



Ministry
of Justice

Domestic Abuse Commissioner's Report - 'The Family Court and domestic abuse: achieving cultural change'

Government Response



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of Justice

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Introduction

The family courts deal with some of the most vulnerable people in our society and make crucial decisions about the lives of children. The Government has a clear responsibility to protect those using the courts and to ensure that they have confidence in how the court operates as well as the decisions that are made.

Section 8 of the Domestic Abuse Act 2021 gives the Domestic Abuse Commissioner ('the Commissioner') the power to report on any matter relating to domestic abuse. The Government must publish a response to any such report.

On 17 July 2023 the Commissioner published a report "Domestic Abuse and the Family Court: Achieving Cultural Change" in which she outlines concerns in the family court and makes 10 recommendations for change.

This response incorporates feedback from partners across the family justice system, such as Cafcass and HMCTS. Although the duty to respond to a report by the Commissioner does not apply to the Welsh Government, we recognise that the family justice system operates across both England and Wales, therefore the response incorporates the views of Cafcass Cymru. Although the duty to respond does not apply to the judiciary (s7(6) Domestic Abuse Act 2021), we have sought their views where this response may impact their work.

Response

Recommendation 1 - The monitoring mechanism recommended by the Harm Panel that is being established within the Office of the Domestic Abuse Commissioner and in partnership with the Victims' Commissioner must be allocated sufficient funding both for its pilot phase and, subsequently, for its national roll out.

Response

Following the publication of the final report of the Expert Panel on Assessing the Risk of Harm to Children and Parents in Private Law Children Cases¹ ('the Harm Panel') in June 2020 the Government invited the Commissioner and the Victim's Commissioner to undertake ongoing monitoring of private family law proceedings involving domestic abuse victims in the family courts.

The National Monitoring Mechanism will collect and publish data on the family court's performance dealing with victims of domestic abuse and their children in private law children's proceedings. The Ministry of Justice (MoJ) and HMCTS are working with the Commissioner on these pilots to establish an improved understanding of the data that is currently collected. The MoJ is interested in further discussion with the Commissioner on their proposed creation of a nationally representative data set following the completion of their pilot study. This work represents an important step towards building the transparency of the family justice system.

The Government remains committed to supporting the development of this work. In the 2022/2023 financial year the MoJ provided £86,373 to the Commissioner's office to support this work and a further £180,000 was provided by MoJ in 2023/2024.

The National Monitoring Mechanism requires datasets that are not currently available. HMCTS have undertaken significant work to ensure that, wherever possible, the new data is made available to the Commissioner by early 2024. There are some areas where it is not currently possible to provide the required data. The Government will continue to work with the Commissioner's office to find ways of capturing the requested information.

The Commissioner's report provides a helpful update on the development of this National Monitoring Mechanism. The Government awaits the outcome of the pilot phase with interest and remains committed to supporting the future operation of the National Monitoring Mechanism to ensure it is effective and will deliver on its objectives.

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

The Government will continue to work with the Commissioner's office on how learning from the National Monitoring Mechanism can be used to make improvements in the family court.

Recommendation 2 - The Government should establish, and provide appropriate funding for, a new HMCTS role of Domestic Abuse Best Practice Lead in every Family Court area.

Response

The Government recognises that improved collaboration and sharing of best practice will enhance standards and improve consistency.

Whilst we support in principle the aims of the proposed role, we do have concerns about how it could be successful in practice given the broad span of responsibilities proposed by the Commissioner. The Government instead proposes to introduce a Domestic Abuse Champions network which will focus on sharing best practice, feeding into training and championing local and national initiatives. The network will not be responsible for monitoring judicial compliance with Practice Directions as we believe this would interfere with judicial independence. The network will be made up of Domestic Abuse Champions from HMCTS, Cafcass and Cafcass Cymru.

Some of these roles are already well established. In Cafcass Cymru, following the publication of the Harm Panel report the organisation secured a secondee from Welsh Women's Aid to act as a "Change Manager" to review their processes and ensure they aligned with the report's recommendations and helped ensure the cultural shift needed. In 2021 Cafcass Cymru established a network of 10 Domestic Abuse Champions; two from each operational area in Wales to support the Change Manager. The role of the champion is to act as a point of contact, support the secondee, showcase best practice and disseminate training to be utilised within their organisation.

Cafcass already has a network of 100 local Domestic Abuse Champions covering each of its operational service areas who are responsible for sharing best practice with their Cafcass colleagues. Cafcass is additionally hosting two secondees from SafeLives to support its domestic abuse practice improvement programme. As part of this work the secondees are coordinating the Cafcass network of Domestic Abuse Champions, supporting local areas to embed training into practice, and participating in practice learning reviews in children's cases where domestic abuse is known or alleged, so that learning can influence policy and practice improvement.

HMCTS will consolidate existing expertise into new Domestic Abuse Champions for each regional court area in England and Wales (seven in total). These regional champions will act as a point of contact for frontline court staff to share best practice and raise concerns, allowing a mechanism for feedback on the implementation of policy and guidance.

The champion will showcase best practice and advocate for the completion of domestic abuse training within HMCTS.

MoJ will create a national forum to facilitate learning across champion networks so that best practice can be shared locally and nationally across the family justice system and any issues of concern be raised for consideration and action where required. MoJ will work with the Commissioner to shape this network and how it functions.

MoJ will ensure that feedback from this network is regularly reported to the Domestic Abuse and Positive Outcomes for Children Group (a national subgroup of the Family Justice Board). This will enable escalation of any concerns or recommendations for change nationally.

The Government and Family Justice Board will engage with this network to gather feedback on how policies are implemented, and what further changes might be necessary to improve the experience of victims of domestic abuse in the family courts.

Recommendation 3 - The Commissioner recommends the Ministry of Justice develop and deliver an ambitious plan to consolidate the best learning from the Pathfinder Courts, as well as from strong local practice elsewhere in England, Wales, and internationally to inform future practice, delivery, and policy development. The Commissioner also recommends Pathfinder Courts should be resourced appropriately as part of wider efforts to roll out nationally.

Recommendation 4 - The Commissioner recommends for the Ministry of Justice and Family Justice Board to work with the Commissioner to capitalise on existing work, such as the Pathfinder Courts, to further strengthen the consideration and understanding of the voice of the child when domestic abuse is raised by drawing from the principles presented in this report.

Response

The response to these recommendations has been grouped as they relate in part to the operation of the Pathfinder pilots.

Following the publication of the Harm Panel Report the Government designed a new Investigative Approach pilot, aimed at improving the experiences of children and parents involved in certain private law proceedings, with a particular emphasis on those who may need additional support, such as victims of domestic abuse.

Known as 'Pathfinders' these pilots launched in Dorset and North Wales in February 2022. The Pathfinders are intended to be more investigative (and less adversarial) in their approach. Furthermore, there is an expectation that increased inter-agency information sharing will reduce the number of times a survivor has to relive the trauma they have suffered and enable them to easily access the support required.

The Pathfinder pilots are trialling a stronger "voice of the child" to ensure the wishes and views of the child are fully considered at every stage of proceedings. This approach begins with the information gathering and assessment stage. At this stage, a Child Impact Report is developed which presents an assessment of the issues in the case gathered through engagement with the parties, relevant agencies and children (where appropriate) as well as recommendations to the court.

The Government is pleased that the Commissioner welcomes the introduction of the Pathfinder pilots. Early reports from pilot partners have been positive. Feedback suggests that the Child Impact Report helps to centre the child within the proceedings from the outset and allows the court to focus on the core issues for the child and their welfare rather than the wider disputes between the parties. Initial feedback from the pilot areas indicates that the changes introduced have enabled earlier engagement with the child involved in

proceedings. Pathfinder partners report that the closer relationship with local domestic abuse agencies has increased the number of survivors accessing support services.

We are currently undertaking a detailed evaluation of the pilot in Dorset and North Wales. This evaluation focusses on understanding how the process has been implemented in the two court areas at an operational level, alongside mapping in detail how it is being delivered on the ground and the experience of all parties to identify benefits and those components that are critical for successful delivery. The Government will publish the results of this evaluation in 2024.

Noting the positive feedback, the Government is actively exploring options for increasing the number of Pathfinder courts in 2024 and the further development of the Pathfinder project.

The Commissioner suggests three principles within her report to create a positive duty to safeguarding children and design a child-centric framework to apply to private family law proceedings where domestic abuse is alleged:

1. Considering duties to safeguard the child
2. Child-centric examination of domestic abuse allegations
3. Understanding the presentation of the child (resistance, reluctance, refusal)

Cafcass' work with children and young people is underpinned by principles 1 and 2: their duty is to establish what is safe for children and in their best interests, keeping the child at the centre of proceedings.

Cafcass' Child Impact Assessment Framework includes guidance for a child's refusal or resistance to spending time with a parent. Cafcass are updating this framework later in 2023 and will consider whether they can further strengthen the guidance on these principles as part of this review.

As highlighted in the Commissioner's report, the pilots play an important role in improving how the voice of the child is heard in private law proceedings. The publication of the Harm Panel report demonstrated that there was a need for further reform to enhance the voice of the child, and we remain committed to delivering this improvement. The Child Impact Report within the Pathfinder model aims to centre the child in proceedings from the outset with a focus on their welfare.

Cafcass is committed to amplifying and making sure that the voices of children are well-represented in family proceedings. Before the first hearing, Cafcass audits evidenced that Family Court Advisers illustrate the child's experience in safeguarding letters through sensitive conversations with parents/carers and safeguarding checks with the police and local authority. When a child's case continues beyond the first hearing, the Family Court Adviser's role is to listen carefully to what children say has happened to them and what they would like and need to happen in the future. A careful and considered assessment of

harm and the risk of future harm is undertaken and recommendations are made on the basis of what is safe, in their best interests and promotes their welfare. Often the reports from Family Court Advisers include direct quotes, pictures from children and letters to the judge.

Cafcass is the national sponsor of the Family Justice Young People's Board (FJYPB) and has an annual work programme with them to focus on priorities that their members have said are important as well as things that have been raised in complaints and feedback. FJYPB members are formal members of the Cafcass board and their influence on practice, guidance and policy is evidenced in recent Cafcass work, including explainer videos on what happens to children in proceedings and what sort of communication is helpful to them. Ofsted inspections of Cafcass also confirm this to be the case.

The Government also remains committed to ensuring that the voices of children and young people are heard in our policy development and national priority work. FJYPB members attend FJB quarterly meetings to report on its priorities and advises both Ministers and officials on how policies can be child-centred and child-inclusive. On 27 July 2023 the FJYPB held their annual voice of the child conference. This event brought people across the family justice sector to hear young people's experiences of the family court and to focus on the importance of the voice of the child.

The Domestic Abuse and Positive Outcomes for Children Group are coordinating work, which will take forward priority actions in three areas: enabling earlier engagement with children, communicating outcomes and developing video resources for children.

The Government welcomes the opportunity to continue working with the Commissioner on strengthening the understanding and consideration given to the voice of the child.

Recommendation 5 - The Commissioner recommends greater transparency and consistency across the whole family justice system, so that a full culture-change programme of training on domestic abuse is provided.

Recommendation 6 - Funding should be made available by the Ministry of Justice for specialist domestic abuse training. This training should include the impact of domestic abuse on adult and child victims and survivors.

The response to these recommendations has been grouped as they relate to training.

The Government recognises that transparency in the family courts involves a delicate balance between two main aims:

- i) ensuring that information and decisions made in family courts are open and can be publicly scrutinised, and
- ii) protecting the privacy of vulnerable children and families going through court.

In October 2021, the President of the Family Division ('the President') published the Transparency Review which suggested that accredited journalists and legal bloggers should be able to report publicly on what they see in the family court, subject to restrictions. In December 2021 the President established the Transparency Implementation Group to implement the findings of the review. In January 2023 the Reporting Pilot was launched in courts in Cardiff, Leeds and Carlisle.

The pilot allows accredited journalists to attend and report on certain family court proceedings, subject to strict reporting restrictions designed to protect the privacy of the parties involved. This will be done through judges in these courts making a 'Transparency Order', which sets out the rules of what can and cannot be reported. The aim of the Media Report Pilot is to enable greater scrutiny of the family court system and to promote public understanding of how family court decisions are made. The pilot is due to run until January 2024 and is being independently evaluated. This evaluation will inform recommendations from the Transparency Implementation Group on reporting in family justice.

We also recognise the important role that monitoring data and sharing information has in improving transparency and the public's confidence in the family court. We will continue to work with the Commissioner on the implementation of the National Monitoring Mechanism which will improve transparency, increase accountability, and identify and disseminate best practice in child arrangement cases involving allegations of domestic abuse.

We understand that training of the highest quality allows professionals across the family justice system to properly respond to allegations of domestic abuse and ensure the safety of all users of the family court. Since the publication of the Harm Panel report there have been significant changes to the training developed and delivered across the system.

Following the Harm Panel report, Cafcass established a [Learning and Improvement Board](#) to provide external scrutiny and challenge to its improvement work and to help the organisation to closely consider the lived experiences of children and families in proceedings where they have or are experiencing domestic abuse. Membership comprises a range of professionals and advocacy groups with expertise in domestic abuse, the Family Justice Young People's Board and members with lived experience. Cafcass committed to assessing progress through annual practice quality audits, which helps inform the Cafcass Domestic Abuse Learning and Improvement Plan, alongside feedback from members of the Board and findings from the Harm Panel.

The Cafcass Domestic Abuse Learning and Development Programme was launched in May 2021, including mandatory training for all Family Court Advisers. The programme addresses the training requirements set out by the Domestic Abuse Commissioner, namely the nature of coercive control, the gendered dynamics of domestic abuse, the tactics a perpetrator will use to gain control over a survivor, and how the family court can be used to perpetrate post-separation abuse. In addition, the training and supporting guidance cover many other areas such as working sensitively with trauma, distinguishing between abuse and harmful conflict, safety planning, and the impact of coercive control on children. The Government will explore methods of aligning this programme with the training requirements for all family justice professionals, and to undertake some aspects of this in inter-disciplinary settings.

The annual practice audits in respect of domestic abuse are additionally moderated by volunteers from the Learning and Improvement Board. They provide evidence that the overall quality of Cafcass practice in private law where domestic abuse is known or alleged has improved year on year since the Harm Panel report. This includes evidence that in most cases Family Court Advisers understand the impact of domestic abuse on children, and that their analysis informs their recommendations to the court. Audits also found evidence that Family Court Advisers are able to distinguish between domestic abuse and harmful conflict, to assess both historic and recent domestic abuse, and to work sensitively with children to gain insight into their experiences.

In April 2023 Cafcass Cymru practitioners and managers attended a one-day training overview of the [Safe & Together Model](#), which enhances safe practice and ensures staff are well-informed on domestic abuse. Cafcass Cymru will continue to provide staff with this training.

In April 2022, HMCTS launched its own [safeguarding policy](#), which aligns with the existing MoJ safeguarding policy. To support HMCTS staff in implementing the policy, mandatory Safeguarding Foundation learning was introduced in July 2022 for all staff to complete. The learning helps HMCTS staff understand what safeguarding is, what they need to do if they have a safeguarding concern and why it's important to make sure they keep our users and staff safe.

HMCTS established a National Domestic Abuse Working Group after hearing of failings within its systems and processes directly from survivors of domestic abuse. HMCTS

undertook a review of the Domestic Abuse training offered to staff. Training material was revised to also include safeguarding and to show a stronger link to the impact on victims of domestic abuse. All HMCTS colleagues who are involved in domestic abuse work within the family courts are expected to complete this revised training by the end of December 2023.

RCJ Advice is a unique Citizens Advice Service made up of two main services: Civil and Family, as well as a range of other projects. RCJ Advice provides legal advice, assistance and information to litigants in person to help them navigate the legal system. In conjunction with "RCJ Advice Now" HMCTS have also provided refresher training to staff on the use of CourtNav (an online tool designed to help applicants who may need assistance in completing an application for a non-molestation and/or occupation order) enabling them to signpost potential applicants to this area of support.

MoJ is working with the domestic abuse charity SafeLives to develop and deliver Domestic Abuse training for chairs and members of the Local Family Justice Board Network. This training will be delivered before the end of the 2023 and funded by the MoJ.

In relation to recommendations specifically regarding the judiciary and judicial training, whilst we welcome these reflections, the judiciary of England and Wales is independent of Government. The statutory training responsibilities held by the Lord Chief Justice under the Constitutional Reform Act 2005 are exercised through the Judicial College. Training is overseen and delivered by the judiciary and outside of the Commissioner's statutory responsibility to make recommendations about the judiciary and Judicial College functions. Notwithstanding that, we note that the Judicial College has published several documents detailing the content of judicial training (including domestic abuse training):

- [Judicial College Strategy 2021-2025 \(judiciary.uk\)](#) which sets out the College's vision and objectives for the future of judicial training;
- Judicial College Annual Activity Reports, which set out the Judicial College's achievements during each training year and include an evaluation of training events that took place during that period (Link to the most recent report: [Judicial College Review of Activities 2021-22 - Courts and Tribunals Judiciary](#));
- The Judicial College Prospectus, an all-inclusive prospectus setting out the full training programme for all judicial office holders (Link to the most recent prospectus: [Judicial College Prospectus 2022-23 \(judiciary.uk\)](#)).
- Further information in relation to the College can be found here: [Judicial College - Courts and Tribunals Judiciary](#). Previous Judicial College Reports and Strategies can be found here: [Archive of Judicial College Reports and Strategies - Courts and Tribunals Judiciary](#)

This approach to training represents a cultural shift across the organisations that make up the family justice system, and will represent a significant improvement in the ability of the

system to meet the needs of its most vulnerable users. We recognise, however, the need to keep training provision under review, and in particular to reflect any insights provided from the increased transparency measures outlined above in considering training needs across the system.

Recommendation 7 - Every survivor going through the Family Court should have access to a specialist domestic abuse support worker. The Ministry of Justice should explore options for investment into these roles for both the delivery of the role, but also for the professional development of the role.

Response

The Government recognises the importance of victims of domestic abuse having access to support whilst going through the family court. Family court proceedings can represent some of the most stressful and challenging times of an individual's life, and we recognise the particular difficulties and vulnerabilities that victims of domestic abuse can face during this time.

Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs) offer unique support to victims as they progress through court, and we recognise the important work of organisations and individuals who perform this role. The Government has already made significant changes to ensure that victims of domestic abuse can access appropriate support during family court proceedings.

The Government has made significant changes to ensure that family court users know of the support available to them. In April 2023, Family Procedure Rules and Practice Directions were amended, to make it easier for victims to access support whilst at court. Practice Direction 27C was introduced, making provisions about the attendance of IDVAs, ISVAs and others providing specialist domestic abuse and/or advocacy support at family court hearings. This may take the form of (but is not limited to) providing information, practical support and emotional or moral support, help in dealing with authorities or other support services, and may include explaining the court process and what to expect. Any party to family proceedings who is receiving support from an ISVA or IDVA has the right to receive that support at any hearing, subject to the court's power to direct otherwise.

In addition to this, Practice Directions 12G and 14E were amended in April 2023 to ensure that victims are able to disclose information from family court proceedings to their IDVA or ISVA. This change enables the IDVA or ISVA to understand the particulars of the victims' case and provide tailored support.

Alongside this work, in April 2023, the President published [IDVA and ISVA guidance](#) to Judges in the family court outlining what these changes were and providing guidance to their implementation.

To further boost these roles, MoJ is more than quadrupling funding for victim and witness support services by 2024/25, up from £41m in 2009/10. Additional ringfenced funding is being used to increase the number of ISVA and IDVA roles by 300 to over 1000 by 2024/25 - a 43% increase on the number of these roles over this spending review period.

This includes all ISVA and IDVA roles, including those with functions relating to the family court.

We are seeking to further strengthen the role of IDVAs and ISVAs through measures set out in the Victims and Prisoners Bill, including statutory guidance on these roles. This aims to improve awareness of the ISVA and IDVA roles, increase consistency of support, and promote collaboration between those who support victims. Through this, we are open at looking at what can support delivery and professional development of these roles, whilst ensuring helpful support is not excluded from the court by restrictive professional standards.

We are also trialling how support from IDVAs and domestic abuse organisations can be better integrated with the family court through the private law pathfinder pilots, outlined above. At the information gathering and assessment stage of the pilot model, the courts will actively investigate the impact of domestic abuse on the child and their welfare. During this stage domestic abuse support services are contacted and will conduct Domestic Abuse, Stalking and Honour Based Violence (DASH) risk assessments where appropriate. The Ministry of Justice fully funds these IDVA services at this initial stage in the pilot areas. This offers victims and survivors specialist domestic abuse support from the outset of proceedings.

The Government remains committed to ensuring that victims are properly supported in the family court. Whilst we await the evaluation into the Pathfinder pilots, we will continue to explore how we can improve access to support for victims and survivors of domestic abuse going through the family court.

Recommendation 8 - The Qualified Legal Representative (QLR) scheme should be fully and appropriately resourced in order to ensure effective implementation.

Response

The Qualified Legal Representative (QLR) scheme is a flagship measure following on from the Domestic Abuse Act 2021. Sections 65 and 66 of the Domestic Abuse Act 2021 prohibited perpetrators or alleged perpetrators of abuse from personally cross-examining their victims or alleged victims in family and civil proceedings (the prohibition also applies in reverse). In July 2022, the MoJ implemented the QLR scheme to allow courts to appoint a suitably trained legal representative, subject to judicial discretion, to undertake cross-examination for cases involving vulnerable witnesses or suspected domestic abuse in family and civil proceedings.

The QLR Scheme is critical to ensuring that victims are not re-traumatised as a result of being cross-examined by their abuser at court. The remuneration scheme for QLRs has been designed to incentivise the right activities that the cross-examination function necessitates. However, we are aware that some geographical areas are experiencing difficulties in finding QLRs who agree to take on this work and that there are cases where QLRs are travelling outside of their local area to meet demand. To help address this issue and in recognition of the added cost of this travel, the Government will legislate to introduce a travel expense policy for QLRs which will enable recovery of travel expenses in certain circumstances. Further information about this policy will be provided in due course.

Recommendation 9 - The Government should remove the means test for legal aid for all victims and survivors of domestic abuse going through private family law proceedings.

Response

On 15 March 2022, the Government launched the [Legal Aid Means Test Review](#). Following a public consultation period which concluded on 7 June 2022, the [Government Response to the Legal Aid Means Test Review](#) was published on 25 May 2023.

Access to legal aid for domestic abuse victims was considered as part of the review. For details, please see Chapter 4 of the consultation document (paragraphs 237 to 249), as well as at Chapter 3 (paragraphs 142 to 147) and Chapter 4 (paragraphs 175 to 189) of the Government Response.

Whilst the Government decided that it would not remove the legal aid means test for all domestic abuse victims and survivors, it confirmed new means testing measures that will directly, as well as indirectly, improve access to legal aid for those who suffer domestic abuse:

- Increasing income and capital thresholds to expand eligibility. Once fully implemented, these changes will on current estimation result in up to 3,000 more legally aided civil representation cases and up to 19,000 more legal help cases each year. Given the cost of living pressures which have emerged since the Review was announced, the Government will consider the final threshold figures again ahead of their implementation.
- Introducing a new lone parent allowance to recognise the higher fixed living costs of single parent families. Consultees, including the Domestic Abuse Commissioner, voiced concerns that the Government's policy proposals would have a disproportionate adverse impact on lone parents, the majority of whom are women, including those who have suffered domestic abuse.
- Passporting victims of domestic abuse who are in receipt of Universal Credit through the means test when they are applying for protective orders. This ensures that victims in receipt of Universal Credit will continue to have access to legal representation, regardless of their financial situation, without needing to pay any contributions, providing victims with legal protection to prevent further harm.
- Creating a mandatory disregard of inaccessible capital from the means assessment. If capital assets are trapped or inaccessible, these will not be taken into account in determining an applicant's eligibility to civil legal aid. Typically, this measure will help support those who have suffered coercive control from an abusive partner in relation to jointly shared assets.
- Removing the cap on the value of capital assets disregarded from the means test assessment when they are a subject matter of the dispute. Most commonly, this

measure impacts divorce or separation cases where the home is jointly shared and the property is included in the proceedings. Currently, assets covered by this rule are subject to a £100,000 cap.

- Extending the equity disregard to those who are forced to flee their home. In cases where a domestic abuse victim flees their home for their own safety but intends to return once it is safe to do so, the equity disregard will still be applied. The equity disregard ensures that those on low incomes and with no other capital assets do not face having to sell their homes to fund their case; the equity disregard will be increased from £100,000 to £185,000.

The Commissioner also highlighted her concern about the risk of legal advice deserts. This is an issue which the Government takes very seriously. On 5 January 2023, the Government announced the Review of Civil Legal Aid which aims to identify options to improve the effectiveness, efficiency, and sustainability of the civil legal aid market. A key outcome for these options will be to ensure that civil legal aid is accessible to those eligible. Civil legal aid providers and clients are invited to [contribute to this review via a survey or interview](#). The Review aims to conclude by 31 March 2024.

Recommendation 10 - The Commissioner recommends the Ministry of Justice consult with her Office, the specialist domestic abuse sector, the relevant regulatory bodies, NHS England, NHS Wales, the specialist children's sector to develop a stricter definition of psychologist. The Ministry of Justice should identify an appropriate legislative opportunity to implement this definition.

Response

In recent years, the family courts have seen an increase in claims of so-called 'parental alienation' and there have been attempts to gain policy and legislative recognition of the concept. The Government does not recognise so-called 'parental alienation' as a concept and did not include "parental alienation" in the Controlling and Coercive Behaviour (CCB) Statutory Guidance that accompanied the Domestic Abuse Act 2021. This was due to a lack of shared understanding - its definition and implications, and how to approach it in practice. The CCB Statutory Guidance does make clear that making false allegations to statutory services and utilising children to control the victim is a part of a pattern of behaviour that amounts to CCB.

The Cafcass [Child Impact Assessment Framework](#) adopts the term alienating behaviours to describe a spectrum of observable parental behaviours which have the potential or expressed intent to undermine or obstruct the child's relationship with the other parent. In a case where a child is resistant, or refuses, to see a parent, Family Court Advisers are trained to first consider whether the child has experienced domestic abuse or whether other forms of harmful parenting are contributory factors. They include in their assessments of harm and risk of harm whether claims of alienation may be used by perpetrators of domestic abuse within proceedings as a form of coercive control or to deflect the court's attention from their own behaviour.

The Family Justice Council (FJC) has undertaken important work in this area. In August 2023 they published "[Draft Guidance on Responding to allegations of alienating behaviour](#)" which was open for consultation until 16 October 2023. The guidance gives detailed information around how the court should handle allegations of alienating behaviours.

The Government is aware of the concerns regarding unregulated psychologists providing expert evidence in the family court. The control of expert evidence in private law children's proceedings is a judicial matter, with parameters set in legislation. The FJC's draft guidance includes new guidance to judges on the instruction of expert witnesses, and more specifically the "scrutiny of their regulation" and recommends that, if their assessments will influence welfare outcomes, these experts should be regulated by the Health and Care Professions Council.

In February 2023, the President delivered a judgment in the case of *Re C* which focussed on the instruction of psychologist experts in the family court. Within this judgment the President outlined that the courts should focus on identifying particular alienating

behaviours rather than determining whether the label of so-called “parental alienation” can be applied.

In August 2023, an appeal was heard in the case of [Re GB](#) regarding the instruction of psychologist experts in the family court. The judge stated “the attitude of the parents towards each other is a factual question for the court to determine. It is not a question for determination by an expert assessment.”

These judgments demonstrate the family court is moving away from psychological assessments and instead focussing on the facts of the individual case. The Government recognises that more needs to be done across the sector and is currently considering what further action to take alongside the guidance issued by the FJC and will work with the Commissioner both on the issue of experts and the situation more widely.



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