

Assessing risk of harm to children and parents in private law child cases: Ministry of Justice call for evidence

Refuge response August 2019

In response to a letter signed by over 120 MPs sent in May this year, the Government announced a short review of the way family courts deal with child contact cases that involve domestic abuse. In August, Refuge submitted evidence to this review, drawing on a survey sent to frontline staff and survivors that we work with, on their experiences of the family courts. Our response is below.

About Refuge

Refuge is the largest specialist provider of gender-based violence services in the country supporting over 6,500 women and children on any given day. Refuge opened the world's first refuge in 1971 in Chiswick, and 47 years later, provides: a national network of 46 refuges, community outreach programmes, child support services, and acts as independent advocates for those experiencing domestic, sexual, and gender-based violence. We also run specialist services for survivors of modern slavery, 'honour'-based violence, and female genital mutilation. In partnership with Women's Aid, Refuge provides the National Domestic Violence Helpline which receives hundreds of calls a day.

Summary

The way that family courts deal with child contact cases that involve domestic abuse requires reform urgently. Through a survey Refuge sent to its frontline staff and many of the survivors we support about their recent experiences of family court cases, we found widespread poor practice and lack of understanding of domestic abuse. In many cases this resulted in survivors being further abused through the court process itself and decisions around child contact which left women and children at serious risk of further harm. Survivors and staff tell us that the way family courts treat child contact cases that involve domestic abuse varies significantly, leaving survivors and their children vulnerable to further abuse at the hands of the perpetrator.

This abuse is frequently facilitated by the court process itself. Survivors and staff told us that perpetrators commonly make repeated spurious applications in order to coercively control survivors through the family courts. In addition, if survivors are not eligible for legal aid – which many aren't due to holding assets jointly with the perpetrator that they cannot access – abusers will make multiple applications in order to deliberately run up survivors' legal fees and perpetrate economic abuse. Additionally, when perpetrators do not have legal representation, survivors are vulnerable to being directly cross-examined by their perpetrators, as they do not have adequate protection against such abuse. Prevention of survivors being cross-examined directly by their perpetrators is typically at the discretion of judges, with many failing to appreciate that the courts themselves can be used as tools for abuse by perpetrators. The approach of judges to child contact cases involving domestic abuse can also lead to survivors being denied special measures, such as being permitted to give evidence behind a screen or via video link, having separate waiting areas, or having separate entrances and exits. This not only undermines the quality of survivors' evidence but puts them at higher risk of harm.

The legal presumption of parental involvement in children's lives in cases of domestic abuse leads to dangerous child arrangement orders, both for survivors and their children. Survivors and staff have told us that perpetrators frequently use child contact arrangements to further abuse survivors. For example, many survivors said that perpetrators commonly intentionally fail to pick up or drop off the children at the agreed time so that they could continue to influence and disrupt survivors' lives, causing survivors

to have to cancel plans with friends or family or even miss work. Staff and survivors also told us that perpetrators have physically assaulted survivors when they have picked up or dropped off the children, including rape.

The challenges for women going through the family courts in private law children's cases are so severe and varied that Refuge recommends an in-depth, system wide review into how the court can better safeguard survivors and their children.

In addition to this, Refuge recommends:

- **A reversal of the presumption of parental involvement of the perpetrator in cases involving domestic abuse**
- **A ban on cross-examination of survivors by perpetrators in the family courts at the point of disclosure of domestic abuse to the court**
- **Automatic eligibility for special measures to be extended to all survivors of abuse in the family courts at the point of disclosure of domestic abuse**
- **The minimum income/asset threshold for survivors of domestic abuse is lifted in private law child cases, in recognition that survivors frequently do not have access to money or assets as a result of economic abuse, and that abusers commonly seek to perpetrate economic abuse by deliberately running up survivors' legal bills**
- **Mandatory comprehensive training on the dynamics of domestic abuse for all judges and other court/judicial staff that interact with parties to a private law child case. Training should pay particular attention to the impact of non-physical abuse in particular, both on the survivor and their children**
- **That quality interpreters are available at every hearing for survivors that need them**

Refuge full response

Below are Refuge's responses to a list of questions put out to the public on experiences of the family court in child contact cases involving domestic abuse.

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.

Dangerous child arrangement orders

The overwhelming majority of the staff and survivors that responded to the survey said that judges, approaching cases from a presumption of parental involvement, granted unsafe child arrangement orders. Every single staff member said they had supported survivors in numerous cases where both they and their children were put at serious risk of harm due to the terms of child arrangement orders. For example, in one case a survivor had been ordered to facilitate the picking up and dropping off of the children for unsupervised contact with the perpetrator. The perpetrator insisted on picking up and dropping off the children from the survivor's home. On several occasions, the survivor was physically assaulted by the perpetrator during these pick-ups, and on one occasion was raped. The survivor was forced to continue to have direct contact with the perpetrator twice a week which was incredibly traumatic and distressing, as well as very dangerous.

Feedback from staff and survivors highlighted that perpetrators commonly use their children as a way to find out the address the survivor has fled to. For example, one survivor said that after an unsupervised visit, the children came back with brand new phones and tablets. The survivor had been advised by her specialist refuge worker that any electronics need to be checked for spyware and other tracking software as it is becoming increasingly common for perpetrators to use technology to abuse, stalk, and harass survivors. The survivor brought the phones and tablets to a specialist computer shop, which found multiple tracking apps installed on it. Survivors and staff told us that in these cases, perpetrators are rarely held to account.

We also heard that it is common for perpetrators to abuse or neglect their children during arranged child contact sessions. One child who was forced to have unsupervised contact with an abusive parent despite saying that she was terrified and did not want to see him, brought her pocket money with her when she was with the perpetrator, just in case she 'needed money to get away.' One survivor that responded to the survey said that the perpetrator was granted unsupervised contact, despite disclosing extensive physical abuse that both she and her child had suffered. The child would return to her home following a visit to the perpetrator's home with bruises on him, and would be tired and hungry. This chimes with [research](#) that found the majority of children who live with domestic abuse are also directly harmed. These children are most likely physically or emotionally abused, or suffer neglect.

Overall, responses to the survey confirmed that there is a serious lack of understanding and awareness about the impact of domestic abuse on survivors and their children, particularly the ongoing risk of serious harm in the family courts.

As such, Refuge is strongly of the view that in cases where domestic abuse has been established, the presumption of parental involvement of the perpetrator should be reversed, in recognition of the serious threat perpetrators pose to the safety and wellbeing of survivors and their children.

Legal aid

While the call for evidence does not include legal aid with its scope, Refuge believes that it is impossible to discuss the experiences of survivors going through the family courts without addressing issues related to legal aid. Almost all of the survey responses we received from our staff raised legal aid as a key issue.

Our operational staff told us that the most common reason for survivors not receiving legal aid was due to survivors' income or assets surpassing disqualifying them. While the majority of survivors in refuge are reliant on benefits, which would normally make them eligible for legal aid, their stake in a house, often held jointly with the perpetrator, means they are unable to access legal aid. Staff said that survivors often did not have access to money or assets due to the economic abuse perpetrated against them, for example, the perpetrator had blocked the survivor's access to jointly held assets, or the perpetrator had forced the survivor into significant debt while they were in a relationship. Given the survivor commonly does not have access to jointly held assets, they are unable to sell them, making legal fees unaffordable.

Survivors who do not receive legal aid are left with few options. Survivors that are able to and choose to pay for legal representation are frequently left in tens of thousands of pounds worth of debt as a result. Survivors say that when perpetrators know that the survivor cannot receive legal aid and is wholly liable for legal fees, they make spurious court applications, deliberately running up the survivor's legal fees – thereby using the court process itself to perpetrate economic abuse. One survivor said she has had to

spend £25,000 on legal fees so far, most of which was borrowed. She expects her debt to increase as the case is still ongoing.

Survivors who do not qualify for legal aid, but cannot afford to pay for legal representation are typically forced to represent themselves in court. Survivors being supported by Refuge will typically have a specialist domestic abuse worker, such as an Independent Domestic Violence Advocate, who can provide emotional and practical support, but not legal advice or representation. Additionally, given the national ongoing funding crisis for specialist domestic abuse services, not all survivors have access to such support. When survivors are forced to represent themselves in the family courts and/or when the perpetrator does not have legal representation, this leaves them open to direct cross-examination by their perpetrator, a form of abuse in itself. Survivors told us that being directly cross-examined by the perpetrator makes it very difficult to communicate clearly and coherently, undermining the quality of their evidence, making it less likely that the court will fully appreciate the extent and impact of the abuse on the survivor and her children.

Refuge therefore recommends that the minimum income/asset threshold for survivors of domestic abuse is lifted in private law child cases, in recognition that survivors frequently do not have access to money or assets as a result of economic abuse, and that abusers commonly seek to perpetrate economic abuse by deliberately running up survivors' legal bills.

Lack of understanding of domestic abuse

Another key theme that emerged across both the staff and survivor surveys was that the response of courts to disclosures of domestic abuse varied enormously. Some survivors said that they felt entirely ignored and dismissed by judges presiding over their cases, while others felt that they reacted sensitively and appropriately. Staff were generally in agreement that there was no consistency with the court's responses to disclosures of domestic abuse, which were entirely dependent on which court the hearings take place in, and which judge is presiding over the case.

One of the most common emerging themes was minimisation and lack of awareness of the impact of domestic abuse on both the survivor and her children. For example, one staff member said that they had been in court several times, where survivors had tried to disclose domestic abuse to the court, but that this was met with the claim that 'just because he abused you doesn't mean that he abused the children, and it doesn't make him a bad dad.' Again, this disregards the strong link between domestic abuse and child abuse – where [children who grow up with domestic abuse are more likely to be victims of child abuse](#). Even when children are not victims of direct child abuse, children that grow up in a household where one parent abuses the other are still victims themselves, commonly suffering indirect harm. A number of survivors said that judges involved in their case 'didn't seem to care' about the abuse and did not think it was relevant to the case. Staff and survivors alike said that such attitudes betray a lack of understanding that children who grow up in homes where there is abuse are also survivors that have been severely impacted. It also totally ignores the risk the perpetrator poses to the survivor.

Additionally, staff said that in their experience when survivors had difficulty communicating the abuse, sometimes breaking down or crying, this was looked upon negatively by the court. Some staff members perceived some judges' attitudes towards survivors as 'this is an emotionally temperamental woman' rather than 'this is an abused and traumatised woman', dismissing either the allegations, or their relevance. Some staff members raised cases where judges questioned the truth of disclosures if survivors didn't fulfil stereotypes about a 'typical' domestic violence survivor. For example, one judge said that the survivor 'didn't look like a victim' because she wore make-up to court. On the other hand, a

staff member described a really positive experience with a judge who encouraged the survivor to take their time when disclosing the abuse. The staff member said the survivor felt empowered following her experience in court.

Almost every single staff member that responded to the survey said that non-physical abuse is rarely taken seriously, and never taken as seriously as physical or sexual abuse. Several staff members said that domestic abuse is often only taken seriously in the family courts when there are police reports and medical evidence supporting an allegation of physical abuse, as well as witness statements. However, survivors frequently tell us that the psychological abuse they experience can be the most damaging and long lasting. One survivor that responded to the survey said that the psychological and emotional abuse she experienced was far worse than the physical abuse she experienced which isolated her and targeted her self-esteem. The physical abuse the survivor experienced included the perpetrator inflicting head injuries on her while she was pregnant, and strangling her on multiple occasions.

Refuge therefore recommends mandatory comprehensive training on the dynamics of domestic abuse for all judges and other court/judicial staff that interact with parties to a private law child case. Such training should be grounded in a gendered approach to understanding domestic abuse, where domestic abuse is understood as a form of violence against women and girls (VAWG) and is both a cause and consequence of gender inequality. Training should cover the impact of domestic abuse on survivors and their children, highlighting that children growing up where domestic abuse is present are always victims too. It should also include how the court system can be used by the perpetrator to inflict further harm and abuse on the survivor, and the damaging effects of non-physical abuse in particular.

Special measures

Finally, survivors reported the fear, dread, and trauma of having to give evidence in direct view of the perpetrator, having to wait for a hearing in the same waiting room as the perpetrator, and constantly being afraid that they would bump into the perpetrator when leaving or entering court. These issues have been well recognised for survivors of domestic abuse who are going through the court system, yet whether or not special measures are available to them varies wildly. Survivors told us that when they were able to give evidence behind a screen or via video link, they felt far less distressed, and felt they were able to give better quality evidence than if they had to deliver their evidence when the perpetrator was in full view. In contrast, some survivors who were not granted separate entrance or exit times into court, or were not provided a separate waiting room reported being subject to harassment, intimidation, and physical attacks.

Refuge therefore strongly recommends that all survivors are automatically eligible for special measures in the family courts.

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?

By far the most common difficulty raised by survivors and staff when it came to disclosing domestic abuse to the courts was around judges' attitudes towards domestic abuse and their lack of understanding of its impact on the survivor and their children. Staff and survivors alike said that such attitudes demonstrate a lack of appreciation that children who grow up in homes where there is abuse are also survivors that have been severely impacted, frequently suffering indirect harm as a result of the domestic abuse perpetrated against their parent. Additionally, staff said that sometimes judges look

upon survivors negatively, e.g. one judge said that the survivor 'didn't look like a victim' because she wore make-up to court. Some staff members said they had supported survivors who had really positive experiences in court, at least in part due to the judge's sensitivity.

When survivors do not disclose domestic abuse immediately, this is sometimes questioned by judges, who ask why it was not raised sooner if the abuse did actually occur. Staff were concerned that this attitude suggests a lack of understanding about how difficult it can be to talk about domestic abuse, given the huge trauma experienced by many survivors, and that more often than not the perpetrator is present in court, leaving the survivor frightened and intimidated.

Another common theme emerging was that judges commonly do not take non-physical abuse such as emotional or psychological abuse and coercive control as seriously as physical abuse. However, survivors frequently tell us that the psychological abuse they experience can be the most damaging and long lasting.

Operational staff responding to the survey commonly highlighted how lack of legal representation can make disclosures of domestic abuse particularly difficult for survivors. In such cases, when survivors are required to represent themselves in court where the perpetrator is present, many find it incredibly frightening and intimidating which frequently causes survivors to opt not to disclose the abuse. Almost every single survivor that responded to the survey raised fears of false and counter-allegations as a deterrent to disclosing domestic abuse. One survivor said that the perpetrator threatened to falsely accuse the survivor in court of being an alcoholic and misusing substances if they disclosed domestic abuse to the court. Survivors were commonly frightened that the counter-allegations might lead to them losing contact with their children. Almost every single staff member also raised concerns around counter-allegations as reasons for why some survivors are resistant to disclosing abuse to the court.

Additionally, some staff members said that survivors that speak limited English face additional barriers to disclosing domestic abuse. In some cases interpreters are not present in court, and even when they are present, the variation in competence of interpreters means that survivors can still experience difficulties in communicating to the court.

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?

The staff and survivors that responded to the survey demonstrated a huge variation in how and if the court takes children's voices into account during private law children proceedings. Specifically, there is variation in how CAF/CASS take the children's views into account and how they take on board the impact of domestic abuse. There are particular difficulties around young children who are frightened of the perpetrator and who tell CAF/CASS they do not want contact.

The majority of child contact cases that survivors had gone through and that staff had supported survivors through involved CAF/CASS. Some survivors told us that they felt well supported by CAF/CASS and felt their children were being listened to and their views reflected in CAF/CASS's final report and recommendations regarding contact with the perpetrator. However, other survivors said that they felt that CAF/CASS officers dealing with their cases did not understand the dynamics of domestic violence, leading to an unbalanced approach when considering what is in the best interest of the children. For example, one survivor said that the CAF/CASS officer involved in her case believed the

perpetrator when he said that she was the abusive parent and discounted what the survivor and their children told them.

Staff similarly reported much variation in how competently CAFCASS deal with cases involving domestic abuse. The majority of staff said that it is common for CAFCASS officers to fail to recognise that a family has been subject to domestic abuse at the hands of the perpetrator, with some saying to survivors things like 'I think he is genuinely remorseful and you should give him another chance.' This rhetoric betrays a serious lack of understanding of the dynamics of domestic violence which is underpinned by the desire to control every aspect of the survivor's life. As one staff member put it, one of the biggest issues they face when supporting survivors in child contact cases is CAFCASS 'who need to be challenged on their unprofessional, judgmental, and victim-blaming attitude.' CAFCASS officers that take this approach also fail to take into account the severe impact of domestic abuse on children growing up in the household where abuse is present.

CAFCASS's approach can be extremely distressing for survivors who feel like they are not believed or that the abuse they experienced is being diminished by those who are partly responsible for deciding the outcome of child contact cases. It can also lead to recommendations for unsafe child arrangement orders. For example, one staff member shared the case of a survivor she had supported, where the perpetrator was awarded full custody of the children despite having served time in prison for GBH and one of the survivor's children witnessing the perpetrator physically abusing the survivor's other children. In this case CAFCASS had recommended unsupervised contact. The majority of staff said that in their experience CAFCASS's views are highly likely to be followed in the majority of cases.

Staff also raised serious concerns about a commonly prevailing narrative where CAFCASS officers prioritise the risk of parental alienation of the father over the impact of domestic abuse on the wellbeing of the survivor and her children. Staff are worried that CAFCASS, officers, often due to a lack of understanding of the dynamics of domestic abuse, can dismiss survivors' disclosures of domestic abuse as attempts to alienate the father. However staff said the opposite is frequently true and that 'survivors will move heaven and earth to try to maintain a relationship between the child and the father' even if it poses a risk to their own safety and wellbeing.

The survey results demonstrated that there are some particular difficulties in how the views of young children are taken into account. Survivors and staff alike said that it is not uncommon for children who have grown up in households where abuse is present to not want to see the perpetrator. According to several staff members, children of all ages frequently express to CAFCASS officers and the court that they are 'terrified' of the perpetrator and do not want any contact at all. However, the vast majority of survivors and staff members that responded to the survey said that when these views are expressed by younger children, they are ignored by CAFCASS and the court.

This has held true in cases when children and/or survivors had told the court about abuse directed explicitly towards the children. For example, one survivor said that she told the court that the perpetrator had been watching pornography and masturbating when their toddler was in the room. The same perpetrator also left their children unattended in public places for hours at a time while they were in his care. In another case, a survivor recounted her child being so frightened to see the perpetrator during unsupervised contact that she brought her piggy bank with her 'in case she needed to get away'. Staff members said that when younger children disclose such abuse and make clear their desire not to have contact with the perpetrator CAFCASS officers have been known to accuse mothers of manipulating children into expressing these opinions. This again demonstrates the lack of understanding CAFCASS officers have when it comes to the nature of domestic abuse.

Refuge therefore recommends mandatory comprehensive training on the dynamics of domestic abuse for all CAFCASS officers. Such training should be grounded in a gendered approach to understanding domestic abuse, where domestic abuse is understood as a form of violence against women and girls (VAWG). Training should cover the impact of domestic abuse on survivors and their children, highlighting the children growing up where domestic abuse is present are victims too. In particular, it should cover the tendency of many perpetrators to use children to manipulate and control the survivor, which can include direct abuse of the children.

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

In the expert opinion of Refuge's frontline staff, domestic abuse is always relevant to any order a judge makes regarding child contact arrangements. [An estimated 90% of children growing up in a home where abuse is present hear or see the abuse](#). This can have a severe impact on children, with many of them extremely frightened of the abusive parent, leading to behavioural issues, bed-wetting, and other psychological harm. Additionally, the welfare of a child's parent, particularly their primary carer, is directly tied to the child's own wellbeing. The harm experienced by a child's mother at the hands of their father cannot be disentangled from the harm inflicted on the child. Almost all of the survivors and staff that responded to the survey said that perpetrators frequently use the court process and final child arrangement orders to perpetrate further abuse against the survivor. Refuge therefore believes that domestic abuse is relevant to all contact arrangements, so fact-finding hearings should always be held when disclosures of domestic abuse are made.

Whether or not fact-finding hearings take place when they should varies significantly according to survivors and our staff. In some cases, fact-finding hearings do not happen at all. For example, one survivor said that the judge simply said that whether or not the abuse had occurred was 'irrelevant' to current proceedings. One staff member said a judge refused to schedule a fact-finding hearing following an allegation of rape saying that 'it is one word against another, so a fact-finding hearing will add nothing'. Another staff member said that a judge took the view that it was more appropriate for the survivor and perpetrator to undertake mediation rather than order a fact-finding hearing. Another survivor said that the fact-finding hearing did not take place because the perpetrator refused to attend.

In cases where fact finding hearings do take place, several staff said that best practice is often not followed. For example, staff told us that in cases where survivors or perpetrators do not have legal aid, survivors are often subjected direct cross-examination by the perpetrator during fact-finding hearings. Survivors are asked to describe in detail how they were abused, either directly by the perpetrator, or, if they have legal representation, with the perpetrator right in front of her, which can be incredibly distressing for the survivor. One survivor described having to describe to the court the abuse she experienced, which involved being threatened with a knife, being kicked, and being beaten with such force and for such an extended period of time that his fist swelled up, following which he would beat her with objects. The survivor was forced to give oral evidence in court despite submitting extensive written evidence in the form of a diary. Other survivors spoke about the trauma of having to describe the physical abuse they were subjected to while pregnant, and the constant emotional abuse.

Refuge therefore recommends mandatory comprehensive training on the dynamics of domestic abuse for all judges and other court/judicial staff that interact with parties to a private law child case. Training should cover the impact of domestic abuse on survivors and their children, highlighting that children growing up where domestic abuse is present are victims too. It should also include how the impact of domestic abuse can be borne out in court, and the damaging effects of non-physical abuse in

particular. The training should make clear that domestic abuse is relevant to all child contact proceedings, given the devastating impact it has on the survivor and her children and that fact finding hearings should be held in every case in which domestic abuse is alleged.

Additionally, direct cross-examination of a survivor by the perpetrator must be banned in the family courts. The traumatising process of fact-finding hearings can be difficult enough for survivors, let alone with the addition of direct cross-examination by perpetrators. Refuge acknowledges that there is a planned extension of the ban on cross-examination to the family courts in the Domestic Abuse Bill currently before Parliament. However, as Refuge has highlighted in our written evidence submitted during the Domestic Abuse Bill consultation and to the Joint Committee on the Draft Domestic Abuse Bill, few survivors will benefit from the prohibition on cross-examination as currently drafted, as it is limited almost exclusively to survivors who have brought criminal proceedings against the perpetrator for domestic abuse offences. In other cases, it is up to the judge's discretion, which, as has been highlighted throughout this response, cannot be counted on for consistency and protection.

Refuge is instead calling for an automatic prohibition on such cross-examination for all survivors who disclose domestic abuse during family court proceedings. Additionally, as suggested by several of Refuge's frontline staff, survivors should be permitted to submit a written statement during fact-finding hearings rather than be forced to testify in person when this is unnecessary.

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?

Almost every staff member that responded to the survey said that the risk the abuser poses to the survivor is dismissed or minimised in most cases. In cases where this does happen, staff say that it is common for judges and CAFCASS officers to say that even if the survivor has been abused, this doesn't mean the perpetrator is a 'bad dad', and so the abuse is irrelevant to proceedings. Again, this shows a severe lack of knowledge on how domestic abuse impacts children, and that children are victims of the domestic abuse when it occurs in the household they are growing up in, frequently suffering harm as a direct result of the domestic abuse. As such, if abuse has happened, it is always relevant to proceedings, and should be central to the future risk assessments of both the survivor and her children.

7. How effective is Practice Direction 12J in protecting children and victims of domestic abuse from harm?

In the experience of our frontline staff and the survivors that responded to our survey, Practice Direction 12J is not effective in protecting children and survivors of abuse from further harm. First, almost every staff member and survivor that responded said that the court system itself is frequently used to perpetrate further abuse against the survivor. One staff member said it was rare for the perpetrator not to use child contact hearings as a platform to perpetrate abuse and many said that in a large number of cases they thought the perpetrator has applied for child contact primarily to have further access to the survivor. They believe this to be the case as survivors often tell them that perpetrators showed little to no interest in the children prior to separating. One staff member highlighted a case where the perpetrator took the survivor to court for multiple hearings, however after he was awarded contact, he didn't see the children at all, failing to attend every contact session.

Second, Practice Direction 12J does not safeguard against perpetrators using the court system itself to perpetrate further abuse against the survivor. Despite the Direction instructing judges that due attention

should be paid to perpetrators deliberately using the court system to perpetrate abuse, for example by making multiple, spurious applications, every single survivor and every staff member that responded to our survey said that they had been subject to economic abuse and coercive control facilitated by the court system in exactly this manner.

Another concern raised by several staff and a number of survivors was the threat of malicious allegations made by the perpetrator. Survivors and staff told us about instances where the perpetrator threatened to lie to the court about the survivor in order to influence the outcome of the child contact proceedings. Staff said it was common for perpetrators to threaten to tell the court that the survivor was an alcoholic or misused drugs, or that the survivor is in fact the perpetrator of abuse. In one case, while proceedings were ongoing and there was no interim contact order in place, the perpetrator falsely accused the survivor of abusing their children, reporting her to the police. When the judge was made aware of this, they ordered that the child be removed from the care of the survivor and put into the care of the perpetrator. The police eventually agreed that no further action would be taken due to lack of evidence and recognised that this was a malicious allegation. However, the children remained in the care of the perpetrator, with the judge stating that they were reluctant to change contact arrangements so not to disrupt the lives of the children. In this case the survivor has not seen her children for several months and the next child contact hearing is not for another few months, so it could be over a year before the survivor sees her children again.

Given how common the court process is used to perpetrate further abuse, with often long-lasting, devastating consequences, and how ineffective Practice Direction 12J has been in protecting survivors and their children from further harm it is essential that an in depth review is conducted into how the family courts treat cases involving domestic abuse, beyond the depth the current review will be able to go into. Additionally, all survivors must have access to legal aid, in recognition that even if they hold joint assets that would typically make them ineligible for legal aid, due to economic abuse they frequently cannot access them, or have large debts. Additionally, it is essential that judges and other members of the judiciary receive mandatory, comprehensive training on the dynamics of domestic violence, which includes how perpetrators can use the court system to perpetrate further abuse.

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?

According to the survivors and staff members that responded to our survey, the Practice Direction is not implemented consistently. There is enormous variation in whether fact-finding hearings are conducted at all; there is a huge variation in whether special measures are made available to survivors; survivors are sometimes cross-examined by their perpetrators; and the risk of further harm to the survivor is frequently diminished and dismissed, with the impact of domestic abuse on the children rarely fully taken into account by judges and CAFCASS. Refuge is of the opinion that there are multiple causes of why there is a variation in how and why judges implement the Practice Direction, including a lack of understanding about the dynamics of domestic violence and its impacts on survivors and children, the impact of non-physical abuse, and how the perpetrator can use the court system itself to perpetrate abuse, and a lack of legal aid support for survivors, making them vulnerable to direct cross-examination by their perpetrators and other forms of abuse.

The presumption of parental involvement

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?

Every survivor and member of staff that responded to the survey said that in their experience CAFCASS officers and judges approach child contact cases with a presumption of parental involvement, regardless of whether it has been established that domestic abuse has occurred. [Work Refuge has undertaken in partnership with an investigative journalist from the Sunday Mirror](#) shows that since 2004, 63 children have been killed at the hands of a perpetrator that had been awarded contact with their children when they had been convicted of serious criminal offences. This only covers cases of murder and manslaughter, with many other children dying due to neglect. This work demonstrates the devastating consequences of underestimating the risk perpetrators pose to their children. Additionally, [research has shown](#) that children that grow up with domestic abuse are more likely to be victims of child abuse.

Out of all the survivor responses, the only case where the perpetrator was barred from all contact, a decision he was not permitted to appeal for the next five years, involved the perpetrator threatening the survivor with a knife, and threatening to kill her. He hit their infant child multiple times, and would beat her for hours until he was out of breath, before beating her with objects. In addition to the physical abuse, the coercive control was extensive. She would be expected to provide sex on demand or risk physical abuse, and was not allowed to go anywhere by herself. Eventually the survivor learned not to say no. She said she only later learned that this was rape. The survivor was relieved when she learned the perpetrator would not have any contact with her child and would not be able to appeal the decision for five years, as she felt she would finally be able to move on.

In the experiences of our staff members, only in cases involving extreme physical abuse such as the case above will lead to a reversal of the presumption of parental involvement. This is despite survivors, including the survivor who experienced the abuse above, frequently telling us that the worst aspect of the abuse they experienced was the coercive control and the psychological and emotional abuse. Specifically, survivors highlight the lack of belief about the abuse they experienced and the impact of that abuse as particularly damaging. The presumption of parental involvement in most cases involving domestic abuse demonstrates a lack of understanding about the impact of domestic abuse on the survivor and her children and the ongoing risk of harm.

In Refuge's experience, the presumption of parental involvement puts survivors and their children at significant risk. The majority of perpetrators of abuse will continue to present a risk to survivors and their children post separation. Refuge recommends that the presumption of parental involvement should be reversed in cases involving domestic abuse where there is either a criminal conviction or a finding of fact in a civil court.

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?

Refuge works solely with survivors of domestic abuse and their children, so we cannot comment on how child arrangement orders in cases that do not involve domestic abuse differ from those that do not involve domestic abuse. That being said, in Refuge's experience, a large proportion of child arrangement orders awarded in cases involving domestic abuse are dangerous, failing to appropriately take into account the risk of harm to the survivor and the child.

A survivor that responded to the survey that had experienced extensive psychological and physical abuse said that the perpetrator was awarded one month's supervised contact, followed by

unsupervised contact that she had to coordinate herself. This was despite the abuse, and despite the perpetrator failing multiple drugs tests and not having seen the child for years. In this case, the survivor and her children are at risk of further harm from the abusive parent, with the survivor unable to escape her abusive ex-partner. Almost every staff member that responded to the survey said that the attitude of judges to domestic abuse varied significantly, leading to varying child arrangement orders. For example, several staff members said that some judges they have dealt with did not believe that domestic violence was relevant to the child contact case, saying this such as 'this is between the parents' or 'this has no bearing on his competence as a parent' effectively dismissing the abuse experienced by the survivor, and failing to appreciate the harm experienced by the children growing up in that household.

Given the huge risk that perpetrators pose to both survivors and her children, Refuge strongly believes that the presumption of parental involvement in cases involving domestic abuse should be reversed. Additionally, it is essential that mandatory comprehensive training on the dynamics of domestic abuse is carried out for all judges and other court/judicial staff that interact with parties to a private law child case. Training should cover the impact of domestic abuse on survivors and their children, highlighting the children growing up where domestic abuse is present are victims too. It should also include how the impact of domestic abuse can be borne out in court, and the damaging effects of non-physical abuse in particular.

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.

The survivors and staff reported huge variation in whether any special measures were provided, and if they were, which special measures were provided and under what circumstances. One survivor said that she requested screens to be put up so that she could not see the perpetrator when giving evidence, which was granted by the judge, however no other special measures were provided, such as a separate waiting room before hearings. Another survivor said that the court provided a separate waiting room and separate entrance and exit times, but were not able to give evidence behind a screen or via a video link. One survivor said that the court provided nothing, so instead her solicitors and Refuge caseworker ensured that she was never alone with the perpetrator, that they planned entry and exit routes to minimise the risk of entering and exiting at the same time, and sourced private rooms to wait in before hearings. Another survivor said that while the court did provide a private room to wait in before the hearing, these were not able to be booked and were often full. Instead the survivor spoke about having to sit 'wedged on a bench' with just her support worker between her and the perpetrator. The survivor said she always had to use the same entrance as him and was often in the same queue to go through security, where he would deliberately talk loudly enough for her to hear, in order to intimidate her. Only after the fact-finding hearing was the survivor given separate entrance times and provided a screen in the court room. The staff that responded said there was a huge variation, with some saying that they had never been to a family court hearing where there had been special measures, with others saying that the court in their area was purpose built to accommodate special measures, so were always available to survivors if they needed them. No member of staff or survivor said that special measures had been offered, they always had to be requested.

The staff that responded to the survey said that the impact of not receiving special measures, or not knowing whether they would receive special measures, was substantial on survivors of domestic abuse. Several staff members said that a lack of special measures, particularly the provision of screens in the court room or being able to give evidence via video link, has led some survivors being unable to

disclose the full extent of the abuse as they feel so frightened and intimidated, and are worried about being further abused by the perpetrator. Some staff pointed out that a lot of survivors have anxiety disorders and other mental health issues as a result of the abuse, and having to disclose the abuse while being in the same room as the perpetrator, when he is in full view, can cause survivors to experience symptoms related to the mental health condition. For example, one staff member said that when a survivor was giving evidence, the distress meant that they found it difficult to breathe normally, and they couldn't remember key events and points they wanted to make, undermining the quality of their evidence.

In addition to the lack of special measures in some cases leading to the survivor giving lower quality evidence than they might otherwise have given, lack of special measures had led to violent attacks at the hands of the perpetrator and their family. For example, one staff member described a case where the survivor was not given a separate entrance and exit time from the perpetrator. The perpetrator and some members of his family waited outside the court building until the survivor and staff member left, and began to shout abusive things at her. The survivor and staff member got into the staff member's car, after which a member of the perpetrator's family attempted to drive into them. The staff member and survivor managed to leave the car park and get away from the perpetrator and his family, but it severely distressed the survivor, making the family court process even more traumatic.

Given the traumatic nature of domestic abuse, the lasting impact it has on the survivor and on their ability to give evidence to the best of their ability, and the opportunity the court process provides to the perpetrator to further abuse the survivor, Refuge strongly recommends that all survivors of domestic abuse are automatically eligible for special measures in the family courts. Courts which do not have the physical infrastructure to provide these should be adapted as a matter of priority. This provision is currently missing in the Domestic Abuse Bill which is before Parliament. Refuge therefore recommends that the Bill be amended to extend automatic eligibility for special measures to survivors in the family court.

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?

Due to the nature and impact of domestic abuse, all survivors should be assumed to be vulnerable. Survivors that are forced to face their perpetrators in court, particularly those who do not receive any special measures, in the majority of cases find the process traumatic. According to the majority of staff and survivor responses to our survey, there is little consistency as to whether judges correctly identify survivors of abuse as vulnerable. As one survivor said, she did not receive any special measures whatsoever until after a fact-finding hearing. Refuge believes that part of the reason why survivors are not correctly identified as vulnerable witnesses and provided for accordingly is due to the lack of knowledge of some judges about the impact of domestic abuse on survivors, particularly non-physical abuse as well as the myths and stereotypes which persist around what a 'typical' survivor of domestic abuse is like.

As such, Refuge is strongly of the view that all survivors of domestic abuse should be automatically entitled to special measures in family court proceedings, and that judges and other relevant court staff receive mandatory, comprehensive training on the dynamics of domestic violence, as a form of VAWG, which pays particular attention to the impact of non-physical violence on the survivor and their children.

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.

Survivors that do not receive legal aid and are unable to pay for legal representation are typically extremely frightened about potentially being cross-examined by the perpetrator according to the majority of staff that responded to the survey. Several staff say that just the possibility that this could happen is extremely distressing to survivors and that the vast majority of the women they had supported through the family courts said they felt further victimised by the process.

Staff and survivors indicated varying likelihood of cross-examination. One survivor said that she had been directly cross-examined by the perpetrator, despite requesting that this did not happen. Neither party had legal representation as they were ineligible for legal aid but could not afford to pay for lawyers. She said she found the experience extremely distressing, saying that it affected the quality of her evidence. Another survivor said that the perpetrator deliberately dismissed his barrister so that he could cross-examine the survivor himself, and use this opportunity to further abuse her. The survivor in this case said that what was particularly traumatic about this experience was that the perpetrator asked questions in a manner that was the same as when they were in a relationship and the abuse was at its height.

Whether or not direct cross-examination by the perpetrator of the survivor is prohibited in family courts at the discretion of the judge does not appear to be consistent. Overall, it appears more likely that judges will prohibit cross-examination of the survivor by the perpetrator if there has been severe physical and/or sexual abuse. However, even in these cases, according to our staff, judges have been known to only prohibit direct cross-examination following a fact-finding hearing, despite that the evidence given during these hearings is likely to be of a lower quality than if the survivor had not been directly cross-examined by the perpetrator.

Refuge therefore strongly recommends that direct cross-examination of a survivor by a perpetrator where domestic abuse has been alleged is automatically prohibited in all family court cases, and not left to the discretion of the judge, which is currently the case. While the Domestic Abuse Bill does prohibit cross-examination by the perpetrator for some survivors, only a small proportion of survivors will be covered. The Domestic Abuse Bill is the perfect opportunity to ensure that no survivor has to suffer through the trauma of being directly cross-examined by the perpetrator.

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?

Please see answers to questions 10, 11, and 12.

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

Please see answers to questions 10, 11, and 12.

Additionally one of the biggest issues raised by both staff and survivors when it came to the perpetrator using the court system to perpetrate further abuse was around making multiple, spurious applications to

the court, thereby subjecting the survivor to continued coercive control and economic abuse – particularly when survivors are ineligible for legal aid and liable to pay their own legal fees.

Refuge would strongly encourage that how to increase the use of barring orders in private law children cases involving domestic abuse is investigated in its own right. In the one case Refuge has been made aware of where a barring order has been granted, the survivor felt that the safety of her and her children was increased drastically, particularly as the perpetrator was not permitted to contact the child at all.

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?

Every staff member and survivor that responded to our survey said that one of the biggest issues survivors face when going through the family courts is the perpetrator using the court system to perpetrate further abuse – specifically by making multiple applications, with the sole intention of coercively controlling the survivor and/or subjecting her to economic abuse.

When survivors do not receive legal aid and are liable for their legal fees, this is a gift to perpetrators who want to perpetrate economic abuse against the survivor. It is very common for perpetrators to make multiple court applications with no intention of seeing them through in order to run up the survivor's legal bills and force them to borrow money, move house, or become destitute in order to pay them. For example, one survivor was evicted from the property she shared with the ex-perpetrator, and couldn't afford decent housing for her and her children due to the mounting legal fees. The survivor was not eligible for legal aid, so she had to move to a run-down flat with bed bugs, borrowing tens of thousands of pounds to pay her legal bills and pay her rent. This particular case was reflected in many of the staff members' responses to the survey, saying that for survivors who do not receive legal aid, it is not uncommon that they are left with debts in the tens of thousands of pounds as cases can be drawn out for such a long time. Another survivor said the perpetrator contacted her through his family in order to threaten pursuing lengthy and costly legal battles for child contact if she pursued a proper financial settlement following their divorce.

Several staff members said they had supported survivors through child contact cases who had been taken to court over 20 times (and counting as some cases had not concluded). Several survivors that responded said their cases had been ongoing for several years. Perpetrators drag out proceedings not only to deliberately run up survivors' legal bills and perpetrate economic abuse, but also to coercively control the survivor following separation. Survivors told us that they felt the perpetrator deliberately made multiple court applications, asked for extensions, decided not to pursue an order at the last moment before a hearing, among many other methods in order to control the survivor and force her to face the perpetrator. Survivors said that last minute cancellations and the threat of additional hearings was incredible distressing, making it impossible to move on from the abuse and rebuild their lives. Staff told us that in most cases judges are particularly bad at recognising that the courts themselves can be used to perpetrate coercive control, despite the regularity with which it happens.

Refuge would therefore strongly encourage that how to increase the use of barring orders in private law children cases involving domestic abuse is investigated in its own right.

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

Refuge has been aware of very few cases where barring orders were granted, with only one staff member saying that she knew of a case where one was granted. Out of all the survivor responses, the only case where a barring order had been granted that prohibited the perpetrator from appealing the final child arrangement order for five years, involved the perpetrator threatening the survivor with a knife, and threatening to kill her.

Refuge is strongly of the view that if this is far too high a threshold to have to reach if a barring order is to be granted. Survivors suffer through extensive trauma and abuse at the hands of the perpetrator, and when they have finally separated from them, the court system provides an excellent opportunity for the perpetrator to continue to control, manipulate, and economically abuse the survivor.

18. How do courts deal with applications for leave to apply following an 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?

Refuge is only aware of a handful of cases where barring orders have been granted. Given that barring orders are used in such tiny numbers in cases that involve domestic abuse, it would be difficult for us to draw systemic conclusions, with the exception that they are used infrequently and only in cases where there has been severe, prolonged, physical and sexual abuse perpetrated against the survivor.

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?

Refuge is aware of only a handful of cases where barring orders have been granted. As such it is very difficult for us to draw conclusions about the difficulties courts have in applying such orders, as so few of our survivors have ever been granted them. In terms of consistency in granting these orders, from the results of our survey, judges by and large are consistent, but consistent in refusing to grant barring orders. As such we think it is essential that an investigation into how the use of barring orders can be increased in cases involving domestic abuse can be increased, in recognition of the sheer prevalence of perpetrators deliberately making multiple spurious court applications, with the sole intention of controlling and economically abusing the survivor.

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

Barring orders are used so infrequently that their existence is largely ineffective at protecting children and survivors from further harm due to multiple court applications being made by the perpetrator. However, the survivor that responded to our survey that had been granted a barring order in conjunction with a total ban on all forms of contact with the child, said that she felt relieved, that she could finally move on with her life. Given that every single survivor and every single staff member that responded to our survey highlighted the huge issue of perpetrators subjecting the survivor to further abuse by making multiple spurious applications to the court, we believe that barring orders, if used more widely, have the potential to significantly increase the protection for survivors who would otherwise be subject to extensive coercive control and economic abuse by perpetrators using this method.

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 order 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?

Every staff member that responded said they had supported survivors in numerous cases where both the survivor and their children had been subject to harm and further abuse which was directly facilitated by the child arrangement orders granted following private law children proceedings. Following the frequently traumatic court process, which perpetrators use to perpetrate further abuse against the survivor as detailed in previous answers, the lack of understanding about the impact of domestic abuse on the survivor and child, including the lasting risk of further harm, commonly leads to child arrangement orders that are dangerous for both survivors and their children. Several staff also said that the default position of the courts is to allow contact with the child as 'it is isn't about the relationship with the parents' and 'it is always in the best interest of the child to see the father.' This approach effectively ignores that children who grow up with abuse are themselves victims that are frequently indirectly harmed as a result of domestic abuse, as well as the fact that many perpetrators use child arrangement orders to perpetrate further abuse against the survivor. Additionally, the risk of harm that perpetrators pose to their children is reflected in the work [Refuge has done in partnership with an investigative journalist from the Sunday mirror](#) that found 63 children had been killed at the hands of perpetrators who had been convicted of serious offences and later awarded child contact. This statistic refers only to murders and manslaughter, and not to children killed through neglect.

For example, in one case, a survivor had fled to an address unknown to the perpetrator but the perpetrator knew where the children were going to school as he had partial custody. The perpetrator waited outside the school, attempting to follow the survivor home when she picked up her children, harassing her the entire time. The survivor brought this up in court, and while the judge said that the perpetrator was not allowed to do this, it was ultimately 'his word against hers'. Due to the continued risk of harm posed to the survivor and her children as a result of the child arrangement order, the survivor ended up returning to the perpetrator. She was then told by her solicitor that because she was returning, if she were to separate from him again and return to court, she would 'have no credibility' and 'would not be taken seriously'.

In another case, when unsupervised contact was awarded but no appropriate third party could be identified for the purposes of dropping off and picking up the children, the judge ordered the survivor to do this herself. The survivor always made sure to meet the perpetrator in a public place, but he would still be abusive, screaming in her face and shouting humiliating comments at her, in front of her children and in front of the public. In another case, where similarly a survivor had been ordered to facilitate the picking up and dropping off of the children, the perpetrator insisted on picking the children up from the survivor's home. On several occasions, the survivor was physically assaulted by the perpetrator during these pick-ups, and on one occasion was raped. The survivor was forced to continue to have direct contact with the perpetrator which was incredibly traumatic and distressing. In a similar case, which involved the perpetrator also picking up and dropping her children off at her home, the survivor felt so unsafe that she felt she had no option but to stop contact and breach the order.

Perpetrators also commonly use their children as a way to find out the address the survivor has fled to. For example, one survivor said that under the child arrangement order, the perpetrator was entitled to two phone calls a week. At some point during the phone call, the perpetrator would start to ask questions about where the children were living. When the survivor raised this at court, they said that she would have to listen in on the calls and just hang up when the perpetrator started asking those questions. The survivor said that this solution did not eliminate the risk posed to her and her children, and put the onus on her to deal with the perpetrator's breach of the order. Another survivor said that after one visit, the children came back with brand new phones and tablets. The survivor had been advised by her specialist refuge worker that any electronics need to be checked for spyware and other tracking software. The survivor brought the phones and tablets to a specialist computer shop, which found multiple tracking apps installed on it.

In addition to the risk of physical harm that survivors are frequently subjected to as a result of child arrangement orders, perpetrators commonly use orders to perpetrate coercive control. For example survivors and staff told us that perpetrators will change plans at the last moment, preventing survivors from going to work or seeing a friend, they will fail to return the child at the agreed date and time causing the survivor to fear that their child has been abducted, and harass the survivor by constantly calling and texting her, under the guise that it is 'about the children'.

In addition to the harm experienced by survivors as a direct result of dangerous child arrangement orders, perpetrators often abuse the children themselves, facilitated by child arrangement orders mandating direct contact. Children are frequently terrified of the perpetrator, having spent years watching them abuse their mother, and frequently suffering physical abuse themselves. One survivor that responded to the survey said that the perpetrator was granted unsupervised contact, despite disclosing extensive physical abuse that both she and her child had suffered. The child would return to her home following a visit to the perpetrator's home with bruises would be tired and hungry. One survivor said that her experience of child arrangement orders demonstrates why 'some women just die quietly' as they feel completely unable to protect either them or their children. In another case, a perpetrator was awarded joint custody, despite failing to acknowledge the medical needs of one of the children, causing the child to be neglected when left in the perpetrator's care.

Survivors and staff told us that in addition to the direct risk of physical harm, there are long-lasting impacts on the child's behaviour and mental state. For children who have suffered harm at the hands of the perpetrator, who have told their mother, CAFCASS, and other professionals that they are terrified of the perpetrator and do not want to see them, being forced to see the perpetrator can cause serious trust issues. Children often feel that they have been let down by the survivor who, from the perspective of the child, has been unable to protect them from the abuser and they feel let down by the court who has forced them to see the perpetrator when they know the child is frightened of them. Staff and survivors have told us that such children can become aggressive towards the survivor, can have behavioural issues at school, and can become withdrawn and angry following visits to the perpetrator. Multiple staff members and survivors said that following a period of no contact with the perpetrator, after which contact is resumed because of the terms of the child arrangement order, their children often display significant mental distress, often in the form of bed-wetting, attachment issues with their parents, and severe behavioural problems at school.

It is therefore clear to Refuge that both survivors and children have been harmed and abused by perpetrators, which has been directly facilitated by child arrangement orders.

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)?

See answer to question 21, particularly regarding the impact of child arrangement orders on children.

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?

See answer to question 21, particularly regarding the impact of child arrangement orders on children. It is sadly common for rape and sexual assault to be part of the everyday experience of survivors suffering domestic abuse. [Research has also found that the majority of children growing up with domestic abuse are also subject to direct harm](#). The risk of harm children are exposed to be continuing to have a relationship with the perpetrator has been further demonstrated by work undertaken [Refuge in partnership with an investigative journalist from the Sunday mirror](#). It found 63 children had been killed at the hands of perpetrators who had been convicted of serious offences and later awarded child contact. This statistic refers only to murders and manslaughter, and not to children killed through neglect.

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)?

The staff and survivors that responded to the survey highlighted some good practice cases which benefited the survivor and her children in making them safer and reducing their risk of harm. Survivors and staff believed that the majority of cases they thought about positively were largely due to judges demonstrating awareness of the impact of domestic abuse on survivors and children, and particularly how the court system can be used to perpetrate further abuse. However, as we have made clear throughout this response, there is enormous variation in how judges treat cases involving domestic abuse, with many judges betraying a severe lack of understanding and sensitivity towards survivors of domestic abuse and their children.

Survivors in particular found the availability of several different special measures particularly helpful when going through the court process. In the best cases, judges grant special measures at the point that a disclosure of domestic abuse is made, rather than waiting until after a fact-finding hearing, or later on in the process. The majority of survivors said that screens blocking their view of the perpetrator, helped deliver their evidence to the best of their ability, particularly during fact-finding hearings. However, the majority of staff said that when survivors were able to give evidence via video link, this was even better, as survivors felt safer in the knowledge that the perpetrator was not anywhere near them. Additionally, survivors that had separate waiting areas to wait in before hearings started reported feeling safer than those who were forced to occupy the same space as the perpetrator, sometimes with only one person sitting in between them on a crowded bench.

Currently, banning cross-examination of a survivor by the perpetrator is largely at the discretion of the presiding Judge. There were only a few examples given where judges stepped in to prevent direct cross-examination when the perpetrator did not have legal representation. One survivor said that in her case, the perpetrator had to write down the questions he wanted to ask, and the Judge asked the survivor instead. While the survivor was still distressed at having to be in the same room as the perpetrator, she said that she really appreciated this action on the part of the Judge, and said that

otherwise she would have 'dealt with it very badly'. There are similarly very few examples of judges granting barring orders, preventing the perpetrator from making repeat applications without leave to apply. However, in the one case that was submitted to us via the survey that involved a Judge granting a barring order, the survivor felt much safer in the knowledge that they could enjoy a reprieve (albeit for just five years), and that 'justice had been served'.

Despite survivors frequently 'moving heaven and earth' to try to maintain a relationship between their children and the perpetrator safely – as one staff member put it – too often judges grant child arrangement orders which put the survivor and her children at further risk of harm. Survivors who felt that they enjoyed a better standard of safety were primarily those who felt the Judge understand the risk the perpetrator posed to them and their children, and awarded either only indirect contact, or supervised contact facilitated by a child contact centre.

The family courts could learn much from how other courts approach domestic abuse, particularly the criminal courts in terms of best practice in the treatment of survivors of VAWG. For example, the cross-examination by perpetrators or alleged-perpetrators of survivors must end. It is traumatising for survivors and leads them to provide lower quality evidence than they might otherwise be able to provide. The Domestic Abuse Bill is a perfect vehicle to make this change.

In the criminal courts, while survivors are not automatically eligible for special measures, they are available much more widely than in the family courts. Additionally, the current draft of the Domestic Abuse Bill includes a provision that would make all survivors of abuse eligible for special measures in the criminal court. All family courts should be able to offer a range of special measures to survivors. This should include separate entrances and exits for survivors and separate, safe waiting areas. This will require investment as many courts do not have the infrastructure to offer these at present. It is also essential that survivors are offered special measures in the family courts as a matter of course.

It is vital that survivors are able to access legal aid for representation in the family courts. The means-test for legal aid is far too restrictive, and in practice means survivors cannot access legal aid if they own joint assets with the perpetrators, even if they have no control over the use of those assets. Further, the means test excludes survivors on modest incomes, who are already attempting to retain employment whilst dealing with the significant challenges of leaving an abuser, leaving them with no access to justice. In line with access to legal aid in the criminal courts, survivors should have access to legal aid in the family courts, with the means test lifted for survivors in recognition that due to economic abuse, they frequently do not have access to assets jointly held with the perpetrator, or have significant debts making legal fees unaffordable.

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

Overall, how the courts deal with private law children cases varies significantly, leaving survivors and their children vulnerable to further abuse at the hands of the perpetrator, frequently facilitated by the court system itself. The challenges are so severe and varied that Refuge recommends an in-depth, system wide review into how the court can better safeguard survivors and their children. In addition to this, Refuge recommends:

- **A reversal of the presumption of parental involvement of the perpetrator in cases involving domestic abuse**
- **A ban on cross-examination of survivors by perpetrators in the family courts at the point of disclosure of domestic abuse to the court**

- **Automatic eligibility for special measures to be extended to all survivors of abuse in the family courts at the point of disclosure of domestic abuse**
- **The minimum income/asset threshold for survivors of domestic abuse is lifted in private law child cases, in recognition that survivors frequently do not have access to money or assets as a result of economic abuse, and that abusers commonly seek to perpetrate economic abuse by deliberately running up survivors' legal bills**
- **Mandatory comprehensive training on the dynamics of domestic abuse for all judges and other court/judicial staff that interact with parties to a private law child case. Training should pay particular attention to the impact of non-physical abuse in particular, both on the survivor and their children**
- **That quality interpreters are available at every hearing for survivors that need them**