



SafeLives' response to the Family Courts Review

About SafeLives

We are SafeLives, the UK-wide charity dedicated to ending domestic abuse, for everyone and for good.

We work with organisations across the UK to transform the response to domestic abuse. We want what you would want for your best friend. We listen to survivors, putting their voices at the heart of our thinking. We look at the whole picture for each individual and family to get the right help at the right time to make families everywhere safe and well. And we challenge perpetrators to change, asking '*why doesn't he stop?*' rather than '*why doesn't she leave?*' This principle applies whatever the sex of the victim or perpetrator and whatever the nature of their relationship.

Last year alone, nearly 11,000 professionals working on the frontline received our training. Over 65,000 adults at risk of serious harm or murder and more than 85,000 children received support through dedicated multi-agency support designed by us and delivered with partners. In the last three years, nearly 1,000 perpetrators have been challenged and supported to change by interventions we created with partners, and that's just the start.

Together we can end domestic abuse. Forever. For everyone.

Introduction

"The family courts need to better understand the effects of DV and make sure that perpetrators are prevented from continuing their abuse this way."

"I can see the life I want out there, but I keep getting dragged backwards (by the family court process)." Ali; 5 years involvement with Cafcass and the Family Court

We welcome the Ministry of Justice's review and see it as an opportunity to drive significant change in the Family Court experience for survivors of domestic abuse and their children, who are often victims as well as witnesses to the abuse.

An estimated 130,000 children in the UK live in households with high-risk domestic abuse; that is, where there is a significant risk of harm or death. 6% of all children are estimated to be exposed to severe domestic abuse between adults in their homes at some point in childhood. Thousands more live with other levels of domestic abuse every single day.¹

¹ In Plain Sight: effective help for children exposed to domestic abuse, SafeLives, 2014.
<http://www.safelives.org.uk/sites/default/files/resources/Final%20policy%20report%20In%20plain%20sight%20-%20effective%20help%20for%20children%20exposed%20to%20domestic%20abuse.pdf>

Research studies show a link between domestic abuse and child maltreatment and domestic abuse has been shown to be a factor in the family background in two thirds of Serious Case Reviews. Cafcass reports that domestic abuse was present in 60% of cases which led to care applications in a 2011 sample. SafeLives' own dataset on children living with domestic abuse shows:

- Almost two-thirds (62%) of the children exposed to domestic abuse were also being directly harmed (physically, emotionally or neglected) as well as witnessing the abuse of a parent.
- In almost all (91%) of our cases the direct harm was perpetrated by the same person as the domestic abuse: principally their father or their mother's male partner.
- Children are suffering multiple physical and mental health consequences as a result of exposure to domestic abuse. Amongst other impacts, over half (52%) had behavioural problems, over a third (39%) had difficulties adjusting at school, and nearly two thirds (60%) felt responsible for negative events.

For this review, we consulted with survivors in our local intervention sites and family court and child contact procedures were consistently raised as a barrier to recovery. Survivors described the experience as very stressful, lengthy and significantly impacting on their health. Lack of understanding, lack of support or access to legal help, and the approach of professionals involved, has had a significant negative impact on families and children.

We also spoke to Idvas (Independent Domestic Violence Advisers) and Family Court Liaison Advisers who have supported clients in the last year in the family courts to help build our response. Their support is regarded as vital by many survivors, but their time is often limited and a number of Specialist Domestic Abuse Family Liaison Officers we spoke to also said that their professional judgement and risk assessments were routinely ignored by Cafcass officers and judges.

Most Idvas will support clients through the court process if their contract allows it, but they note that often they are only funded to work with clients for short periods of time meaning the clients are left without specialist advocate support. We know that for many survivors, having specialist domestic abuse professionals supporting them through this process helps to increase their safety and that of their children, as well as ensuring they can understand proceedings. These professionals will often help to liaise with court staff, request special measures where needed and feed into risk assessments being made by Cafcass and Children's Social Care professionals.

Without this support in place, or if specialist advisers advice is ignored, the family courts are a traumatising place for most survivors who often describe their experience as being worse than the abuse they have experienced to date, or see it as forming part of an ongoing pattern of abuse. To them, it seems as if the state and its arms of justice are colluding in the abuse they have experienced or are experiencing, whilst putting their children at risk of harm.

Survivors responding to our Every Story Matters consultation told us that what was needed was: *"Cafcass training and acknowledgement of the link between domestic abuse and child abuse. Cafcass working together with children's social care. Mothers who have left perpetrators to be supported through private family courts. Unsafe contact arrangements being ended. Children are living in fear for years and their childhoods are being lost."*

Family court is so often a difficult and prolonged battleground for men and women, with children at the very centre of bitter arguments. We recognise the need for balance in the judicial process, but the stories we share through our response highlight the painful experiences survivors of domestic abuse have had through the family courts and demonstrate that children are too often victims as well as witnesses to abuse.

Such personal testimony suggests the scales of justice are too often weighted in favour of a perpetrator – the presumption of child contact trumping clear evidence of abuse, and putting women in an

unforgivably difficult situation where they are forced to allow their children to spend time with men they know may harm them in order to retain the right to custody or risk losing access to the abusive parent, or worse, being accused of abuse themselves because they have allegedly turned their children against that parent. Coupled with the very often significant financial imbalance, and the use of financial abuse alongside other forms of abuse, it is no wonder than we have heard from so many survivors about the urgent need for change.

A better understanding of the manipulative behaviours, particularly coercion and control, used by perpetrators, and of the reasons why victims do not leave, is essential for all professionals associated with the family court process. The lessons learnt from criminal court should be applied appropriately in the family court where domestic abuse is flagged. The welfare of the child, paramount in the Children's Act, must be considered in relation to domestic abuse and its significant long-term impacts, prioritising this over the rights of a parent.

In particular:

Specialist support:

In order to ensure that victims of domestic abuse understand their rights and are given the support required to minimise being traumatised by the family court process, SafeLives recommends that;

- **all victims who have been risk assessed by specialist domestic abuse professionals should have access to a family court Independent Domestic Violence Advisor**
- **children who are identified to have experienced domestic abuse should be given access to appropriate specialist domestic abuse workers and therapeutic support.**

Cafcass currently commissions services for perpetrators, we suggest **that they should do the same for the victim and children who have been harmed as a result of that abuse.**

Cultural change:

The lack of awareness of the impact of domestic abuse on children and adult victims is absolutely clear in the testimony we have heard from survivors and domestic abuse professionals and needs urgently addressing. So SafeLives also advocates for:

- **a cultural change programme (along the lines of the successful DA Matters training programme for the Police) for everyone involved in the family court process including Cafcass officers, the judiciary, family lawyers, court staff and children's social care workers.**

We also note the role of high-quality training and culture change for children's social care to influence cases before they reach family court. This has the potential to improve safeguarding for those affected by domestic abuse, build practitioners' confidence and skills, ensure the voices of children are listened to, and ensure a less traumatising court process for survivors and their families.

Court procedures:

We support Women's Aid's 'Child First' campaign, in particular, the need to:

- **Ban direct cross-examination in any family, criminal or civil proceedings in cases involving domestic abuse, sexual abuse, stalking or harassment.**
- **Guarantee access to special measures for survivors of domestic abuse in the family courts.**

- **Prohibit unsupervised contact for a parent who is on bail for domestic abuse related offences, or where there are ongoing criminal proceedings for domestic abuse.**

Financial abuse:

We also recognise the potential for financial abuse through the family court process and support the recommendations made to this review by Surviving Economic Abuse, namely that:

- **Victim-survivors of domestic abuse be exempt from the legal aid means test.**
- **Procedures for making further applications to the family court be reviewed and streamlined with a view to reducing the instances in which victim-survivors of domestic abuse are required to go to court.**
- **In order to minimise vexatious litigation, statutory guidance is provided on the use of section 91(14) of the Children Act 1989. This guidance should alert judges as to how some perpetrators of domestic abuse make applications under the Children Act 1989 so that they can continue their controlling and coercive behaviour over survivors, even after separation.**
- **Those working within the family court system must be required to undertake full training on economic abuse (as well as other forms of abuse).**
- **An audit should also be undertaken on financial disclosure in family courts and how this process can be rendered more robust (for instance through triggering a non-compliance process in case of refusal to submit timely or accurate financial statements). The proposed Domestic Abuse Commissioner (outlined in the Domestic Abuse Bill) should conduct a full inquiry into economic abuse, and financial disclosure in family courts should form a part of this.**
- **Family courts be required to take into account the possible impact of court orders on the employment and earnings of victim-survivors of domestic abuse.**

Section 1 - Your experience of private family law children proceedings

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

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

Survivors have told us through our Every Story Matters platform, our work in our local intervention sits and via consultation for this review that they have felt traumatised by the court process: being in the same room as the perpetrator, being lied about and feeling that their children are not listened to. Survivors talked about the length of time court cases can go on for, sometimes a number of years, so they are held back from moving forward. In some cases, they described this involvement and their situation as worse than when they lived with the abuse.

"You never see the world as just and fair again, and you learn to accept that there is something deeply and shockingly dark at the heart of the legal system."

"Services also need to be particularly aware of the traumatic effects of family court experiences and the ongoing abuse that goes hand in hand with those proceedings. How can women and children heal if they can't escape the abuse even after leaving?"

"I could hear my abuser breathing. When he was lying I didn't have courage to speak up. Scared he'd take it out on the kids. He knows I see every movement, every breath. It's what kept me alive. Sat a few feet away put me back there. He used that. He knew he could use that."

"The Central Family Court is a daunting place, there are no separate entrances, and the parties to the hearing have to wait, once called by the judge, outside the courtroom, in a narrow corridor. My ex used this time to call me names "liar" being his favourite, comment on my clothing and appearance."

Some legal professionals advise survivors not to use the family court because of the continued abuse and lack of appropriate response:

"The advice from my lawyer about family court was excellent, basically they told me: this is the stuff of nightmares, avoid at all costs, it will make the stalking and threats so much worse. Your violent ex-partner has more rights than your child. No one will believe you, better not to bother. Family courts perpetuate abusive situations and put mothers and children at risk. So he still has regular contact with our child and I support her."

"My 2½ year old hits me – just like his father did. He had to leave his home with nothing as I had to run. He will have unsupervised contact soon with a man who was violent, emotionally and verbally abusive to his mother because every piece of legal advice I receive tells me I have no choice and the courts will regard him as no threat despite a criminal record."

Sometimes, engaging with the family court process leads to increased risk because the victim decides to return to the perpetrator in order to ensure they continue to have contact with their children:

"I have supported at least one client who returned to the relationship because she simply could not afford to continue with paying the costs of trying to ensure that her children could stay with her and be safe. She felt that if she couldn't secure their safety by getting residency she would have to go back to the relationship because at least she would be in the home and could therefore provide the children with some protection. This was a victim experiencing high risk domestic abuse, Children's Social Care were involved and of course they wanted her to leave but he would have got at least some contact with the children, likely to be overnight and she felt she simply couldn't take the risk of leaving them with him."

In another case, *"the perpetrator argued that because the victim was living in refuge she was homeless and couldn't offer a stable environment. The judge agreed and gave residency to the perpetrator as he was in work and had family to support him. The victim returned to him soon after stating she couldn't leave her children with him knowing what he was like. There wasn't any social care involvement."*

In other cases, the victim just decides to give in:

"I was manipulated and controlled, made to believe I was mentally ill so he could control me more, I wasn't ill at all, I was isolated from friends and family, he made me work three jobs while raising two young children, he paid for nothing, he'd force me to have sex, humiliate me about how having our children had changed my body, he hit me when he was drunk, he'd change the goal posts daily, when I threw him out he refused to pay child support, but he tried to interfere in every aspect of my life still. He then lied and colluded with his mother and used the courts to take my children away, using them as weapons to manipulate and control me, dictating where I could live, who I was allowed to see... Alone homeless vulnerable and virtually bankrupt by legal fees I had no choice but to concede and allow him to have residency. It completely broke me..."

“I have fought for both my children and my own safety and apart from specialist help I received no support from police, family courts or children’s service they made me feel as if I was a time waster, so I inevitably gave up reporting incidents which in turn put me at more high risk”

2. Was your experience in the family court: In 2018-2019 In 2014-2017 Before 2014

Our interviews with survivors have taken place across the period 2018-2019 but the cases they refer to in some cases started before then and in some cases are still ongoing.

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

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

Mediation

In most cases, victims have to attend a Mediation Information & Assessment Meeting if they want to go to the family court. There is an exemption if there have been allegations of domestic abuse, but many victims do not know this, particularly if they do not have legal support or specialist domestic abuse support, at this stage. DA professionals told us that they had picked up a number of cases where face-to-face mediation had still gone ahead when domestic abuse had happened, because mediators did not understand the risk of putting perpetrators and victims in the same room.

To apply for the exemption, victims need to show clear evidence, for example, of either a police investigation or an injunction issued. We know that only one in five victims of domestic abuse calls the police, so many domestic abuse victims will still be being forced through a potentially dangerous mediation process because they can’t prove their domestic abuse. Furthermore, victims will often be trying to secure future contact arrangements for their children at the same time as pursuing protection orders and injunctions and therefore may not have the appropriate evidence to prevent mediation going ahead.

Professionals also told us that because mediators don’t receive training in domestic abuse, they were prone to be groomed and manipulated by perpetrators, and in some cases took their side. Finally, given that mediators are paid to mediate, it was felt that some went ahead even when domestic abuse was alleged because they would lose their commission if they didn’t.

Raising abuse makes the court process worse

We have numerous examples of survivors who do raise the issue of domestic abuse, only for it to count against them in court.

“My ex partner had photocopied pages from my diary where I wrote about my postnatal depression, my abusive childhood, personal thoughts of not bonding with my child. He said it was ‘proof that I was too mentally unstable to be a mother’. His solicitor sent copies to the social workers and refuge staff. It was humiliating. The children were placed on the At Risk register and I was observed on my parenting skills, because of him. I had to tell the staff where I was going, they’d observe me cooking, cleaning and caring for them. I had to have three mental health assessments which all concluded my mental health was a result of the DA.

“I was very conscious of the need not to be seen as being dramatic. I was always advised and even told by Cafcass that how I come across plays a significant part in proceedings....It was always brought up

negatively in court by Cafcass and in their reporting how much I was struggling dealing with [court] proceedings and manipulated to raise an air of 'is she affecting the children with her stress?'"

Domestic abuse professionals told us that they felt their own challenge to agencies could make things worse. One said: *"challenging Cafcass will often make things worse for the victims"*. And another said: *"if one individual social worker on the case doesn't like you, you are screwed."*

Survivors also told us frequently that the behaviour of the perpetrator was disregarded in the court process.

"Because of his parental rights, they had to treat him fairly - all the while I knew that as I was being treated as a criminal - the man who had raped me when I was heavily pregnant, called me names, was aggressive, controlling - he was living his best life with women, drink and drugs."

"Cafcass, social services and the family courts need some urgent training on anti social personalities and abusive traits and behaviour. They are often charming manipulative individuals who play the righteous victim very well. I found the entire experience shocking. Cafcass actually recommended a psychological assessment for the perpetrator but the judge declined. You are then just waiting for something to happen and feel powerless to address it if it does."

Experience of domestic abuse professionals in court

We spoke to a number of domestic abuse practitioners who felt their own experience of the process had taken its toll on them: *"I was glad to have left the role. My mental health has suffered too much."*

Another said, *"Family court is a utilised tool for domestic abuse."* They said that after a year in the role, they hadn't come across a single case where from start to finish, the victim's rights had been respected and trauma was minimised.

Section 3 - Children's voices

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

Survivors described children not being listened to and their views not taken into account by the family court. They also described the negative impact on their children: bed wetting, fear, education, refusing contact, and being left unable to understand why they were being made to have contact with someone who had abused them and/or their other parent.

Some adult respondents to SafeLives' survivor consultation and SafeLives' Pioneer Rachel Williams' own petition described going through this as children and talked about the impacts they were still experiencing in adulthood.

"The children said "mum why doesn't anyone believe us?" It's hard to then teach your children what's right and wrong as these people will go to great lengths to destroy you and discredit you. Family courts seem to have no idea of these controlling dangerous men and send the children there for contact even though the children don't want to go."

"The family courts really need to understand that contact isn't always best for the child. Children's emotional health suffers greatly when being forced to see someone who has hurt them physically and emotionally and they don't want to go. My child became scared of the contact area as she related it to having to see her dad."

One domestic abuse professional we spoke to told us that they had tried to raise the voice of the child to Cafcass, asking whether they could share notes of a meeting they had with their client and her 13 year old child who had said that they would kill themselves if they had to have contact with their father who was the perpetrator. They never heard back from the Cafcass officer.

Section 4 - The procedure where domestic abuse is raised

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

5. Fact-finding hearings

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

No further comments on this section.

6. Risk assessment

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

Cafcass officials have access to a number of sources to be able to determine risk to the child or children, including the Police National Computer and checks with local authority safeguarding teams. However, this relies on children in domestic abuse households having been known to statutory authorities prior to their investigations.

SafeLives' Insights data found that in 2017², only 57% of the children involved in cases were known to have been referred to children's services before the victim sought help. Additionally, a substantial proportion of these referrals (31%) had resulted in no action or had not proceeded beyond initial assessment or enquiries. So even if Cafcass do find some evidence that there has been a referral to children's social care, it may not give them conclusive evidence of domestic abuse.

Cafcass should speak to both parties but survivors told us that, in practice, Cafcass are not always able to in the 17 days they have allocated, often because of a lack of capacity or resource, or because they are not always given the contact details of the other party (in some cases the victim). So there is plenty of opportunity for risks to the children and to the non-abusive parent to be missed right from the start. We also know that when allegations of domestic abuse come out later in the process, they are likely to be disbelieved.

Even if victims do disclose their abuse in a conversation with a Cafcass officer, the officer is not trained to understand the dynamics of domestic abuse. Whilst they have access to a Domestic Abuse pathway, this is no substitute for an in-depth understanding of the risks that domestic abuse in a

² <http://www.safelives.org.uk/insights-national-briefing-children>

household poses to the non-abusive parent and the children in that household. We heard from one domestic abuse professional who said that a Cafcass officer asked her client “so why didn’t you leave if you allege the abuse was so bad”, revealing a lack of understanding of domestic abuse and the reasons why victims stay in a relationship.

The process of determining risk to both the child and adult victim would be improved if there was greater involvement of domestic abuse professionals, utilising their judgement and risk assessments in Section 7 reports, but Idvas and other domestic abuse workers are often viewed as not being able to be objective because they believe the victim.

Specialist Domestic Abuse Family Liaison Officers we spoke to said that their professional judgement and risk assessments were routinely ignored by Cafcass officers and judges. On two occasions they had written to the judge with serious safeguarding concerns for the children in separate cases and the judge told them “this is nothing to do with you”. They said that even police officers who had been involved in the case and had sent Marac Chair’s letters to judges found their advice ignored.

We also found that often courts were not able to access information when risk to both children and adult had increased – for example, when non-molestation orders had been breached. Victims have to provide evidence of the breach (which the police often charge for) and there is no duty on the Judge or Cafcass to take it into consideration when assessing risk. There is no way of determining the impact of cumulative breaches, but given the length of family court proceedings, there can often be a number of order breaches by perpetrators during the process, and seldom have we heard that they are taken into consideration.

Further to this, survivors raised with us the safety and efficacy of the domestic abuse perpetrator programme, Building Better Relationships, which is commissioned by Cafcass. All perpetrators are referred to this programme, even if their victim has been subject to a Marac meeting for victims at high risk, so you may have different perpetrator typologies in the same group as others. The reports from this process (midway and at the end of the programme) are very short in detail, usually only covering whether the perpetrator has engaged with the programme and attended all the sessions. They do not provide a thorough risk assessment or judgement from domestic abuse professionals about whether the behaviour of the perpetrator has changed.

7. The impact of Practice Direction 12J

7. How effective is Practice Direction 12J in protecting children and victims of domestic abuse from harm? The next three questions are designed for people responding to the questionnaire who have knowledge and experience of multiple proceedings in the family courts.

In our interviews with survivors and domestic abuse professionals, we found little evidence of Practice Direction 12J being followed in full. Unfortunately, because the Family Court sits in private, it is impossible to build quantitative data to prove whether there has been a shift since the revision of 12J. However, when we asked DA professionals whether there had been an improvement, none said there had.

We heard from a survivor who has been in the Family Courts in the last three years. She said *“The Judge who represented me around child contact threatened me with prison and community service and referred to me as the girl who cried wolf. He had firm evidence of my ex-husband’s history, police reports, social services evidence, children’s wishes and feelings, school reports and chose to stick to a framework that guaranteed access to his children, when their own wishes and feelings were ignored.”*

Other survivors spoke to us about their struggles in getting to court: *“I had to leave the refuge at 6am to travel three buses with my son and toddler to get to the family court. Why didn’t the judge move the*

hearing to a later time - did he even know I wasn't in this local authority? My ex lived five minutes away. The judge told me "you can have a break when the children are with him". What break is it to spend two hours worrying about your children? He wanted me to apologise for being too emotional."

8. Challenges and variation in implementing Practice Direction 12J

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

9. The presumption of parental involvement

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

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

Domestic abuse professionals felt that the direction of the Children Act that it is in the best interests of the child to have contact with both parents always trumps Practice Direction 12J. The will of everyone involved in the court process appears to be to force contact except in exceptional circumstances.

10. Orders

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

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

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

11. Requests for safety measures

11. What is the experience of victims of domestic abuse or other serious offences in requesting arrangements to protect their safety at court? Please tell us about experiences where safety measures have been provided and where they have not been provided, and when this occurred.

Victims are asked to tread an impossible balance between being traumatised enough that they are believed, but not so traumatised that they come across as unable to parent. Those who ought to be ensuring victims can access special measures, including Cafcass workers, legal support and judges, are often doing the opposite. One survivor we spoke to was clear about her judge's impatience with the use of special measures:

"The very thought of seeing my husband in Court terrified me and my solicitor took the initiative to use screens in the Magistrates Family Court. This was met with irritation by the first Judge but permitted.

Each time we went in, it was made an issue of as they had either forgotten to set it up and had to hold everything up to set it in place. His QC constantly implied that I was manipulating my claim of abuse and using the screens as a tactic and the Judge would nod along. I was made to feel like I was inconveniencing the Court and wasting valuable time by asking to be screened. I was painted as a 'drama queen' which played into what my husband was trying to portray me as, to undermine the allegations."

We spoke to a number of specialist domestic abuse professionals who support victims in the family court. Their experience suggests that access to special/safety measures is extremely variable and dependent on a) their legal advisors knowing they can request it b) advising their client to do so c) the judge accepting the need for it and d) the court estate being able to cater for it. At each stage we found survivors who had been let down by the system.

"I was previously a criminal court Idva, so now I'm in the family courts, the difference between the two is significant. Both courts are in the same building but victims of abuse face such different practice. For example, if you are supporting a victim in the criminal court, they get to use a separate, secure witness room via a separate entrance which has its own secure car park. Now I support victims in the family court, I find it extremely hard to book a witness room for the same victim who may have recently just used that room for a criminal hearing. If there is more than one case listed then the situation is even more difficult.

"Many of my clients are vulnerable, but they have to sit in the same waiting area as the perpetrator of abuse and sometimes his family and friends – it causes great anxiety going to court to fight for access to your children in any case, but if you are a victim of abuse who may not have seen the perpetrator for months, it can be absolutely awful. You can apply to the family court to book a secure waiting area but this will be subject to availability, the same goes for a screen, but with things like injunctions, you may not have the time. There's no set procedure in place and it will depend on the goodwill of the judge or bench in the end. I've had some good judges who will move the court to get a screen, but sometimes this just isn't possible. Most judges will let me accompany my client into the proceedings, but once they have started I won't be allowed to speak to the client, unless they are visibly affected."

Judges' views about special measures were often detrimental: *"I was told by my solicitors that the Judge had made it clear that by using the screens I will prove that I am unable to co-parent properly, in which case he would remove both children from me because I would be reinforcing my daughter's fear of her father (she had witnessed some of the abuse and he constantly told her he would kidnap her and take her to India and she would no longer see me). Cafcass came on board and they were of the same mindset. They were another extension of abuse within the system and punished my daughter and me throughout."*

Even when victims were at high-risk of serious harm or murder, they weren't guaranteed access to special measures. One victim who was refused measures told us: *"There had been three MARAC meetings, and I was identified as being at significant risk of harm, I was warned to take precautions, and that my life was at clear risk. The courts and the solicitors were fully aware of this."*

We know that some courts work hard even in difficult situations to think about victim safety, but because it's an add-on rather than a considered part of the process, victims can often be put at risk.

One DA family court advocate we spoke to said that her client was able to access a separate waiting area to the perpetrator which was welcome, only to find that it doubled up as a prayer room, and suddenly her client was turfed out and had to face her perpetrator in the main waiting area. As the DA professional reflected, *"It's an odd system which prioritises prayer over safety"*. In another example, the DA specialist said her local court estate is working hard to ensure safety, but victims are still the ones expected to enter through smelly garages rather than the perpetrator. In other examples, the advocate would get to the court's back gate with their client only to be told *"Your name's not down"*. In combined courts, the criminal court always takes priority, so often screens which had been reserved would be

unavailable. As for video links, we were told that judges don't like them and in any case they very rarely work.

One survivor we spoke to told us of her experience with screens which in the circumstance clearly didn't help: *"How the screen was used was quite farcical really. It was a bi-fold large white board type thing on wheels. It was stashed in the corner of the court - if the court clerk had remembered to put it in the court room prior to the start of hearings. I had envisaged it would be in place around me at all times so I wouldn't have to deal with seeing the perpetrator- this was not the case. It was in fact only put into place when I was giving evidence and in particular when it was his questions I had to answer (read out by the judge), as he was acting in person."*

In another example we heard a victim was offered the option of giving evidence by video link, but told she would only be able to hear the questions put to her and would not be able to hear anyone else's evidence (Cafcass, experts or the perpetrators) and therefore would have to rely on her barrister's recounting of events. She was urged by her solicitor not to use this option as the judge's ability to 'see and hear me clearly would assist in their decision making'.

As this professional states, the lack of training in family courts in understanding domestic abuse is a clear problem: *"I think that the family courts are a long way behind the criminal courts in terms of safety for victims, it is often very difficult to convince the courts or judges that a victim is at risk. The level of training for court staff in family courts regarding domestic abuse is very limited."*

Survivors who responded to SafeLives' Every Story Matters consultation think training needs to be improved too: *"Family court professionals need to be educated in domestic abuse. Support through the process as the fear when our children are at risk is absolutely horrendous and that our children will be handed over to these animals as fathers' rights to family life prevail over children being put at risk and having to be around abusive behaviour which will affect them in their childhood and through the rest of their lives. We need to cut the circle of domestic abuse."*

There is little to no recognition that safety should also apply to those who are supporting victims in the family court too: *"There's also an issue of course for us as staff. We're often the victim's main support, particularly if they are a litigant in person, so being in a non-secure area can leave us open to intimidation too."*

12. Vulnerable witnesses

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

Survivors gave many examples of various related services or practitioners showing a lack of understanding about domestic abuse, particularly coercive and controlling behaviour.

"Many years ago, the court appointed mediator could not understand why I was too frightened to attend the meeting WITH my ex. When I met her she had already had a meeting with him and fallen for all his lies and excuses. She even explained to me that he had become so violent because he loved me so much!!!!!"

In one case study we were given, the perpetrator was sent on a court-ordered 26 week perpetrator programme, after admitting to sustained violence against the mother. He said in court he would perpetrate violence against the mother again. The mother was understandably worried about giving the children contact with her ex-partner and prevented contact, breaking the contact order. When the case came back to court, the judge awarded the father full custody of the children and ordered the mother to

go on a perpetrator programme citing 'parental alienation' was a form of domestic abuse. There had been no other parenting concerns for the mother in this case.

13. Direct cross-examination

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

13. What is the experience of victims of domestic abuse and other serious offences of being directly cross-examined by their alleged abuser/alleged perpetrator? What is their experience of having to ask questions of their alleged abuser/perpetrator? Please tell us about experiences where direct cross-examination was allowed or required and when this occurred, as well as experiences where direct cross-examination was avoided in some way – please specify how and when this occurred.

Domestic abuse professionals have told us that it is not uncommon for their client to be cross-examined by the alleged perpetrator and that this has grown because a lack of access to legal aid has led to a significant increase in litigants in person:

“Because of the growth in people litigating in person, the perpetrator does have the right to cross-examine the victim and vice-versa. Talking about an emotional issue like access to children puts huge pressure on the victim and can cause a real relapse in their recovery from abuse. As an Idva it can be hard to sit there and see your client be grilled when you know the perpetrator knows which buttons to push. It can be devastating.”

Other professionals have reflected that judges don't recognise the impact that litigants in person have on their clients:

“As the client's advocate I had a handful of perpetrators who acted in person - it was terrifying for victims and I had to work hard to get in through back doors & in separate rooms.”

“In one case I had the perpetrator started questioning the victim about her sexual preferences and how this affected her being an 'unfit' mother - the judge didn't intervene.”

“My client was visibly shaking in the court room, which was essentially a small meeting room, because she was sitting directly across the table from the abuser who did not speak at all during the hearing but stared at my client throughout the time we were in the room. He was extremely intimidating without saying a word. She subsequently gave evidence in a case against the same perpetrator for harassment and she explained that, whilst giving evidence in the criminal court was hard, it wasn't nearly as bad as having to sit so close to him in the family court room.”

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

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

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

No further comments here.

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

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

No further comments here.

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

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

16.Repeated applications as a form of abuse

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

Survivors described ongoing abuse, mainly through the children, over child contact and financial support arrangements. Survivors overwhelmingly felt that family courts, child maintenance services and Cafcass allowed the abuse to continue, and generally felt let down by services who appear powerless to do anything. Sometimes they report this as happening for years after they have left the relationship.

"Cafcass & child arrangement cases still are allowing his abuse....9 hearings in 18 months with him breaching every order, every contract with family centres, my child collapsing through distress but still I'm ordered to provide them....and to top it all off I then get ordered to pay £55 pw contribution for contact in a private venue as all others refuse to facilitate him."

Survivors note the impact of this on their children, who too continue to be manipulated and abused:

"He's emotionally harming my child too and my child is on the child protection register yet family court still refuse to stop contact and I'm forced to send my child to him so he can carry on abusing my child and abusing me, we are both suffering, the abuse never stops social services know he is the abuser and are actually powerless to stop his behaviour as the laws in the UK are not defined enough, my abuser will carry on with this until my son is at least an adult, we have 11 years to wait until that time comes, but somehow I think he will continue beyond that time."

"The abuse continues via the family courts. He has convictions for abusing our children, yet I have failed to have the support of the family courts to protect them. He has unsupervised contact. It is torture."

"All their relationships are affected. They have difficulty trusting people, they feel responsible as it is down to them to cease contact with the perpetrator... something which they feel too guilty and are too afraid to do. They experience direct abuse during contact but little is done in court as professionals believe that contact is paramount. Trusting me is a challenge sometimes as I think they feel let down by me... despite my efforts having left I found it impossible to protect them from"

ongoing abuse until they themselves made the decision to stop seeing their dad. They cannot understand why nothing was ever done by the courts and why he has had no consequences.”

Survivors note how perpetrators use psychological manipulation to ‘spin the narrative’ making victims look incompetent:

“The family court agency facilitated the perpetrator sustaining and compounding the abuse for ten years plus, after I'd escaped the relationship in a timely manner. I'm still compensating for the trauma and induced poverty 15 years on. I lost my whole family who ended victim-blaming me for the shortcomings of the system who had no real knowledge or appreciation of the coercive control I was surviving. Perpetrators are highly manipulative of professionals. It comes naturally to them. Because they respect no-one. Loving single-parent households are good; shared parenting with an abuser is a living bereavement, harmful to children.”

Domestic abuse practitioners also confirmed that perpetrators use the court process to continue their abuse:

“I have many examples, especially as an outreach worker, of supporting people where the perpetrator didn't adhere to a court order re contact, so my clients have to go back to court, pay a representative, all costs lots and lots of money. It's just a way of perpetrators gaining back control and drawing out the process so it costs loads of money.”

17.Making s.91(14) orders

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

No comments.

18.Leave to apply applications

18.How do courts deal with applications for leave to apply following a s.91(14) order? Is the other party always given the opportunity to respond to the application? Are applications heard by the same judge who made the original order? In what circumstances are courts willing to grant leave? The next two questions are designed for people responding to the questionnaire who have knowledge and experience of multiple proceedings in the family courts.

No comments.

19.The implementation of s.91(14)

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

No comments.

20.The impact of s.91(14)

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

No comments.

Section 7 - Outcomes for children

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

21.What evidence is there of children and parents suffering harm as a result of orders made in private law children proceedings, where there has been domestic abuse or other serious offences against a parent or child? (This can include harm to a parent caused by a child arrangement orders which requires them to interact with the other parent in order to facilitate contact). Please give details of the type(s) of harm that have occurred, when the harm occurred, the type(s) of orders made and whether they were made by agreement between the parties or their lawyers, or a decision of the court. What effects are caused by child arrangement orders where a victim parent must interact/ communicate with an abusive parent in order to facilitate contact that a court has ordered?

SafeLives refers to the extensive research that Women’s Aid has collated as part of its child homicide campaign as evidence that there is clearly harm caused to children as a result of contact.³

Survivors told us how they felt that Cafcass was complicit in forcing them to engage with perpetrators: *“Cafcass along with Court Psychologists told me that unless I started going out on lunch/supper meals with my husband and the children, to prove to them that they have nothing to be afraid of, I would lose my children. I was also pressured into going away to London with him and the children for a weekend (separate rooms) to prove to the children it was fine to go on sleepovers with him. If I did not go, they would take my children from me. It is incredible what a mother would do to hold onto her children and because I dared to be brave and do these things as terrified as I was, it was used against me in court as proof that I was never really afraid of him in the first place and had lied about the abuse. Catch 22 in every situation for 8 years of ongoing Court involvement.”*

22.The impact of domestic abuse

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

Without undergoing behavioural change, perpetrators of domestic abuse are likely to continue to use coercive and controlling behaviour and violence in their continuing relationships. As we noted at the start, almost two-thirds (62%) of the children exposed to domestic abuse in our dataset were being directly harmed (physically, emotionally or neglected) as well as witnessing the abuse of a parent. In almost all (91%) of our cases the direct harm was perpetrated by the same person as the domestic abuse: principally their father or mother’s male partner.

One survivor wrote about the impact on her children in her Every Story Matters response: *“All their relationships are affected. They have difficulty trusting people, they feel responsible as it is down to them to cease contact with the perpetrator... something which they feel to guilty and are too afraid to do. They experience direct abuse during contact but little is done in court as professionals believe that contact is paramount. Trusting me is a challenge sometimes as I think they feel let down by me... despite my efforts having left I found it impossible to protect them from ongoing abuse until they themselves made the decision to stop seeing their dad. They cannot understand why nothing was ever done by the courts and why he has had no consequences.”*

³ <https://www.womensaid.org.uk/research-and-publications/domestic-abuse-human-rights-and-the-family-courts/>

23. Other serious crimes

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

No further comments.

Section 8 - Any other comments

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

No further comments.

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

i. Problems accessing legal aid

We found that victims often struggled to get legal aid in time for their court hearings: *“I had to leave my children with my elderly grandmother so I could attend the hearings. My ex could afford a solicitor but I had to wait months for Legal Aid so I was representing myself.”*

One frontline practitioner told us *“legal aid access is a huge issue because the financial means test knocks so many people out.”* We also heard that the availability of firms who can take on legal aid cases has also declined.

This has created an increase in litigants in person which, of course, has led to an increase in case length and cross examination of victims by perpetrators. Victims who are litigants in person often don't understand court directions which can get them into further difficulties.

ii. Family court proceedings can prove detrimental to criminal proceedings

One survivor we spoke to whose husband raped her, as well as physically assaulted and abused her whilst she was pregnant and 8 days after birth of their, soon saw her criminal case crumble because of statements in the Family Court:

“They used the un-challenged material/statements from the Family Court to bombard the Jury with. He was acquitted of all charges in the end. Family Court involvement proved detrimental to the criminal proceedings.”

SafeLives 21 August 2019

For follow-up or further information, please contact jessica.asato@safelives.org.uk or liz.thompson@safelives.org.uk