domestic abuse commissioner

The Family Court and domestic abuse: achieving cultural change

METHODOLOGY REPORT JULY 2023

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Introduction

On the 18th July 2023, the Domestic Abuse Commissioner published her report *Family Court and domestic abuse: achieving cultural change*, the aim of which was to:

- Demonstrate in detail the key issues victims and survivors of domestic abuse face when they come into contact with the Family Court;
- Identify a range of measured recommendations to bring about change;
- Provide a position on so-called 'parental alienation';
- Offer a positive child-centric model for the Family Court which draws on the legal provisions established to protect the child;
- Set out in detail the planned pilot for the monitoring mechanism to be established by the Office of the Domestic Abuse Commissioner and in partnership with the Office of the Victims' Commissioner.

To support the formulation of her positions, the Domestic Abuse Commissioner conducted three pieces of primary research for the development of this report:

1. Drawing on information from a range of roundtables with relevant stakeholders in Summer 2021. The methodology of these roundtables can be found in the Commissioner's Report *Improving the Family Court Response to Domestic Abuse 2021*.[1]
2. Reviewing correspondence received by the Commissioner from victims and survivors of domestic abuse, as well as from their friends, family members and their new partners.
3. Running a survey of solicitors, chartered legal executives, and barristers to gain an insight into practitioners' unique access to private family law proceedings in the Family Court.

The Commissioner also drew from a range of comprehensive reports and robust research, and considered the findings from the two surveys conducted by Channel 4's Dispatches programme in 2021.[2]

This report provides the full methodological detail of the research process undertaken, and subsequent data findings which have informed the *Family Court and domestic abuse: achieving cultural change* Report. It will cover (i) the analysis of the victim and survivors' correspondence received by the Commissioner on page 4, and (ii) the controlled survey of solicitors, chartered legal executives, and barristers on page 7.

1 Domestic Abuse Commissioner, (2021) Improving the family court response to domestic abuse, https://domesticabusecommissioner.uk/wp-content/uploads/2021/11/Improving-the-Family-Court-Response-to-Domestic-Abuse-final.pdf

2 Channel 4 Dispatches (2021), survey conducted for: Torn Apart: Family Courts Uncovered: Dispatches. Dispatches conducted two surveys: one for legal professionals (to which 297 family solicitors and barristers responded) and one through an online questionnaire for those who have used the Family Court, over 4000 users responded). The Commissioner acknowledges the limitations of this survey as those who replied were self-selecting, and the full methodology has not yet been published.

Methodology for the victim and survivors' correspondence review

Between May 2020 and May 2022, the Domestic Abuse Commissioner received 443 pieces of email correspondence from victims and survivors of domestic abuse, as well as from the friends, family members and new partners of those victims and survivors. Upon receipt, each piece of correspondence is logged and tagged based on the issues raised within the email. There was no limit on how many tags could be added to each piece of correspondence, with the preference being to ensure that all of the issues raised in each email could be captured.

As part of our work to better understand the key issues faced by victims and survivors who have undergone private family law proceedings, we carried out a thematic audit of all the survivor correspondence which was sent to the Domestic Abuse Commissioner relating to these proceedings. This was done by reading every item of correspondence sent to the Domestic Abuse Commissioner's Office from May 2020 – when the first piece correspondence was received – until 31 May 2022. This was done to ensure a full two-year period of correspondence was included but allowing appropriate time to review and inform the drafting of the report.

Thirty five per cent (153 of 443) of all victim and survivors' correspondence received mentioned the Family Court as an issue. For the purposes of this report, this correspondence was then split into that relating to individuals who were undergoing private family law proceedings and correspondence relating to those who were undergoing public family law proceedings. Where this was unclear, the correspondence was excluded from the analysis. As the report sought to draw on the experiences of victims and survivors who had gone through private family law proceedings, the cohort of survivors was further refined to only include individuals who mentioned that they had already commenced or completed proceedings. The audit identified 108 pieces of correspondence where victims and survivors raised private family law proceedings, with this being almost a quarter (24 percent) of all survivor correspondence received, and 71 percent of victim and survivor correspondence where the Family Court was raised as an issue.

The audit process involved identifying key themes and issues which arose across all the pieces of correspondence and keeping a log of whenever these were raised (see Table 1 below for list of categories). When a survivor wrote to the Office multiple times, their individual record was updated with additional issues raised in new correspondence. All correspondence from each individual survivor was collated on a spreadsheet and appropriate anonymisation processes were undertaken.

In addition to identifying themes, the audit analysed survivors' overall experience of the proceedings, as well as references to their interactions with agencies such as CAFCASS and the police. The aim of this was to identify whether their interactions with these agencies had been positive or negative, as well as to gain an overall picture of whether their experience of the Family Court had been positive or negative.

Whilst this provided a helpful insight into victims and survivors' experience of procedural justice, it is important to recognise that the sample is a self-selecting group potentially biased towards individuals who have had difficult experiences or are dissatisfied with the outcomes of their cases. It is not a represented sample of those who have experienced the Family Courts process and any descriptive statistics derived from the data must not be generalised. As such, any findings have not been referred to as evidence within the Family Courts report. We also acknowledge that the sample included correspondence from two months prior to the Harm Panel publication.

Category of issue raised	Explanatory notes / examples
Issues with procedures	
Court procedure - delays/ continuity	Proceedings protracted; cases have been delayed; no continuity between judges.
Court procedure - rules and forms	Survivors raised concerns or issues around court procedure rules or the forms which they had to complete for the proceedings. Had trouble navigating the paperwork or making applications.
Court procedure - special measures	Survivor did not receive special measures following requests, court forgot to include special measures
Court procedure - lack of support	Survivor did not receive any support throughout the proceedings – legal or otherwise; the judge refused to allow external support like IDVAs / McKenzie Friend into court
Court procedure - traumatic proceedings	The survivor struggled in the proceedings or was retraumatised. Any mention of things like cross-examination by perpetrator, antagonistic counsel; victim-blaming; accusations of lying; judges or Cafcass being rude.
Court procedure - lack of joined up approach	Lack of joined up approach between criminal court and Family Court or other civil court. Lack of communication between agencies such as policing, social services, Cafcass and the Family Court
Court procedure - lack of understanding/minimisation of abuse	Judges and court workers unaware of domestic abuse issues such as non-physical abuse, or unaware of how different forms of abuse present themselves. Lack of understanding of coercive control.
Costs	Court proceedings expensive; survivor has had to get into debt to pay for proceedings; survivor cannot afford to pay or continue paying for representation
Wider issues raised	
Legal aid	Applications for and concerns around legal aid and reasons why survivor is not eligible for legal aid

So-called 'parental alienation' (for/against)	'Parental alienation' was raised within correspondence and can we delete the second sentence 'Note whether survivor supported the concept or against it'
'Parental alienation' experts	Survivor raised concerns about use of 'parental alienation' experts in the Family Court. Concerns raised as to whether the expert was unqualified or unregulated
Contact arrangements	Survivor raised contact arrangements as an issue, including contact orders, breach of contact orders, concerns about unsafe or unsupervised contact
Presumption of contact (for/against)	Survivor raised the presumption of contact as an issue. Note whether they support the presumption or oppose its implementation
Child Maintenance Service	Survivor raised the Child Maintenance Service as an issue, including decisions over amounts due, lack of enforcement or manipulation of the system
Financial arrangements and remedies	Survivor raised issues around financial arrangements, such as division of assets
Social services	Survivor raised social services in their response and note issues they had with the social worker on their case

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Methodology for the Family Court practitioners survey

As set out in the main report, one of the recommendations of the Harm Panel report was for the Office of the Domestic Abuse Commissioner, alongside the Office of the Victims Commissioner, to establish a national monitoring mechanism to maintain oversight and report regularly on the Family Court's performance in protecting children and adult victims of domestic abuse and other risks of harm in private law children's proceedings.[3] The objectives of the monitoring mechanism are to increase the transparency and accountability of the Family Court in responding to allegations of domestic abuse. The monitoring mechanism will gather national or nationally representative data and specific spotlight data on the processes and outcomes in private law proceedings.

The survey was prefaced with a contextual framework establishing that the contents related to domestic abuse in private family law proceedings. The following was stated at the outset of the survey:

'***Therefore, the survey considers proceedings which comprise of at least one party alleging domestic abuse***.'

At present, the Office of the Domestic Abuse Commissioner does not have access to systematic or reliable data and the pilot is scheduled to commence in 2023. To gain a glimpse into the Family Court and private law proceedings, a survey for legal practitioners was designed and shared with the legal profession. Our survey aimed to understand private children family law proceedings from the view of those who were practising family law, acknowledging that not all legal professionals are comprehensively trained in the complexities of domestic abuse. We understand that the views of legal professionals in this survey are subjective and reliant on their own thoughts and experiences of private children family law proceedings. We recognise these findings are, therefore, limited and have only been used to inform and support the Domestic Abuse Commissioner's understanding of the Family Court.

The questions were designed to gain an insight into the day-to-day running of the Family Court, with practitioners approached due to their unique access to private family law proceedings, as recognised below:

Solicitors and chartered legal executives play a frontline role in private family law cases, including those concerning domestic abuse or their legal representative.[4] They have direct contact with the victim or survivor; direct contact with the alleged perpetrator parent, or their legal representation; and an insight into court room dynamics. In combination, the role of the solicitor is central to the victim or survivor's experience of the Family Court; and

3 Ministry of Justice, 2020, Assessing Risk of Harm to Children and Parents in Private Law Children Cases (publishing.service.gov.uk)
4 It is important to note that 1) not all family court cases involve domestic abuse, or allegations of domestic abuse; and 2) there is not a separate cohort of solicitors and chartered legal executives who only deal with domestic abuse related family court proceedings.

Barristers, with their rights of audience, have exposure and engagement to the judiciary and see the court room from a unique position. This is especially true when considering cross-examination of victims or survivors, and perpetrators of domestic abuse.

Both solicitors and barristers will represent the parties at some point during proceedings and don't always know whether they are representing a victim or survivor, or perpetrator. They will act to represent their clients' views to the best of their ability.

Our survey comprised of 40 substantive questions, using a mixed approach of open and closed questions. Prior to dissemination, the survey was shared with Miles & Partners, a solicitor's firm who accept legal aid and specialise in Family Law. The survey was reviewed by a handful of solicitors, including a partner, who provided feedback. This was to ensure the survey appropriately addressed the legal provisions to which it referred and the remit of practising family lawyers. Data was collected via SmartSurvey from January 2023 to April 2023.

As stated above, the purpose of the survey was to ascertain the specific views of family court professionals. The Commissioner had previously held roundtables with relevant stakeholders from across the profession and reviewed victim and survivor correspondence to better understand the experiences of all other parties in the Family Court, and this knowledge gathering exercise also served to inform the survey questions. To ensure only the views of family court professionals were represented in this survey, the survey was sent to specific mailing lists of registered family law practitioners: the Family Law Bar Association, Association of Lawyers for Children, the Bar Council, Resolution, FLOWS and SafeLives (solicitors and barristers who have undertaken their domestic abuse informed training relating to the Family Court). The use of these mailing lists also ensured dissemination with family law practitioners who have practised in private family law proceedings within the last two years and could therefore provide timely insight on the Family Court. The survey was designed to inform the Commissioner in developing a child–centric framework by providing more context of its operation.

At 11.26am on Friday 28 April 2023 the integrity of the Domestic Abuse Commissioner's survey was compromised. A link to the survey was shared without our consent via social media, allowing members of the general public to complete it. The question set was designed, as part of a wider research, to draw together the views and professional expertise of barristers and solicitors only. Therefore, to ensure methodological robustness and guarantee the responses we subsequently analysed had been provided by family law professionals, the survey was then closed a few hours ahead of the original 11.59pm deadline. Any responses submitted after the link was shared, via a social media post, have been excluded from our analysis. This decision has been taken at the recommendation of our Head of Research to preserve the validity of the data set by ensuring members of the general public were not included in the sample.

Data for all responses collected before this date and time was then analysed in Microsoft Excel. After preliminary review, eight responses were identified as having been submitted by respondents who were not practising law and these were, therefore, also removed from the raw data set in addition to those received after the timestamp. A total of 138 responses were included in our survey analysis.

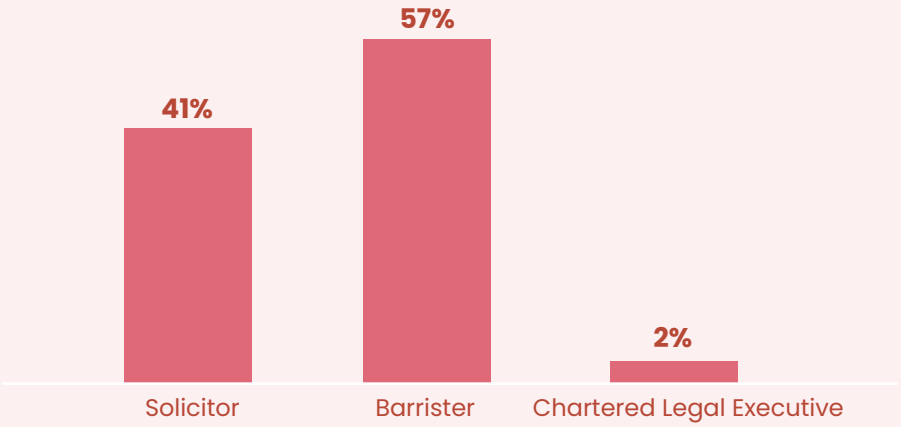
Who responded

Over half the respondents were engaged with the Family Court as barristers (57 percent). Three of these respondents noted they were also completing the survey in their capacity as a Judge as well as a barrister. Two fifths of responses were from solicitors (41 percent) and one solicitor also responded to say their role also included mediation and arbitration. Three respondents to the survey were Chartered Legal Executives (2 percent).

Children Arrangement Order applications

Our survey asked legal practitioners: *When reflecting on the gendered nature of Child Arrangement Order applications how often men are the applicants in these types of proceedings?* We recognise this question did not explicitly ask for applications where domestic abuse allegations were a factor and, therefore there may varying interpretations in the responses given.

Respondent's capacity of engagement with the Family Court.



The question sought to test statements which refer to men being the majority of those who make Child Arrangement Order applications. This question sought to test data which indicates that fathers are the vast majority of those who file child arrangement order applications.[5] In order to question the position, to see if it aligned with the perceptions of practitioners, the established position was tested.

Over a quarter of responses (26 percent) felt that men were the applicants in these proceedings '81 percent-100 percent' of the time, and 41 percent felt that men were applicants '61 percent-80 percent' of the time. A fifth of respondents felt this was the case '41 percent-60 percent' of the time and one in ten felt that this was the case less than two fifths of the time '21 percent-40 percent' (8 percent) and '1 percent-20 percent' of the time (3 percent).

Our survey also asked family law professionals to confirm whether the applications in private family law proceedings (regardless of funding), in their experience, are usually for an increase in contact. Over two thirds of respondents (67 percent) stated 'yes – most of the time' and just under a third (30 percent) answering 'sometimes yes and sometimes no.' Only three responses (2 percent) stated 'no – not normally' and one respondent (1 percent) answered 'based on reflections of the last 24-months, I am unable to comment.'

5 Maebh Harding and Annika Newnham, 'How Do County Courts Share the Care of Children Between Parents?' (Nuffield Foundation, 2 July 2015) 10. The Commission also heard this assumption from her engagement with domestic abuse specialist services, in particular from her engagement with men and boys services.

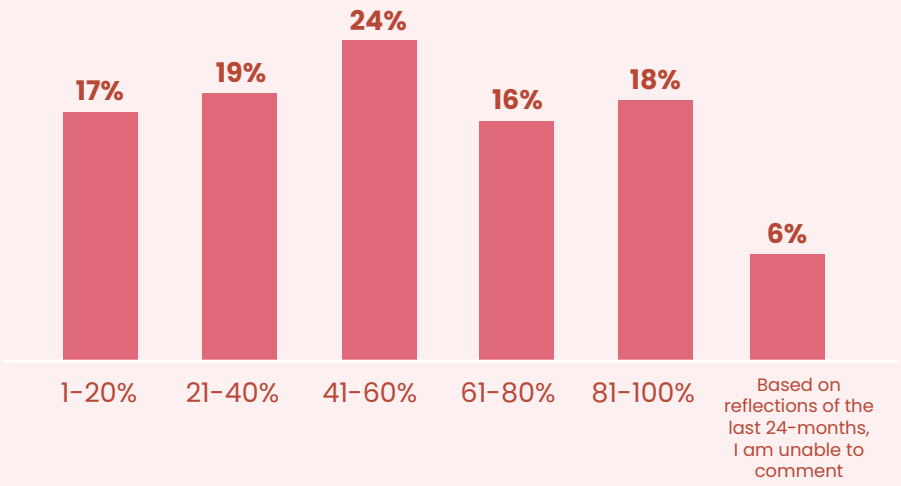
Child Arrangement Order applications and domestic abuse

The first substantive question asked practitioners what proportion of cases that family law professionals are involved in they felt include allegations of domestic abuse. In privately funded cases, over a quarter of responses (27 percent) stated between '81 percent -100 percent' and a quarter (26 percent) included allegations '61 percent-80 percent' of the time. Just over a fifth (21 percent) stated they are involved with cases with allegations of domestic abuse between '41 percent and 60 percent' of the time. This gives a total of nearly three quarters (74 percent) of practitioners responded saying domestic abuse allegations were involved in privately funded cases over 40 percent of the time. Thirteen percent felt cases included allegations of abuse in '21 percent-40 percent' of the time and nine percent, '1 percent-20 percent' of the time.

Unless there are exceptional circumstances, legal aid for private family law proceedings is only available if the applicant for legal aid can evidence that they or the children have been victims of domestic abuse.[6] This was reflected in the answers to the questions on the proportion of legal aid cases which include allegations of domestic abuse, with over half of responses stating domestic abuse is alleged '81 percent-100 percent' of the time and 12 percent stating '61 percent-80 percent' of the time, giving a total of 63 percent of legal practitioners stating domestic abuse is alleged '61 percent - 100 percent' of the time. However, just under a quarter of responses for this question (23 percent) stated they could not comment on this question (compared to 4 percent being unable to answer the question in relation to privately funded questions). This is likely to reflect the numbers of solicitors and barristers who do not practice private law proceedings funded through legal aid.

When asked whether the applicant in privately funded Child Arrangement proceedings was likely to be an alleged perpetrator of domestic abuse, the results were very mixed. The highest number of respondents, with a quarter of answers, stated this happened '41-60 percent' of the time (24 percent). However, as shown in the graph below, there was a fairly even spread of opinions relating to this question.

What proportion of the privately-funded private family law cases you have been involved with comprise of an Applicant, pursuing a Child Arrangements Order, who was also alleged to be a perpetrator of domestic abuse?



Question nine of the survey asked family law professionals: *Given the prevalence of domestic abuse in private family law proceedings, how often do you perceive the motivation to issue a Child Arrangement Order application to be genuinely child-centric?*

Over half of survey respondents (56 percent) felt that applications for Child

6 Legal Aid, Legal aid: Domestic abuse or violence

Arrangement Orders were 'Usually' or 'Always' genuinely child-centric,[7] and over a third (36 percent) felt this was 'Sometimes' the case. Only 6 percent felt this was 'Rarely' the case and 3 percent could not comment on this question. This question was asked as a multiple-choice question, but the respondents were also given the opportunity to provide free text to support their answer.

A total of 30 respondents commented further in the open box. Where comments covered more than one theme, the responses were split and coded accordingly. This means the percentages given below may not sum to 100. Almost half of the respondents who gave a free text answer to this question (47 percent) discussed applications in the court involving a genuine want to see the child. This was often caveated, however, by the fact that this was not always the case and some perpetrators of domestic abuse do use the courts to continue their abuse of the victim / survivor.

"In my experience, I would say that applications are usually borne out of a genuine desire to spend more time with the child. However, there are a percentage of cases where the application is intended as a way to further abuse the Respondent, a way to control the Respondent and child, or for other means e.g. a desire to achieve shared care in order not to pay child maintenance. In the cases I deal with, these make up less than 50 percent."

"In most cases there is a genuine belief in the parent seeking an order that it would be better for the child to have the relationships they seek whether that is to increase the amount of time the child spends/lives with them or reduce the amount of time with the other parent. There may be other emotions/attitudes in play (such as a wish to be in control or obtain vindication for a wrong they say was inflicted on them)."

Over a fifth (23 percent) of respondents, stated that they felt perpetrators of domestic abuse do not have an understanding of the effect domestic abuse has on children

"There does appear to be a lack of insight into the effect of domestic abuse on children by those making the application in many cases"

"I have yet to come across a case where the motivation to issue a CAO application is to perpetuate abuse. In all of the cases I have represented the alleged perpetrator, there is, generally, a bewilderment at why they cannot see their child."

The remaining smaller categories included issues where there are cross allegations of abuse (17 percent). This was split into to two types of cross allegations - the first where those who were accused of domestic abuse made allegations of so-called 'parental alienation' and those who felt that both parties behaved poorly to each other due to the heightened emotions of separation and, therefore, both made allegations of abuse.

A total of 13 percent of respondents that answered this question discussed that allegations of domestic abuse can be made by an alleged victim or survivor for their own motivations and are not, necessarily, child-centric.

One in ten respondents who gave an open text box answer (10 percent) felt that private law children act proceedings were a continuation of domestic abuse, and a further 10 percent felt there were numerous

7 A definition of 'child-centric' was not provided, which we acknowledge could contribute to a degree of variation and subjectivity. However, the DAC Office worked on the reasonable assumption that by engaging specialist family law practitioners, the overarching principle of 'welfare of the child' would be understood in using the term 'child-centric'.

reasons for an application, and this could not be easily defined. Two respondents felt there was an inability for professionals in the Family Court to see domestic abuse.

Our survey also asked: *If arrangements sought are not child-centric, what do you consider to be the overarching / other objective(s)?.* Practitioners were given options (shown on the table below) and asked to answer 'yes' or 'no' to each option. The table below shows the answers for 'yes.'

If arrangements sought are not child-centric, what do you consider to be the overarching / other objective(s)?	Percent (%)
Hostility towards the other parent	75%
To intimidate/fatigue the other parent	60%
To ensure increased contact with the child with the intention of maintaining it	54%
To pursue allegations of abuse in relation to a child resisting, refusing or exhibiting reluctance at contact/increased contact	46%
To restrict the movement of child and/or other parent	44%
To clarify finances with the Child Maintenance Service	33%
To air frustration in the court process	32%
To obtain a Prohibited Steps Order	26%
To ensure increased contact with the child without the intention of maintaining it	17%
To clarify a position in relation to a Specific Issues Order	12%
To finalise divorce proceedings	5%
Other	1%

Research has shown that often perpetrators of domestic abuse, when facing allegations of abuse, will deny these allegations and attack the victim and survivor to make professionals question the victim or survivors' credibility.[8] They will then reverse the status of perpetrator and victim or survivor to secure their own position as a victim and position the person who has been a victim of their abuse as the perpetrator. This is known as DARVO. The survey asked family law practitioners whether they felt that the family court is able to engage effectively with this tactic that is commonly used by perpetrators of abuse.

The results to this question were very spread out and, in fact, almost a quarter of the 108 respondents who answered the question (23 percent) felt they were unable to comment on this question. Just over a quarter of legal practitioners (28 percent) felt the courts could 'Rarely' effectively engage with DARVO, 27 percent felt the court could 'Sometimes' effective engage with it and 19 percent answered 'Usually.' Four respondents (4 percent) felt the court could 'Always' effectively engage with DARVO.

The legal practitioners were then asked how often they saw situations where the perpetrator of domestic abuse claimed to be a victim. Over half of 119 legal practitioners (55 percent) who answered this question felt that this took place 'Always' (10 percent) or 'Usually' (45 percent). Two fifths felt (41 percent) this 'Sometimes' happened and 3 percent answered that they 'Rarely' saw perpetrators claim to be victims.

When asked to what extent legal practitioners believed the Family Court could effectively engage with domestic abuse, out of the 118 respondents who answered this question, over two fifths (45 percent)

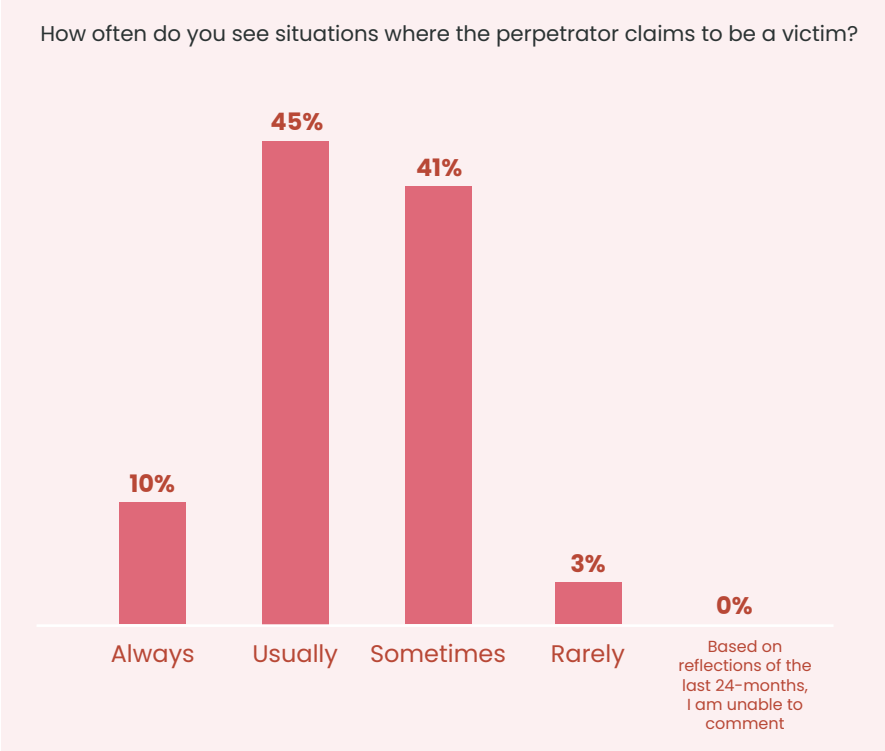
8 Sarah J. Harsey & Jennifer J. Freyd (2022) Defamation and DARVO, Journal of Trauma & Dissociation, 23:5, 481-489, DOI: 10.1080/15299732.2022.2111510

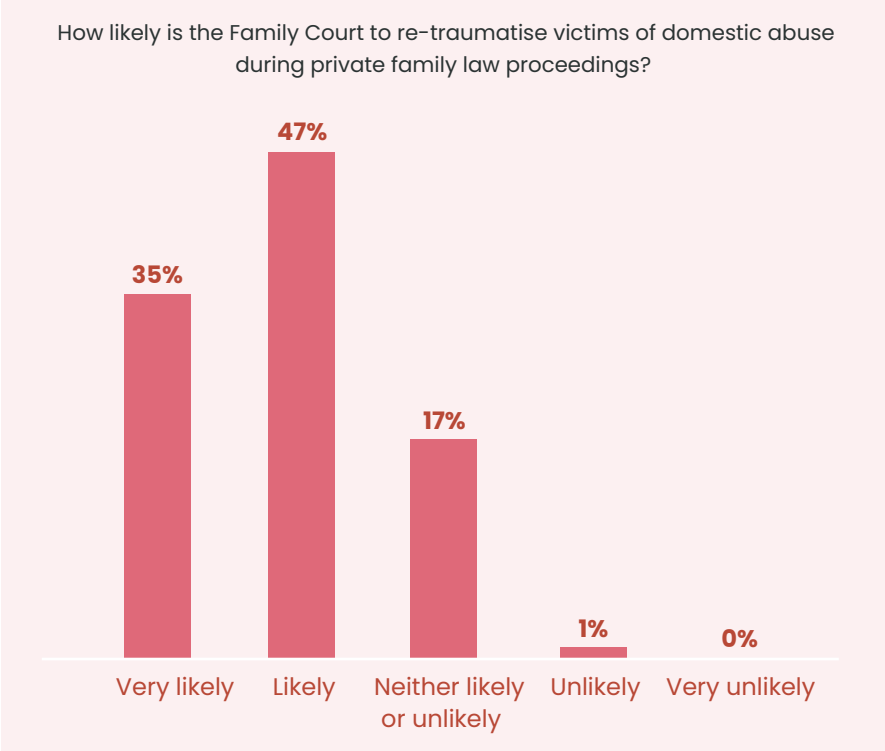
stated 'Somewhat positively'.[9] A quarter (25 percent) responded 'Somewhat negatively' and 17 percent answered 'Neither positively or negatively.' Finally, 8 percent answered 'Very positively' and 6 percent answered 'Very negatively.'

The final questions of the survey returned to victims and survivors of domestic abuse. The Domestic Abuse Commissioner asked what legal practitioners felt the impact of the Family Court were on victims and survivors.

The survey also asked how likely legal practitioners felt the Family Court would re-traumatise victims and survivors of domestic abuse. Over four fifths (82 percent) of legal practitioners felt that the Family Court were either likely or very likely to re-traumatise victims and survivors of domestic abuse. Only 1 respondent answered that it was 'Unlikely' (1 percent) and 17 percent felt it was 'Neither likely or unlikely.'

As a follow up question, a total of 18 options were given for the survey respondents to answer 'yes' or 'no' to. All 138 respondents to the survey answered this question. The results shown in the table below are where 'yes' was given in response to the likely effect.





9 The DAC Office worked on the reasonable assumption that specialist family law practitioners would reflect on 'effectively engage with domestic abuse' to encompass the duties of the Family Court to implement domestic abuse provisions intended to support the effective engagement of Family Court actors with domestic abuse. For example, Practice Direction 12J which should be automatically applied in relation to vulnerable court witnesses, which explicitly includes victims of domestic abuse.

Likely effects	Percent (%)
Distress	74%
Feeling disbelieved	70%
Fear of court process	70%
Stress	69%
Loss of faith in Family Court	66%
Trauma	58%
Loss of faith in the law	57%
Heightened fear of ex-partner	57%
Negative financial impact	53%
Anger	51%
Feeling believed	44%
Post-Traumatic Stress Disorder	41%
Relief	34%
Feeling supported	28%
Reassured of domestic abuse provisions	24%
Able to move on and positively co-parent	22%
Engaged with effectively	21%
Positive financial impact	9%

Nearly three quarters of legal practitioners answering the survey felt that proceedings in the Family Court are likely to cause distress to victims and survivors. A fear of court proceedings and feeling disbelieved were considered the second highest most likely effects (70 percent), and 69 percent of respondents felt that stress was a likely effect of court proceedings.

Child Arrangement Orders and finances

Financial and economic control are prevalent aspects of broader domestic abuse behaviours with the Statutory Guidance Framework on Controlling and Coercive Behaviour stating in paragraph 124 that:

"Perpetrators of domestic abuse may also target and undermine parents' relationships with their children, using power and control dynamics, for example making vexatious applications to the family court to prolong proceedings and using child arrangements and child maintenance to control the victim."[10]

Research has shown that perpetrators of domestic abuse are willing to disrupt their own lives and their own income to continue their abuse of the victim in the Family Court and may also do so through financial applications.[11]

10 'Controlling or Coercive Behaviour, Statutory Guidance Framework, Home Office 5 April 2023 Controlling or coercive behaviour statutory guidance (publishing.service.gov.uk)

11 Surviving Economic Abuse, 2018, 'Economic abuse is your past, present and future' A report on the practical barriers women face in rebuilding their lives after domestic violence. SEA-Roundtable-Report-2018-1.pdf (survivingeconomicabuse.org)

The question below is unable to differentiate if the applications are made by a perpetrator or not. However, it gives an indication of the volume of such applications being made in the Family Court and highlights the role financial applications play in domestic abuse cases.

Our survey asked legal practitioners their views and experiences of this when they are representing parents in Child Arrangement proceedings. Legal practitioners were asked if they had seen any of the behaviours stated in the table below. Respondents to this survey could answer 'yes' or 'no' to each behaviour. All 138 legal practitioners responded to these questions on behaviour in the Family Court.

The most common response was the request that respondents to the proceedings paid for their legal fees (43 percent) followed by applicants stating that the primary carer should take on more paid work (whilst paying child maintenance) (41 percent). Almost a third of legal practitioners had seen an application for forced sale of the family home or former matrimonial home (31 percent) and a quarter had seen applicants stating they require more resources, even as the non-resident parent (25 percent) as well as a refusal to recognise the need to pension share (24 percent).

Do you see any of the following in private family law proceedings?	Percent (%)
Requests that Respondents pay for their legal fees	43%
Applicants stating the primary carer should take on more paid work (whilst paying child maintenance)	41%
Application for forced sale of the Family Home / Former Matrimonial Home	31%
Applicants stating they require more resources, even as the non-resident parent	25%
Refusal to recognise the need to pension share	24%
Based on reflections of the last 24-months, I am unable to comment.	15%
None of the above	15%

When asked if private family law proceedings generally put financial pressure on the primary carer, 45 percent of the 122 respondents said, 'Yes' and 50 percent answered 'Sometimes yes and sometimes no'. The remaining five percent felt that 'No' it did not.

An open question with a free textbox was provided for legal practitioners to describe examples of financial tactics used in the Family Court. Comments by legal practitioners often covered more than one theme and were coded to ensure all themes were included in the analysis. Ninety-eight legal practitioners gave examples of financial tactics and the total number of coded themes from the analysis of their responses was 122. Percentages are of the number of respondents, who could have provided more than one answer, and therefore will not add up to 100.

Over a third of legal practitioners (35 percent) discussed ways of ensuring child maintenance fees were as minimal as possible. This included people refusing to pay bills or removing money from accounts to place the other party in a financially unstable position or in debt, changing their finances to lower their income for the purpose of child maintenance, refusal to pay child maintenance, or trying to work out a position to increase or decrease (depending on the party) the amount of child maintenance being paid with shared care arrangements.

"Paying legal fees means they cannot pay maintenance, or reducing working hours to only be able to pay legal fees, reducing their available income to pay child maintenance or stopping working all together to say they are available to care for the children and then relying on family members to pay legal fees, when they have sometimes worked for years right up until the proceedings. Also increasing payments to children from other relationships to reduce the amount available."

"....refusal to pay child maintenance and / or seeking additional overnights to reduce child maintenance payments and / or stipulating what child maintenance should be spent on and demanding to see proof of the same."

"Threatening costs orders by represented parties. Resident parent resisting additional time for child with other parent due to loss of benefits or CMS"

The second most common response was the use of repeated applications or prolonged proceedings, with 32 percent of legal practitioners noting this in their comments.

"Prolonged and repeated applications to Court, even after having withdrawn from the previous set of proceedings approximately two years earlier in an attempt to cause financial hardship to the Respondent Mother with whom the children were living."

"I have seen perpetrators self represent and push for proceedings to be ongoing for as long as possible, knowing that the victim is 'bleeding' financially. Some enjoyment is taken in this process, despite the impact on the victim who is often paying for everything for the children with little or no support..."

"I have had frequent experience of representing a privately paying client against someone who has obtained legal aid on the basis of alleging some form of DV. Given there is no financial repercussion for that person, of delaying, postponing and non compliance with directions or orders, matters can be delayed for a long time, there can be numerous applications for experts reports, or scientific testing that the privately paying client is required to pay in full. For the privately paying client, the costs can very quickly become prohibitive and cause them to drop hands..."

Over a fifth of legal practitioners (23 percent) felt that a financial tactic is to use, or not use, legal representation to create higher costs for the other party.

"instructing lawyers to attend court with them when they know the respondent resident parent cannot afford to do the same. Not paying child and spousal maintenance. Instructing lawyers to send multiple hostile letters knowing it will cost to get a solicitor to reply and issuing proceedings but not engaging and the respondent resident parent has already spent money with lawyers to deal with application."

"Excessive correspondence from a litigant in person to the other party's solicitor, intentionally delaying proceedings, refusal to comply with deadlines leading to an increase in correspondence, ceasing paying child maintenance."

"Issuing unnecessary applications sometimes on issues which the court has no

jurisdiction to determine. Legally aided party making unfounded allegations in order to protract the proceedings and rack up legal fees for the privately funded client so that he runs out of funds. Privately funded party who has access to more funds making allegations or issuing ridiculous applications within proceedings against another privately funded party with limited funds in order to dissipate their litigation fund. Privately funded party with more funds instructing KC where one is not required thereby putting pressure on other litigant to do the same even if they can't afford it."

Further tactics which were discussed by legal practitioners included threats of costs orders (8 percent) and using allegations of domestic abuse or allegations of so-called 'parental' alienation to prolong proceedings (7 percent). Six legal practitioners (6 percent) noted that finances should not be discussed in private law proceedings, so they were unable to answer this question.

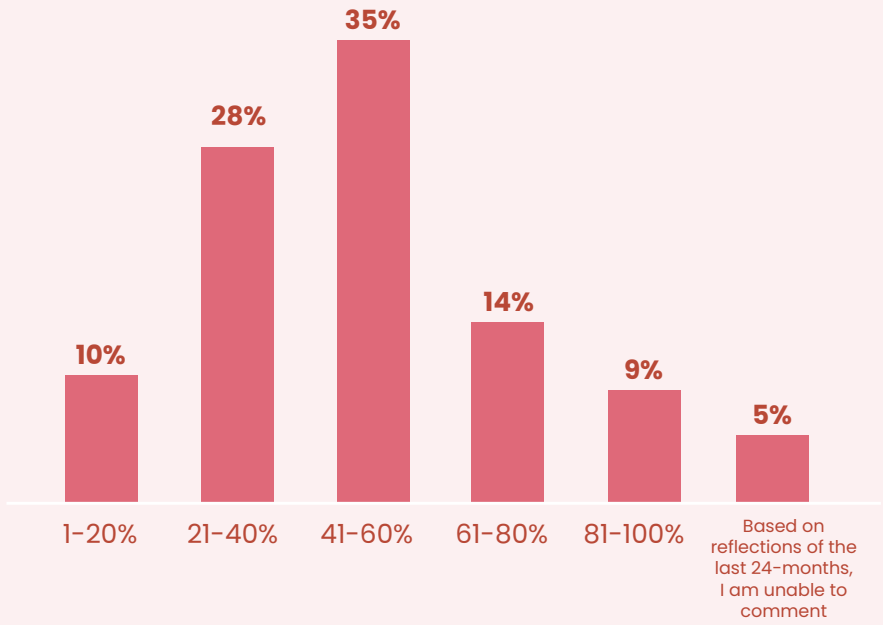
A large number of comments (13 percent) sat under the heading of 'Other.' These included legal practitioners who stated they practiced legal aid only and, therefore, did not have a lot of experience with this or that they did not do this form of work (10 practitioners). Comments also included the fact that each case is very different and cannot be generalised in this way (3 practitioners).

The survey used a multiple-choice scale question to determine whether legal practitioners felt that parties used methods to induce pressure in parallel financial proceedings. Out of the 122 practitioners who answered this question, the majority (76 percent) felt this either 'Always', 'Usually' or 'Sometimes' happened (2 percent, 16 percent and 58 percent respectively). Only five percent of respondents felt this 'Rarely' happened. A fifth (19 percent) felt that, based on their experiences in the past 24 months, they could not comment on this answer.

Resistance, Reluctance or Refusal

The survey asked legal practitioners how often children involved in private family cases where there are allegations of domestic abuse show signs of resistance, reluctance or refusal to see a parent.[12] The most common answer, with just over a third of responses (35 percent) felt that this was seen in '41 percent-60 percent' of cases. Over a quarter of responses felt

How often are the children involved in private family cases with an element of domestic abuse exhibiting signs of resistance, reluctance or refusal at seeing a parent?



12 As described in the survey: **Resist, refuse and reluctance**: terms used to encompass a child who is hesitant to spend time (or increased time) with the non-resident parent.

that this was seen '21 percent-40 percent' of the time and 14 percent felt this was seen '61 percent - 80 percent' of the time. One in ten respondents (10 percent) saw this '1 percent-10 percent' of the time and nine percent saw this '81 percent-100 percent' of the time.

These results support the need for further data from the Family Court to ascertain the scale of the issues reported by the number survey respondents. We are also aware that practitioners may not yet understand the linguistic framework of resistance, reluctance or refusal and therefore the ability to identify it. It nevertheless indicates that a child-centric approach is required, in line with statutory provisions to consider the child's best interests.

The survey also wanted to understand legal practitioners' views on child reluctance, resistance and refusal in relation to how proceedings can be protracted. The survey asked legal practitioners whether they saw parties in proceedings behave in a way which protracts proceedings and the majority of the 129 legal practitioners who answered this question (58 percent) felt that this is done by both parties. Legal practitioners could only answer one of the options shown in the table below. A slightly higher percentage of respondents felt this behaviour was undertaken by the party alleging the other parent of engineering child reluctance, resistance and refusal (21 percent) but 13 percent also felt that it is done by the party who is alleged of engineering child reluctance, resistance and refusal.

Do you see parties in proceedings behave in a way which protracts proceedings?	Percent (%)
Yes, by both parties	58%
Yes, by the party alleging the other of engineering child reluctance, resistance and refusal	21%
Yes, by the party who is alleged of engineering child reluctance, resistance and refusal	13%
No	5%
Based on reflections of the last 24-months, I am unable to comment.	3%

Where a parent (a) is alleging child resistance, reluctance or refusal being engineered by the other parent (b), the survey asked how often child contact was cancelled by this parent (a) in the run up to a court hearing or on the day of the court hearing. This was not commonly seen by legal practitioners, with the most common response (43 percent) answering that this happened between '1 percent-20 percent' of the time and the second most common answer being '21 percent-40 percent' of the time with 19 percent of responses. The response to this attempt to identify pressure-inducing effects in the run up to already stressful proceedings was therefore neutral and suggests that other methods are more commonly utilised.

In relation to how the courts deal with child resistance, reluctance or refusal at contact, legal practitioners were asked if they perceive the court to prioritise allegation centric behaviour over an understanding of child resistance, reluctance or refusal. Almost half of the 116 practitioners who answered the question said 'Sometimes' (49 percent), a quarter (25 percent) answered 'Usually', 16 percent answered 'Rarely' and nine percent answered 'Always.'

Resistance, Reluctance or Refusal and finances

Legal practitioners were asked how often they saw the parent accusing the other of engineering child resistance, refusal and/or reluctance being better financially resourced in private family law proceedings. A total of 129 legal practitioners answered this question and the responses were evenly spread out. The most common answer with 28 percent of responses was that it happened between '41 percent - 60 percent' of the time. A quarter of responses (25 percent) felt that it happened between '61 percent-80 percent' of the time and 13 percent felt it happened between '21 percent - 40 percent' of the time.

The survey also asked whether parties alleging abuse in the form of the other parent engineering resistance, reluctance and / refusal of the children to see that parent usually provide greater financial support for their child or children than is legally required. A total of 107 legal practitioners answered this question. The most common responses were 'Sometimes' with 39 percent and 'Rarely' with 34 percent of answers. A fifth of legal practitioners felt they were unable to comment (20 percent), five percent felt this 'Usually' happened and three percent felt this 'Always' happened.

When asked if the party alleging the other party of engineering resistance, refusal and/or reluctance show flexibility and /or a willingness to compromise with respect to family finances, again the most common response of the 118 legal practitioners who answered this question (41 percent) was 'Sometimes.' Just under a third (31 percent) felt this happened 'Rarely' and a fifth (19 percent) felt that based on reflections of the last 24 months they could not comment on this question.

Similarly, when the survey then asked whether the party alleging the other parent is engineering child resistance, refusal and/or reluctance takes a child – centric approach to finances, out of the 114 legal practitioners who answered this question, 37 percent said 'Sometimes.' Just over a third (35 percent) said 'Rarely' and 19 percent told the Domestic Abuse Commissioner that based on the reflections of the last 24 months they were unable to comment. Just under one in ten (8 percent) felt the parent alleging child resistance/ refusal or reluctance 'Usually' takes a child – centric approach to finances and one legal practitioner (1 percent) said 'Always.'

Litigants in person

The changes in the scope of legal aid in private family law proceedings have led to a substantial decrease in legal representation. In 2022, the proportion of disposals in private law cases where neither the applicant nor the respondent had legal representation was 39 percent, whilst the proportion where both had legal representation was 19 percent. This was up two and down two percentage points respectively compared to 2021.[13] The survey gave legal practitioners a number of options to describe the nature of litigants in persons' behaviour in court. It provided a number of communication styles and asked legal professionals to answer 'yes' or 'no' to the question. Respondents could select more than one style of communication so percentages may not sum to the same number as respondents. The results are based on the number of answers for 'yes' to each type of communication.

13 Family Court Statistics Quarterly: October to December 2022, Family Court Statistics Quarterly: October to December 2022 - GOV.UK (www.gov.uk)

When assessing the communication style of a litigant in person who is alleged to have abused the other parent, how would you describe their approach to the other parent and/or their legal representation?	Percent (%)
Aggressive	68%
Accusatory	65%
Hostile	59%
Domineering	54%
Passive aggressive	53%
Condescending	51%
Patronising	46%
Business like	23%
Unclear	22%
Civil	22%
Genuine	19%
Open to negotiation	17%
Compromising	17%
Flexible	14%
Collaborative	13%
Clear	12%
Kind	9%
Based on reflections of the last 24-months, I am unable to comment	1%

From the options given to participants completing the survey, the most common forms of communication styles of litigants in person who are alleged to have abused the other parent are aggressive (68 percent), accusatory (65 percent) and hostile (59 percent).

An 'Other' option was also given in the survey and an open text box gave space for legal practitioners to give further views on this. A total of 37 legal practitioners who responded to the survey gave further comments on this question. These comments were coded and split into themes. Where the comments covered more than one theme the response was coded to reflect this.

The most common response (59 percent) was that litigants in person vary considerably and that their behaviour and communication style cannot be generalised.

"Very much depends on the particular litigant in person."

"It really varies from case to case."

"It very much depends and is fact specific and at any given time each description above has applied."

A quarter of the responses (24 percent) further highlighted that litigants in person can be abusive, misogynistic and even aggressive towards legal practitioners and the parent they are representing.

"Cases being pursued by LiPs who are clearly perpetrators they are often passive aggressive, refuse to compromise are unreasonable etc etc. Rarely are they openly hostile on the whole continuing abuse is much more subtle."

"Defensive, rude, ill-informed, not child focussed"

Five (14 percent) of the added responses felt that litigants in person were often confused and out of their depth and this could make their communication style and behaviour more difficult.

"LIP are usually out of their depth in the court environment, especially faced by a legally trained professional representing the other party. This usually means the LIP is hostile (they think you are trying to stitch them up), aggressive (because they are scared) and uncooperative (because they think you are going to misrepresent what they say)."

Two respondents' comments were categorised under 'other' as their responses did not fit with the coded themes. These responses include litigants in person making cross allegations of abuse and the other stating that conclusions cannot be made until facts are found in proceedings.

The survey then asked more generally about communication styles of litigants in person. Survivor correspondence and the Domestic Abuse Commissioner's roundtables with victims and survivors have informed the Office that perpetrators, when acting as litigants in person, can be hostile in court proceedings and hearings. The survey wanted to understand if this was felt by solicitors and barristers representing parents and presented several behaviours commonly described by victims and survivors. For each behaviour the survey gave and option of 'yes' or 'no.' The following percentages show where the respondent has answered 'yes.'

Are any of the following communication methods used?	Percent (%)
Excessive communication	75%
Demands	69%
Hostile negotiation	64%
Imposing timeframes	58%
Reneging on agreements	57%
Unclear communication	52%
Punitive measures	35%
Other	5%
None of the above	3%
Based on reflections of the last 24-months, I am unable to comment.	1%

Three quarters of respondents to the survey (75 percent) felt that excessive communication is used by litigants in person. Over two thirds (69 percent) felt that demands were used as part of litigant in person's communication style and 64 percent felt that hostile negotiation was used as a communication method.

When asked if the communication style of the parent alleged to be abusive was intentionally stress-inducing to the other parent, just over half (52 percent) of respondents answered 'Sometimes', a third of respondents (36 percent) said 'Usually' and 12 percent stated 'Always'.

We know from the Harm Panel report that a tactic used by perpetrators of abuse is to threaten to, or apply for, continuing litigation.[14] The survey asked legal practitioners whether they felt this was the case in their experiences at court. The questions asked whether threats of further litigation were communicated by parties who are alleged of being abusive to the other parent. Almost two thirds of respondents (63 percent) responded to the multiple-choice question with 'Sometimes yes and sometimes no.' A quarter of respondents (25 percent) gave the answer 'Usually, yes' and 9 percent answered 'No - not normally.' Four respondents (3 percent) felt they could not answer this question based on their experiences in the past 24 months.

The survey asked about legal practitioners' experience of litigants in person and their finances when self-representing. It asked whether parties with available resources choose to self-represent as litigants in person. Almost two thirds (61 percent) of the 119 legal practitioners who answered this question felt this was the case 'Sometimes.' A quarter (24 percent) felt this happened 'Rarely' and one in ten (11 percent) felt this happened 'Usually.'

When asked if this was felt to be strategic, the answers were split almost equally. Out of the 122 legal practitioners who answered this question 47 percent said 'Yes' and 44 percent said 'No.' Eleven respondents to the survey (9 percent) felt that based on the reflections from the last 24 months they could not comment on this question.

To further understand this question, the survey asked if it is strategic to be a litigant in person, why would this be? A choice of five explanations were given and respondents could select as many as they felt were applicable. There were 117 responses to this question. The most common reason selected was litigants wanting an opportunity to speak in court (38 percent) . The second most common response was 'to incur fees for the other side who instruct Counsel and therefore have to prepare bundles' (26 percent).

Do parties with available resources choose to self-represent as Litigants in Person? If yes, why?	Percent (%)
To have an opportunity to speak in court	38%
To incur fees for the other side who instruct Counsel and therefore have to prepare bundles	26%
To ensure their case is put forward	16%
To avail higher protection with court orders	14%
To avoid paying the other parties legal fees under Schedule 1	6%

Twenty-nine legal practitioners commented further in the open text box about tactics that litigants in person may use. These were split into themes and due to some comments discussing more than one theme, there are 32 codes. The percentages represent the proportion of respondents, so totals may not add up to 100 percent.

The most common responses were that litigants in person, who have the funding to pay for representation, represent themselves so they can avoid taking legal advice and avoid being told what

14 Ministry of Justice (June 2020), Assessing Risk of Harm to Children and Parents in Private Law Children Cases

to do (28 percent).

"An inability to accept the legal advice they have received about the strength of their case"

"Additionally there is often an element of narcissism involved in believing that they understand the system and can do a better job than a solicitor."

The same number of responses (28 percent) felt that litigants in person believe, and often do, get treated more leniently by the court and Cafcass.

"partly for the tactical advantage of being treated better by the court"

"They believe that the Court will give them further opportunity and less restriction on the basis that they are not legally qualified and use that as a means of manipulating the situation."

Five legal practitioners (17 percent) also felt that litigants in person want to save costs.

"To avoid the cost of representation"

Four respondents (15 percent) felt that litigants in person represent themselves to continue their abusive behaviour and that it allows them to be abusive and hostile in court.

"It is mostly because they want the ability to intimidate the non abusive party in the court arena"

Four respondents (15 percent) to the survey felt that the answer to the question should be 'Sometimes' and that sometimes litigants in person represent themselves as a tactic but other times this is not the case.

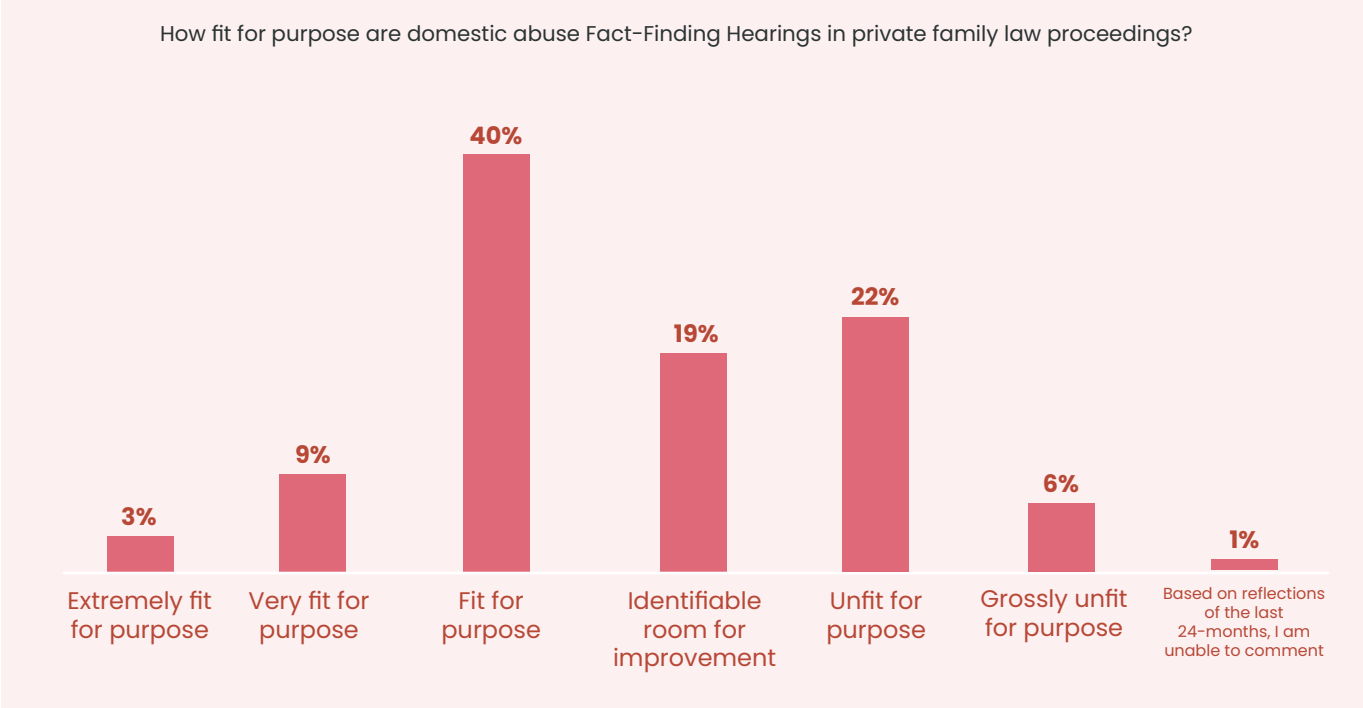
"Answer to Q 26 is yes and no - but generally a LIP by choice gives the reason that their solicitor won't do what they tell them to"

Two responses (7 percent) noted they have not seen litigants in person use their position in court tactically and one person felt this mostly happens when the litigant in person finds it difficult to work with professionals.

The survey also asked whether parties who represented themselves pay for legal advice that does not appear on the court records. Out of the 120 legal practitioners that answered this question, two thirds (66 percent) answered 'Sometimes.' The second most common answer was 'Usually' with 12 percent and one in ten respondents answered 'Rarely.' Two responses (2 percent) said 'Always' and 13 legal practitioners (11 percent) felt they could not answer this question based on their reflections in the last 24 months.

The Family Court

The survey asked legal practitioners how effective they felt magistrates were at handling domestic abuse cases. A total of 129 legal practitioners answered this question. Nearly 80 percent of respondents answered either 'Not at all effective' or 'Not so effective', 42 percent and 36 percent respectively, and 14 percent felt they were 'Somewhat effective.' Three respondents to the survey



(2 percent) felt they were 'Very effective' and one respondent (1 percent) felt they were 'Extremely effective.'

When asked if fact-finding hearings were fit for purpose, out of the 129 responses to this question, the most common response was that they were 'Fit for purpose' (40 percent). Just over a fifth felt they were 'Unfit for purpose' (22 percent) and just under a fifth (19 percent) felt there was 'Identifiable room for improvement.'

An open text box was available for legal practitioners to further comment on how fit for purpose domestic abuse fact-findings hearings are in family law proceedings. Forty-eight legal practitioners chose to comment on this, with many noting more than one concern. This meant the responses were split into 73 coded answers. The findings here show the proportion of the 48 legal practitioners who provided various responses and, therefore, the percentages will not add up to 100 percent.

A third of the legal practitioners who made further comment (33 percent) noted their concerns around delays in the Family Court when fact–finding hearings take place.

"Fact-findings are helpful to enable soundly based welfare decisions. But they create huge delays and can be deployed to create a new status quo with little or no contact and this leads to resistance reluctance and refusal in children even where the findings sought are not made or a comparatively trivial (or not one sided)."

"The key issues are the delay that is caused by listing these cases and the huge financial burden this places on the parties (I practice exclusively in private law proceedings)"

"The issue is the time it takes to get them heard. Fact Findings should be before a judge sooner rather than later then everyone can focus on welfare"

The second largest theme was the lack of consistency across courts, with 21 percent of respondents commenting on this.

"A consistent approach across all courts is needed to special measures, evidence etc, so that clients can understand the process clearly. Last minute adjournments are harmful and costly. I believe the FFH process itself is necessary to establish the facts, on which welfare decisions can be made."

"Magistrates are almost always useless, biased, and unsafe to sit as tribunals. They have neither the appropriate training nor the requisite experience to adequately decide such important matters. The family court's use of the civil burden for some of the most serious allegations is extremely concerning at times. The variety of outcomes depends totally on the tribunal: 'different judge = different outcome' is always true. That should not really be the case."

Issues around evidence and concerns around how Scott Schedules are used were discussed equally, with 17 percent of practitioners commenting on these issues.[15]

"Scott schedules are a real problem, as are the judges who tell you to 'pick your best 5 or 10 allegations as the Court will not hear any more than that'. All Judges need proper domestic abuse/coercive control training and that should be a MANDATORY AND NOT OPTIONAL requirement for all of the judiciary. Many simply do not understand it and so lack the expertise and empathy needed for these cases. Victims and children are being failed as things stand. A complete overhaul is needed."

"It is usually difficult to enough independent evidence to make them worthwhile. The other difficulty is being clear enough about what allegations are being sought and how they are to be proved"

"Although some improvements are seen there is still a tendency to restrict allegations in coercive control and abuse cases leaving the court with an incomplete picture and children at risk of harm. A lack of forensic clarity and limits to finding caused by lips being unable to contribute to e.g. police information leads to delay"

Other themes that emerged from the comments included a need for training for Judges and Magistrates on domestic abuse (15 percent of respondents), when fact–finding hearings do take place, neither parent recognises the findings so the position of the parties does not change (15 percent of respondents), they continue the abuse for the victim / survivor of domestic abuse (8 percent of respondents), the cost of fact-finding hearings (8 percent of respondents) and the courts not using special measures to support victims and survivors (8 percent respondents).

The survey asked how often emergency processes were used in the Family Court.[16] This was asked in relation to privately funded family court proceedings and also in cases where legal aid is used. This question attempted to further identify pressure-inducing effects in the run up to already stressful proceedings and indicated that it is an issue to give consideration to.

Out of the 128 respondents who answered the question relating to privately-funded applications, over 90 percent of practitioners said there were 'Always', 'Usually' or 'Sometimes' emergency applications, (5 percent, 27 percent and 59 percent respectively). Similarly, for family court proceedings using legal

15 For explanation of a Scott Schedule, please see: https://www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/general/scott-schedule-note

16 For the purposes of this survey, the Office uses the term 'emergency' to encompass: Allegations of harm and abuse made within the C1A form and any other measure utilised to fast-track Children Act 1989 proceedings.

aid - out of the 121 respondents who answered the question – 96 percent said there were 'Always', 'Usually' or 'Sometimes' emergency applications, (10 percent, 45 percent and 41 percent respectively).

The Domestic Abuse Commissioner wanted to know what family law practitioners felt could improve private family law proceedings. Practitioners were given options (shown on the table below) and asked to answer 'yes' or 'no' to each option. The table below shows the answers for 'yes.'

Which, if any, of the following do you consider to be areas which require improvement in private family law proceedings?	Percent (%)
Access to legal aid	79%
The use of magistrates and/or variable quality of legal advisors	59%
Court administration	59%
Cafcass	59%
So-called (parental) 'alienation' allegations	54%
Lack of trauma informed training / judicial understanding of domestic abuse	54%
Minimisation of domestic abuse	44%

In order to gain an understanding of how family law was viewed across the legal profession, the survey asked legal practitioners how their fellow practitioners perceive family law cases. The objective of this question was to ascertain the legal profession's cultural view of family law cases to contextualise further experiences of the Family Court.

Just under two thirds of the 129 legal practitioners who answered this question (64 percent) felt family law was viewed 'Unfavourably' and just under a fifth (19 percent) felt that it was viewed 'Favourably.' Over one in ten (16 percent) of legal practitioners felt that they could not comment on this question.

An open text box was given to survey respondents to allow them to expand on their views of how the legal profession views private family law cases. Forty five of the 138 legal practitioners commented further. Where an answer covered more than one theme it was coded in the analysis to reflect this, resulting in a total of 52 codes. Seven of these comments (16 percent) were from legal practitioners who felt that that they could not answer the question, but the comments they were able to provide have been included in the analysis.

A third of respondents (33 percent) focused on the view that private family law is exhausting, hostile and a waste of time with parents fighting over minor issues.

"There is a terrible inequality of arms which makes private law cases extremely difficult, tiresome and depressing to run - there is also a disjoint [sic] between private and public law in terms of the seriousness placed on allegations of harm and evidencing the same, exposing children to a risk of harm and leaving lay parties to manage contact by themselves in cases in which, if the allegations had been made in a public law arena, professional supervision of contact would be recommended"

"Private law family cases are perceived by many to be of limited actual utility for children in cases where one parent simply refuses to comply with the order made by the court. Enforcement tends to lead to protracted variation applications and the case ends up re-litigated whilst the child has no contact or limited contact."

"They are enormously draining"

"People are tired, cases are delayed, clients are angry and traumatised. No one is paid sufficiently for the amount of work for private family law cases, especially fact finding hearings, which require enormous amounts of work and extensive disclosure to be reviewed."

Eighteen percent of respondents reflected on the poor legal aid fees.

"They are more difficult and are paid at a lower rate than public law cases, so most Family practitioners do not wish to engage with them"

"Those which are legally aided are often avoided by my fellow practitioners as the pay is so low. Most tend to do care work which leaves a lot of parents in private proceedings with legal aid without representation or with very junior members of the Bar representing them."

"...Some opt not to do publicly-funded private law because the rates of pay are lower than for public law, despite the fact that the work required can be at least as much."

The difficulty of working with litigants in person was also noted by 16 percent of legal practitioners.

"They are a nightmare, especially with the inexorable rise in the number of LIP since Legal Aid was withdrawn for respondents and the eligibility criteria reduced to such an extent that very few people are now eligible. Justice is not being served, and it is definitely not accessible to all."

"The key problem with private law family cases is the lack of parity in representation. There are many cases where the mother of the children makes allegations of domestic abuse in order to get legal aid funding. She may be the applicant or the respondent. The father of the children does not qualify for legal aid funding and is at a huge disadvantage. If one party is legally aided, the other party should be too. It would make proceedings far more efficient if both parties were legally represented and cause less stress to both parties."

Other practitioners commented on delays in private family law proceedings (9 percent), that private family law is avoided by many legal practitioners (9 percent) and that there is a lack of understanding from legal practitioners and judges around domestic abuse in private family law (7 percent).

A category of 'Other' comments (9 percent) included practitioners working outside of family law being shocked at the day-to-day reality of it, that experiences of private family law often depend on the judge and the court, that there is a view that mandatory mediation and arbitration should replace it and that family law practitioners can make a lot of money by encouraging their clients to fight in court proceedings.

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