from the Harm Panel's findings and implement its recommendations.²⁰ It also asks what work is still to be done, using the voices and experiences of survivors of domestic abuse and the services supporting them to illustrate the need for this work. The report ends with a call to action and recommendations on the urgent changes that remain outstanding and must be made if the family courts are to be safe and just spaces for survivors of domestic abuse and their children.

19 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 14 [Available online](#)

20 In mapping action and progress, we are limited to information that is in the public realm. It is possible that other work is going on that has not been publicly announced, but that work will not be reflected in this report.

Methodology

Section three of this report draws on the experiences of survivors of domestic abuse and the specialist services supporting them. Twenty-one survivors and ten services from across England responded to a call for evidence. In order to meet the criteria set out in the call for evidence, survivors needed to have been engaged in private law children's proceedings since June 2020, and their case needed to be now closed. Specialist support services were asked to submit evidence only about their experiences of supporting survivors in the family courts since June 2020.

There were particular ethical considerations and risks to be addressed in relation to the research for this section of the report. These included: confidentiality and anonymity; obtaining informed consent; risks of disclosure of details about current court proceedings; and risks of disclosure of harm to a child or vulnerable adult. Care was taken to follow the research integrity framework that has been developed by the four Women's Aid federations from Scotland, England, Wales and Northern Ireland.²¹

Section three presents its findings largely through the testimonies of survivors and the services supporting them. We wanted to provide a space for women's voices to be heard, because many of them feel they have been silenced during family law proceedings.

The findings discussed in section three relate to an exploratory study looking at the experiences of twenty-one survivors and ten support services. This was a self-selecting sample and we cannot claim to represent the views and experiences of other survivors and services. However, we know from our previous and ongoing work, and from feedback from our member services, that these experiences are likely to echo those of many other survivors and services in similar situations.

21 <https://www.womensaid.org.uk/evidence-hub/research-and-publications/research-integrity-framework/>

2. What progress has been made?

In response to the Harm Panel's findings and recommendations, the government published an implementation plan in June 2020.²² This set out a range of measures designed to address some of the concerns raised in the Harm Report. The Minister introducing the plan described these measures as “the first, immediate steps” towards improving the experience of victims of domestic abuse in the family courts.²³ The measures that have made most progress are discussed below. We also discuss some positive developments outside of the implementation plan.

Domestic Abuse Act provisions

The Domestic Abuse Act achieved Royal Assent in April 2021. The Act includes several measures relevant for private law children proceedings which have the potential to improve the experiences of survivors and their children in court:

- The first ever statutory definition of domestic abuse which recognises children as victims in their own right. This recognition of children came into force from January 2022.
- Protections for victims and witnesses in court, including making victims of domestic abuse automatically eligible for special measures in the family court. This came into force in October 2021.
- Automatic prohibition of perpetrators or alleged perpetrators of abuse from directly cross-examining their victims in person in the family courts, and vice versa, where there are convictions or evidence of domestic abuse in place. In the absence of such evidence, the court has the discretion to prohibit direct cross-examination of or by a victim of domestic abuse. This provision was due to come into force in June 2022.
- Clarification around Section 91 (14) of Children Act 1989, to make clear that barring orders can and should be used to prevent child proceedings being used by perpetrators to continue their abuse.

22 Ministry of Justice (2020). *Assessing risk of harm to children and parents in private law children cases: Implementation plan*, Ministry of Justice [Available online](#)

23 Ministry of Justice (2020). *Assessing risk of harm to children and parents in private law children cases: Implementation plan*, Ministry of Justice, p. 2 [Available online](#)

Pathfinder pilots

In response to the Harm Panel's call for a less adversarial, trauma-aware approach to private law children's proceedings, the government launched a pilot project in February 2022 which is trialling a new family court approach. The approach applies to all child arrangements cases, but (as recommended by the Harm Panel) it includes a particular emphasis on supporting victims of domestic abuse in the family courts. The pilot offers a valuable learning opportunity and if successful, the approach offers the potential for safer, less traumatic outcomes for survivors and their children. The pilot, which is taking place in Dorset and North Wales, aims to improve information sharing between agencies so that victims are not forced to re-tell traumatic experiences, and improve opportunities for the voices of children to be listened to at every stage of the process.

An initial information gathering and assessment stage will be undertaken in all cases, with the aim of actively gathering information about the case, including involvement of the child, and production of a child impact report. The allocated judge will then review the child impact report and determine how the case should proceed, including any hearings (including fact-finding hearings), interventions or other steps. Orders will be reviewed by the courts and other agencies between three months and one year later, to evaluate if they are working well or not. Local domestic abuse specialist services are among the agencies involved in the pilot.²⁴

The Domestic Abuse Commissioner's monitoring and reporting mechanism

The Harm Panel recommended that a monitoring mechanism should be set up to improve data and understanding of how private law children cases involving domestic abuse are dealt with, and provide a means for the voices of survivors and children to be heard. The office of the Domestic Abuse Commissioner, in partnership with the Victims' Commissioner, has designed a pilot stage for the mechanism, which will commence in 2022. The aims of the mechanism are to:

- Increase understanding, transparency and accountability within the family court on how allegations of domestic abuse, and children and survivors, are treated.
- Encourage more consistent and effective application of key practice directions and new Domestic Abuse Act measures.
- Ensure child and adult survivors of domestic abuse can feed back on their experiences, and that this feedback is acted upon.
- Ensure the particular barriers faced by Black and minoritised, Deaf and disabled and LGBTQ+ survivors are better understood and addressed.

²⁴ The pilot was drawn up by the Private Law Advisory and Pilots Group made up of individual members of the judiciary, Cafcass, HMCTS, and the Ministry of Justice. It also worked with stakeholders during the development stage, including the Family Justice Young People's Board, academics, police, the Domestic Abuse Commissioner, and charities such as Women's Aid, Welsh Women's Aid, SafeLives, Respect, JUSTICE, Centre of Justice Innovation, and the Nuffield Foundation. <https://www.gov.uk/government/news/pioneering-approach-in-family-courts-to-support-domestic-abuse-victims-better>

- Share emerging findings and learning from the mechanism to inform private law reform programmes.
- Disseminate best practice, helping to ensure that all family court professionals have the training and support they need to make the safest possible decisions.²⁵

The pilot will run for one year, and will conclude with a report including proposals for a framework for longer-term monitoring of the family court's response to domestic abuse in private law children's proceedings nationally. If the mechanism is developed into a national, sustainable and effective system that increases accountability and promotes learning and good practice, it has the potential to impact positively on the experiences of survivors and their children in private law proceedings.

Review of the presumption of parental involvement

In response to the Harm Panel's call for an urgent review into the presumption of parental involvement contained in Section 1 (2A) of the Children Act, and its detrimental impacts in cases of domestic abuse and other forms of serious harm, the government began a review process in November 2020. The review aims to "assess whether the right balance is being struck in private law cases between the risk of harm to a child and their right to have a relationship with both parents."²⁶ The review is due to conclude in late 2022.

Review of domestic abuse perpetrator programmes

Recognising the Harm Panel's recommendation that a review should be conducted to address concerns about the availability and operation of domestic abuse perpetrator programmes (DAPPs), the government set up a steering group to review and evaluate DAPPs, drawing on the existing evaluation and evidence base. The aim of the review will form the basis of a new commissioning specification for family court DAPPs, including the need for additional services beyond DAPPs. This work is still in progress.

Cafcass domestic abuse learning and improvement plan

In September 2020, Cafcass set up its Learning and Improvement Board, the aim of which is to oversee an improvement programme for Cafcass' work with children and families who have experienced domestic abuse, drawing on the findings of the Harm Panel. Members of the board, which includes a range of organisations that support parents and children through private law proceedings, as well as the vital expertise of parents with lived experience,²⁷ inputted into the development of a Domestic Abuse Learning and Improvement Plan, published in June 2021.²⁸ The plan is being used to inform a new mandatory learning and development programme for all Cafcass practitioners, which has been developed in partnership with domestic abuse services and survivors of domestic abuse.

25 Domestic Abuse Commissioner and Victims Commissioner (2021). *Improving the family court response to domestic abuse: Proposal for a mechanism to monitor and report on domestic abuse in private law children proceedings*. Office of the Domestic Abuse Commissioner [Available online](#)

26 <https://www.gov.uk/government/news/child-protection-at-heart-of-courts-review>

27 Cafcass (2021). *Cafcass Learning and Improvement Board terms of reference*. Cafcass [Available online](#)

28 Cafcass (2021). *Cafcass Domestic Abuse Learning and Improvement Plan*. Cafcass [Available online](#)

Positive case law

Since the publication of the Harm Report, case law has been developed that could positively impact on the ways that domestic abuse is considered in private law children cases. In March 2021, the Court of Appeal judgment on four joined family court cases, all of which involved allegations of domestic abuse, was published. In *Re H-N and Others*,²⁹ the appeals were from mothers who had experienced dismissive attitudes and minimisation of the domestic abuse and sexual violence they had experienced. Women's Aid, along with Rights of Women, Rape Crisis England and Wales, and Welsh Women's Aid, intervened in the cases to argue that the problems arising in the four cases were not "one off" examples of poor practice and decision making, but were representative of widespread systemic problems across family justice as set out in the Harm Report.

Three of the four appeals were upheld, with the Court of Appeal agreeing that poor decisions had been made. The judgment noted that the cases demonstrated the importance of judges and magistrates having "*proper understanding of the nature of domestic abuse and in particular of controlling and coercive behaviour and of its impact on both the victims and the children.*" It said that: "*consideration of whether the evidence establishes an abusive pattern of coercive and/or controlling behaviour is likely to be the primary question in many cases where there is an allegation of domestic abuse, irrespective of whether there are other more specific factual allegations to be determined.*"³⁰ The Court of Appeal questioned the value of Scott Schedules, which can serve to focus the court's attention on a limited number of specific incidents, rather than the wider context of a pattern of coercive and controlling behaviour. It also emphasised that coercive control is relevant to the risk of future harm, and is never just 'in the past'. The judgment noted that while Practice Direction 12J, the guidance that all judges and magistrates should follow in cases where there has been domestic abuse, was fit for purpose, there had been problems with its implementation.

Also in 2021, the judgment in the case of *F v M*, in which "serious and far-reaching findings" were made about the perpetrator's coercive and controlling behaviour in two separate relationships, noted that current approaches to investigating domestic abuse allegations in the family court may be too formulaic to recognise coercive and controlling behaviour, and that Scott Schedules are likely to be ineffective and unsuitable in these cases.³¹

In January 2022, the High Court judgment from an appeal in *Griffiths and Griffiths*,³² in which a survivor of domestic abuse had been ordered to pay for part of the costs of supervised contact in a contact centre, found that "*there must be a very strong presumption against a victim of domestic abuse paying for the contact of their child with the abuser.*" The judge set aside both the order for direct contact and the mother's obligation to pay for the contact.

29 [Re H-N and Others \(Children\) \(Domestic Abuse: Finding of fact hearings\) \[2021\] EWCA Civ 448](#)

30 [Re H-N and Others \(Children\) \(Domestic Abuse: Finding of fact hearings\) \[2021\] EWCA Civ 448](#)

31 www.familylawweek.co.uk/site.aspx?i=ed218860; www.familylawweek.co.uk/site.aspx?i=ed225578

32 [Griffiths and Griffiths \(Guidance on contact costs\) \[2022\] EWHC 113](#)

3. What work is still to be done?

Despite the developments outlined in section two, the family courts and safe child contact continues to be one of the top priority issues for survivors of domestic abuse and the services supporting them. This section is informed by the experiences of a sample of these survivors and services. It reads in stark contrast to the positive developments outlined above, and it clearly demonstrates the need for renewed commitment, and urgent action to implement *all* of the Harm Panel's recommendations, and step up efforts to make the family courts safer places for survivors of domestic abuse and their children.

Two years on, what are survivors telling us?

"I felt like the Harm Report could have been written about my case, but despite it being such a fantastic resource I feel its impact has been minimal, with me being advised to not even mention it to my judge because he would find it 'insulting' as it was 'only guidance not law'. I sadly know the barrister who told me this was correct in this view too." (Survivor of domestic abuse in court 2021-22)

"The mantra of my experience is: 'everything that could go wrong went wrong'. Every single step of the way has been horrible and expensive. There have been zero consequences for this man. He continues to emotionally harm our child, and puts him at risk of physical harm. The family court system is absolutely byzantine, and terrible for women and children. It has been the worst experience of my life, a dystopian horror compounded by the Covid pandemic and being completely isolated with no support." (Survivor of domestic abuse in court 2021-22)

Two years on, what are specialist support services telling us?

"We continue to hear about the minimisation of domestic abuse and pro contact culture in the family court on our family law advice service. Although there have been some important cases that appear to be changing the attitudes of some professionals, we are still hearing about unsafe approaches to child contact being taken by some professionals within the family justice system including family judges. There is a lot of lip-service being paid to how seriously the court takes domestic abuse but this is not being felt in the lower courts where it's business as usual."

"The many different ways in which victims of domestic abuse are failed by the court have been exacerbated by the pandemic and the impact this has on increasing backlogs. A lack of resources across the entire system is making it harder for professionals to keep women and children safe and women feel that they are not being heard. A recent example is a case where the court has measures in place to reduce the backlog. This has resulted in the safeguarding letter being prepared without speaking to either parent, a section 7 report being ordered without a hearing and without the court deciding whether a fact finding is necessary, and the Cafcass officer has had to make recommendations without disputed allegations being determined. This all happened before a single hearing had taken place resulting in the mother feeling that the court had no interest in what she had to say." (Senior Legal Officer, Rights of Women)

Each of the subsections below discuss one of the key thematic areas emerging from the submissions we received from our sample of domestic abuse survivors and specialist support services.

3.1 Understanding of domestic abuse and its impact needs to be stronger among family court professionals

In April 2022, a Court of Appeal judgment was published in the case of *K and K*³³ which appears to have a different perspective to that of *Re H-N* (see section two). In this case, at a fact finding hearing, a district judge had made a number of findings against the father, including rape and controlling behaviour. A Section 7 report had recommended that there should be no further direct contact between the children and their father. The father appealed, but the fact finding was upheld. The appeal progressed to the Court of Appeal, with the father arguing that the mother had 'alienated' his children from him, and the findings that the judge made of rape, coercive and controlling behaviour, and physical abuse of the children were unsound. The Court of Appeal judgment states that the parties should first have participated in a mediation, information and assessment meeting (MIAM) before going to court, despite the fact that MIAMs are not appropriate in cases involving allegations of domestic abuse.

The judgment also includes comments that indicate a lack of understanding about the negative impact of coercive and controlling behaviour on children. While the fact finding case analysis had stated that the children "have suffered harm and are at risk of suffering harm due to witnessing domestic abuse against their mother", and that the father's behaviour "would have been very frightening for the children",³⁴ the Court of Appeal judgment states that:

*"The judge's findings concerned the father taking charge of all aspects of married life and the mother feeling disempowered as a result. We do not underestimate the impact of such a finding, but the judge's analysis did not include any description of its impact on the children or that they would have found this behaviour 'very frightening'."*³⁵

The Court of Appeal appears to have minimised the abuse and its impact on children in this case, in a decision that could have been motivated by attempts to contain the number of fact finding hearings due to ongoing resource limitations in the family courts. This is the message that also appears to be conveyed by guidance published in May 2022 for judges and magistrates on fact finding hearings on domestic abuse in private law children proceedings. This guidance states that:

*"There is a time and a place to determine allegations of domestic abuse, but it may not be in your court. Unless it will be relevant to, and necessary for, your decision regarding the welfare of the child, do not allow the court to be used to litigate such allegations."*³⁶

33 [K and K \[2022\] EWCA Civ 468](#)

34 [K and K \[2022\] EWCA Civ 468](#)

35 [K and K \[2022\] EWCA Civ 468](#)

36 www.judiciary.uk/announcements/fact-finding-hearings-and-domestic-abuse-in-private-law-children-proceedings-guidance-for-judges-and-magistrates/

It is difficult to understand how this statement, or the *K and K* judgment, can align with either Practice Direction 12J or the new statutory definition of domestic abuse that include children as victims in their own right. The guidance and judgment are examples demonstrating the argument that progress has stalled, and in some cases, gone backwards, since the publication of the Harm Report and the H-N judgment. This judgment highlighted the primary importance of identifying coercive and controlling behaviour and viewing other behaviours through this lens to identify the context of abuse and its impact on the whole family.³⁷ It appears that, as identified by the Harm Panel, a lack of both resources and understanding continues to operate as a barrier to the courts' effective consideration of domestic abuse allegations.

The judgment in *K and K* was mentioned by several of the survivors who contributed to this report. They found it very disheartening to read. This was especially the case for survivors whose allegations of abuse have not been believed, and whose children have been forced to have unsafe contact with a perpetrator of domestic abuse, or removed from them due to counter-allegations of alienation. Below we discuss some of the problems around family court professionals' understanding of domestic abuse in more detail.

Poor understanding of coercive control

Outdated understanding of the impact of domestic abuse on children – particularly when it involves coercive and controlling behaviour – was highlighted by the Harm Report, which noted that: *"Until recently there has been very limited understanding in the legal system about coercive control as a component of domestic abuse."*³⁸ One survivor told us that:

"My barrister asked that the fact finding hearing examine the psychological abuse and controlling behaviours that I'd been subject to. She even mentioned Practice Direction 12J and the Harm Report, but the judge declined and said 'no, we're not going to look at any of that.'" (Survivor of domestic abuse in court 2020-2021)

The case study overleaf demonstrates that, while some family court professionals' understanding of coercive control is beginning to improve, the impact of coercive control on survivors, and the ways perpetrators use it post-separation, even during court proceedings themselves, are still not fully understood.

³⁷ *Re H-N and Others (Children) (Domestic Abuse: Finding of fact hearings)* [2021] EWCA Civ 448. Paragraph 50

³⁸ Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 48 [Available online](#)

Case study: Incomplete understanding of coercive control and perpetrator strategies in the family courts

One of the survivors contributing to this report had experienced many years of domestic abuse, including coercive and controlling behaviour and sexual abuse. She had been trying to escape the abuse with her children for a long time, but had been prevented from doing so due to the perpetrator's suicide threats and false counter allegations. During the Covid-19 pandemic, she managed to escape. The survivor's husband then began child arrangements proceedings, which began at a magistrates court:

"The lay magistrates didn't have the first idea about coercive and controlling behaviour. They were charmed by my husband – he cuts a dash and he's very educated. They didn't get it. Then the legal adviser told me to 'calm down'. I thought his role was to advise the lay magistrates on points of law. Not to tell an abused woman – ignoring Practice Direction 12J – to 'calm down'."

The case then progressed to a judge for a fact finding hearing, where all but one of the allegations were proven:

"The only one the judge didn't find as proven was gaslighting. Well the whole of the marriage had been gaslighting. But as we had to use the Scott Schedule this was difficult to show. I had been subject to marital rape on an epic level, but I didn't even mention this, as I knew it would do me no good."

"The judge did recognise it was a pattern of coercive and controlling behaviour, so they must have had some sort of training on coercive control. But they then told me that while they recognised I was a victim, I had to change my behaviour and prioritise my children. I said 'I'm not a victim of domestic abuse, I'm a survivor of domestic abuse. Please do not victim-shame me'."

The judge then asked for a Section 7 report. The report author from Cafcass spoke to the survivor for four hours. They spoke to the children, the children's father, and the children's teachers:

"They dismissed my husband's allegations of parental alienation. The report said they could not recommend any contact between him and the children. The Cafcass officer said to me: 'You don't have to persuade me, I can see'. And I thought: 'Oh my gosh, someone can see!' They were a breath of fresh air."

At the final hearing, the judge ordered no contact. Despite the survivor's request for a Prohibited Steps Order, the judge would only agree to an undertaking:

"When they judge gave him the undertaking to sign, he crossed out what we had agreed, and changed it. The judge said 'If he's not prepared to undertake that, I can't make him'. So he was abusing the situation even then, and undermining the judge. I thought: 'you've been criticising me, and I lived with this for 20 years'."

(Survivor of domestic abuse in court 2020-22)

The Harm Report also discussed how coercive and controlling behaviour can be reframed by the courts into evidence of ‘harmful conflict’, the solution to which is considered to be mediation and cooperation, rather than protection of the child and adult victim from the other parent’s abuse. This reframing can be seen in the last paragraph of the *K and K* Court of Appeal judgment:

“Whilst the court will not hesitate to adjudicate upon parental behaviour where this impacts upon the protection or welfare of a child, it is not for the court to hear about, much less to resolve, issues between the parents relating to their time together, unless to do so is likely to be necessary for, and proportionate to, the resolution of a dispute relating to the protection or welfare of a child.”³⁹

Inadequate understanding of the impact of domestic abuse and other forms of harm on children

The Harm Report drew attention towards a lack of understanding around the ongoing impact of abuse on children, despite the fact that Practice Direction 12J has been updated to better reflect this impact.⁴⁰ As one of the support services contributing to this report told us:

“There’s still a lot of work to be done with judges, magistrates and legal advisers to show them that children do walk on eggshells, children are directly affected, whether they are present in the home, whether they are present in the room where domestic abuse is happening. This whole not considering what children are experiencing – there’s so much more work to be done.” (Family court and children’s support worker, Women’s Aid member service)

All of the survivors we spoke to were trying to manage and cope with the impact of domestic abuse on both themselves and their children. Some of them were also trying to help their children recover from sexual abuse by the same perpetrator. One survivor whose son had been sexually abused explained how her efforts to get the court to recognise both the evidence and the impact of the abuse were in vain:

“At the fact finding, I sat there, being ripped apart by everybody but my barrister. They disregarded evidence from the doctor, from the play therapist, from health visitors, the social worker’s report, a letter from the supervised contact centre which outlined their concerns about my son’s presentation and the way he played with dolls in a sexualised way. This was all completely ignored. None of the facts were found. I went through it because I knew that when my son is old enough to ask, I wanted to be able to say I did everything I could. But it was hell, they weren’t interested in anything I said.” (Survivor of domestic abuse in court 2020-21)

39 *K and K* [2022] EWCA Civ 468

40 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p.162 [Available online](#)

Poor understanding of child arrangement proceedings being used as a strategy of post-separation abuse

The Harm Report drew attention to the “*many accounts of abusers continuing to use children as pawns in the exercise of coercive control over their mothers*”⁴¹ received during its call for evidence. The experiences of the survivors and services we spoke to indicate that this problem is as strong as ever:

“Over the last two years, we’ve seen no reduction at all in the number of women raising concerns around perpetrators using the family courts to inflict further harm. It becomes a way for perpetrators to further exert control once relationships are over. That issue continues, and women continue to feel their voices aren’t being heard.” (Representative of a ‘by and for’ organisation supporting Black and minoritised women and children)

“I feel there’s such a lot of work to be done with judges, magistrates and legal advisers around domestic abuse and the history of the case they’re looking at. Not just the physical aspects, but the coercive and controlling behaviour, and how proceedings are used as a means of control and abuse. For example where the applicant continually fails to provide the court with the right information, and things are prolonged and prolonged. Our survivors feel this is done to manipulate and control” (Family court and children’s support worker, Women’s Aid member service).

Some survivors spoke about the ways their former partners used contact as a strategy to further abuse them. This was minimised by the courts, despite the fact that Practice Direction 12J states that risk to the non-abusive parent must be considered as part of any contact ordered:

“The court heard about an incident at handover where he opened the door to get my child out, and was screaming xenophobic and misogynistic abuse at me. My daughter was shaking and crying. But in the end it was me who was criticised, they said: ‘Surely it wasn’t that bad as you then left her with her father’. (Survivor of domestic abuse, in court 2020-2021)

“I said I wanted third party handovers as I didn’t feel safe. The Cafcass guardian said ‘No I think mother needs to move beyond that.’ They didn’t care about my safety moving onwards.” (Survivor of domestic abuse in court 2020-21)

41 Harm report, Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 151 [Available online](#)

We heard about the ways that a range of professionals and agencies minimised the risks and dangers that perpetrators posed to survivors and children post separation. In the example below, the survivor's solicitor encouraged her to attend mediation with the perpetrator, even though a protective order meant that the perpetrator was not allowed to contact her:

"In early 2022 we supported a survivor whose former partner was on police bail for sexual assault against her. He had conditions not to contact her either directly or indirectly. She had fled the home and was in temporary accommodation with her child. The child's school were concerned about the father's behaviour and impact this was having on the child. The father had changed the locks meaning that the mother couldn't even collect her or the child's belongings. The father had instructed solicitors who had written to the mother suggesting mediation. The mother sought advice and was advised by her solicitor that she should attend mediation "so as not to appear difficult". She was trying to find another solicitor who would be able to properly protect her and her child." (Senior Legal Officer, Rights of Women)

Some cases highlight the motivations of perpetrators using family court proceedings, not because they truly want to spend time with their children, but because proceedings offer a way to continue to abuse and control their victims:

"The sad irony is, that after all he's put us through, he's now starting to reduce the contact he has with my son. For him it was all about winning in court. Now he isn't getting any power from it, because I don't see him and we only communicate through an app. Once he realised that my son wakes up multiple times in the night due to the trauma he's experienced, he doesn't want to do the contact. So now what do I do? Do I keep quiet that he's not doing the contact, or do I run the risk of going back to court and asking for an amendment to the orders? I'm very reluctant to willingly re-enter that arena again." (Survivor of domestic abuse in court 2020-21)

Other survivors discussed the ways that perpetrators use post-separation coercive control of children as a strategy. One survivor had not seen her children for several months as their father was holding them indefinitely, in breach of the contact order. Despite the fact that he has done this many times before, the survivor now has to wait another four months for the court date she has been given to try and get the children returned. Another survivor, whose children are now living with their abusive father, told us about the post-separation strategies of control he has used:

"People think that coercive control is just about isolating you from your friends and family. He did that, but he also used our children. As a well-spoken, manipulative man, he worked hard to position me as a wailing banshee of a woman. He's on some online forums saying he's an abused husband. I can't do anything for fear of retribution. When he kept my children for five weeks, in breach of the order, nothing was said about whether that might be abusive. When he kept them again there was a penal notice, but by then they'd been there for three months and he'd convinced them that I was mentally ill and that they should stay with him. I've always abided by the court order, whereas he never has. He's been rewarded for that by being given the children. I send them a monthly parcel with a card and a little gift. I say how much I love them. I never receive a response." (Survivor of domestic abuse in court 2020-21)

Lack of awareness about recent positive and important case law

As discussed in section two, some positive case law has emerged since the publication of the Harm Report. However, several of the survivors contributing to this report mentioned that they did not feel that the magistrates or judges involved in their cases were aware of this case law, or resented being reminded of it:

"During my case we had Re H-N, and we had Griffiths and Griffiths. It was all hot off the press. I read the whole of the judgments. My barrister was constantly telling the judge about case law they hadn't heard about. I think whoever is supporting women in court need to help raise awareness. Because once it's gone to the High Court it's in the public domain, and it's amazing how many judges don't know what's going on with cases, they just don't know. For example, women are still being asked to pay for contact costs, even after the Griffiths case." (Survivor of domestic abuse in court 2020-22)

"The harm report and Re H-N should have been helpful to me. But in fact, mentioning them seemed to have the opposite effect. Any gains that women make are undermined." (Survivor of domestic abuse in court 2020-2022)

3.2 Survivors are not automatically seen as eligible for the special measures to which they are entitled

As discussed in section two, the Domestic Abuse Act 2021 introduced a provision to make survivors of domestic abuse automatically eligible for special measures in the family courts. Before the introduction of this provision, survivors should still have been provided with special measures, as set out by Practice Directions 12J and 3AA,⁴² but the Harm Report, along with research conducted by Women's Aid and others,⁴³ highlighted that this often did not happen. The experiences of the survivors and services contributing to this report suggest that some better practice is happening around special measures in some courts:

"We know that the Domestic Abuse Act has introduced special measures for victims of domestic abuse, and this is sometimes being done, but we usually find that we still need to ask for them for our clients, like not having to wait in the same room, or asking for a special arrangement for the hearing." (Family court support worker)

"In the courts we work in, requests for special measures are usually well received. Sometimes it is written in court orders that the mother should continue to have special measures throughout the case. Sometimes requests get lost in the system, but because we work closely with the court, we are usually able to resolve the problem." (Family court support worker, Women's Aid member service)

If the design of court buildings does not allow particular special measures to be put in place, then alternative safety measures should be developed. However, the experiences of survivors contributing to this report suggest that this is not always happening, and that courts are not always proactively considering or offering special measures:

"There was no separate exit or entry. I was in a position where I was waiting in the court for my bag to be checked, and my perpetrator – who had been proven to be a perpetrator at the fact finding hearing – was standing right next to me in the queue. I got a screen in court, but I'd already been traumatised after seeing him in the queue." (Survivor of domestic abuse in court 2020-22)

"I made lots of requests for screens and separate waiting areas. They were all ignored. I was always told by the court 'the judge will decide that' and I never got a decision from him." (Survivor of domestic abuse in court 2020-21)

42 https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j; https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-3aa-vulnerable-persons-participation-in-proceedings-and-giving-evidence

43 Birchall, J. and Choudhry, S. (2018) 'What about my right not to be abused?' Domestic abuse, human rights and the family courts. Women's Aid [Available online](#)

3.3 The pro-contact culture in the family courts remains strong

"The urgency from the court for my daughter to see her dad was immense. Contact needed to happen and it needed to happen now." (Survivor of domestic abuse in the court 2020-21)

The Harm Report, echoing a substantial collection of research studies spanning more than a decade,⁴⁴ identified the way a 'pro-contact culture' operates in the family courts. In order to address this, it recommended an urgent review of the legal presumption of parental involvement. Within the 'pro-contact' culture, it is *"assumed that children would benefit from contact even where individual children had clear and justifiable reasons for wishing to avoid contact with an abusive parent."*⁴⁵ For the survivors and support services contributing to this report, the pro-contact culture was still a key driving factor behind private law children proceedings:

"I don't believe anything has changed yet following the recommendations that were made by the harm panel – children are still being pushed into contact arrangements with people that frighten them and victims and their families are being accused of parental alienation for wanting to break cycles of abuse and ensure contact is safe. Whilst some individual social workers appear to be more aware of the risks and trying to advocate for family safety, it doesn't appear to be translating into Cafcass reports or court judgments yet." (Refuge worker, Women's Aid member service)

"Court progresses contact at all cost. If there is supervised contact, they move to unsupervised contact. If there are no overnights, they move to overnights. Clearly the court was more interested in appeasing the father rather than doing the right thing for the child." (Survivor of domestic abuse in court 2021)

"The contact decision was decided in minutes. My barrister told the judge my daughter was having nightmares, panic attacks and stress symptoms. He just said: 'contact is always in the best interests of the child'." (Survivor of domestic abuse in the court 2020-22)

The case study overleaf illustrates the difficulties and complexities around contact between children and abusive parents. It illustrates why the presumption of parental involvement should not apply, or be interpreted to apply, in cases involving allegations of domestic abuse or other forms of serious harm.

44 Barnett, A. (2020). *Domestic abuse and private law children cases: A literature review*. Ministry of Justice; [Available online](#) Birchall, J. and Choudhry, S. (2018) 'What about my right not to be abused?' *Domestic abuse, human rights and the family courts*. Women's Aid; [Available online](#) Thiara, R.K. and Harrison C. (2016). *Safe not sorry: Supporting the campaign for safer child contact*. University of Warwick and Women's Aid [Available online](#)

45 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 82 [Available online](#)

Case study: Reflections from a family court and children's support worker

"I definitely feel like the court still has the perspective that contact is positive whether a parent has a positive impact on the child or not. There have been no improvements on this. I've seen so many cases where findings might have been made, or they haven't even had a fact finding, but domestic abuse has been presented as a factor within the family court proceedings, and contact has still been ordered. "

"I think we have to look at, not just the physical safety, but also the mental health of children when it comes to enforcing contact. A lot of children are people pleasers, and they have no measure of how to assess their own risk. In one recent case, the children described physical abuse, but they still wanted to see their dad, because they love him. And because he's their dad, they don't know any different. Until we can do healthy relationships work with them, and talk about what is kind behaviour and unkind behaviour, they can't unpick what's happened and say: 'This is what I saw, and this is how this happened'. One of the children in that case suffers from quite severe anxiety, to the point where she'll be very tearful. It is very worrying that unsupervised contact has been ordered when there's been those allegations of abuse. "

"So there are lots of worries for us as workers. When contact is recommended as supervised, and then moving to unsupervised – that's quite a big shift. How is that going to be managed, and how is it going to be assessed through time? Women are warned about the consequences if the contact doesn't go ahead. All we can say is, we cannot physically force a child to go to contact. If a child is visibly upset, being re-traumatised, refusing to get out of the car, how is it fair on a mother to tell her she could be imprisoned, fined, returned to court, if contact doesn't go ahead? "

"We see so many cases coming back to court when the ordered arrangements aren't working out, and it's always around safety and wellbeing of the children. The courts are so overwhelmed, and so many cases are coming back because the contact ordered hasn't worked. You wonder: 'How many more times are these families going to have to go through this?' If safety was paramount, and if the wellbeing of the children was thoroughly looked into, it would prevent the families returning and reduce the pressure on the courts."

(Family court support worker and children's worker, Women's Aid member service)

3.4 Children's voices, wishes and feelings are still not being listened to

The Harm Report noted that *"too often the voices of children go unheard in the court process or are muted in various ways"*.⁴⁶ It identified the pro-contact culture (discussed earlier) as a key barrier preventing children's voices being heard⁴⁷ and recommended that options for hearing from children, together with advocacy, representation and support for children, should be explored more fully as part of the work to create a reformed child arrangements programme. This 'muting' of children's voices is something that services supporting children who have experienced trauma and abuse are still observing:

"We have extensive children's services, which includes a child advocate that works with children directly. And often we see that the ways children's voices are being reflected in court are very different to what the children are saying to our child advocate. But there's no space for those voices to be heard, or accurately represented, in the court spaces. And there's been no improvement in this over the last two years." (Representative of a 'by and for' organisation supporting Black and minoritised women and children)

All of the survivors contributing to this report felt that their children's voices, wishes or feelings had not been listened to or acted upon. Frequently, the distress of younger children exhibiting non-verbal symptoms of trauma was not taken seriously by family court professionals. When survivors tried to draw attention to the trauma their children were experiencing, they were ignored, or accused of fabricating allegations:

"My son had had play therapy that showed he had ongoing trauma, he was wetting the bed and showing symptoms of regression and anxiety, and the health visitor had recommended stopping even the supervised contact. Despite this evidence, and a letter from my GP saying they were extremely concerned, the section 7 report came back and was so damning of me. It said it was very concerning that I still believed my son's allegations. But who isn't going to believe a four year old's allegation of sexual abuse? Where is a child that young going to know about that unless it's happened to them?" (Survivor of domestic abuse in court 2020-21)

"I had to start preparing my daughter for contact and she was furious with me. I had to start forcing her to go to these contact sessions. I called social services and told them how scared I was about how she was reacting. There were tummy aches and night panics about people coming to take her. There's no way to comfort her. She's started falling out with her friends, pushing them. She's regressed in toileting, wanting to wear nappies and go into the pushchair. Her sleeping has been affected, her development has gone back years. I recorded her crying, saying she doesn't want to go and 'please don't leave me, I don't want to see him'. Social services said: 'If it's not safe, don't send her. We may step in and take her if you're not protecting her'. I asked: 'Can I have that in writing?' but they said no, we don't get involved in private proceedings." (Survivor of domestic abuse in court 2020-22)

46 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 67 [Available online](#)

47 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 77 [Available online](#)

We also heard about older children who were able to speak about their wishes and feelings, but were ignored:

"My sons begged to have the opportunity to speak to the judge directly and to tell him their experience of their father who chooses to abuse. Instead, they had to speak to a Cafcass officer who ignored what they said and presented her own version which was that they should spend 50% of their time with their father." (Survivor of domestic abuse in court 2021)

One survivor told us how, after her allegations of domestic abuse had been ignored for many years, her teenage son's voice was finally listened to:

"My son said respectfully that he didn't want to see his father because he knew what he had done to him and his siblings. Finally, the social worker recommended that my son should have his own lawyer, and for the first time someone was standing up for him. The judge then spoke to my son directly, together with his lawyer, and my son told the judge how he felt. The judge said that my son was not what they had envisaged, that the case had gone on too long and that they wished they had met sooner. Following this the case collapsed and my ex-husband withdrew." (Survivor of domestic abuse in court 2020-22)

The case study overleaf illustrates many of the above concerns. It provides worrying examples of how, even when children's voices are corroborated by police evidence, they have still been ignored by the courts. It also demonstrates how traumatised children involved in private law children proceedings are prevented from accessing therapy to address this trauma.

Case study: Reflections from a support service for survivors of sexual violence and child sexual abuse

"Recently we have supported two mothers of children who have disclosed sexual abuse. In both cases the mums are survivors of domestic abuse and both have been raped as part of this abuse. In the first case, the older child had disclosed sexual abuse by their father, and the younger child was displaying sexualised behaviour, which suggests they may also have been sexually abused. In the second case, the younger child of two had disclosed sexual abuse by their father."

"In both cases, the presumption of parental involvement was very much in place, with both fathers having ongoing contact despite these serious allegations. In the first case, contact was ordered to be supervised by the perpetrator's mother. In the second case, supervised contact was ordered in a contact centre."

"There was very little focus on the voice of the child in either case. Despite the disclosures of sexual abuse, no psychologist report was requested for any of the children. In one of the cases, the ABE interview⁴⁸ conducted by the police as part of the criminal investigation was discounted as evidence because the police did not meet required practice guidelines, meaning one of the very few opportunities to capture the child's voice was discounted."

"As there remains no clear guidance on whether children can access therapy while there is a family court case involving disputed sexual abuse, both mothers were given strong messages from their solicitors that they should not bring their children for play therapy while the case was ongoing – in case this was viewed as corroborating a false narrative. Both children have been denied therapy that they would have had a right to access during a criminal investigation. Understandably, the mothers are deeply concerned about their children's emotional wellbeing and are desperate for them to have therapy."

"In one of the cases, the mother was explicitly told to "stop over-reporting" her concerns after contact between her children and their father, with the implication that continued reports would be viewed poorly by the court. This has led to her feeling silenced and shuts down a culture of safety and protection from harm."

Representative of a support service for survivors of sexual violence and child sexual abuse

Another survivor voiced her fears for her child's future, and what the impact of being ignored and not believed would be:

"I don't even want to think, in future ... if anything bad happens to her, she'll be scared to speak up. Because she did here, and look what happened to her. She's been silenced, gaslighted and called a "naughty girl" by people in a position of authority. I know she wasn't lying." (Survivor of domestic abuse in court 2020-21)

48 ABE refers to Achieving Best Evidence guidance on interviewing victims and witnesses

3.5 An underlying culture of misogyny, mother-blaming and victim-blaming continues in the family courts

Previous Women's Aid research has illustrated the culture of disbelief, gender discrimination and victim-blaming that survivors of domestic abuse face when seeking to protect their children from unsafe child contact in private law proceedings.⁴⁹ The Harm Report discussed how mothers reported *"not being believed because they had not acted in a way that a 'stereotypical' victim would behave"*,⁵⁰ and being treated with suspicion when making allegations of domestic abuse or sexual abuse of their children. It discussed a range of stereotypes and judgements at work in the family courts, which include:

- Blaming survivors for not reporting abuse to the police or children's social care or delayed reporting to a third party.
- Blaming survivors for staying in a relationship with the abuser instead of accessing help or leaving.
- Judging survivors for appearing 'over emotional' or 'under emotional' when giving evidence at court.
- Making judgements about survivors' credibility if they are experiencing emotional distress or mental ill health as a result of the trauma of abuse.⁵¹

Two years on, the survivors contributing to this report were clear that this problem remains:

"The judge had no understanding of our case but found a way to label me as 'overprotective' and 'hypersensitive', particularly in regards to my child's medical needs. I am a mother. What mother does not take care of her child, protect her child. Her comments were unprofessional, demeaning and revealed her complete failure to protect my child from harm." (Survivor of domestic abuse in court 2021-22)

"Magistrates are bringing their own prejudices so loudly and presently into proceedings, and if you want to counter what they say, they just bully you". (Survivor of domestic abuse in court 2020-22)

Survivors described the ways that perpetrators of domestic abuse capitalised on these prejudices and stereotypes, in order to position themselves as rational and calm, compared to their victims, whom they portrayed as unstable and irrational:

"He said I experimented with anti-depressants. He pathologised everything about me being a woman – he said I was menopausal and histrionic. He used every misogynistic trope that he possibly could in this statements". (Survivor of domestic abuse in court 2020-22)

49 Birchall, J. and Choudhry, S. (2018) 'What about my right not to be abused?' Domestic abuse, human rights and the family courts. Women's Aid [Available online](#)

50 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p.49 [Available online](#)

51 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 49 [Available online](#)

"Often the non-abusive parent's mental health will be raised in court and used against them. We all know that survivors' mental health can be affected by the abuse that they've survived. We often get medical records being demanded, information on medication they're on. Lots of personal things are included in family court proceedings that don't need to be mentioned. Lots of elements are used to humiliate survivors." (Family court and children's support worker, Women's Aid member service)

At the same time as being labelled overprotective, mentally unstable, or being blamed for the abuse that they and their children have experienced, survivors felt they were also blamed for not encouraging contact between child and perpetrator:

"I was blamed for my child's rejection of their dad and their interactions not being warm enough. I was to foster their relationship. That burden was on me, my responsibility. He had no responsibility whatsoever. Not responsible for trying to engage with his child. To earn his child's trust. The double standard and gender bias was so apparent. I just don't know how this is ok." (Survivor of domestic abuse in court 2020-21)

Several of the survivors we spoke to felt that they had been judged harshly because they were articulate, educated, had researched their rights and advocated for them:

"There was this hostility towards me, because I wasn't just going to stay silent. If you look at the comments about me in the judgment I would class it as subtle misogyny. They don't like outspoken women. They don't like women who know their rights. You're too persistent. But mothers will be assertive to protect their children – it's their instinct." (Survivor of domestic abuse in court 2020-21)

"In one family I worked with, the children disclosed that their father was abusing his new partner. The children's mum raised her concerns about this. But the judge did not take to the mum very well. She was an empowered woman, she had a career, she spoke for herself confidently, and the judge was convinced that she was trying to alienate the children from their father." (Family court and children's support worker, Women's Aid member service)

Meanwhile, the abusive, disruptive or controlling behaviours of fathers who were perpetrators of domestic abuse were minimised or overlooked:

"In court his behaviour has been absolutely hideous but nothing has ever happened. He has shouted at judges and called them drunk, but nothing has happened. You feel like you're in a parallel universe where you can see his behaviour but other people can't. They continue to see him as a rational human being, and then you start to doubt. Domestic abuse charities told me his behaviour was abusive, but this doesn't align with how this is perceived in court, and that's a major issue". (Survivor of domestic abuse in court 2020-21)

"Often a perpetrator doesn't turn up, they don't communicate with the court, but the court continues to set new court dates and extend the process for them. But you find that there a much higher expectations around women's engagement with the court. I regularly have women saying that they feel judges favour men when it comes to child contact." (Representative of a 'by and for' service supporting Black and minoritised women and children)

3.6 Women continue to be accused of “parental alienation” when they raise valid concerns around domestic abuse and child safety

The most dangerous and disturbing manifestation of the culture of disbelief and victim-blaming discussed above is the continuing increase of survivors of domestic abuse being accused of “parental alienation”⁵² when they express their concerns about the abuse that they and their children have experienced. There is a growing body of evidence to highlight this problem in England and Wales.⁵³ The Harm Report discussed the submissions to the panel that detailed how *“perpetrators were sometimes allowed to raise counter allegations of parental alienation and that these were taken seriously, even when there was little or no supporting evidence”*. It also noted that: *“Fears of false allegations of parental alienation are clearly a barrier to victims of abuse telling the courts about their experiences.”* There was a perception, among those submitting evidence to the Harm Panel, that there is a lower threshold for raising allegations of parental alienation than there is for raising domestic abuse or child sexual abuse, and that “experts” on parental alienation are more likely than those with expertise on domestic abuse or child sexual abuse to be listened to in the courts.⁵⁴

All of the survivors contributing to this report had either been accused of “parental alienation” themselves, or had feared that they would face allegations after raising their own concerns about their children’s safety. As one survivor summarised:

“My story started with my daughter disclosing abuse by her father, and finished with me losing her and being told to seek treatment for parental alienation.” (Survivor of domestic abuse in court 2020-21)

The case studies overleaf illustrate the experiences of two survivors who have been in the family courts in the last two years. They are by no means isolated examples, and highlight the concerns we hear at Women’s Aid on a regular basis.

52 ‘Parental alienation’ or ‘alienating behaviours’ are discredited terms with no credible scientific evidence to support them. Ideas behind these terms have been described in different forms during the last half century, usually used to describe mothers who are judged to be blocking contact between their child and the other parent, or coaching a child to believe that they have been abused by the other parent. While proponents of ‘parental alienation’ present the term as fact-based, there is a dearth of robust empirical studies to back it up and no reliable data on its prevalence. The terms should never be used to describe domestic abuse or coercive control.

53 Barnett, A. (2020) ‘A Genealogy of Hostility: Parental alienation in England and Wales’ in *Journal of Social Welfare and Family Law* 42 (1) p. 18-29; Birchall, J. and Choudhry, S. (2021) “‘I was punished for telling the truth’: How allegations of parental alienation are used to silence, sideline and disempower survivors of domestic abuse in family law proceedings’ in *Journal of Gender Based Violence*; Doughty, J., Maxwell, N. and Slater, T. (2020) ‘Professional responses to ‘parental alienation’: research-informed practice’ in *Journal of Social Welfare and Family Law* 42 (1) p.71; Doughty, J., Maxwell, N. and Slater, T. (2018) Review of research and case law on parental alienation, Cafcass Cymru

54 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 62-63 [Available online](#)

Case study 1

This survivor had experienced coercive control and physical abuse from her former partner, who had a criminal record for violence offences against women. After he was arrested again for such violence, and their daughter made allegations of abuse from him, the survivor stopped contact between him and their daughter. At this point he made an application to the family court. The survivor explained what happened next:

"My, and my daughter's allegations about her father – all of which were backed up by police and medical records – were disregarded, and her fear of contact with her father was blamed on my parenting. Ultimately this led to the court appointing an expert who I now know has a full time job providing parental alienation reports, despite the fact that she has minimal experience working with children. She dismissed any allegations about the father, his violence was minimised. The expert said I needed to have therapy for parental alienation in order to work on my 'distorted views of father', despite the evidence of his abuse."

The final outcome was that the care of the survivor's daughter was transferred to the perpetrator, and she is only allowed supervised contact every other week for an hour.

"The person who's been walking around abusing people got patted on the back, and got to see our child taken from me. Since the transfer she has changed, I can see she's traumatised, I can tell she's not ok. She's been in an autopilot, trauma state. Eventually she'll need therapy, there's absolutely no doubt about that." (Survivor of domestic abuse in court 2020-21)

Case study 2

This survivor stopped contact between father and child when the child disclosed sexual abuse. The case began with a district judge who listened to allegations concerning domestic abuse of the mother and sexual abuse of the child, and followed Practice Direction 12J. There was an open police investigation regarding the child sexual abuse. Cafcass wrote a safeguarding letter to this effect. A fact finding hearing was ordered and the judge ordered indirect contact in the interim.

Due to the seriousness of the allegations towards the father, the fact finding hearing was allocated to another judge for speed. Due to the survivor experiencing emotional distress and panic attacks as a result of the trauma she had experienced, her barrister advised that the fact finding should be adjourned. The judge agreed to the adjournment, but ordered costs against the survivor, as they did not feel that the GP evidence was reason enough for a delay. As a result, by the time the fact finding hearing was held, the survivor had run out of funds. She had to represent herself and was expected to cross-examine the perpetrator about the sexual abuse of their child as well as rape and violence against herself.

"My child had ABE interviews with the police, and one of them was what I'd imagine the CPS would think of as liquid gold. They were in a comfortable environment and they told them about multiple incidents of oral sexual abuse, physical sexual abuse and digital penetration. And this was ignored by the court because it wasn't transcribed. It was a video interview."

None of the allegations put forward in the fact finding were found. Instead the judge found the survivor was alienating the child.

"But no examples were given, there was nothing about how I'd supposedly coached and indoctrinated them, no evidence at all. The judge had decided that I was an alienating mother before the fact finding started."

As a result public proceedings were started, and the child was removed into foster care, before being eventually placed with the father. A non-molestation and barring order were issued against the survivor on the grounds of parental alienation. (Survivor of domestic abuse in court 2020-21)

3.7 Survivors' intersectional identities and experiences are not understood or addressed

The Harm Report discussed the intersecting structural disadvantages faced by some survivors engaged in private law children proceedings, focusing particularly on the experiences of Black and minoritised women and survivors living in rural communities.⁵⁵

The support services contributing to this report discussed the experiences of survivors who face structural discrimination and inequality based on their intersectional identities. In particular, these services raised concerns about the extra barriers faced by Black and minoritised women, women with no recourse to public funds, women whose first language is not English, and Deaf and disabled women. Some of these barriers centre around a lack of accessibility, and the courts' failures to put measures in place to ensure that all parties can participate equally:

"Some of our clients know they could get Legal Aid or a translator, but some of them have no idea. Especially the ones that are not from the UK and English is not their first language. There needs to be better communication from the courts about this. It is available online, but not everyone can access this." (Family court support worker)

"There have been occasions where a woman has been allocated a court-appointed interpreter, who already knows the perpetrator from the community. There were no checks and balances around this, and it obviously raises huge concerns around the way things are being interpreted." (Representative of a 'by and for' organisation supporting Black and minoritised women and children)

In addition to barriers around access, survivors from marginalised or minoritised groups, such as Black and minoritised survivors, LGBTQ+ survivors, and Deaf and disabled survivors, also face barriers caused by limited understanding and awareness of the particular forms of harm they have experienced, and the ways that structural discrimination impacts on their interactions with family court processes and professionals. For example, research evidence reviewed as part of Women's Aid's Deserve To Be heard campaign⁵⁶ highlighted the negative impact of structural racism on Black and minoritised survivors and their attempts to access support. It noted the dangers of the predominant 'one size fits all' approach to supporting survivors, which does not take into account the full range of differentiation and diversity among groups of women, contributing to structural exclusion and exacerbating survivors' distress and trauma.⁵⁷

The two case studies overleaf provide some examples of these issues, demonstrating the need for more nuanced understandings of the different and divergent situations of survivors of domestic abuse involved in private family law proceedings.

55 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 64-65 [Available online](#)

56 <https://www.womensaid.org.uk/deservetobeheard/>

57 Thiara, R.K. and Harrison, C. (2021) *Reframing the Links: Black and minoritised women, domestic violence and abuse, and mental health - A review of the literature*. Women's Aid [Available online](#)

Case study: Insights from a 'by and for' organisation for Black and minoritised women and children

"We're a by and for organisation, working with Black and minoritised women. Around 60% of our service users are also migrant women with uncertain or insecure immigration status. What we continue to see is women being really fearful of engaging with the family courts, because they're concerned that information about their uncertain or insecure immigration status will be shared with the Home Office. We've seen in the past how information has been requested and shared between the two spaces. These requests are often pushed by the perpetrator, particularly if they have settled status, who will argue that the children should not stay with their mother as she may soon be deported. There needs to be a commitment that there's going to be a firewall and the information isn't going to be shared, particularly for women who are vulnerable or survivors of domestic violence and abuse."

"Another concern we have is around fact finding hearings. Black and minoritised women will experience particular forms of harm through particular cultural and social lens, which might not look the same as it would be for a white woman, for example. Often we work with women who are in the UK on spouse visas, and often their families are not in the UK. These women will be subject to harm perpetrated not just by the husband or the boyfriend but also his extended family and community. They've often been subject to high levels of control while in those marriages or relationships, and they've never been given the space to develop their own support networks. There needs to be a level of specialism and skill in assessment to be able to recognise the nature of that abuse and how harmful it is. Our concern is that the family court professionals don't have that ability to make that assessment."

"We see women experiencing forms of immigration abuse, but Cafcass aren't understanding why this is dangerous and why it might impact the way that a mother is able to interact with a child, and the risks of that situation. The perpetrator is continuing to subject her to immigration abuse, ensuring that she isn't able to regularise her status and access resources. There isn't really that nuanced assessment, which is really important in those spaces."

Representative of a 'by and for' organisation supporting Black and minoritised women and children

Case study: Insights from a 'by and for' organisation supporting Deaf mothers in the family courts

"All of the barriers that hearing people have, we have those as well, but on top of those, we've got the access barriers."

Interpretive provision

One of the biggest challenges that Deaf mothers face in the family courts is problems around interpreters. A lack of interpreters often delays proceedings; there are no Deaf relay interpreters, and sometimes only one interpreter is provided for both perpetrator and survivor. In addition, the Deaf community is very small, so the perpetrator may already know the interpreter.

"When our clients get to court and there's no interpreter available, who's responsible for that? Should the client have to sort it out? Should the court have to sort it out? There really needs to be a clear line of accountability."

Another problem is that interpreters are not provided to assist Deaf mothers to apply for legal aid or in initial meetings with solicitors:

"If survivors have questions, need to fill in forms they don't understand, who provides the interpreter for this? Even if you obtain legal aid, when you go to meet the solicitor there's no interpreter, so often our staff have to go with clients. There needs to be proper funding for solicitors to have their own interpreters so that our staff can attend the meeting with the client as an advocate, rather than an interpreter."

Deaf awareness training

Deaf mothers face a range of barriers arising from a lack in Deaf awareness among family court professionals:

"Some of our clients have mentioned that going into the court, with the security, is an issue. They can be quite rude and don't try to build a rapport. Our clients try to explain that they're Deaf and security are not accepting of that, which can be problematic, especially with mask wearing."

"I don't know what training they currently have, but Cafcass, judges, magistrates and operational staff absolutely need Deaf awareness training. This needs to include domestic abuse in the context of the Deaf community. It needs to include historical awareness of the barriers facing Deaf people as children. Deaf people usually have had difficulties accessing education which has a knock on impact to how they access services. Professionals need to be aware of this so they know how to work with the Deaf community."

Stereotypes around Deaf parents

Deaf mothers in the family courts experience all of the stereotypes around women and mothers reported by other contributors to this report. But they also experience the impact of specific stereotypes about Deaf parents:

"Deaf mothers have been told by professionals as part of family proceedings: 'You aren't able to communicate with me so therefore you're not a fit parent'. They will favour the other parent if they're a hearing parent. This means Deaf parents are discriminated against. It's not good enough to judge Deaf people because of problems with interpretative provision."

"When we can't access things we become frustrated, and this leads to being accused of having no patience, being told to calm down and not be aggressive. It can also lead to people thinking we have mental health issues. But it all comes down to communication - you're not being aggressive, you're just feeling the frustration of not being able to access the means of communication that you need to participate. You're having to deal with the frustrations and barriers of everyday life, but you have to do this with a smiley face."

"Deaf parents can be quite tactile with their children. It's natural within the community to touch each other to get attention, to move someone's head, pat their shoulder. There's no cultural understanding of this. For people who don't have Deaf awareness, it can come across as being aggressive, but it's not aggression."

Representative of a 'by and for' organisation for Deaf people

3.8 Survivors continue to face barriers to accessing legal aid and incur huge debts as a result of family proceedings

The Harm Report discussed the submissions of mothers who “described how they had lost their jobs, lost their homes, run up huge debts due to legal costs, been trapped in poverty, become homeless and destitute”.⁵⁸ It also noted that: “We received many submissions detailing the huge emotional, physical and economic impact of court proceedings on litigants in person, and the crippling depletion of their personal resources occasioned by their encounter with the family court.”⁵⁹ The Harm Panel recommended that legal aid should be made available to both alleged perpetrators and alleged victims of domestic abuse in the interests of the child. Despite changes to the evidence requirements and means test to access legal aid in cases involving domestic abuse,⁶⁰ many survivors find that they still do not qualify:

“We do have women who are falling through the gaps for legal aid, particularly women who are working a few hours here and there – not enough to afford legal representation, but not eligible for legal aid. In those cases we try to act as McKenzie Friends or try to help them access support from legal charities like FLOWS.” (Representative of a ‘by and for’ organisation supporting Black and minoritised women and children)

“I’d chosen to work full time to support my daughter, but this made it very difficult for me. The sheer cost of going through it – £200 an hour for a solicitor! Even if you work full time, as a single parent, who can afford that? The rules and restrictions on legal aid access are not fair.” (Survivor of domestic abuse in court 2020-21)

Other survivors told us about the huge debts they had incurred as a result of their efforts to protect their children from unsafe contact with abusive fathers:

“I was given £150,000 to rehouse myself and my children, from the sale of our property. Every penny of that and more was spent in legal fees. I am now £200,000 in debt.” (Survivor of domestic abuse in court 2021-22)

“So controlling and manipulative was my ex-husband, whose legal support fed the courts a stream of twisted and false allegations and lies about me, that not only have I been slapped with a penal notice which could send me to prison, but I, on benefits with an income of less than £10,000 a year, have been ordered to pay my ex-husband’s court fees. This money goes to a man who raped me and psychologically and emotionally abused me and my children for years, a man who earns around £70,000 a year. I can’t afford to put my heating on, and I’m now £30,000 in debt due to all my court hearings.” (Survivor of domestic abuse in court 2020)

58 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 164 [Available online](#)

59 Harm report, Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 104 [Available online](#)

60 Surviving Economic Abuse (2021). *Denied justice: How the legal aid means test prevents victims of domestic abuse from accessing justice and rebuilding their lives*. Surviving Economic Abuse [Available online](#)

3.9 The expertise of specialist support services needs to be valued and utilised by the family courts

The Harm Report discussed the importance of a consistent and inclusive approach to the provision of victim support services as part of private law children proceedings, and recommended that as a matter of course, IDVAs, domestic abuse advocates and mental health support workers should be allowed to accompany the party they are supporting into court.⁶¹ However, the specialist support services we spoke to while preparing this report raised a number of issues that demonstrate the missed opportunities to support survivors and their children in the courts:

"We have to really fight to be in these spaces. Often perpetrators raise concerns about an IDVA or ISVA being in the room, and this adds additional stress to the victim who has to really argue that she needs that support." (Representative of a 'by and for' organisation supporting Black and minoritised women and children)

"I frequently support women who are going through the family court process. I have supplied women with copies of their case notes for the family court to show that they have accessed domestic abuse services and refuges because of the abuse, but the courts are reluctant to accept this." (Women's Aid Specialist Practitioner, No Woman Turned Away project)

Concerns were also raised about the training provided for family court professionals, and whether the expertise of specialist services was being utilised as part of this:

"I know judges and magistrates have training, but who is doing it? Before Covid, we used to go into courts and do briefings for magistrates, for a refresh. It wasn't just: 'This is what domestic abuse is and this is what it looks like', as it's not one size fits all. Women present in all sorts of different ways when they've survived, and so do children." (Family court and children's support worker, Women's Aid member service)

"Work has not been done to make those spaces trauma-informed. What services are being engaged to do that? I've noticed that when training is offered to courts, judges or solicitors, often it's not being delivered by the frontline organisations that are working with women." (Representative of a 'by and for' organisation supporting Black and minoritised women and children)

61 Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*. Ministry of Justice, p. 178 [Available online](#)

3.10 The Covid-19 pandemic has exacerbated the challenges facing survivors in the family courts

The Harm Report was published in June 2020, at the beginning of the Covid-19 pandemic. The pandemic has resulted in large case backlogs in the family courts, and has presented particular challenges around safeguarding children from abuse and ensuring that survivors can access family justice.⁶² It has exacerbated many of the problems highlighted by the Harm Report, particularly around perpetrators' strategies of power and control, as well as creating new ones.

Some of the survivors and services contributing to this report had experienced particular difficulties as a result of the Covid-19 pandemic, particularly in relation to the shift from in-person to remote or hybrid hearings. Support services noted that remote hearings can have a range of benefits, including the fact that survivors do not have to travel to and from court and can attend hearings in the comfort of their own home and safe place:

"With hearings by video cloud platform over the last two years, this has led to a massive reduction in anxiety for women, compared with physically attending court. They've felt safer and more protected. Proceedings have run more quickly and smoothly. Now hearings are moving to in-person again, but for families there would be a benefit in keeping remote hearings if that's their choice." (Family court and children's support worker, Women's Aid member service)

However, services were also keen to highlight problems around remote hearings. These type of hearings can, if not run correctly and safely, allow the perpetrator to see the survivor's home or safe space, and potentially identify this space. Not all survivors have the technology to attend these type of hearings, and it can be difficult to consult with legal representation during the hearing. In addition, if children are at home at the time they may overhear what is being discussed. Hearings that are distressing and traumatic, yet take place within survivors' and children's safe spaces, can have a clear negative impact:

"I supported a woman whose court hearings fell during half terms. She had to go and sit in her car and join the hearing on her phone as she cannot afford a laptop, while the children were in the house. Women who are abused and have been isolated have no one that can 'just' come and look after the children while they attend a remote court hearing on cheap phones alone with no solicitor to explain the language. How can you possibly be an active participant if you are not even in the same room? What is worse is that the children in these cases are often likely to be in the same room witnessing their mother talking about horrific abuse, often sexual, in front of the very children who have been impacted. It is re-traumatising for mothers and the children. How do they then simply get on with their day?" (Family court IDVA, Women's Aid member service)

62 Women's Aid. (2020). *A Perfect Storm: The impact of the Covid-19 pandemic on domestic abuse survivors and the services supporting them*. Women's Aid; [Available online](#) Ryan, M., Harker, L. and Rothera, S. (2020). *Remote hearings in the family justice system: Reflections and experiences*. Nuffield Family Justice Observatory [Available online](#)

"At four o'clock they ran out of time and wanted everyone out of the court due to Covid. I was sent home to continue the fact finding. They didn't provide me with any of the court documents, and no special measures. So he was there on screen and there was nothing I could do about it." (Survivor of domestic abuse in court 2020-22)

Remote and hybrid hearings have also, throughout the course of the pandemic, presented challenges around accessibility for survivors who are Deaf or disabled:

"Many recent hearings have been held by conference call, for which Deaf people need interpreters. We recently had a case of a Deaf mother who was called to a face to face hearing. She attended but the interpreter was remote. She wasn't allowed to have anyone attend with her. Why does a Deaf mother have to attend the court in person without the interpreter? Hybrid models don't work for Deaf people." (Representative of a 'by and for' organisation for Deaf people)

The case study overleaf illustrates the impact of the pandemic on the survivors of domestic abuse who are clients of a support service located in a family court. It illustrates how the changes induced by the pandemic can exacerbate the anxiety and trauma already experienced by survivors in family law proceedings.

Case study: Reflections from a family court support service on pandemic-related changes impacting on survivors of domestic abuse

"During the pandemic there have been more remote hearings. Around 25-30% of the parties we support are victims of domestic abuse. We know this is an underestimation as it represents only those who have disclosed. The pandemic has meant that parties have less opportunities for support and information. The public counter in the court has been closed, the telephone service is always busy. We know that, before the pandemic, clients who had experienced domestic abuse were usually 'walk-in' clients, but now it's a bit more difficult as they need to book an appointment. If they just come to the office, we can't always provide last minute help."

"Before when our clients were all physically in the court, they would be signposted to us. Now, they are more likely to be at home, and they don't know how to get our support. We have a remote service open every day, but our physical office in the court is only open two days a week. Then we get people coming crying, very distressed, and I often wonder: 'What do they do on the other days, and what do the people at home do?'"

"Due to the pandemic, in our court there is no longer a space where mums can leave their children, either when they have an appointment with us or while they are in a hearing. This morning one of our clients was in a hearing and the children had to just sit outside, waiting. So all of this has created increased anxiety and distress for our clients."

"In some ways remote hearings have worked for victims, as they don't have to be in the same room as the other party. But remote hearings don't work for everyone, especially those who don't have access to the internet. Some of our clients don't know that they can request a different type of hearing in these circumstances."

"Sometimes our clients need translators, but for phone hearings this is very difficult. Not everyone has access to the two telephones required. It's very confusing for them. Some of our clients say: 'They did provide me with a translator, but actually, I barely understood what happened'. We have had two cases where the child has had to act as a translator for the mum while in an appointment at our office. We feel this is unjust, and not a fair experience."

(Family court support worker)

In addition, some contributors discussed the legacy of the pandemic, and the need for greater understanding among family court professionals around the impact of lockdowns and social distancing measures on young children:

"I do not think that court have taken into account the issue of 'lockdown babies' who have had limited experience of people generally and so contact with their father may be more of a shock to them. I believe this is a real issue and requests for contact to be built up slowly because of this have not been taken very seriously." (Family court support worker, Women's Aid member service)

3.11 Family court proceedings continue to be trauma-inducing, rather than trauma-aware

"They criticise you for your trauma and use it against you, but they then add to the complexity of the trauma you have to work through. It's not something any woman should have to go through." (Survivor of domestic abuse in court 2020-21)

In 2020, the Harm Report called for a safety-focused, trauma-aware child arrangements programme. When all of the issues, barriers and challenges discussed in the subsections above come together, the result is that, two years on, private law children proceedings continue to be a source of re-traumatisation and distress for survivors of domestic abuse, and the decisions that are being made continue to traumatised children, ignoring their wishes and feelings and placing them in situations of danger. Echoing the findings of the Harm Report, the survivors and specialist support services contributing to this report noted the traumatising impact of the current adversarial approach in private law children's proceedings:

"It's a really traumatic space for women. They have to relive details of the violence and abuse they've experienced, and what's really problematic is that there's a complete lack of understanding of the impact of domestic and sexual violence, there's no understanding of how trauma impacts on women. The very premise of fact finding hearings are that women have to recall the details of what happened to them and then the judge decides if this is fact." (Representative of a 'by and for' organisation supporting Black and minoritised women and children)

"I had to constantly prove that I was a safe parent, a good woman, I hadn't done anything wrong. It was like state-sponsored abuse. I feel abused by the legal system, completely and utterly, and I hate to think what it's done to me." (Survivor of domestic abuse in court 2020-22)

Survivors also related the long-lasting, traumatic impact of proceedings on both themselves and their children:

"We are prisoners doing our time. My son has to 'take care' of his volatile dad and lives in fear of upsetting him. I am a shell of the person I used to be, I am still in shock from the trauma I have endured from both my ex and from the courts." (Survivor of domestic abuse in court 2021-22)

Survivors discussed their dread at the thought of having to return to the family courts, due to the trauma it had induced in them:

"I'm terrified of having to go through it again. I had a meeting with school to see if there's anything they can do to help my son, and they just said 'Well, if it's not working, you'll have to go to family court again'. And I, as an adult woman, could feel I was physically shaking, from the trauma of thinking I'd have to go back there again." (Survivors of domestic abuse in court 2020-21)

Others were left wondering if their original decision to escape their abuser had been the best thing for their children, due to how traumatising the family courts had been:

"There had been many years of coercive control, rape, aggression and economic abuse. But if I'd known what the family courts were like, I might not have left him. I'm not joking. If I'd known that leaving him would mean he'd be allowed to see the children on his own. Because I'd protected them. I'd stood between him and them. He'd never played with them, taken them to school, been interested in them, but now he wanted sole custody, and they almost gave it to him." (Survivor of domestic abuse in court 2020-22)

4. A call to action

Two years after the Harm Report's publication, not enough has been done to address the harm caused by the family courts to survivors and their children. Exacerbated by the impact of the Covid-19 pandemic, this failure has left the survivors we spoke to feeling traumatised, disillusioned, unheard and unprotected. While, as we discussed in section two, some welcome progress has been made in implementing some of the Harm Panel's recommendations, this progress has been far too slow and piecemeal. It will not achieve the wholesale reform that the Harm Report, along with research evidence spanning more than a decade,⁶³ has demonstrated is so desperately needed.

As the experiences included in this report show, during the last two years, survivors of domestic abuse have continued to be disbelieved, children have continued to be forced into traumatic and unsafe contact arrangements with abusive parents, perpetrators have continued to use child arrangement proceedings as a form of post separation abuse, and family court professionals have not been held accountable for their poor decision making and the trauma it has caused.

Two years on, we are calling on the government, the Family Justice Board, the President of the Family Division of the High Court, the Judicial College, Her Majesty's Courts and Tribunals Service (HMCTS) and Cafcass to scale up and reinvigorate plans to implement the Harm Panel's recommendations in full. In particular, action should be taken in the following areas.

Pathfinder pilots

Learning and best practice from the Pathfinder pilots should be developed and considered as a priority, so that it can be channelled into the development of a trauma informed, child centred, investigative approach to private law child arrangements that encourages information sharing between agencies and can be replicated in courts across the country. **The roll out of this approach should be a key priority for the government, who must ensure that it is adequately and sustainably funded.**

The presumption of parental involvement

Given the wealth of evidence provided by the Harm Report itself and other research evidence to demonstrate the detrimental impact of the legal presumption of parental involvement in cases involving domestic abuse and other forms of serious harm, **the government should urgently amend Section 1(2A) of the Children Act 1989, to make clear that the presumption does not apply in these cases.**

⁶³ This research evidence is summarised in the literature review that accompanied the Harm Report. Barnett, A. (2020) *Domestic abuse and private law children cases: A literature review*. Ministry of Justice [Available online](#)

Training

Renewed attention should be placed onto the Harm Panel's recommendations for multi-disciplinary training for all participants in the family justice system, which should include a significant cultural change element, to tackle biases, myths and stereotypes around domestic abuse, child contact and parenting. Currently, different groups of professionals working in the family courts receive different training. The Harm Panel identified a significant weakness in the knowledge and skills of social workers who are undertaking risk assessments and other related direct work with children and their families where domestic abuse is alleged, suspected or known. As mentioned in section two, Cafcass has rolled out a new training programme for its staff on domestic abuse, and has involved specialist organisations in its learning and improvement plan. This is a positive development. At the same time, however, the Department for Education has ended the national assessment and accreditation scheme for children's social workers in England, which was designed to assess social workers against core knowledge and skills requirements.⁶⁴ **We urge the government to ensure that the Harm Panel's recommendations on social worker accreditation are actioned within any new scheme developed.**

The government implementation plan noted that the Lord Chief Justice and Senior President of the Tribunals have statutory responsibility for the training of the judiciary in England and Wales. The plan stated that the Judicial College would be introducing refresher training for magistrates, and that new materials for family judges addressing domestic abuse issues were being piloted.⁶⁵ While basic information on training is available on the Judicial College website,⁶⁶ there is no publicly available information on the domestic abuse training that judges receive, who delivers this training, or how the impact of the training is evaluated.

As the experiences of survivors included in this report illustrates, there remain clear and dangerous gaps in family court professionals' knowledge around coercive control, its impact on survivors and children, and the ways perpetrators use private law children proceedings to continue to abuse and control their victims. There are also significant knowledge and awareness gaps around the intersectional experiences and needs of particular groups of survivors, including Black and minoritised women, LGBTQ+ parents, women with insecure or uncertain immigration status, and Deaf and disabled women. Evidence of a culture of disbelief, victim-blaming, and harmful gender stereotypes about mothers and fathers remains strong, and urgently needs to be challenged. **We urge the Judicial College to work collaboratively and transparently with specialist domestic abuse organisations to improve judicial understanding and awareness around domestic abuse, and we encourage all agencies with responsibility for training family court professionals to work together on the multi-disciplinary training recommended by the Harm Panel.**

64 <https://www.communitycare.co.uk/2022/01/14/government-scraps-naas-social-work-accreditation-scheme/>

65 Ministry of Justice (2020). *Assessing risk of harm to children and parents in private law children cases: Implementation plan*. Ministry of Justice. [Available online](#)

66 <https://www.judiciary.uk/about-the-judiciary/training-support/judicial-college/>

The provisions of the Domestic Abuse Act

Enhanced action is needed by the government, the judiciary, and HMCTS to **ensure that the newly introduced provisions around special measures in the family courts are understood and implemented at ground level**. In addition, the Family Division of the High Court must prioritise the implementation of the Harm Panel's recommendations to **improve the identification of abusive applications, so that perpetrators are prevented from using private law children proceedings as a vehicle for post separation abuse**.

The Domestic Abuse Commissioner's monitoring and reporting mechanism

The pilot phase of the monitoring and reporting mechanism developed by the offices of the Domestic Abuse Commissioner and the Victims' Commissioner should be adequately resourced, supported and learnt from. It will be vital to ensure the buy-in of relevant actors within the family court system, so that data can be effectively and consistently collected and analysed. Learning from the pilot should be prioritised, championed and actioned, in order to develop a sustainable longer term mechanism that can drive the transparency, accountability and learning needed to improve the family courts' response to domestic abuse and other forms of serious harm.

Review of perpetrator programmes

The review of DAPPs currently being undertaken by the Ministry of Justice should prioritise the Harm Panel's recommendation that **any new DAPP commissioning approach is effectively focused on reducing harm for children and families affected by domestic abuse, is trauma aware, centring survivors' and children's safety and needs, and recognises the need for accreditation, consistency and quality assurance**. In the interim, urgent action is needed to address the risks caused by the current patchy and inconsistent provision of family court DAPPs across England, and the recently announced nationwide gap in provision from April 2023 until at least 2024. When safe and accredited DAPP provision is not available, other provisions must be in place to ensure that courts are not ordering unsafe contact between children and perpetrators.

Resourcing and legal aid

As discussed in section 3.1, it appears that high demand and a lack of resources are contributing to the systemic failings of the family courts in dealing with cases involving allegations of domestic abuse and other forms of serious harm. Over the last two years, restrictions on legal aid have continued to impact on the length of hearings and put pressure onto the judiciary. Further resource restrictions have led to an incentive to prioritise public law cases and try to encourage other routes for private law children cases, such as mediation, even where there has been domestic abuse. This has led to a paradoxical situation where, at the same time as understanding of the dangers of coercive and controlling behaviour for survivors and their children has begun to grow, this type of abuse has been marginalised and not investigated properly in the courts. This is not only dangerous but economically short-sighted. Marginalising these cases will only lead to more cases returning at a later stage.

It is essential therefore, that **the government prioritises the Harm Panel's recommendations around the additional investment needed across a range of areas.** These areas include the family court estate, Cafcass, DAPPs, supervised contact centres, and specialist assessments. While we welcome the fact that the government is currently considering how the legal aid means test could be reviewed, we do not agree that the means test should be applied in any form in cases involving domestic abuse. **The government should act on the Harm Panel's recommendation that legal aid be made available to both alleged perpetrators and victims of domestic abuse, in the best interests of the child.**

In addition to our renewed calls for the full implementation of the Harm Panel's recommendations, Women's Aid is also calling for the following key changes and actions needed to make the family courts safer and more just places for survivors of domestic abuse and their children.

Action to tackle allegations of "parental alienation" being used in response to survivors' valid concerns around child safety

During the two years since the publication of the Harm Report, the number of survivors reporting that their concerns about safe contact for their children have been met with allegations of "parental alienation" from the abusive parent has continued to rise. Most worryingly, the number of women reporting having their children removed as a result of these allegations is also rising. We understand that a working group of the Family Justice Council will be producing guidance for the courts on dealing with allegations of alienating behaviours, and initial guidance on the use of experts in cases with these types of allegations is now available.⁶⁷ **Urgent action is needed by the government, Family Division of the High Court, the Judicial College, Magistrates Association and Cafcass to ensure that family court professionals are aware of this problem and recognise the importance of effectively and sensitively investigating allegations of domestic abuse and child sexual abuse before counter allegations are considered.** The problems around the influence of parental alienation "experts" in private law children proceedings, including both those who are regulated and those who are unregulated, needs urgent attention from the government, Family Division of the High Court, as well as the relevant professional bodies.

Build on learning from family proceedings during the Covid-19 pandemic to offer choice to survivors around participation, and ensure that diverse needs are recognised and met

The impact of the Covid-19 pandemic on the family courts, and the experiences of survivors within them, has been significant. Throughout the pandemic courts have been dealing with backlogs and reduced capacity. While remote and hybrid hearings have brought benefits for some survivors, others have experienced challenges and barriers in participation as a result of the switch from in-person hearings. We know that some courts have now decided to return to in-person hearings only, whereas others continue with a combination of hearing types. **Going forward, it is essential that survivors are provided with the information they need to make an informed choice about the type of hearing most appropriate and accessible for them.**

⁶⁷ Family Justice Council (2022). *Interim guidance in relation to expert witnesses in cases where there are allegations of alienating behaviours – conflicts of interest*. Family Justice Council [Available online](#)

Special measures must be provided for all types of hearings, and the type of hearing offered must be informed by survivors' needs and preferences, in order to ensure that all parties can access justice equally. Family Justice Council guidance is available on this topic.⁶⁸

Greater awareness of survivors' intersectional identities and experiences, and the barriers faced by survivors from minoritised and marginalised groups

As discussed in section 3.7, some groups of survivors face extra barriers when trying to engage with the family justice system. It is essential that action is taken to provide family court services that are accessible to all. Appropriate translation and interpretation facilities must be readily available for all court processes, and the information given to parties should be available in a range of different formats. Action should be taken to remove barriers to minoritised survivors' safety during proceedings, such as the threat of sharing data on immigration status. **Family court professionals should draw on the expertise of 'by and for' specialist domestic abuse support services in order to gain a better understanding of the specific experiences and needs of survivors and children from marginalised and minoritised groups.**

Better recognition of, and funding for, the support offered by specialist domestic abuse organisations to survivors and children involved in family court proceedings

The Harm Panel recommended that guidance, practice directions and training should be amended to make clear that domestic abuse specialist support workers, IDVAs and independent sexual violence advocates (ISVAs) should always be allowed to accompany the party they are supporting into court. It also recommended that a model for the provision of specialist support services for both alleged victims and alleged perpetrators of domestic abuse in all family courts should be developed. As the specialist services contributing to this report have demonstrated, they have a wealth of experience in supporting both survivors of domestic abuse and children involved in family court proceedings. This includes the specific expertise of 'by and for' services, who support women and children with particular intersectional identities and experiences, and face extra barriers in accessing family justice. However, we know that many specialist support services are increasingly struggling to provide family court support and children's support services, due to financial pressures and cuts to their funding.⁶⁹ Better supporting these services would allow good practice to be sustained and scaled up across the country. **Women's Aid is calling on the government to provide ring-fenced funding for 'by and for' services.**

68 Family Justice Council (2020). *Safety from domestic abuse and special measures in remote and hybrid hearings*. Family Justice Council [Available online](#)

69 Women's Aid. (2022) *The Domestic Abuse Report 2022: The Annual Audit*. Women's Aid [Available online](#)

New measures are needed to increase transparency and accountability for the decisions made in the family courts

The monitoring and reporting mechanism being piloted by the Offices of the Domestic Abuse Commissioner and Victims' Commissioner is an important and positive development towards greater transparency and accountability in the family courts. The data it generates will be extremely useful in further determining the scale of the problem survivors are facing, listening to the voices of survivors and children, and targeting action towards particular problem areas.⁷⁰

However, the problem remains that for survivors who feel they have suffered injustices in the family courts, their only means of redress is to appeal their case. While the Judicial Conduct Investigations Office can consider a complaint about the personal conduct of a judge, it cannot review how a judge has managed a case; this must be done by an appeal to a higher court. For the majority of survivors, this is not an option. Many survivors do not have access to legal representation or advice. Many have run out of funds by the time appeal stage comes. Many survivors who have faced years of abuse and trauma, even if they are lucky enough to have supportive legal counsel, cannot face the prospect of returning to a court that feels hostile and victim-blaming, threatens cost orders if they lose, and even worse, may make orders that increase risk to children, causing further trauma and damage. This is a significant and serious barrier blocking access to justice. **Women's Aid calls on the Lord Chief Justice, Family Division of the High Court, and the government to develop an alternative, transparent process where complaints about poor decision making in cases involving domestic abuse or other forms of serious harm can be considered without cost to vulnerable victims and survivors.**

Two years ago, the publication of the Harm Report brought a landmark opportunity to create a family justice system that is safe and trauma aware, with the voices of children and survivors of domestic abuse and other forms of harm at its heart. Two years later this opportunity remains, but if we are to take it we need renewed, urgent and wide-ranging action across the family justice system.

As one of the survivors we spoke to said: *"Survivors of the system are not going to give up. They're living it, they're breathing it. It matters to them massively."* If we do not listen to, and learn from, the voices of survivors and their children, we will never achieve the Harm Panel's vision for change. Women's Aid stands ready to support family justice institutions and agencies to work towards this vision – through our national training centre, our direct services and our member services across the country. We invite all family justice actors to come together and work collaboratively to action not just the commitments in the government's implementation plan, but all of the recommendations we have discussed in this report. Only then will we achieve the system that we all want to see – one that is fair, safe, accountable, and truly puts children first.

70 Domestic Abuse Commissioner and Victims Commissioner (2021). *Improving the family court response to domestic abuse: Proposal for a mechanism to monitor and report on domestic abuse in private law children proceedings*. Office of the Domestic Abuse Commissioner [Available online](#)

Women's Aid Federation of England,
PO Box 3245, Bristol BS2 2EH

T: 0117 944 4411
info@womensaid.org.uk | www.womensaid.org.uk

© Women's Aid, 2022

women's aid
until women & children are safe