

Interim report

March 2022

# “Hit and miss”

## Family lawyers’ understanding of domestic abuse

Verona Taylor-Blackford



# Acknowledgements

We are grateful to the Legal Education Foundation for providing the funding for this project, to everyone who took part in these interviews, and to our Advisory Group for their time and expertise.

Our Advisory Group members are: #TheCourtSaid, Dr Adrienne Barnett, Jenny Beck QC, Sam Cottman, Professor Rosemary Hunter, Lolita Gerald, Lucy Logan Green, Cris McCurley, Dr Charlotte Proudman, Mia Scally, Dr Cassandra Wiener, the Bar Council, Cafcass, Charles Russell Speechlys, Coram Children's Legal Centre CLC, the Domestic Abuse Commissioner's Office, Drive, the Family Law Bar Association, Finding Legal Options for Women Survivors (FLOWS),

the Magistrates Association, NIDAS, Nuffield Family Justice Observatory, Refuge, Reigate and Banstead Women's Aid, Resolution, Rights of Women, Surviving Economic Abuse, and the Victims' Commissioner's Office.

**Finally, thank you to all the survivors who shared their experiences of the family court with us, presented in greater detail in our report "*Hit and miss*" *Family lawyers' understanding of domestic abuse*. We hope the training we have developed alongside these reports will make the difference for future victims and survivors of domestic abuse who are represented in family court proceedings.**

# Contents

<b>3</b>	<b>Introduction</b>	<b>17</b>	<b>Recognising the impact of the family courts on survivors of domestic abuse</b>
<b>4</b>	<b>About this report</b>		
<b>5</b>	<b>Summary</b>		
<b>6</b>	<b>Findings</b>	<b>19</b>	<b>Trauma-informed practice</b>
<b>6</b>	Family lawyers' understanding of domestic abuse	<b>21</b>	Good practice in the family courts
<b>8</b>	Key gaps in family lawyers' understanding around domestic abuse	<b>23</b>	<b>Informing the training package</b>



**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 applies whatever the gender of the victim or perpetrator and whatever the nature of their relationship.

Last year alone, 8,577 professionals received our training. Over 75,000 adults at risk of serious harm or murder and more than 95,000 children received support through dedicated multi-agency support designed by us and delivered with partners. In the last six years, almost 3,000 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**

# About this report

## At SafeLives we hear repeatedly from survivors of domestic abuse, who have spent years in the family courts, that the system is failing them.

They frequently share their experiences of feeling unsupported, silenced and even blamed by their lawyers. Survivors have raised times that legal professionals have told them to minimise or withhold information about the domestic abuse they lived with, in order to avoid ‘annoying’ the judge or ‘complicating’ a case. Others have been told that they can bring up allegations at a later date – but when they do, the Courts have rejected their disclosure out of hand on the basis that it was not raised at the outset of the case. In 2020, the Ministry of Justice Family Harms Panel concluded that “family courts approach domestic abuse cases inconsistently, and in some cases with harmful effects.”<sup>1</sup>

One survivor of domestic abuse who responded to our Every Story Matters consultation told us that “family court professionals need to be educated in domestic abuse.”<sup>2</sup> The Family Harms Panel recommended a wide range of training “for all participants in the family justice system, including: a cultural

change programme to introduce and embed reforms to private law children’s proceedings and help to ensure consistent implementation.”<sup>3</sup> Our own response to the call for evidence highlighted the need for specialist training across the whole family justice system.<sup>4</sup>

In response, we were delighted to be supported by the Legal Education Foundation (LEF) to develop and deliver a cultural-change training programme to create systemic transformation within the family justice system and strengthen practitioner capacity to respond well to domestic abuse.

As part of the development of this project, we have produced two reports, exploring the voices of survivors and of family legal professionals.

We could not begin this work without talking to survivors who are experts by experience. Alongside our partner, VOICES, we facilitated a number of focus groups with survivors and interviews with domestic abuse practitioners. Our report, “*Hit and miss*”

*Family lawyers’ understanding of domestic abuse*, draws together the findings from these conversations and highlights areas where changes can be made for future survivors. It also celebrates the legal representation that survivors found supportive and empowering.

We have also interviewed more than 35 key stakeholders across the legal and domestic abuse sectors, including the founder of a campaign for survivors of domestic abuse with experience of the family courts, practising family lawyers from a range of legal backgrounds (including barristers and solicitors from both legal aid firms and large, commercial law firms), representatives from law associations, frontline domestic abuse practitioners, third-sector domestic abuse organisations, and public sector bodies.

This interim report, “*Hit and miss: Family lawyers’ understanding of domestic abuse*”, presents findings from these interviews, including anonymised quotes, which has helped shape our pilot training, and it should be read in conjunction with “Don’t complain.” Domestic abuse survivors’ experiences of family lawyers. A full report on the

overall project will be produced when the pilot training courses are concluded in 2023.

Our goal is to see a reformed and informed family justice system where survivors of domestic abuse have faith in the system, where the safety of adult and child survivors is paramount and where better, safer social justice outcomes are achieved. This work is just one step on the road to achieving that.

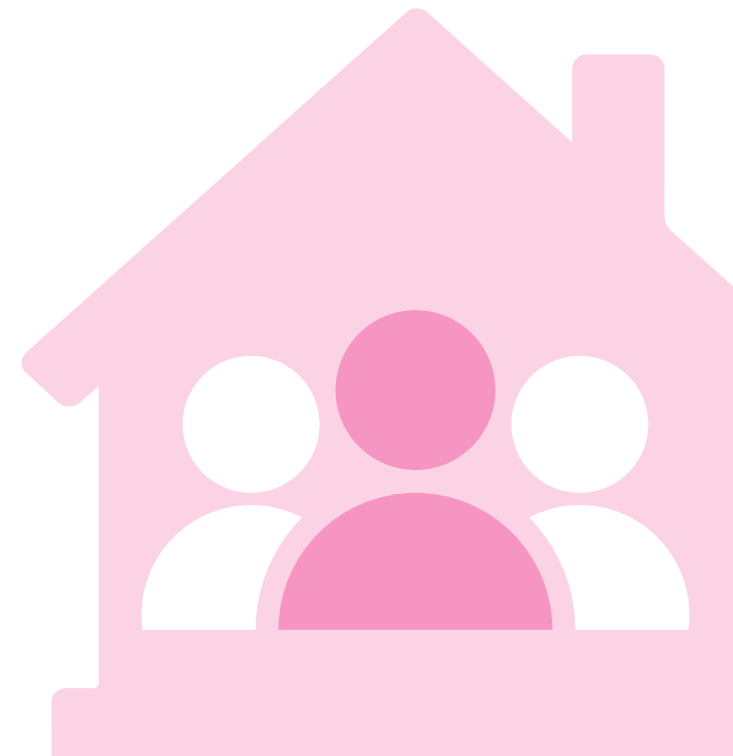
1. Hunter, R., Burton, M., Trinder, L., (2020). *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final report*. p173. Available at: <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>
2. SafeLives (2019). *SafeLives’ response to the Family Courts Review*. p12. Available at: <https://safelives.org.uk/sites/default/files/resources/190821%20SafeLives%27%20response%20to%20the%20Family%20Courts%20Review.pdf>
3. Hunter, R., Burton, M., Trinder, L., (2020). *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final report*. p12. Available at: <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>
4. SafeLives (2019). *SafeLives’ response to the Family Courts Review*. Available at: <https://safelives.org.uk/sites/default/files/resources/190821%20SafeLives%27%20response%20to%20the%20Family%20Courts%20Review.pdf>

# Summary

## Family lawyers' understanding of the dynamics of domestic abuse is a mixed picture, varying across types of legal professional, between urban and rural areas, and types of legal proceedings.

- ✓ Too often, there is a paradigm which privileges incidents of physical abuse over non-physical forms of abuse, with survivors asked to identify 'first, worst and last' incidences, courts failing to take account of patterns of coercive and controlling behaviour, and lawyers' lack of confidence around evidencing non-physical abuse.
  - Awareness of the dynamics of domestic abuse and the impact of power imbalance inherent in abusive relationships on the safety of adult victims and their children
  - The impact of domestic abuse on children and the risks posed to them
  - Understanding of the potential for misuse of the notion of 'parental alienation', a theory heavily criticised for its poor evidence base and negative impact on victims
  - Recognition of the role of and relationship with other agencies, including Independent Domestic Violence Advisors and Cafcass guardians.
  - Understanding the realities behind common 'myths' about domestic abuse and awareness of tactics used by perpetrators
- ✓ There are some clear knowledge gaps:
  - Understanding of risk, particularly around controlling and coercive behaviour
  - Identifying abuse and responding appropriately, when a survivor might not recognise that what they have experienced is abuse and is criminal
  - Knowledge about the impact of trauma on survivors and how that might affect in their presentation in court

- ✓ And whilst there are also some examples of excellent, empathetic practice by barristers, solicitors and judges, the majority of respondents felt that few lawyers understood the impact of the family court on survivors, perhaps as a result of being desensitised by working within the system and by a lack of time to properly consider how it might feel.
- ✓ Most respondents want to see a far greater understanding of trauma-informed practice, asking 'what has happened to you' rather than 'what is wrong with you', and seeking to avoid re-traumatisation, as such an approach has far greater potential to support clients to give their best evidence.
- ✓ The extensive findings from consultation with survivors, frontline domestic abuse practitioners and legal professionals have informed the content of the pilot training packages for family legal professionals. Initial feedback has been positive and lessons from the pilots will inform the remainder of the training through to 2023.
- ✓ A full evaluation report will be produced along with a set of recommendations for legal professionals and policy makers to support all those in the family justice system to be better equipped to identify and respond to domestic abuse and to restore trust in the family courts.



## Findings

# Family lawyers’ understanding of domestic abuse

### To build a picture of the current situation, we asked whether respondents felt family lawyers understand the dynamics of domestic abuse and coercive and controlling behaviour (CCB).

Repeatedly, respondents highlighted poor awareness: several told us lawyers’ understanding presents “a mixed bag”, others said it is “hit and miss,” “completely patchy,” and “enormously variable.”

“Some do [understand], some don’t,” – but “the majority don’t,” according to one campaigner and survivor of domestic abuse.

Respondents agreed that there are certainly some family legal professionals with high levels of knowledge. However, most reported that many lawyers simply do not understand what adult survivors have experienced and how it might continue to affect them and their children after separating from the perpetrator, nor the impact of their traumatic experiences on their behaviour in court.

One frontline practitioner told us they had been working in a domestic abuse service for eight years and, in that time, had only worked with one family lawyer who they felt truly understood the dynamics of abuse and the impact of trauma. This practitioner’s colleague told us, in one case, they had “looked high and low” for a solicitor with an in-depth understanding – with no luck.

Similarly, representatives from a public sector body told us that they occasionally come across family lawyers who have built up a specialism – many of whom sit on the Advisory Group for this project – but, more often, they see “some really questionable practice.”

Some respondents related this ‘patchy’ understanding to historic attitudes in the

legal sector towards domestic abuse, which was previously seen as “women’s work.” This devaluation of work with survivors can lead to lawyers feeling that these cases do not require the levels of training and understanding they might dedicate to other areas of law. Others raised the issue of ‘juniorisation,’ where the named lawyer on a case may be highly experienced but those tasked with the face-to-face work with clients are their more junior colleagues, and trainee solicitors. When experienced lawyers are doing the work, we were told, they are most likely to be working with high-income clients.

One family lawyer told us that many legal practitioners will assume they understand everything they need to around domestic abuse and CCB because they have read the legal definition in detail, have a full understanding of the statute, and a lot of experience applying for non-molestation orders. This respondent highlighted a level of (what they referred to as) ‘arrogance’ among lawyers who do not recognise gaps in their own knowledge.

#### A number of interviewees highlighted important differences in lawyers’ understanding of domestic abuse.

Some respondents raised a difference between barristers’ and solicitors’ levels of understanding, suggesting the former have a narrower understanding. Respondents highlighted this is often due to barristers having typically received less training on the subject and

identified an assumption that barristers will learn ‘on the job.’ We know, however, that simply representing large numbers of survivors of domestic abuse in court does not allow family lawyers to build the detailed understanding they need around trauma-informed practice, the dynamics of domestic abuse, and the impact of domestic abuse on children.

Types of proceedings were also highlighted as a point of difference. Some lawyers are, apparently, less recognisant of the relevance of domestic abuse between intimate partners in children’s matters. In addition, “money lawyers tend to brush it under the carpet,” according to one such ‘money lawyer’ who specialises in matrimonial finance, perhaps due to the high threshold for when conduct can be raised in financial proceedings.

One legal academic told us that they have noticed geographical differences in understanding around domestic abuse and CCB, with lawyers who tend to practice in large urban centres understanding better than those in more rural locations. This echoes a perception we have encountered across a range of professions, in which those in rural areas believe domestic abuse does not happen in their community with the same frequency or severity as in urban centres. In fact, rural victims of domestic abuse are half as likely to report their abuse and, on average, live with the abuse for 25% longer compared with those in urban areas.<sup>5</sup>

## Family lawyers’ understanding of domestic abuse

### A paradigm which privileges incidents of physical violence over non-physical forms of abuse.

Respondents consistently raised the emphasis which lawyers can tend to put on physical violence and individual ‘incidents’ of physical abuse. Their experience was that these are seen as both ‘easier’ to evidence and more acceptable to a justice system operating in a paradigm which elevates physical abuse above all other forms. One stakeholder explained that it is difficult to unpick a lawyer’s approach to domestic abuse from the wider system: the court is incident focussed, they told us, and does not allow for a holistic approach which recognises long-standing emotional and psychological abuse.

Lawyers are often expected to present ‘the first, the worst, and the last’ incidence of domestic abuse – an approach which does not consider the patterned and nuanced nature of CCB, which often cannot be broken down into a series of discreet and easily-proved examples of abuse. This is especially true when it comes to the use of Scott Schedules, where the applicant is expected to detail individual incidences with accompanying evidence and leave

room for both the response of the alleged perpetrator and the judge’s finding on the veracity of the claim. As highlighted in the Court of Appeal’s recent judgement on domestic abuse:

*“[One] concern arose from an asserted need for the court to focus on the wider context of whether there has been a pattern of coercive and controlling behaviour, as opposed to a list of specific factual incidents that are tied to a particular date and time. Abusive, coercive and controlling behaviour is likely to have a cumulative impact upon its victims which would not be identified simply by separate and isolated consideration of individual incidents.”<sup>6</sup>*

When lawyers advise clients to minimise or not to raise their experience of domestic abuse, it is possible this stems from a hope to ‘make the best out of a bad situation,’ based on their understanding of the Court’s – or a particular judge’s – attitude to such allegations. One respondent described it as a “chicken and egg” situation: if a lawyer knows a judge won’t look kindly on allegations of domestic abuse, they risk setting up their client to fail if they encourage them to disclose. Lawyers know the limitations of the family justice

system and may see such a strategic approach as the best way to achieve a good outcome for the survivor. The survivor, however, may experience this approach as silencing, minimising or, at worst, retraumatising.

We also heard about a lack of confidence around evidencing patterns of abusive behaviour and CCB, as opposed to presenting evidence of bruises or other injuries inflicted during physical abuse.

Training which increases lawyers’ understanding, confidence and ability to enable their clients to give best evidence should improve survivors’ experience of the family justice system, and outcomes for them and their children, but it is important to note the systemic weaknesses present in the courts. Lawyers (and their understanding of domestic abuse) are clearly a crucial cog in a wider machine, but respondents also acknowledge they are operating within a system which is currently failing survivors in a multitude of ways, including, but not limited to: long delays in cases and a large backlog exacerbated by the Covid-19 pandemic; high thresholds for accessing legal aid which leaves victims of domestic abuse

unable to afford legal representation; inconsistent application of special measures and poor attitudes towards survivors who use them; limited access to specialist support services despite provisions in the Victim’s Code; victim-blaming and responsibility placed on the non-abusive parent to keep children safe from the perpetrator; and a presumption of contact which ‘trumps’ the safety and wellbeing of adult and child victims of domestic abuse.

5. National Rural Crime Network (2019), *Captive & Controlled: Domestic Abuse in Rural Areas*. Available at: <https://www.ruralabuse.co.uk/wp-content/uploads/2019/07/Domestic-Abuse-in-Rural-Areas-National-Rural-Crime-Network.pdf>

6. *Re H-N and Others (children) (domestic abuse: finding of fact hearings)*, [2021] EWCA Civ 448 Available at: <https://www.judiciary.uk/wp-content/uploads/2021/03/H-N-and-Others-children-judgment-1.pdf>

## Findings

# Key gaps in family lawyers' understanding around domestic abuse

**Having heard from interviewees about many lawyers' limited understanding of the dynamics of domestic abuse and, in particular, of coercive and controlling behaviour, we wanted to know where the specific gaps are. This would help to shape our training content and highlight areas which wider policy recommendations could seek to address.**

One respondent told us that they hadn't seen identifiable 'gaps;' in their view, those who do understand and those who do not are poles apart, and lawyers' levels of understanding are "all or nothing."

However, one lawyer told us they think "there are massive gaps" in understanding, and many respondents shared specific areas to tackle in order to improve lawyers' practice and survivors' experiences of the family justice system.

### Coercive and controlling behaviour

The knowledge gap most frequently raised centred on coercive and controlling behaviour (CCB). In particular, several respondents again highlighted the legal environment which places physical abuse above CCB and emotional abuse. This leads to an underestimation of both the impact of the non-physical abuse and the risk posed to victims. For example, respondents from a national domestic abuse organisation told us that they had come across many situations in which

solicitors refused to apply for a non-molestation order because it was "only emotional abuse," instead relying solely on incidences of physical abuse to apply for orders. As one academic added, many legal professionals fail to understand the cumulative impact of living each day in an "abusive regime;" emotional abuse and CCB are therefore often written off as 'low-level' abuse when they are not accompanied by physical violence.

It is clear that lawyers should be supported to understand the wider picture of physical and non-physical forms of abuse, in which all forms are inextricably intertwined in the perpetrator's creation of an environment of fear and control.

One academic explained that they know many family lawyers will say they understand that domestic abuse has an effect on adult victims and their wellbeing. However, in the respondent's experience, lawyers rarely grasp the full impact of abuse, especially with regards to a survivor's experience in a court room. The damage that a perpetrator can do to a victim's autonomy and relationship with people in authority can be especially pertinent in a setting as imposing and stressful as the Courts of Justice.

This approach betrays what another legal academic termed a widespread and "fundamental lack of understanding around risk, especially around CCB," and a family lawyer called a "distinct failure to understand the actual danger presented by CCB, pre- and post-separation." While some legal professionals might assume that physical violence is the most harmful form of domestic abuse, there is a body of evidence which has found that cases involving CCB are, in fact, more likely to result in serious harm or murder than those involving solely physical violence.<sup>7,8,9,10</sup>

7. Campbell, J., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M., Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health, 93*, 1089-1097

8. Stark, E. (2007). *Coercive control: How men entrap women in personal life*. Oxford, UK: Oxford University Press.

9. Dobash, R., Dobash, R. (2015). *When men murder women*. Oxford, UK: Oxford University Press.

10. Myhill, A. (2015). Measuring coercive control: What can we learn from national population surveys? *Violence Against Women, 21*, 355-375.



## Key gaps in family lawyers’ understanding around domestic abuse

A legal academic told us that a lot of family lawyers and members of the judiciary have a “theoretical understanding” of CCB. When asked, they can describe coercive and controlling behaviours, but the academic felt this was a “surface understanding” which does not translate into their everyday practice when working with, and responding to, victims of domestic abuse.

### Identifying abuse and responding appropriately

Several lawyers and former lawyers highlighted issues in identifying non-physical abuse, especially CCB. They stressed that those in the profession need to be able to spot such abuse, even when a survivor is not using that language.

They also spoke about the challenges of supporting victims of domestic abuse to recognise that what they have experienced is abuse and is criminal. For example, a SafeLives Pioneer survivor of domestic abuse told us that she did not realise that what had happened to her constituted rape and sexual abuse until she was speaking to her solicitor; she was married at the time

and didn’t know her experience ‘counted.’ As detailed in *“Hit and miss” Family lawyers’ understanding of domestic abuse*, one focus group participant explained that their solicitor was “the first person to tell [them their] experiences were DA.”

This was a key finding to come out of the focus group discussions, with several survivors recounting how they did not initially contact a solicitor to discuss domestic abuse, with one explaining that she had only reached out to legal representation “was to say, ‘he’s got my kids. I need to get them back. They’re missing school.’”

Our own research with young people has found that they tend not to use the term ‘domestic abuse,’ instead using words such as ‘toxic,’ ‘controlling’ and ‘manipulative’. They told us that they want support in understanding what is and isn’t acceptable in their relationships, suggesting many victims and survivors do not know that what they experienced wasn’t ‘the norm’ of intimate relationships, especially if they have had prior experience of domestic abuse either in their own intimate relationships or in their household as a child.

In addition, legal language can often be confusing and inaccessible: for example, for young people, those with English as a second language, migrant survivors, and those who are illiterate. Victims of honour-based abuse, child victims of domestic abuse or victims with multiple perpetrators may find the abuse is normalised within their immediate circle or wider community, hindering their ability to recognise that the behaviours are unacceptable. Moreover, SafeLives Pioneers have highlighted that many people experiencing abuse may not understand what the behaviours are behind phrases such as ‘coercive and controlling behaviour’ or ‘financial abuse,’ again leading some survivors to not label their experiences as domestic abuse. And one frontline domestic abuse service told us lawyers need to be able to identify when survivors are raising issues involving economic abuse, a form they highlighted as being under-identified in the courts.

This means that lawyers must be empowered to enquire about and identify all forms of domestic abuse in an accessible way to help their clients achieve best evidence, and to represent and support clients appropriately.

One family lawyer told us: “I’ve had cases in the past when my feeling was that something terrible had happened to [the client], but I didn’t have the skills to ask or worried it might have been harmful to ask her about it. Of course, I could have been wrong, so it was something which was never dealt with.”

When lawyers do identify domestic abuse, it is vital they can confidently signpost clients to specialist support, rather than seeing it as “a ‘tick-box’ exercise,” as one former family lawyer put it, which whisks a survivor down a particular legal route. They explained that the disclosure of abuse can result in some lawyers taking a formulaic approach to the case in which they will argue for a fact-finding hearing to establish the abuse but will not see that findings of abuse should undermine the pro-contact culture of child arrangement proceedings. Too often, in these instances, the abuse is seen as separate from the contact arrangements: “[it’s] as though you’ve thought about the DA [domestic abuse], addressed the risks, and now we’re looking at contact.”

A magistrate echoed that sentiment, telling us that there’s a danger in court that, once identified, the presence of

## Key gaps in family lawyers' understanding around domestic abuse

domestic abuse means the case is put in a silo, rather than legal professionals seeking to understand better: simply put, "it's a process that the case goes through," rather than being seen as the wider context of a case and a deeply impactful experience for both adult and child victims. A respondent from a public sector body described how "a strategic approach gets adopted and clients can see that in a retraumatising way."

### Trauma

Gaps in lawyers' knowledge around the impact of trauma on survivors and their presentation came up frequently.

One respondent told us that "the lack of understanding [of] trauma is mindboggling." Others questioned how survivors could be expected to give their best evidence while traumatised (and, often, being retraumatised by the court process). One lawyer called it a "procedural misunderstanding" that survivors in that position can give best evidence, while another respondent identified a key gap as "understanding trauma and how it impacts on survivors in their recollection of events." They questioned whether, without that knowledge, lawyers can truly help clients give their best evidence.

Another family lawyer told us that they had a client who would become tired and unable to focus when trying to speak about her experiences during hearings, due to her trauma. They found the survivor's memory would ebb and flow which rendered the process of taking instructions from her and representing her "exceptionally difficult." In this case, the lawyer found that the opposing counsel would apply a great deal of pressure and only make the survivor's state worse due, in the lawyer's opinion, to their lack of knowledge around trauma; they told us, "if I was on the other side of that case, I would benefit from understanding how to manage the case better rather than destroying another human being. The other side could have dealt with these things much more productively."

One lawyer highlighted that this lack of understanding around trauma and its effect on survivors' brain, functioning and presentation, extends beyond their colleagues to other court officials, including some members of the judiciary. They told us of frequently encountering attitudes exemplified in one case in which a survivor was ruled against with the judge suggesting they

preferred the evidence of the father (and alleged perpetrator) because his evidence was structured and chronological whereas, due to the impact of trauma, the mother's testimony was less well organised. Such comments betray a severe knowledge gap around how a traumatised person's memory and cognitive functioning can be impacted by their experiences.

A solicitor echoed this sentiment, explaining that victims of domestic abuse can often appear to be confused, or bitter and angry. Too often, it is assumed that they are "blowing things out of proportion" and that they have actually experienced very 'normal' levels of relationship conflict, or that they are using allegations of domestic abuse as revenge against their ex-partner. The solicitor found it frustrating how often survivors are disbelieved solely "because of how they come across," with apparently little consideration given to the content of their evidence.

In addition, this knowledge gap can work against survivors of domestic abuse at the other end of the spectrum. A family barrister told us that they had

represented a client who presented as being very strong and 'put together'. As such, the lawyer "could tell [the] judge didn't accept" the allegation of domestic abuse on the basis that the survivor did not present how society might expect. According to the lawyer, "there's very little you can do to change someone's mind when they don't believe because of the presentation," and the decision went against the survivor.



## Key gaps in family lawyers’ understanding around domestic abuse

While these examples indicate that a lack of understanding around trauma and its effect on survivors of domestic abuse extends beyond family lawyers to the wider court system, an increased awareness among lawyers will empower them to make a well-informed case to judges, magistrates and opposing counsel, and better represent their traumatised clients.

This lack of knowledge around trauma led one lawyer to share their concerns that they could be unconsciously exacerbating survivors’ trauma and the retraumatising nature of the courts: “you’re dealing with such ‘damaged’ people and you could be amplifying that.”

Trauma may also lead to survivors of domestic abuse minimising their experiences. As one academic highlighted “survivors’ threshold of what they’ll disclose and what they think is serious is different to what a solicitor or family court setting will need.” Moreover, trauma can affect not only what a survivor deems ‘normal’ versus ‘serious’ but also what they remember in the first place. A barrister told us that one client “keeps remembering things over a long period of time – it doesn’t work with the court timeframes or the tight

deadlines to get written evidence submitted. Nine or ten months in, she’s suddenly remembered an entirely new experience.” An academic we spoke to said that the general perception is that, when survivors remember elements of the abuse later, it is part of a strategy rather than a symptom of their trauma: “they’ll say ‘she never mentioned it, she only mentioned it half-way though, so it must be tactical.’”

A solicitor echoed this experience, explaining that clients can disclose something at the beginning which “isn’t relevant in the family courts’ point of view but then, months and months down the line, they’ll say something that would have a huge impact.” Survivors she’s worked with can seem “fixated on things that from our perspective aren’t a big deal.” The solicitor explained a key gap is recognising why that might be the case, and understanding what a survivor of domestic abuse may disclose and what they may choose not to.

### Dynamics of domestic abuse

Respondents from a national domestic abuse service provider highlighted a lack of understanding around victim and perpetrator dynamics. They raised the concern that legal professionals can categorise abusive relationships as demonstrating “implacable hostility” or as a particularly acrimonious divorce, without recognising the fundamental manipulation and control exerted by the perpetrator, not just against the traumatised survivor but potentially against each of the professionals with whom they come into contact.

A legal academic echoed this concern, raising a lack of acknowledgement that too often sees coercive and controlling behaviour as merely ‘relationship conflict’ or a bad argument. This is especially pertinent when survivors are offered alternative dispute resolution programmes such as mediation (despite the exemption afforded to domestic abuse in theory), which cannot take into account the dynamics of domestic abuse.

Another academic identified a gap in understanding the impact of the power imbalance inherent to abusive

relationships on the safety of adult victims and their children. This knowledge gap not only leaves domestic abuse unidentified and survivors having to undergo a retraumatising experience without the right support in place, but it also affects the outcomes of their cases. Respondents from a national domestic abuse charity highlighted a recent case in which a survivor challenged her lawyer, arguing that she had not agreed with the settlement and that her ex-partner had hidden their assets in order to protect them in the proceedings. In failing to recognise and understand the dynamics of domestic abuse, the lawyer even wrote to the Legal Aid Agency to revoke the survivor’s legal aid, saying she was trying to prolong the proceedings. When she went to a different firm, her new lawyers listened, understood, and successfully challenged the first settlement, entitling the survivor to more of the assets that her perpetrator had sought to conceal.

Similarly, the financial imbalance apparent in many cases of domestic abuse was raised by a family barrister. In their experience, it is not uncommon

## Key gaps in family lawyers’ understanding around domestic abuse

to encounter a victim of domestic abuse who is accessing legal aid or representing themselves (due to their being unable to afford a lawyer but ineligible for legal aid due to assets in their name controlled by the perpetrator), while the other party is paying tens – if not hundreds – of thousands of pounds in fees to a lawyer from a very prestigious firm. The barrister recalled a case in which they were paid £135 to draft a legal document while the opposing counsel was paid £13,000 for the same work.

### The impact of domestic abuse on children

Multiple respondents told us they often see a lack of understanding around the risks posed to children when a parent is perpetrating domestic abuse, especially non-physical forms of abuse, and around the impact the abuse can have on them.

Representatives from one public sector body explained that children “can learn to deal with the abuse by making themselves smaller, more compliant.” Child victims can respond to the abuse by “subjugat[ing] their own needs so much that they then don’t pay any

attention to what they want.” The respondents told us legal professionals’ practice must be developed to understand and communicate the short- and long-term impacts of CCB on children.

One legal academic told us they had found that lawyers often understand the concept that domestic abuse is harmful to children in theory, “but they can’t see it in front of them and they can’t see it in relation to children’s matters.” Another academic’s research has highlighted issues around professionals’ understanding of how younger children might communicate their experiences and their trauma non-verbally, for example missing that bed-wetting and frequent nightmares might point to the impact of the domestic abuse on them even if they are too young to explain their feelings.

A respondent from a public sector body told us that the issue of the impact of domestic abuse on children can be “used as a football depending on which side” a lawyer is representing; they explained that “you would hear more about that if representing the non-abusive parent,” whereas lawyers representing the perpetrator might

seek to minimise the impact of CCB, or highlight the absence of direct and/or physical abuse. In the respondent’s view, this demonstrates a failure to recognise the “symbiotic relationship” between the wellbeing and safety of the adult victim and the child victim.

In January 2022, the law was updated in line with the Domestic Abuse Act 2021 to recognise children as victims of domestic abuse in their own right, when it is perpetrated by or against an adult relative. Children’s inclusion in the statutory definition of domestic abuse should increase the understanding of lawyers, among other professionals, that a child will experience the domestic abuse whether or not they are directly targeted or in the room when a physical incident occurs.

Our Insights data on children and young people supported by domestic abuse services between April 2020 and March 2021 found that 93% were exposed to domestic abuse, on average for 7 years and 5 months<sup>11</sup>. Of those who were exposed to abuse, 90% were exposed to jealous, controlling and coercive behaviour, 68% to physical abuse, 42% to harassment and stalking, and 2% to sexual abuse. Almost all (96%) of those

who were exposed to abuse were at home when the abuse took place, while 85% visually witnessed it. In almost 1 in 4 cases, child contact visits were used as an opportunity for ongoing abuse. 6% of the children supported intervened to stop physical abuse, 3% had been injured as a result of abuse perpetrated against a parent, for example being in the non-abusive parent’s arms during a physical assault, 3% were directly involved in the abuse, for example being forced to hurt the non-abusive parent.

In addition, 56% had a direct experience of abuse, including emotional abuse (92%), physical abuse (28%), neglect (28%) and sexual abuse (4%). On average, this experience continued for 6 years.

As respondents from a public sector body highlighted: often, a perpetrator of coercive and controlling behaviour will manipulate and emotionally abuse the entire family. Perpetrators of domestic abuse can use threats of physical

11. SafeLives (2021), *Children’s Insights dataset 2020-1 Specialist children’s domestic abuse services*. Available at: <https://safelives.org.uk/sites/default/files/resources/CYP%20Insights%20Dataset%20202021.pdf>

## Key gaps in family lawyers’ understanding around domestic abuse

violence to any children as a method of control against their primary (adult) victim, or can encourage children to join in with – or force them to witness – the abuse. As such, it is critical that legal professionals recognise the impact of abuse on the children involved in private law proceedings, and recognise the relevance of findings of domestic abuse in decisions around residency and contact.

In her 2014 article on child contact in domestic abuse cases, Adrienne Barnett highlights uninformed ideas held by many professionals that parents who have experienced domestic abuse should somehow put the experience behind them and, instead, focus on the importance of their children having contact with both parents.<sup>12</sup> Clearly, this outlook entirely misunderstands the dynamics of domestic abuse, its harmful impact on children, and the level of risk posed to both adult and child victims post-separation.

As a respondent from a national charity working with perpetrators of abuse noted: “the ultimate power move is murdering the children.”

### So-called “parental alienation”

Many interviews covered the topic of ‘parental alienation,’ and the weaponisation of this concept by perpetrators of domestic abuse against their victims.

The so-called theory of ‘parental alienation’ has been heavily criticised for its weak evidence base and negative impact on adult and children survivors of domestic abuse. Cafcass Cymru’s commissioned review of research and case law highlighted that there is currently no commonly accepted definition of parental alienation, in addition to insufficient scientific evidence to support the theory. The review noted that “the label parental alienation syndrome (PAS) has been likened to a ‘nuclear weapon’ that can be exploited within the adversarial legal system in the battle for child residence.”<sup>13</sup>

The Ministry of Justice expert harm panel also found that fears of false allegations of parental alienation can prevent victims of domestic abuse disclosing their abuse.<sup>14</sup> Moreover, studies from a number of countries have shown that a significant proportion of

allegations of parental alienation are made by perpetrators of domestic abuse to rebut their victims’ disclosures.<sup>15</sup> This was the case for a SafeLives Pioneer, who feared her perpetrator would retaliate against her own disclosures with an allegation of parental abuse. These fears impacted her communication and relationship with her children as she went through the family courts.

Adrienne Barnett’s analysis of case law argues that “raising PA dominates cases to the exclusion of all else. The complex and complicated lives, emotions and circumstances of the mothers, fathers and children who come before the family courts are reduced to stark binaries of good and bad, deserving and undeserving, excluding many other ways of explaining parents’ and children’s views and behaviour.”<sup>16</sup>

Theories of parental alienation are loaded with harmful, gendered ideas about mothers, fathers, and domestic abuse survivors. In addition, the Pioneer survivor told us: “parental alienation campaigns suggest we should not trust our children’s voices, it completely goes against what the Harm Report showed.”

12. Barnett, A. (2014), ‘Contact at all costs? Domestic violence and children’s welfare’. *Child and Family Law Quarterly* 6 (4) pp.439-462.

13. Doughty, J., Maxwell, N. and Slater, T. (2018), *Review of research and case law on parental alienation*, p5.

14. Hunter, R. Burton, M. and Trinder, L. (2020). *Assessing risk of harm to children and parents in private law children cases: Final report*.

15. For example: Barnett, A. (2020a) ‘A Genealogy of Hostility: Parental alienation in England and Wales’ in *Journal of Social Welfare and Family Law* 42 (1) pp. 18-29; Birchall, J. and Choudhry, S. (2021, forthcoming) “‘I was punished for telling the truth’: How allegations of parental alienation are used to silence, sideline and disempower survivors of domestic abuse in family law proceedings’ in *Journal of Gender Based Violence*; Meier, J. (2020) ‘US child custody outcomes in cases involving parental alienation and abuse allegations: What do the data show?’ in *Journal of Social Welfare and Family Law* 42 (1) pp. 92-105; Neilson, L. (2018) *Parental alienation empirical analysis: Child best interests or parental rights?* Muriel McQueen Fergusson Centre for Family Violence Research and The FREDA Centre for Research on Violence Against Women and Children.

16. Barnett, A. (2020) ‘A Genealogy of Hostility: Parental alienation in England and Wales’ in *Journal of Social Welfare and Family Law* 42 (1) p. 26

## Key gaps in family lawyers’ understanding around domestic abuse

Respondents highlighted these problems, with one practising barrister telling us that a significant gap in most lawyers’ understanding is that parental alienation is frequently used with the sole intention of undermining allegations of domestic abuse and coercive and controlling behaviour. She highlighted that “where there’s domestic abuse allegations, there are now always parental alienation allegations,” which are used to ‘neutralise’ the domestic abuse allegations.

An academic told us that professionals across the family justice system would benefit from “understanding that abusive men shift blame. Allegations of parental alienation can be part of [that] blame-shifting behaviour.” Respondents from a public sector body agreed, suggesting family lawyers would benefit from training on how parental alienation allegations can be used to further perpetrate coercive and controlling behaviour post-separation, as well as from building their knowledge around child psychology and parental alienation in order to effectively rebut arguments centred on unscientific assertions.

Several respondents explained that the problem with these allegations is a systematic one, too. We heard about two approaches in the Family Justice System to these allegations.

Firstly, a family barrister detailed a framing in which parental alienation allegations sit at the other end of the scale to domestic abuse allegations; within this paradigm, a judgement which finds neither is seen as the ‘compromise’ position. Clearly, this leaves adult and child survivors of domestic abuse at greater risk from the perpetrator’s continued abusive behaviour.

Alternatively, this respondent also highlighted the way in which binary fact-finding hearings can make an almost ‘default’ finding of parental alienation if the domestic abuse allegation is not found. Another practising family lawyer echoed this assertion, telling us that the binary system means that “if abuse isn’t found, it doesn’t exist. You’re told to pick four incidents and then they’re not found. If it’s not found that there is abuse, then we say there wasn’t abuse – so why does the child say there was? Then there must have been parental alienation, failure to promote contact, etc.”

### The role of other agencies

Several respondents raised questions around lawyers’ understanding of and relationship with other professionals involved in cases, such as Idvas (Independent domestic violence advisors) and Cafcass guardians.

In 2020, the Family Harms Panel recommended that “as a matter of course, IDVAs, domestic abuse advocates and mental health support workers be allowed to accompany the party they are supporting into court.”<sup>17</sup> 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. We also know from our 2020/21 survey of domestic abuse practitioners that just one in twenty domestic abuse services had an Idva providing specialised court support.<sup>18</sup> Significantly, research from SafeLives and the Domestic Abuse Commissioner found that one in five (21%) Idvas were prohibited from supporting victims in court, in clear contradiction to the Victim’s Code, which sets out victims’ entitlement to support at every stage of their journey from report to court and into the recovery phase.<sup>19</sup>

As such, survivors of domestic abuse in contact with the family justice system are frequently 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.

17. Hunter, R., Burton, M., Trinder, L., (2020). *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final report.* p178. Available at: <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>

18. SafeLives (2021), *SafeLives’ 2020/21 survey of domestic abuse practitioners in England and Wales.* Available at: [https://www.safelivesresearch.org.uk/Comms/2020\\_21%20Practitioner%20Survey%20Final%202.pdf](https://www.safelivesresearch.org.uk/Comms/2020_21%20Practitioner%20Survey%20Final%202.pdf)

19. *Domestic Abuse Commissioner & SafeLives (2021), Understanding Court Support for Victims of Domestic Abuse.* Available at: <https://domesticabusecommissioner.uk/wp-content/uploads/2021/06/Court-Support-Mapping-Report-DAC-Office-and-SafeLives.pdf>

## Key gaps in family lawyers’ understanding around domestic abuse

Representatives from a national domestic abuse organisation highlighted power dynamics between lawyers and any specialist domestic abuse practitioners working with the client such as an Idva, refuge worker or outreach worker. They explained that they have seen cases in which family lawyers feel they are experts in domestic abuse, having worked on dozens – if not hundreds – of non-molestation orders and worked with so many survivors of domestic abuse. As such, it seems some lawyers can undervalue the specialist input of the domestic abuse practitioners involved in their cases, to the extent that these respondents had even heard of cases in which Idvas were told not to speak in meetings between the client and the family solicitor.

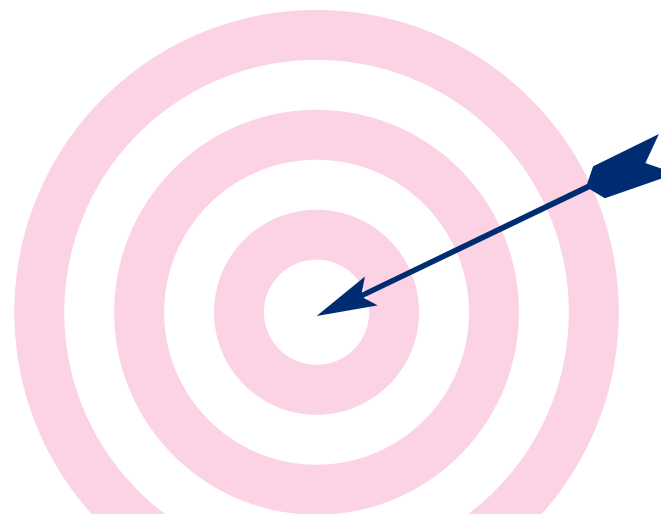
One barrister told us she was “not sure we [lawyers] totally understand what their [Idvas’] function is,” explaining that she had found the involvement of an Idva in a recent case “unhelpful.” This respondent expressed concerns that domestic abuse practitioners might ‘coach’ clients and influence the survivors’ narrative to bolster their allegations of domestic abuse. However, once we fully explained the Idva role,

and how Idvas can support their client and improve their experience of the family justice system, the lawyer seemed much more open to their involvement and the value and expertise they can bring. This exemplified, in real time, this particular knowledge gap and the potential benefits to building lawyers’ understanding around the role.

A legal academic echoed some of the barrister’s concerns, suggesting that the presence of an Idva can work against a survivor of domestic abuse in a wider system which does not understand their role. They told us that “if I’m working for the perpetrator, I would argue that all of this has been put in the client’s head by the Idva.” When faced with such arguments from the opposing party, family lawyers could refute them were they equipped with more detailed knowledge about the process undertaken to access an Idva, and the levels of risk that must be identified to access this specialist role. An understanding of the training and professionalism of the role would allow lawyers to better explain the Idva’s purpose of supporting – and not coaching – survivors.

Another barrister who specialises in domestic abuse cases singled out Idvas and specialist domestic abuse practitioners as critically important for her clients, telling us that “lawyers should be flagging and signposting [to] Idvas a lot more” as, on top of their legal duties, lawyers are “expected to be a therapist and a domestic abuse advisor.” She saw the potential for Idvas to support clients with their specialist knowledge of domestic abuse and tailored methods of support, leaving solicitors and barristers to focus on providing their legal expertise.

A respondent from a public sector body told us that they felt lawyers would benefit from a more developed understanding of Cafcass’ role and decision-making processes. One respondent told us that they had experienced lawyers pre-emptively advising clients on the basis of what they believe the Cafcass family court advisor will say; for example, they had seen survivors of domestic abuse who had agreed to an interim consent order on the basis of the lawyer’s predictions around the Cafcass advisor’s input. When lawyers’ predictions are wrong, the Cafcass advisors then have to “almost undermine the legal advice. [They have to] try to get to the reasons behind why the client has agreed to contact, for example – it’s pre-empting what Cafcass will advise, wrongly.” As such, the respondent called for family lawyers to keep a more open mind, noting that “the Cafcass advice can change, risk assessment is a dynamic process, it’s not fixed until it’s in an order. The advice can change on the day itself.”



## Key gaps in family lawyers’ understanding around domestic abuse

### Domestic abuse myths

Respondents raised a range of domestic abuse ‘myths’ which they see repeated in the family courts process, by lawyers and by other officers of the court.

One barrister recalled a case in which a victim of domestic abuse underwent a day and a half of cross examination in which she was asked “why didn’t you leave?” – a question which highlights a severe lack of understanding around the dynamics of domestic abuse and the risks associated with ending the relationship. The perpetrator’s lawyer also accused the victim of ‘enjoying’ the abusive behaviour, and questioned the veracity of the allegations by pointing out that she did not go to the police or to medical professionals to seek help, again highlighting their lack of understanding around the barriers which victims face.

An academic shared her experience that if survivors seem “knowledgeable,” lawyers will ask “how did you get yourself into this situation?” If there are multiple police call outs in the case, the victim can be deemed “problematic,” and if the case is dropped by the police,

there is an assumption that “the police would have become involved if it was really serious.” Moreover, she raised attitudes around race and disability which play into these myths, further hampering marginalised survivors’ access to justice.

A practising solicitor highlighted that assumptions around the police extend beyond lawyers, telling us that there is “a misplaced view in the judiciary that if they [the survivor] haven’t disclosed to anyone, if they haven’t sought support or gone to the police, then it must be a lie.”

Finally, a myth raised by respondents from a national domestic abuse service provider revealed a lack of understanding around the universal aspects of domestic abuse. They explained they have come across “issues with solicitors blaming survivors’ cultures, [saying] ‘women from x culture are like this, men from x culture are like that.’” In their experience, the respondents said this myth had even been shared by lawyers from that same cultural background.

### Perpetrator tactics

Respondents also highlighted the need for training to prepare lawyers for working with perpetrators of domestic abuse. Solicitors at a third-sector organisation told us about being on the receiving end of a perpetrator’s abusive tactics when the perpetrator is a litigant in person; they told us they wished they had known how to protect themselves and understand the wider context when facing a perpetrator who is representing themselves. One had experienced a perpetrator of domestic abuse repeatedly complaining to professional bodies and her colleagues about her as part of his attempts to undermine her client’s case – “no one really thought about how I [the solicitor] felt about the perpetrator’s behaviour – [...] it’s nerve-wracking.”

An academic raised the possibility that lawyers themselves are groomed by perpetrators of domestic abuse and do not have the training to identify perpetrator tactics and manipulating behaviours. Another academic told us “what I’ve never seen but think there is a need for is good lawyering for perpetrators. I’ve never seen it – I can imagine what it would look like but I’ve never seen it, I’ve never read anything about models, I’ve not seen people talking much about it.” They recommended that domestic abuse specialists should develop such models around what ‘good lawyering’ looks like when working with perpetrators.



## Findings

# Recognising the impact of the family courts on survivors of domestic abuse

**When we asked whether respondents felt lawyers understand how it might feel for a survivor of domestic abuse to go through the family justice system, a representative of a public sector body told us that they have “seen some really empathetic advocacy.”**

Representatives of a national domestic abuse organisation recalled speaking to a survivor whose lawyer had helped to prepare her for the experience of going through the courts by warning her that “the system was going to replicate the power and control dynamics” of the abuse she had experienced.

However, the majority of respondents told us that few lawyers tend to show that they understand what it might feel like for survivors. Two key reasons emerged for this: firstly, lawyers being desensitised due to working within the system and,

secondly, a lack of time to properly consider how it might feel.

One barrister told us: “we’re so blasé about going into court, we’re so used to it, that we forget what it feels like for other people,” while an academic told us that the courts “get normalised” for legal professionals. Another academic explained “some do [understand] but others have become desensitised. It’s just another day in court [for them], it’s just ‘another domestic.’” Lawyers have, according to one respondent, “forgotten what it’s like to be a stranger in the

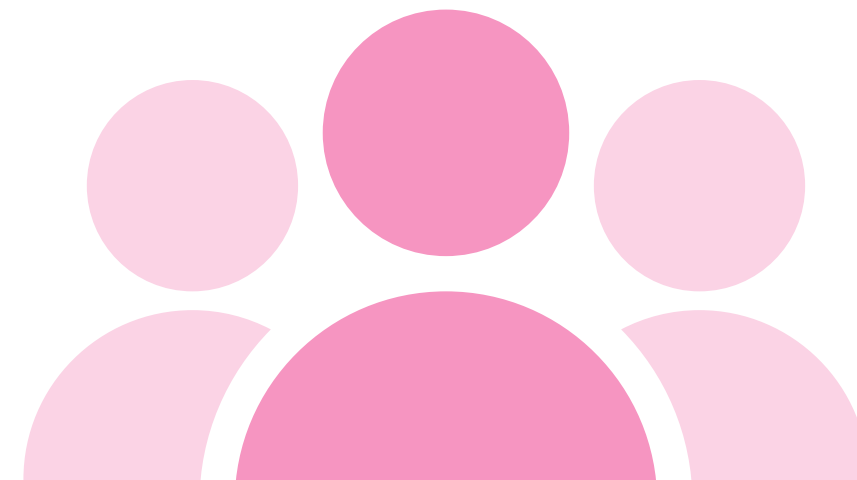
system. They have their relationships and understanding of the processes [so] they forget what it’s like not to.”

A solicitor told us: “you can feel sympathy and empathise [with the client], but actually standing back from it... It’s our day job, we’re trying to get them through the process. I’m not sure we’re sensitively and intelligently – and in an informed way – able to step back and look at how it must feel.”

One barrister agreed, explaining “everything’s happening so quickly, they [lawyers] don’t take the time to sit down and think about it. They would understand if they did [but] the sheer volume of cases means you can’t sit down with each case and think about how it will affect them. [...] Recognising the impact of the court system necessitates the time to think about that specific person and how they will react and a lot of people don’t have that time.”

Similarly, respondents from a national domestic abuse service provider explained that, in their experience, lawyers “don’t ever stop to think about it. They would understand if they did stop to think about it.” However, they highlighted that “taking the time to think about the client – it [costs] money.”

The pressure to avoid spending too much time with a client was raised by several practising lawyers who told us that, given they charge at an hourly rate, they have to be careful that their clients do not spend time telling them information which won’t be useful to the case and will just increase their legal fees. This can lead to lawyers only having the ‘headline’ facts of a case, rather than an in-depth knowledge of the patterns of perpetrator behaviour which characterise an individual survivor’s experience of abuse.



## Recognising the impact of the family courts on survivors of domestic abuse

This is especially true when working with legal aid, as lawyers will receive a (small) fixed fee, and so are encouraged to understand the relevant parts of the story as quickly as possible and focus only on the provable elements of their client’s experience. A legal academic told us that the time pressure of working in legal aid can bar lawyers from developing the level of rapport and closeness required to allow a client to disclose their full experience.

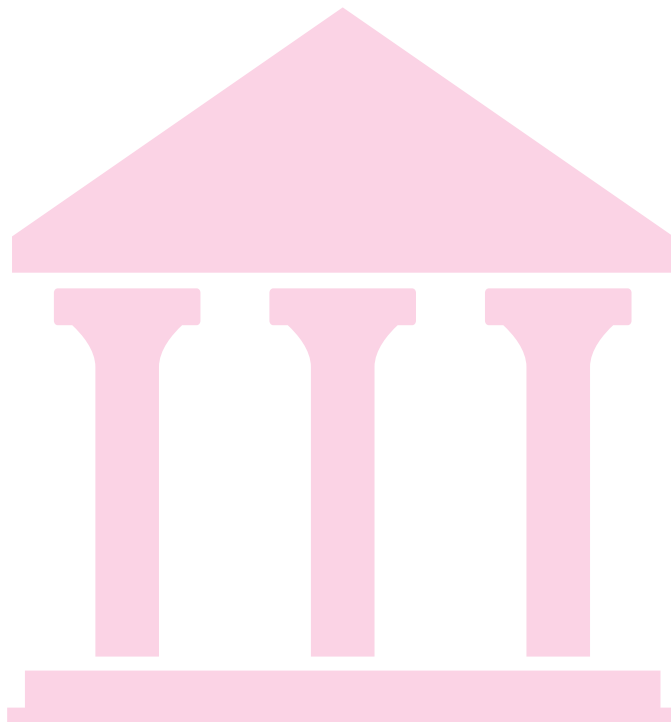
Several respondents highlighted that solicitors may have a better understanding than barristers given they spend more time with clients. As respondents from a law association highlighted, “solicitors can really get to know the client, see them frequently” and attend court with them; “they have some insight into how that person might be presenting and might be feeling.”

Representatives of a public sector body explained that solicitors will consider how to prepare their client for the case and a “good solicitor should be preparing clients for how it might feel to be in court.” They highlighted that solicitors should be seeking to build rapport with the survivor in advance, sort special measures, and could even have a signal for when the client needs to take a break from the hearing.

However, respondents from a national domestic abuse organisation told us that, in their experience, organising or pushing for special measures to be made available falls to clients’ Idvas or other domestic abuse workers. They explained that they had “never heard it even occur to a solicitor or barrister that they should think about” logistics such as planning the trip to court, having separate entrances for the client and the alleged perpetrator, and arranging access to a safety room.

One lawyer explained that “lawyers look at everything through their end of the lens.” To help trainees grasp how it might feel to go through the process without years of legal education and experience behind you, the respondent told us about an exercise she runs; trainees are first asked to write a letter to the client, and then they sit on the other side of the desk and have to ‘receive’ the letter. The respondent explained that she tries to help trainees imagine the client’s mindset upon receiving the letter. She told us “lawyers tend to think about discharging their legal obligations rather than [considering] the survivor’s end of it.”

This difficulty to see the legal process from a client’s perspective can mean that solicitors can come across as “cold and distant” in their efforts to maintain a professional distance, according to a survivor of domestic abuse; she told us “a bit of ‘bedside manner’ wouldn’t go amiss.” A legal academic echoed this, explaining that solicitors are trained “to not be emotional about things.” They raised the issue of vicarious trauma as a key barrier to lawyers being fully empathetic with survivors of domestic abuse: “if you properly engage, it would be very, very difficult [as you would be] watching women putting their children at risk” or being traumatised by the court process.



## Findings

# Trauma-informed practice

**We asked respondents whether, in their experience, family lawyers tend to understand what a trauma-informed response is and, additionally, whether they tend to feel comfortable implementing one. The consensus was that they do not.**

A trauma-informed approach asks “what has happened to you?” rather than “what is wrong with you?” and seeks to avoid re-traumatisation when working with people who have lived through traumatic experiences, including domestic abuse. A trauma-informed approach to domestic abuse includes understanding that a survivor might be presenting or acting in a certain way as a coping mechanism resulting from their experiences. It means seeing the whole person and centring the survivor rather than seeing them as a problem or responding to their trauma as a tick-box exercise.

In the justice system, as in many other sectors, it means reducing the number of times a survivor might have to retell their story and seeking to form a basis of connection and trust before asking them to recount painful experiences which might make them feel scared, overwhelmed, or ashamed. It’s important to allow survivors of domestic abuse to choose their own language and tell their story in the way that works best for them: asking “how did that make you feel?” instead of “didn’t that make you angry?”, for example, or “where would you like to start?” instead of “start at the beginning and tell me everything that happened.” One academic even highlighted simple acts lawyers can take like calling the client at the agreed-upon time, and telling the survivor client that they believe them.



**there’s literally, in the family courts, zero understanding of being trauma-informed – zero**

One practising family barrister highlighted that while there may be understanding of the legal options available to survivors, there is no complementary understanding of how best to respond to survivors. A legal academic highlighted that a trauma-informed approach is crucial but agreed that it is currently lacking, while respondents from a domestic abuse frontline service told us there is a “complete lack of understanding,” in their experience.

A survivor told us that, had their lawyers understood trauma-informed practice, it “would have helped them not to victim blame. I really didn’t need that from my own representation – they’re supposed to be in your corner.” One respondent from a public sector body who had been a solicitor echoed that, saying they would have “really welcomed trauma-informed training as a lawyer [because] a lawyer can be the first person who might be on [the survivor’s] side.” Solicitors from a family law firm agreed, telling us “that’s one of the biggest areas that lawyers need support in.”

The question of lawyers’ understanding and implementation of a trauma-informed approach is not one of making survivors a bit more comfortable in what is a fundamentally uncomfortable process; it is a question of whether adult and child survivors are able to become safe and have access to justice at all. As representatives of a national domestic abuse organisation explained, when survivors of domestic abuse receive a response from lawyers who are not trauma-informed, they can take the decision that the family justice system is not safe for them: “clients go in hoping to get support and be heard about



## Recognising the impact of the family courts on survivors of domestic abuse

what they've been through. Then, the meeting is all about money, the process, can you prove anything? Lots give up at this stage." They could think of countless examples where survivors had not received a trauma-informed response. In one case, a former refuge resident was found by the perpetrator with tragic consequences, because the solicitor had not redacted her new home address on court documents.

According to one former lawyer, "it's in a lawyer's best interest to be really good at this." A trauma-informed approach is "not purely an altruistic exercise," but gives lawyers the opportunity to help their clients present their best evidence, and therefore to make the best case possible. It would also help lawyers to know how best to look after their own wellbeing, recognise when a survivor's trauma may be triggering trauma from their own experiences, and to protect themselves from vicarious trauma.

Several respondents explained their perception that lawyers are concerned by language around supporting survivors and the trauma-informed



**...it is actually having the practical skills to direct the case and understand what the trauma they've been through is.**

approach, fearing that it means taking on an emotional burden that they are neither qualified for, nor have the time for. An academic told us, "part of law is taking the emotion out of proceedings in different settings. [Lawyers] think that a trauma-informed response means managing emotion and behaviour. In my opinion, they view it more as counselling rather than being informed and looking out for triggers and understanding where they have come from." Lawyers may fear they are being asked to act as a domestic abuse practitioner and therapist alongside their legal work. However, a family solicitor highlighted that "it is actually having the practical skills to direct the case and understand what the trauma they've been through is."

As such, we were advised by a number of respondents to make the training on the trauma-informed approach very practical, focussing on clear rules and tips, in order to dispel the myth that it requires lawyers to take on these extra roles. One solicitor told us their fellow lawyers "like to follow a set of procedural rules. Lawyers tend to like following and living within the rules and they don't have the time to contemplate [... or] look into the psychology of it."



## Findings

# Good practice in the family courts

### We asked respondents whether they could identify good practice in the family justice system around working with and representing survivors of domestic abuse. Many respondents were able to identify pockets of good practice.

A legal academic told us “there obviously are some pockets of good understanding.” They told us there is a minority of solicitors and barristers “who do get it,” naming three family lawyers off the top of her head, all of whom were interviewed separately and sit on our Advisory Group: Jenny Beck QC of Beck Fitzgerald, Cris McCurley of Ben Hoare Bell LLP, and Dr Charlotte Proudman of Goldsmith Chambers.

Respondents from a frontline domestic abuse service also highlighted the work of Beck Fitzgerald: “[they] have been amazing. A trauma-informed response throughout, they set realistic expectations, ensuring practitioners are on hand, [clients have] access to counselling after.”

Another academic highlighted the work of one solicitor who “asked the survivor to write out every experience that made them feel uncomfortable in the relationship. It highlighted the pattern, and helped the survivor to realise the enormity of what they’ve been dealing with.” This clearly demonstrates an understanding of the patterned and ongoing nature of domestic abuse, avoiding the incident-led paradigm focussing on physical abuse.

Several respondents noted that, just as the failures in the family justice system to sensitively respond to domestic abuse extend beyond lawyers, so do the successes. For example, the respondent who named lawyers also explained that they have “seen some

really good judgements by judges which are clearly based on really good representations by lawyers.”

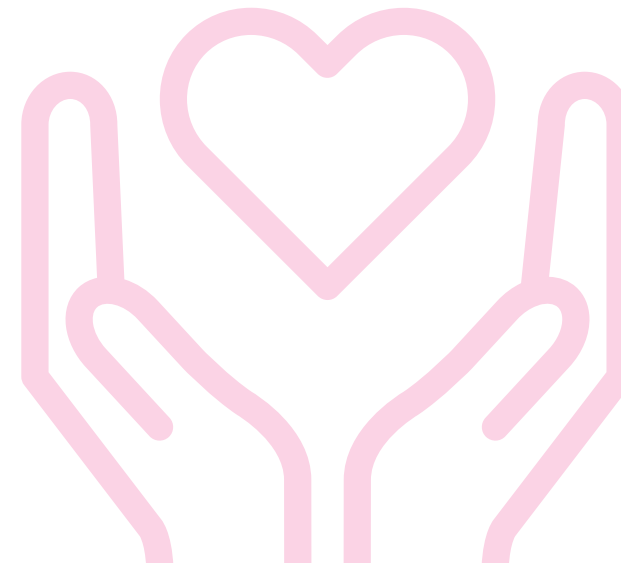
A solicitor from a third-sector domestic abuse organisation identified “lots of pockets of good practice,” and highlighted judges who have acted with sensitive and understanding around the dynamics and impact of domestic abuse: “we do hear about cases where judges are making good decisions, making findings of CCB [coercive and controlling behaviour] and taking them seriously, and placing restrictions around the type of contact they will order – placing restrictions on contact and not ordering contact before fact-finding hearings.”

A barrister agreed, telling us about two recent cases in which “judges [were] open to the idea of a ground rules hearing, looking at how a vulnerable person might be assisted to give their best evidence.” In addition, a public-sector body pointed towards Justice Hayden’s judgement on coercive and controlling behaviour in *F v M* [2021]: “the impressive judgement was a fact-finding judgement. It was a skilful, trauma-sensitive approach to trauma and SV [sexual violence].”

One lawyer shared a hopeful note: “I’ve seen a real systemic change since, not just the Harms Report, but the President’s judgement in *Re: H-N* [and Others (children)]. The judgement is directing courts to redefine how we approach and manage these cases.”

A public-sector body pointed towards the increased presence of Idvas in the family courts in the Nottingham area in comparison to some other areas, and how useful it was for other officers of the court to engage with the Idva throughout the process. The respondent noted that they would heavily encourage frontline practitioners in other parts of the country to develop those relationships in order to improve the process for adult and child victims of domestic abuse.

A survivor of domestic abuse who we interviewed told us about the final Cafcass family court advisor they had during a process through the family



## Good practice in the family courts

courts which lasted almost a decade: “I had a brilliant Cafcass Guardian in my last case, she was superb. She did understand the issues, she cut through all the noise quite spectacularly. I, all of a sudden, actually felt safe in [the] system. [...] I loved her, I really did. I thought she was brill. A powerful woman.” This survivor did note that systemic failures to properly respond to domestic abuse limited the ability of frontline practitioners to evidence high quality practice: “she understood it, she told me in her analysis about how she was understanding it, but the report she submitted was slightly different. She had to fit within the court’s expectations of what CC [coercive control] looks like. [...] There were so many reasons why she couldn’t say in the reports how she said it to me – it’s the system preventing it.”

Respondents from a frontline domestic abuse service also highlighted the benefit which many of their clients experienced when hearings moved online due to the Covid-19 pandemic. “As a refuge provider, having someone attend a court hearing is one of the most dangerous times in their stay in accommodation. Remote hearings remove so much of the danger that these women are in. We’re hoping that this can continue after Covid, it removes so much of the physical danger.” Even if most hearings transfer back to physical courts as restrictions have lifted, these respondents wanted to see remote options available to survivors of domestic abuse, especially those in refuge.

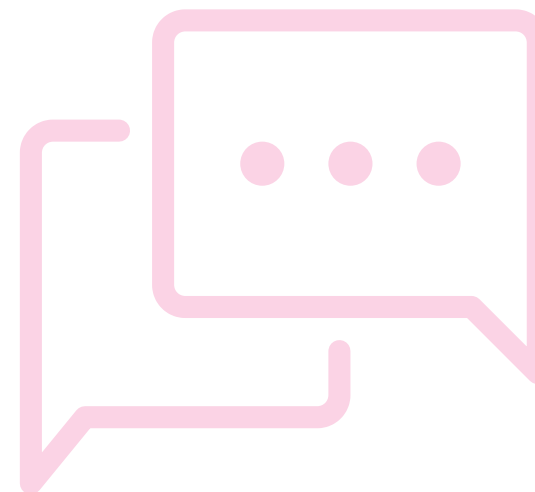
Finally, respondents from a national domestic abuse service told us that they are seeing an increasing number of emails from family law organisations which focus on lawyers’ wellbeing. They saw this as a growing area of good practice as lawyers become more and more aware of these issues and concepts such as vicarious trauma.

Unfortunately, several respondents struggled to identify any good practice; one academic’s simple answer was: “no.” Another academic told us “I haven’t seen much in the way of good practice,” while a solicitor said they were drawing “a bit of a blank on that. My recent experience has been really quite negative.”

A barrister also said she couldn’t identify good practice in the courts, explaining that “even when I’ve seen judges deal with cases somewhat more fairly – trying to deal with it in a just way – it is still a gruelling, retraumatising process for the victims. These trials can last longer than criminal trials.” In her experience, even in a case where the judgement found every allegation, including rape and domestic abuse, her client “was so humiliated – degraded” by the process and the judge still ordered supervised child contact with the perpetrator.

Another barrister told us good practice “is more rare – I’ve heard about other people having good experiences with the judiciary but I haven’t experienced that.” Similarly, one academic told us that she hadn’t seen good practice first hand, but had seen a few examples in law reports.

Respondents from two national domestic abuse services were also unable to identify good practice but did note that “women tend to contact services when things aren’t so great;” as such, they “hear about the bad, not the good.”



# Informing the training package

## We used the findings from the survivor focus groups, interviews with frontline domestic abuse practitioners, and interviews with stakeholders across the legal and domestic abuse sectors to inform the content of the training package.

While the content and additional materials will undergo a process of evaluation and adjustment following each of three tranches of pilot sessions, initial feedback from solicitors and learners in the first pilot sites has been positive. At the end of the project, we will publish an evaluation of the training alongside a series of recommendations for legal professionals and policymakers to ensure that professionals across the family justice system are better equipped to identify and respond to domestic abuse, and to restore trust in the family courts.

The training opens with a section setting out the current context, including recent developments around the treatment of domestic abuse in the family courts, such as the relevant provisions in the Domestic Abuse Act 2021 and the statutory definition of domestic abuse.

A key finding in the focus group with survivors was that survivors themselves may not know they are experiencing, or have experienced, domestic abuse. Their legal advisor may be the first person the survivor speaks to at the end of an abusive relationship and, therefore, survivors felt the training should focus on developing an understanding of all forms of domestic abuse

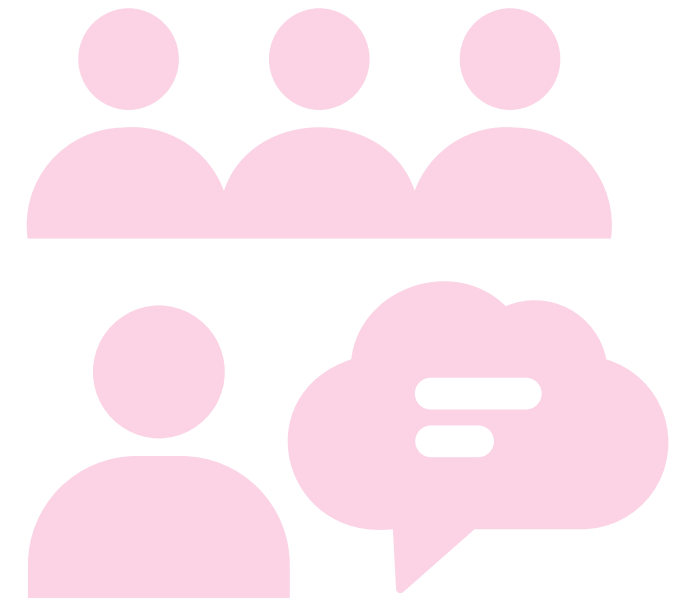
Following our identification of key gaps in lawyer’s knowledge around domestic abuse, the training then covers the dynamics of domestic abuse, including introducing “Johnson’s typologies” of domestic abuse, the characteristics of a perpetrator of coercive and controlling behaviour, Biderman’s ‘chart of coercion’, and the ‘Power and Control wheel’. Alongside these theory-based materials, the training contains practical advice around identifying and

evidencing coercive control. This section includes key questions which lawyers can ask their clients, focussing on behaviour-specific questions (“does you ex-partner frequently put you down?”) rather than using language centred around legal definitions (for example, “are you experiencing emotional abuse?”).

In our research, respondents highlighted barriers to multi-agency working, including a gap in knowledge around the Idva and Cafcass Family Court Advisor roles and ways of working. Domestic abuse practitioners were clear in their interviews that it is helpful when solicitors work with them to support the client. Practitioners felt they could help with a range of practicalities, such as collecting identification documents, as well as addressing the client’s safety and providing support throughout the court process. As such, the training focusses on evidencing risk and impact within a multi-agency framework, working with specialist domestic abuse practitioners to support survivors and help them to give their best evidence. Trainers guide

lawyers through learning from Domestic Homicide Reviews to underscore the importance of multi-agency and where missed opportunities to work with domestic abuse experts can have tragic consequences.

A key finding raised in the survivor focus groups and the interviews was the need for lawyers to be able to identify and understand the impact of trauma on



## Informing the training package

survivors and on their presentation – in part, to be able to address any uninformed comments or attitudes held by other officers of the court, including the opposing party's representatives or members of the judiciary. The training therefore considers five long-term effects of trauma, including the impact of trauma on the brain, and includes several specific signs of trauma a lawyer may see in a client's behaviour. Learners are encouraged to think about how it might feel to be experiencing trauma while going through the family courts, including elements specific to the court system, which may be retraumatising to a survivor of domestic abuse. Early feedback from learners has been especially positive about the trauma-informed approach, with lawyers telling us they feel it will have direct and immediate impact on how they practise with survivors of domestic abuse.

Survivors in the focus groups made a number of practical recommendations to ensure lawyers are able to appropriately respond to and represent clients who have experienced domestic abuse. Learners are asked to consider and discuss the recommendations,

focussing on how they will implement them in their own practice. This includes signposting clients to specialist support, responding with empathy and compassion, and moderating their language (including abbreviations) to ensure that survivors without legal training understand what is happening in their case.

This is followed by examples of good practice that the survivors shared from their own experiences with legal representation, enabling learners to 'see' trauma-informed practice in action. Lawyers therefore hear, in survivors' own words, the positive impact that making simple changes to their practice can have on their clients.

The next section of the training focusses on the impact of domestic abuse on child victims, as raised by participants in the focus groups and interviews, including research by the Child Trauma Academy and Dr Emma Katz on the impact of trauma on children's brain development and the impact of living with coercive control. Crucial to this is the understanding that child victims of domestic abuse live in continual fear, even if they are not the

'direct' victim of neglect and physical abuse on a daily basis. The training highlights the lawyer's role in ensuring child victims have access to what they need and feel empowered to speak up for children when they do not feel that those tasked with ensuring the child's voice is heard and the court prioritises their safety are doing enough.

Finally, the training addresses the gap we identified in lawyer's understanding of the so-called 'theory' of parental alienation, its weak evidence base, and how allegations of parental alienation can be weaponised by perpetrators of domestic abuse against their victims.

There are, of course, findings from our interviews and focus groups with survivors, frontline domestic abuse practitioners and other stakeholders which the training does not cover. Some were omitted in favour of including other areas raised, given the time constraints inherent in a single day's training. For example, there is no in-depth discussion of how to work with, and represent, perpetrators of domestic abuse. Given the differing skills and contexts required for perpetrator work, we will look to scope out the potential to

create a complementary training session focussing on this area in the future.

Other recommendations were omitted following consultation with practising solicitors; for example, survivors recalled times they felt they were being silenced in financial proceedings, but legal experts were able to explain that those decisions were taken due to the specific rules around such proceedings. While lawyers are clearly bound by the legal system in such situations, this clearly highlights the need for them to communicate more fully with survivors to explain the reasons and ensure survivors feel informed about their case.



## **SafeLives**

Charity no: 1106864

Scottish charity reference number: SCO48291

Company no: 5203237

## **Contact**

[info@safelives.org.uk](mailto:info@safelives.org.uk)

**Twitter** [@safelives\\_](https://twitter.com/safelives_)

**Facebook** [/safelives.uk](https://www.facebook.com/safelives.uk)

**Instagram** [@safelives\\_](https://www.instagram.com/safelives_)

**LinkedIn** [/safelives-uk](https://www.linkedin.com/company/safelives-uk)

