



# Domestic Abuse & The Family Courts

A review of the experience and safeguarding of survivors of domestic abuse and their children in respect of family court proceedings



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# Foreword

## *Domestic Abuse and the Family Courts*

We have known for a long time how hard it is for someone to acknowledge they are in an abusive relationship, let alone flee that relationship, keep their family safe and try to rebuild their lives. Even when someone is ready to take the difficult and brave step of leaving an abusive partner, they will face many barriers. These include systems that at times force survivors back into close proximity with their abusers during complex processes and proceedings, undertaken in the hope that they can keep themselves and their children safe.



The family court system is one such an example. Of course, it can and does protect survivors and their children, but at the same time we need to understand it is often a source of further stress and anxiety. Sometimes 'the system' is deliberately used by perpetrators to inflict trauma on their victims, employing its traditional and often complex procedures for their own ends. Unfortunately, such cases very often involve domestic abuse.

Over the past year or two, a lot has been said about the family courts, so I was keen to commission this report, not to criticise the people and processes involved, but to offer a vehicle for learning and improvement. What's more, I have personally met women whose former partners have tried to exert control over them, using the family court as a weapon in their abuse.

This much-needed and well-written report lifts the lid on the complexities and challenges in the system, seeking feedback from those who have found it a struggle. Not everyone has experienced these challenges, and indeed the family courts, Cafcass, support services and others do work well together to keep children protected and individuals safe. However, collectively we need to be honest about those times when men, women and children feel let down and failed by the system, albeit more often than not, women are most the impacted. I am grateful for the feedback and conversations that took place during the drafting of this report, and look forward to an open and constructive conversation about how we can collectively improve, here in York and North Yorkshire as well as more widely.

The recommendations do make it clear that measures need to be taken, and we need to think about how we can make positive change, as quickly as possible. Some recommendations in the report are 'national' and therefore somewhat out of our hands directly, but that shouldn't stop us adding our voices to those already calling for change. In joining together to make our local improvements, I am confident we all share the same goal, which is to protect children and families as best we possibly can.

To that end, I look forward to working positively with partners to ensure this report leads to improvements and that families are better supported and kept safe.

Julia Mulligan

**Police, Fire and Crime Commissioner for North Yorkshire**

# Executive Summary

This report details the findings and recommendations of an extensive project focusing on the experience and safeguarding of survivors of domestic abuse and their children who are part of Child and Family Court Proceedings in York and North Yorkshire. Some of the issues identified during this short-term strategic work have already been progressed, for example a new pathway in place around non-molestation orders, whereas others remain as recommendations for partners to progress collectively. Moving forwards, this report is intended to be used as a source of information and evidence to improve outcomes and experiences.

This review was commissioned by the North Yorkshire Police, Fire and Crime Commissioner, and makes up one element of a wide-ranging, regional programme of work funded by the Home Office; 'Domestic Abuse: A whole Systems Approach'. The review was conducted by a Child and Family Court Liaison Officer (CFCLO) employed by Independent Domestic Abuse Services (IDAS), the largest specialist domestic abuse service in Yorkshire.

The evidence collected and used for the report is comprehensive and varied, including all partners across the family court partnership, involving victims and survivors themselves, support workers, mediators, policing, Cafcass, the judiciary and others. It was important to get a cross-section of evidence and feedback to ensure not only specific areas for improvement were identified, but that thematic trends and patterns were also picked up and understood.

The voice of victims and survivors, and support workers in their varied roles, were central to this review. To ensure that voice was heard, the CFCLO undertook three anonymous surveys to which over 90 individuals contributed, assessing the findings against the feedback, workshops and focus groups also done as part of this project. The aggregated feedback in this report, split into three themes, is a reflection of that feedback as a whole, and rooted in the experience of victims and survivors going through the family court system. When taken together in that way, the findings have fit into clear, well-defined themes:

1. Support for people attending court including Legal Aid and Litigants in Person
2. Domestic Abuse best practice
3. Civil and Criminal

Beyond the survey and feedback from those going through the family court system, the work of the Child and Family Court Liaison Officer has been extensive and inclusive, already having a positive impact which will stretch into the medium and long term.

As part of the whole systems approach, the officer has:

1. **Mapped the landscape and user journey** – Undertook a detailed strategic and operational mapping activity to understand the user journey and the strategic governance of the Family Court.
2. **Consultation** - Coordinated a consultation attended by over 50 stakeholders.
3. **Dedicated working group** - Convened a Domestic Abuse & Family Court working group which now meets quarterly.
4. **A Family Court website for survivors** - Developed a website with detailed information about the Family Court to assist survivors. <https://familycourts.idas.org.uk/>

5. **Improved information about Family Court** – Developed and implemented a communications plan including distributing 10,000 leaflets and 15,000 postcards. The postcards list the warning signs of domestic abuse and direct people to resources about Family Court Proceedings on the new IDAS Family Court website. 15,000 postcards have been distributed to the Police and partners.
6. **Developed resources and information packs** - Developed a range of resources and information packs to assist stakeholders in understanding the family courts and the impact of domestic abuse on proceedings, including three short videos. The information pack will now be sent out with notification of hearings for Contact Arrangement Orders, including advice and information about getting support. This has been shared with all North Yorkshire Courts.
7. **Made improvements to special measures** - Worked closely with the courts to make improvements to the provision of special measures and to make more people aware of them, including a video hosted on the IDAS Family Court website.
8. **Improved the safeguarding of survivors** - Worked at a strategic level to improve communications and develop robust processes to improve the safeguarding of survivors, including a documented pathway for service of non-molestation orders to the Police. This included starting a working group to develop a pilot to improve the recording and enforcement of non-molestation orders with North Yorkshire Police and Durham Constabulary.
9. **Training offered to all stakeholders** - Feedback from survivors and stakeholders suggested that training on coercive and controlling behaviour would be of benefit. Therefore, three training inputs on coercive and controlling behaviour were offered to all stakeholders. They were attended by 112 people.
10. **Development of volunteer programmes** - Convened a steering group of stakeholders to oversee the development of volunteer programmes to provide support for survivors going through the family courts. Three universities have committed to a volunteer programme involving law students being trained to become Community Legal Companions as part of the CLOCK project. <https://clock.uk.net/> Furthermore, began the development of a 'Court Support' volunteer programme to train people to attend the court building with survivors as moral support.
11. **Developed a pilot five-week support group programme for survivors going through Family Court proceedings.** The pilot group was attended by six survivors, delivered by colleagues at IDAS Scarborough Office.
12. **Support for survivors** - Arranged pro-bono legal support, attendance at court and McKenzie friends for five people. Individually offered support to five people including providing resources and information to assist them.

The project has started a much-needed dialogue between the different parties involved in supporting domestic abuse victims and survivors as they move through the family courts. The work has benefited from the commitment and enthusiasm of partners to make much needed improvements for survivors. No system is perfect, and there are clearly areas for improvement nationally but also locally in York and North Yorkshire. The review shouldn't undermine the good work that has already been done, but build on it, increasing understanding further and ensuring that each part, in the often long and complex arrangements around family courts, always recognises abuse and supports survivors and their children appropriately. Children are of course the focus of family court proceedings, and rightly so, but that shouldn't mean victims of abuse aren't also heard, and the impact abuse can have on children understood.



# Summary of recommendations

The report, building on the full suite of work undertaken by the CFCLLO, highlights several recommendations under each of the three themes of the report. The themes themselves reflect the findings and discussions across all stakeholders and the complexity of the family court system. The main recommendations of the review are highlighted here for ease. Under each theme in the report, a detailed explanation of the outcomes of the project has been provided with some additional recommendations.

## 1. Recommendations - Support for people attending court, including Legal Aid and Litigants in Person

### **National:**

- The provision of Legal Aid should be extended where domestic abuse is a factor. The financial means test makes Legal Aid inaccessible to many survivors and leaves their children at risk from further abuse and emotional harm.
- Where Legal Aid is provided to one party the other party should be provided with representation to ensure that there is parity.
- Judges should have powers and resources to appoint legal representation when they feel a party is vulnerable or is not able to effectively represent themselves. Currently, the application process for exceptional circumstances is prohibitive. This would be addressed by the Domestic Abuse Bill.
- CEOs from the leading domestic abuse agencies to develop a proposal for access to Legal Aid which would improve the safeguarding of survivors and their children
- National funding should be provided to enable Litigants in Person (LiPs) from all areas to access support services such as 'Support in Court', previously known as the Personal Support Unit (PSU). The MoJ review of LASPO failed to address the extent of the concerns raised in this report. A very minimal amount of funding has been made available to assist with the voluntary support being offered by various services. However, these services do not operate in York and North Yorkshire. The Secretary of State for Justice may be provided with a copy of this report.
- A working group to be established under the National Family Justice Board, with key stakeholders to review the provision of legal services that are attempting to plug the gap in provision created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This should also include a review of the service provided by firms with Legal Aid contracts such as National Centre of Domestic Violence and voluntary services such as the PSU. This would involve mapping the services currently available and reviewing the standards of service.



- Domestic Violence All Party Parliamentary Group (APPG) to review LASPO considering MOJ report and propose amendments to assist with the safeguarding of survivors of domestic abuse and their children.

**Local:**

- As a result of this review, a project has been set up locally to train law students to provide a voluntary support service to LiPs. The Keele University CLOCK Project will be adopted by the three universities in North Yorkshire to provide this support. <https://clock.uk.net/> All stakeholders will need to provide support to ensure that this pilot project is successful. The pilot is currently focused on York County Court, other courts in North Yorkshire will not be covered under the current proposals and therefore action needs to be taken to address this.
- Considering the restrictions to the provision of Legal Aid, local partners should consider how they can support the development of a network of pro-bono solicitors who can assist LiPs who are particularly vulnerable. The work of YorLaw is limited to residents of York, there is no similar project in other areas of North Yorkshire.
- A Domestic Abuse & Family Court working group has been convened and is currently chaired by an IDAS representative reporting into the Domestic Abuse Joint Coordinating Group (DAJCG) which is chaired by the Head of Safer Communities. The group supports the development of the CLOCK project and has a range of additional objectives agreed by its members, including reviewing and addressing the training needs of stakeholders involved in Family Court. This working group should also feed into the Local Family Justice Board (LFJB). Since writing this report, the LFJB have proposed a domestic abuse subgroup. It has been proposed that the working group established as part of this project reports in to both the DAJCG and the LFJB as a subgroup of the LFJB.
- Promote and assist with further development of the IDAS Family Court website and the printing of the postcards for Police to give out at incidents.

## 2. Recommendations - Domestic Abuse best practice

**National:**

- An independent inquiry into the family courts and associated stakeholders.
- An independent research study to review the longitudinal impact of family court decisions on children.
- A suite of data provided by agencies involved in the Family Court system to allow for transparency in relation to domestic abuse best practice. The suite of data should be

agreed collaboratively with a range of agencies. This could include the number of orders and injunctions, arrests for breaches and prosecutions. Additionally, information could be shared about the safeguarding checks, including the number of EIT calls made, reports requested from Police. Also, information about the number of orders returning for enforcement and under what grounds, the number of cases where domestic abuse is a factor (not proven) where finding of facts have taken place and where cases have been prevented from coming back to court because the system is being abused. It would also be useful to share data on perpetrator programmes so the effectiveness of these could be more widely known.

- A review of mediation services in relation to domestic abuse to ensure that best practice and adequate safeguarding measures are taken.
- In cases where domestic abuse is a factor, a more robust, mandated information sharing protocol should be implemented to support Cafcass. Enabling workers to base recommendations on the information held by all agencies involved with the family to ensure that a holistic view is taken. This could involve Cafcass being able to access the Police National Database directly to provide a broader picture of offender behaviour based on Police intelligence held on the database. Currently Cafcass have direct access to the PNC database.
- Stakeholders to explore the role IDVAs can play in the system to improve the safeguarding of survivors.
- A screening process for families coming before the courts multiple times which triggers multi-agency involvement to avoid further abuse through the courts.
- A collaborative training and development plan to improve the consistency of understanding of domestic abuse among all stakeholders through information sharing and focused training inputs.
- A dedicated programme for survivors of domestic abuse to assist with parenting following separation which considers safety and risk and is also trauma informed. This should be offered instead of the Separated Parents Information Programme (SPIP) which is not suitable for survivors of domestic abuse, even at standard risk.
- National Family Justice Board to consider the support available for survivors of domestic abuse to keep themselves and their children safe when contact is court ordered.

**Local:**

- Partners to agree a suite of data which can be obtained locally to provide an insight into the effectiveness of the safeguarding of survivors and their children involved in

family court proceedings. This could include the number of orders and injunctions, arrests for breaches and prosecutions. Additionally, information could be shared about the safeguarding checks, including the number of EIT calls made, reports requested from Police. Also, information about the number of orders returning for enforcement and under what grounds, the number of cases where domestic abuse is a factor (not proven) where finding of facts have taken place and where cases have been prevented from coming back to court because the system is being abused. It would also be useful to share data on perpetrator programmes so the effectiveness of these could be more widely known.

- Improved mechanisms to enable survivor's feedback to be heard and acted upon at all levels and by all stakeholders, including the judiciary.
- Survivors to speak at the local Domestic Abuse & Family Court working group and for case studies to be reviewed as opportunities for learning and development.
- The local Domestic Abuse & Family Court working group to assess training needs and feed into the Domestic Abuse Join Coordinating Group (DAJCG)
- IDAS to have representation on the Local Family Justice Board
- IDAS and Cafcass to work closely together on reciprocal training inputs
- IDAS to work with all partners, including mediators to improve knowledge and understanding of IDAS services
- Stakeholders to explore the role IDVAs can play in the system to improve the safeguarding of survivors.

### 3. Recommendations - Civil and Criminal

#### **National:**

- A nationwide system for recording and flagging protective orders to improve safeguarding of victims and survivors and enable Police officers to more effectively respond to breaches.
- An information sharing protocol to ensure that the Family Court is aware of any ongoing criminal proceedings that may impact on the case.

- Improve the protocols for Police sharing information with the Family Court to ensure judges have all the information to make safe orders. In North Yorkshire, the CFCLC worked with the Police Legal team on this and has documented a pathway for survivors.
- A national review of protective orders conducted as a joint initiative between the National Oversight Group on Domestic Abuse, Ministry of Justice, the National Family Justice Board and the National Police Chiefs Council leads on domestic abuse. This should build on existing research conducted by Nick Dale and Martin Jebb at CGI supported by the Sussex Police Crime Commissioner Katie Bourne.

<https://www.cgi-group.co.uk/en-gb/white-paper/why-civil-and-criminal-justice-need-to-work-better-together-to-protect-victims-of-domestic-abuse>

### **Local:**

- North Yorkshire Police to work with partners, including Durham Constabulary, CGI and Crest to develop a pilot programme to record orders on the Police National Database. The aim of the pilot is to improve the intelligence on offenders, improve enforcement and rates of prosecution from breaches of non-molestation orders.
- Improve links between the Local Family Justice Board and the Local Criminal Justice Board.
- A representative from the Police Legal Team attends the Local Family Justice Board meetings.
- The Domestic Abuse & Family Court Working Group to review the effectiveness of non-molestation orders locally.

## **Further background**

### **Methodology**

The overarching methodology was to understand the experience of victims and survivors of domestic abuse going through the family court, investigate these in more depth with partners so that recommendations could be made and, where possible, act together to address them. Where this has not been possible further actions have been suggested, both at a local and national level.

The review has taken a broad scope to include a wide range of stakeholders. The aim has been to enable stakeholders to share their concerns frankly and to facilitate discourse and collaboration in the interest of survivors. With this in mind, the views of stakeholders have been included via informal conversations both on the phone and in person.

Anonymous surveys have been used to collect qualitative data from stakeholders, including from professionals working with people affected by domestic abuse and going through the family courts;

survivors of domestic abuse with experience of the family courts, and Independent Domestic Violence Advisors (IDVAs) employed by IDAS.

Many of the victims and survivors who took part in the survey are also in ongoing proceedings, meaning anonymous contributions were the only way for this review to gather those experiences. Whilst it can be challenging to take specific findings or recommendations from single case studies, the aggregated feedback from over 90 survey participants, including representatives from all stakeholder groups, provides clear and helpful feedback as to areas for improvement. The experience of victims and survivors cannot be overlooked, and indeed all partners should have those shared experiences front of mind when progressing recommendations and seeking improvement. It is also worth noting at this point that the survey did not seek specifically positive or negative views, but the views of victims and survivors in the broadest sense.

A consultation event was also held with over 50 stakeholders attending. The results of the surveys were included in the consultation to facilitate discussions about existing concerns and recommendations for improvement.

In addition to this, the voice of survivors has also been included from a focus group conducted by IDAS on the subject. Case studies and quotes have been included in this report to highlight the experience of survivors in relation to the concerns raised. To ensure the integrity of the survivor's voices, no changes have been made to the quotes taken from the surveys even where there are typographical or other errors.

The format of this report mirrors the overarching methodology to identify concerns and demonstrate the outcomes of the short-term project with further actions identified and suggested stakeholders and/or strategic boards to take oversight.

## Limitations

Although the review aimed to have a broad scope, it is important to recognise that there are some limitations. In response to the concerns raised, the review has mainly focused on Family Court proceedings related to protective orders and child contact arrangements. The survey itself didn't account for the response from partners to the original report of abuse itself e.g. good or bad policing practice, and nor did it intend to. The focus has always been on family court proceedings specifically.

Where operational 'quick-wins' have been identified, efforts have been made to facilitate these within the project timescales. Where there have been limits to what can be implemented, this has been clearly identified in the report.

Whilst a range of stakeholders have been invited to take part in the project, there are several voices that have not been heard during the review or were underrepresented. Most importantly, due to the limitations of the project and the ethical implications, the voice of the child has not been sought directly. The impact of this has been mitigated by holding meetings with those stakeholders who are closest to children involved in the family courts, such as: Cafcass, Social Care, IDAS Children's team, and survivors. However, a recommendation of the review would be that a large-scale inquiry should be conducted into the child's experience of court proceedings and the long-term impact of orders on children.

The legal landscape is complex and there are areas which have proven challenging to unpick in relation to their impact on the experience and safeguarding of survivors and their children. Where further investigation may be needed, this has been highlighted in the report.

# Theme 1: Support for people attending court, including Legal Aid and Litigants in Person

In North Yorkshire and York, if you cannot afford a solicitor and do not qualify for Legal Aid there are very limited support services available. Citizens Advice offer a very limited service to York residents and the Personal Support Unit (PSU), which operates in some courts across the country, does not operate in North Yorkshire and York. In York, YorLaw, covered by Citizens Advice York, provide a service to residents of York with children going through the Family Court. They can offer limited legal advice and in some cases a McKenzie Friend service, they cannot take on cases or represent clients in court.

Serious concerns have been raised about the efficacy of the limited availability of legal support for victims of domestic abuse and indeed parents more widely. Additional concerns are raised where parties have low literacy levels, are disabled or have a learning disability. Judges in North Yorkshire and York report that complex cases with vulnerable parties are being heard with no support for the parties in any form. Whilst there is provision for 'exceptional circumstances' to apply for Legal Aid, the process of application is arduous, taking hours to complete the forms and solicitors are concerned about submitting applications which may be rejected because of the impact this has on their Legal Aid contract. This is leaving vulnerable people and their children in complex and often risky situations with no access to support.

Furthermore, where only one party is represented this can have a negative impact on proceedings with judges often having to step in to assist the unrepresented party to enable the case to proceed or key factors or evidence being omitted due to a lack of knowledge or experience.

## From the survey conducted as part of this project including over 45 survivors of domestic abuse:

- 14% said that they had received no support at all through the Family Courts.
- 73% said that they had the support of a solicitor.
- 52% of respondents either disagreed or strongly disagreed with the statement 'I was well prepared for the experience'.
- 61% of respondents did not feel safe.
- 32.5% did not know that they could request screens, or separate waiting rooms.

## Legal Aid

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 limited access to Legal Aid. This is particularly impactful where domestic abuse is alleged, or where domestic abuse is a factor but may not yet have been identified because of the safeguarding concerns for survivors and their children. Without legal support, many survivors of domestic abuse may not know to fill out the relevant forms to inform the court about their situation or how to prepare themselves to present the evidence of their abuse. The lack

of support in court leads to court proceedings being drawn out and the possibility of important information not being made available to the court, or not being presented to the court in an appropriate way. Anecdotally, judges have raised concerns about the number of litigants in person and the impact this has on proceedings. Some expressed concern about the impact of only one party being represented.

In some courts, under Practice direction 12-J, judges are already preventing the cross examination of survivors (by alleged perpetrators) by putting the questions to survivors on the alleged perpetrators' behalf. However, this may also be problematic. As many alleged perpetrators will have no legal support, the quality of the questions, and the nature of the questions may be wholly inappropriate, leaving judges to make difficult decisions about how to proceed. The Family Court (at time of writing) has no resources to appoint legal representation in such cases and the number of litigants in person is increasing.

The forthcoming Domestic Abuse Bill makes the following provisions:

- A blanket ban on cross-examination in person where one party has been convicted of, given a caution for, or charged with certain offences against the other party.
- A blanket ban on cross examination in person where one party has an on-notice protective injunction in place against the other party.
- Give the court a power to prohibit cross-examination in person where it would be likely to either diminish the quality of the witness's evidence or cause significant distress to the witness being cross-examined.
- Give the court a power in specified circumstances to appoint a legal representative to conduct cross-examination on behalf of a party who is prohibited from cross-examining in person. The court-appointed advocate will be paid from central funds.

These provisions will assist survivors of domestic abuse and vulnerable victims more widely and would be a welcome step.

See the following link for the government fact sheet on cross examination.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817448/Factsheet - Cross examination FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817448/Factsheet_-_Cross_examination_FINAL.pdf)

*"I felt that the Judge was totally dismissive of domestic abuse and sided with my ex-husband as he had a barrister and I represented myself through most of the proceedings. I felt the decision was unfair and evidence was missed out of proceedings. I tried to appeal but was told it was without merit."* – **Anonymous quote from survey** (#44 "Child Arrangement Order, Non-Molestation Order, Financial Remedy Proceedings the duration in total was 20 months")

*"I always remember telling my family and friends after court proceedings what had happened and how I was treated and no-one could believe the unfairness of it all. That's the thing about family courts, it's all behind closed doors, no-one in the public knows what happens. I felt like the court system allowed the systematic re-abuse of myself by my ex. He used the system to get to me and they didn't see that. By the time my case was going on through the years, financial support for cases such as mine were non-existent so I had no other option but to represent myself. How is someone who is untrained in law, who is up against an ex with a solicitor and who feels completely intimidated just being in the same room as her abusive ex supposed to be able to clearly articulate her thoughts on such crucial and important matters. I am a confident, educated woman and thankfully in the latter stages of court had a fantastic support network, but despite all of this I really struggled emotionally to handle the court appearances. I would feel sick in the build up, be anxious, stressed and nervous about the outcome. Instead of moving forward with each court appearance, because I knew what was coming and the down right unfairness of the system, I would dread it. It had a huge emotional impact. I can't even think how women with less support, lacking in the ability to research their points prior to court are able to cope under such strain. I imagine a lot of women just give in to whatever their ex wants. I managed to keep going and focused what was best for the children. I wanted their voice heard but it fell on deaf ears. There's a general misconception that fathers have no rights in courtrooms. I felt it was the exact opposite in my experiences. It was all about his relationship with the children and how to retain that irrespective of what he did. My safety, the children's safety was completely compromised. As was our mental health. That's unforgivable for a system that is supposed to be there to protect you. If it was a criminal court, I do not believe a victim would be put in the same situations I was."* – **Anonymous quote from survey** (#5 "I have had various proceedings strung over around 6 years.")

In June 2017, The Law Society published their review of the impact of the 2012 act and drew the following conclusions:

1. Legal aid is no longer available for many of those who need it
2. Those eligible for Legal Aid find it hard to access it
3. Wide gaps in provision are not being addressed
4. LASPO has had a wider and detrimental impact on the state and society

The Ministry of Justice has undertaken an evidence-based review into the impact of LASPO Act 2012. The report was published in February 2019 with very little action promised to remedy this situation. The MoJ announced £900,000 of funding for the PSU and Citizens Advice Witness Service, however neither of these services are currently operating in North Yorkshire courts. [Read the announcement here.](#)



**All stakeholders consulted for this report agree that the limited access to legal support is having a detrimental impact upon people's access to justice and to the safeguarding of children.**

In some areas, services are attempting to plug the gap caused by LASPO by offering pro-bono support, McKenzie Friends and advocacy services. However, access to these services is patchy. In York and North Yorkshire, advocacy and pro-bono support is mainly focused on residents of York with services including YorLaw and limited advocacy services.

There are limited solicitors with Legal Aid contracts and there are confusing messages about eligibility. Anecdotally, survivors have been told that they are not eligible and then been found to be eligible by another solicitor. The number of Family Law solicitors with Legal Aid contracts in York and North Yorkshire is decreasing. The reasons cited for this is that Legal Aid cases don't pay.

Information taken from the Legal Aid Statistics England and Wales bulletin July to September 2018 suggests that the assistance provided by the Legal Aid Agency is decreasing, with less than a third of the support offered to pre-LASPO levels. Applications and grants supported by evidence of domestic abuse or child abuse have increased since the same period last year. However, there is no ability to make a comparison to pre-LASPO levels.

The National Centre for Domestic Violence, Domestic Violence Assist and National Legal Service can offer assistance in obtaining injunctions under their Legal Aid contracts. The Police often refer victims of abuse to them following an incident as they have helplines for survivors to call. However, local solicitors who provide Legal Aid may be a more effective source of legal support for victims / survivors.

## Financial impact of court proceedings

Many survivors report how detrimental the cost of ongoing court proceedings has been. Without access to Legal Aid or support through the court system many people borrow and even refinance their homes to continue to pay for legal representation to safeguard their children. The means test for Legal Aid includes Children's Trust Funds (when the applicant is a signatory) and the £8000 capital limit includes capital in property. Therefore, many survivors feel that they are being encouraged to sell their family home to cover legal costs.

In addition to this, many of the survivors who shared their experiences were resident parents and the non-resident parent was not making any form of financial contribution to the child's upbringing but was continuing to push for additional contact or to vary contact arrangements.

*"Life been on hold for 8 years while actively going back and forth to court, living day to day, waiting till we could escape ourselves. Trying to counteract the decisions as best as I could, feeling like I had to compensate the children myself for what they were going through. Extreme poverty too, which was part of the abuse, which 14 years after separation are still living to some extent, court decisions contributed to this, the impact has been devastating, 14 years after separation I'm still in some ways living with the consequences of that abuse, it's been impossible to fully recover, and regain a life."* – **Anonymous survivor (#11)**

*"Financially destroyed me for 2 years after but gave my kids the safest judgments I could of asked for. Just wished they had seen it sooner and not triggered re visits whilst contact had stopped and wait untill the final hearing was over before they decided to put my kids back in contact and imposed danger and mental abuse from there farther in supported contact"* – **Anonymous survivor (#21)**

*"I feel the financial aspect has been horrendous I have got myself into massive debt to justify my actions. I felt that CAFCASS didnt listen and generalised my individual case and child to being the same as every case."* -**Anonymous survivor (#39)**

*"I couldn't afford to go to court.*

*"My children no longer have a relationship with their paternal family due to their mother's coercive and controlling abuse. They are left alone, often overnight as I am no longer there to look after them."* – **Anonymous survivor (#3)**

## Legal Aid Case Study

Sarah (not her real name) spoke to me on the phone and agreed for a summary of her experiences to be included as a case study in this report.

Sarah was in an abusive marriage. She separated from her husband. Her husband went to the Family Court for an order to try and have the children removed from her care which meant she had to go to court. Sarah sought help from a solicitor who said that they could get Legal Aid to cover the legal costs. However, they were reluctant to apply and kept putting off the application. Sarah contacted the Legal Aid agency herself to confirm that she was eligible and informed her solicitor. He assured her that everything was in order and that he would apply when the time was right.

Sarah explained that she went to court and was represented by a barrister who was inexperienced and not fully trained. She told me that the barrister was not informed that Cafcass had recommended that her ex-partner should have no contact with the children. She said the result was that a court order was made for her children to have unsupervised contact with their father every Wednesday after school and every other weekend.

Sarah said she had always had concerns about the children's wellbeing during contact and was not comfortable with the court order.

When the proceedings concluded, Sarah said that her solicitor sent her a bill for thousands of pounds. Confused, Sarah said that she wrote to them to query why her bill hadn't been covered by Legal Aid as discussed with her solicitor. They explained that they never applied for Legal Aid. Sarah said that she could not afford to pay the bill and contacted them again to complain that she had been misled by the solicitor. She also contacted the Legal Ombudsman. Sarah said that when she discovered that solicitors get paid significantly more for private work than they do Legal Aid work she was concerned that they had purposefully misled her about the Legal Aid application.

Since the court order has been in place, Sarah said that she has contacted the authorities on a few occasions with concerns about the children's wellbeing and safety. The school have also raised concerns. On one occasion, when the children were on an unsupervised visit at their Father's house, he got a large knife from the kitchen and threatened to smash up their phones with it if they called their mum. When the children told her, Sarah took the children to the Police station to give statements. She was so concerned that she didn't want them to go to their Father's again. The Police took the statements from the children. Their father also went to the Police station and was interviewed. Sarah said that he admitted to threatening to smash their phones but dismissed it as a 'moment of madness'. Sarah said that the Police made a safeguarding referral and told Sarah that the children had to go to contact with their Father because there was an order in place. Sarah explained that she doesn't feel that she has the support to take it back to court and therefore complies with the order.

Sarah feels that her only option to safeguard her children would be to put an application in to the Family Court. Sarah still has thousands of pounds of legal bills that the solicitor is chasing her for and, without the support of professionals, worries that going back to Family Court would just make things worse for her and the children and that she won't be believed. Sarah continues to raise concerns and to ask why nothing has been done since the safeguarding referral that the Police made. Her children still go to contact but they report being afraid.

Sarah is trying to make arrangements to pay off the legal bills and also safeguard her children from further harm.

## Special Measures

Many survivors are not aware of the measures that can be taken to help them to feel safe when attending courts, such as: screens, video links, separate waiting rooms, and entrances. This may be due to lack of legal representation or simply because no one explains that there are provisions for vulnerable witnesses.

Access to special measures was a reoccurring theme as was the protections available for vulnerable witnesses with some survivors reporting being afraid or intimidated at court.

A number of stakeholders, particularly court staff, explained the limitations of implementing special measures where there are very limited resources or where the court building has physical limitations that make it difficult to implement these provisions. Anecdotally, stakeholders explained that they would like to do more but that there wasn't the funding available to increase the provision so that it was accessible to everyone who required it.

It is understood that the judiciary locally have requested additional resources to make special measures more widely available and adapt buildings but that this has not been made available by government.

During the project, courts were able to make some changes to improve the accessibility of special measures. This is documented in the 'Outcomes and further actions' for theme 1.

*"I find it very difficult to be sat in the same waiting room as i had to in the latest hearing. Also had to sit meters away from my abusive ex-partner on the same bench at the same hearing."*

*"I feel there should be further protection for victims to lessen intimidation during the hearing. Yes, we may seem to be "ok" and get through it but it really is very scary."*

**– Anonymous quote from survey (#26 Various proceedings around June 2018)**

## Theme 1: Outcomes

The following table provides an overview of the outcomes under this theme of the project.

<b>Outcomes of theme 1 of the project</b>
Survivors, stakeholders and IDAS Independent Domestic Abuse Advisors (IDVA) were surveyed, highlighting that the lack of legal support has ramifications for the safeguarding of survivors of domestic abuse and access to fair and just legal proceedings in the family courts.
A dedicated IDAS Family Court website has been developed to provide information and resources aimed at survivors of domestic abuse to assist them with navigating through court proceedings.
A searchable database of solicitors will be a feature of the IDAS Family Court website to help survivors to identify local solicitors with Legal Aid contracts.
The CFCLO created videos to make information about the family courts accessible. These are available on the IDAS Family Court website.
THE CFCLO has worked with students from the University of York, Street Law Project to develop easy read information packs to help survivors understand the processes. These will be available on the IDAS Family Court website.
Following a series of meetings convened by the CFCLO, the three universities in North Yorkshire have committed to developing a voluntary scheme to support Litigants in Person following the Keele University CLOCK project template.
The CFCLO has circulated lists of solicitors with Legal Aid contracts and has also pulled together a list of services available to support people who are litigants in person which will be circulated to stakeholders.
A member of staff at York Court has been given the role of reviewing the measures in place to ensure that Special Measures are implemented and to consider how to make the court safer for survivors. The CFCLO has worked with this member of staff to produce an information pack to be sent out with notifications of hearings. Scarborough Justice Centre were able to make some changes to enable vulnerable witnesses to access a separate entrance and a separate waiting room.
Judges report vulnerable people attending hearings without support where the risks and complexities of their case have not been communicated to them. There is virtually no support available in these circumstances. CFCLO has set up a meeting with the Judiciary, Court Staff, CEOs of Citizens Advice, Heads of Law from the three main Universities and other stakeholders to discuss the possibility of establishing volunteer programmes to assist with this.

**Q: Who or what was most helpful during the proceedings?**

*"IDAS. Once I found them. I wasn't even aware of them until I finally called Women's Aid after years and years of the horrendously unfair court system. I was counselled in my own home and advised about future action in court proceedings and at my last court case was provided with a Mackenzie's Friend via them who was an ex police officer and who supported me in court."* - Anonymous survivor (#9)

*"The outcome of my experience was a positive one for me and my children. It has caused a lot of stress and has had a considerable influence on my mental health. The longevity of the proceedings being a main factor."* – **Anonymous survivor (#2 18 months of proceedings)**

## Theme 2: Domestic Abuse Best Practice

(Child Contact Arrangement Orders)

When there is a dispute about who a child lives with or spends time with and this cannot be resolved by the parties involved, the Family Court can decide the arrangements for the children on behalf of the parties. The court is tasked with making a decision that is safe and child focused. The welfare of the child is of paramount importance. Consideration is also given to the welfare of the parents caring for the child.

In accordance with the Children and Families Act 2014, there is a presumption that it is in a child's best interests to have both parents involved in the child's life unless there is a reason why this might not be safe or may compromise the child or the resident parent's welfare.

Practice direction 12-J details how cases, where domestic abuse may be a factor, should be managed in the Family Court to effectively safeguard the child and the parent who experienced the abuse.

The following extract has been taken from Practice direction 12-J to explain the impact of domestic abuse on children.

### **General Principle re Domestic Abuse in Practice direction 12-J: child contact arrangements and contact orders: domestic abuse (Ministry of Justice, 2017)**

Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent or live in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with domestic abuse and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents.

Additionally, Cafcass have developed a 'Domestic Abuse Pathway' to provide guidance to their Family Court Advisors on managing cases where domestic abuse is a factor. This is available on the Cafcass website.

During the review, survivors (and other stakeholders) reported that there was a lack of understanding of domestic abuse, particularly coercive and controlling behaviour. Survivor's accounts detail how they feel this lack of understanding has impacted their experience of the family courts and their ability to safeguard their children.

**During the review, several survivors reported that their children had either been threatened with violence or had been physically injured during court ordered contact. Many others said their children were afraid, experienced neglect during contact, or were showing signs that contact was having a negative impact, such as bed wetting.**

In some cases, survivors who return to court to vary contact arrangements or prevent contact where they had concerns for the child's welfare struggled to compile evidence to back up their concerns. In some of these cases, survivors reported being labelled obstructive or as displaying alienating behaviours.

There are numerous pieces of research which evidence that domestic abuse has a negative impact on a child's welfare and their well-being. There are also clear links between domestic abuse and child abuse.

Domestic abuse can and does continue post-separation with well documented impacts. Most domestic homicides occur in the six months after the parties have separated. Additionally, domestic abuse is widely understood to be the result of deeply held attitudes and beliefs that lead to one person exerting power and control over their intimate partners. This pattern is often repeated with future partners. Seeing the issues

as being the result of conflict between two parties, rather than domestic abuse, can result in children being put at risk. Furthermore, the ability of perpetrators to manipulate and groom professionals should not be underestimated.

Research conducted by Safe Lives (formerly CAADA) in 2014 highlighted that 62% of children living with domestic abuse are directly physically harmed by the perpetrator of abuse. This would be in addition to the harm caused by witnessing the abuse or being in a household where domestic abuse takes place.

### **There are clear links between domestic abuse and child abuse:**

- A third of children witnessing domestic violence also experienced another form of abuse. NSPCC Radford, et al (2011)
- Domestic abuse can also be a sign that children are suffering another type of abuse or neglect (Stanley, 2011).
- NSPCC: Exposure to domestic abuse or violence in childhood is child abuse.
- Children may witness abuse directly, but they also witness it indirectly by
  - Hearing the abuse from another room
  - Seeing a parent's injuries or distress afterwards
  - Finding disarray like broken furniture
  - Being hurt from being nearby or trying to stop the abuse
  - Experiencing a reduced quality of parenting as a result of the abuse (Royal Collee of General Practitioners and NSPCC 2014; Holt Buckley and Whelen, 2008)

The review highlights where there may be opportunities to improve systems and processes in the interests of survivors and their children to reduce the potential risk of harm from perpetrators of abuse. This includes where mediation is being attempted between couples where domestic abuse may be a factor, to safeguarding checks and court ordered programmes.



*"I do not think that the process was sufficient to understand the complexity of the residency dispute. All disputes seemed to be interpreted as parental conflict rather than looking at the real picture. The Cafcass officer was not skilled enough to question statements my husband made which were entirely inappropriate to put in the report and in fact were evidence of his controlling behaviour. I expressed deep concern regarding the emotional impact of my sons disputed residency and the consequences. All of this was ignored."* – **Anonymous survivor (#6)**

*"IDAS and the counsellor from relate were brilliant. I found CAFCASs to lack understanding of abuse. They said he seems like a nice man. Luckily the judge allowed my daughter to make her own decision about seeing her father which was wonderful. The financial side was not so easy and this has continued to be difficult with him not fully supporting the children financially"* – **Anonymous survivor (#41)**

*"I went into a male dominated environment on many occasions which in itself was intimidating as the only female with her abusive ex husband. On my very first time in court, which was to take an injunction out against my ex as he had turned up at my home threatening to kill me, I was granted the injunction and then a prohibitive steps order was put in place whilst they assessed him around my boys. On the very next time in court, whilst the injunction was still in place I was ordered by a judge to go into private room with my ex on my own to discuss the contact arrangements. I was absolutely petrified. I was told by the judge that if I didn't then he would make all the decisions, including residency of the children and I might not like his decision so I felt like I had to go. On numerous times I have been told to sit next to my ex husband in court. I found that really intimidating and it made it really difficult to be able to confidently express my points when I was representing myself. I still can't believe to this day that a court that was supposed to protect my children allowed their mother to be put in such difficult situations."* – **Anonymous survivor (#5 Various Proceedings over 6 years)**

*"uncomfortable and a stressful process throughout"* – **Anonymous survivor (#26)**

*"1st time cost me £15000 as was ineligible for legal aid (this was when legal aid was available). 1st time nearly killed me emotionally and the stress and tension caused immense upset to my then 4 year old. The 1st court order was deeply flawed and unfair but i felt i had to comply against my child's best interests as was so scared of the penal penalty especially as ex threatened breach all the time yet he never complied. A truly awful time of my life with upset all around. 2nd time when i took it back to court after giving it 3 or so years to try and varied the order to be more specific to reduce communication with the ex and make things more stable for my child it has worked very well since as i laid out rotating days and times to cover everything so no arguments"* – **Anonymous survivor (#20)**

## 2a. Mediation Information and Assessment Meetings (MIAM) and mediation

In April 2014, attendance at a MIAM became mandatory for anyone wishing to resolve disputes via the family courts. The aim was to reduce the number of cases being heard at court and the financial costs of resolving disputes which are usually much higher in family court. However, mediation is not appropriate, and exemptions are made where there has been violence, coercion or controlling behaviour, namely domestic abuse. The Ministry of Justice makes it clear that if there has been domestic abuse or there are child protection concerns, MIAM is not suitable.

As outlined on the Family Mediation Information and Assessment Form (MIAM) F1M, MIAM is not suitable if domestic abuse is a factor. However, this does not address the cases where domestic abuse may be a factor but has not yet been identified. It is unclear how a mediator may assess whether there is or has been domestic abuse and whether they would be required to produce a risk assessment in such cases.

In relation to mediation more generally, mediators reported that they *will* work with clients if they believe that domestic abuse is 'not happening now', even when there has been a disclosure of domestic abuse. Anecdotally, some mediators did not acknowledge that there could be a risk of the process being controlled or manipulated by a perpetrator of abuse. Some Mediators felt that 'shuttle mediation' would be appropriate in these circumstances.

## 2b. Safeguarding checks and risk assessment

When an application is made to the court under Child Arrangement Proceedings, the Child and Family Court Advisory and Support Service (Cafcass), should be notified so that they can undertake checks with the Local Authority and the Police to establish if there are any risks or safeguarding concerns related to the family and the child. A safeguarding letter must be provided for the court in advance of the hearing. Part of the process, in addition to the checks, is to conduct telephone interviews with the parties prior to attending court. Cafcass have a maximum time limit to undertake these checks and are often given even less time to undertake the checks prior to the First Hearing Dispute Resolution (FHDRA).

If they are unable to complete the telephone interviews, they will allocate a short period of time prior to the court hearing to carry out these checks.

Unless the initial telephone interview or safeguarding checks highlight concerns, the Family Court Advisor (FCA) will not meet with the parties or their children.

This is in line with Practice Guidance 12-B – Child Arrangements Programme, paragraph 13.6, Cafcass will not initiate contact with a child prior to the FHDRA. Therefore, in most cases, Cafcass will not speak to the child unless there are directions from a judge following the FHDRA.

Cafcass are required to prepare a safeguarding letter for the courts along with an explanation of any risks ahead of the FHDRA.

Survivors highlighted concerns about the telephone checks carried out by Cafcass Early Intervention (EIT) workers. Some said that they never received a call, so did not have an opportunity to raise their concerns, while others felt that by the time they received their call the worker had already been manipulated by the alleged perpetrator and did not take their concerns seriously. Furthermore, the EIT worker will make it clear that concerns raised during the conversation will be shared with the other party. This may decrease disclosures of domestic abuse for fear of the perpetrator.

Cafcass have direct access to the PNC police database which provides details of convictions. More detailed information can be requested if there are concerns. The information for these reports is selected by the Police Legal team and put into a report. Currently, when the police legal teams are preparing their reports for Cafcass and the Courts, they are hand selecting information that they believe will be relevant. Without specialist training, there is the possibility that information relevant to child abuse or domestic abuse, such as animal abuse, is not seen as being relevant and therefore not being included.

Survivors and some stakeholders felt that the safeguarding checks could be more detailed. During the consultation (held on 15<sup>th</sup> January 2019), several stakeholders recommended that, where domestic abuse was suspected or identified as a factor, mandated checks with all agencies and organisations involved with the family should be carried out.

Additionally, during a workshop with the Family Court, North Yorkshire Police, Durham Constabulary, Central Government Intelligence (CGI), and Crest, it was suggested that Cafcass should have direct access to the Police National Database to get a more holistic picture of offender behaviour, based on more than just convictions but also Police intelligence, to improve safeguarding.

Anecdotally, both survivors and stakeholders raised concerns about the potential negative outcomes of Family Court proceedings if the right information was not made available.

**Excerpt from Cafcass' most recent Ofsted report:**

Work prior to the first hearing dispute resolution appointment (FHDRA) is good. Children are allocated to an FCA without delay. The local EIT prepares safeguarding letters.<sup>8</sup> Timely initial risk assessments ensure that children's welfare is safeguarded. Most safeguarding letters are informed by evidence-based tools. These support the analysis and good advice given to the court. In a very small number, however, the quality needs to improve. A few letters lack analysis and are filed with grammatical mistakes and typos.

*"Cafcass didn't bother to phone to complete background checks and find out any information relating to our circumstances. I attended court and was told they had 5 minutes to speak to me. This wasn't a sufficient amount of time as the allegations that were made, my abusive husband denied and told lies about me. There was no one to defend me or agree with my story as no statements from hv [health visitors], Idas [Independent Domestic Abuse Services] etc were taken. I was made out to be a psychotic liar with mental health issues with the judge saying there's just a lot of he said she said here.*

*"[It's had a] Massive financial impact and has also left me feeling very unhappy and insecure that there is no one to help me fight to keep my child safe". – **Anonymous survivor (#40 Ongoing proceedings at the time of completion in 2019)***

*"I am at a complete loss how to improve things for my children, my ex has told the authorities I am mentally unwell and have fabricated everything to paint him as a bad person despite the school, the police and the Prevention team making safeguarding referrals and evidencing his aggressive and controlling behaviour." - **Anonymous survivor (#28)***

*"He went to prison for attempted murder against me and has since gone for shared custody which has been ongoing for some time. They started around June time [2018] and are still ongoing to this date with CAFCASS involved too." – **Anonymous survivor (#31 Child arrangements, 4 court cases over 6 years.)***

## 2c. Reports ordered by the court and professional giving evidence

**The survey of survivors, conducted as part of this project, revealed:**

**56% of people felt that courts did not have all the information they needed to make an order.**

**24% were not sure if the courts had the information.**

**20% felt that the court did have the information they needed.**

Many survivors and some stakeholders raised concerns that, in their opinion, some of the reports that are produced do not accurately reflect the situation; omit information that they felt was relevant or contained factual inaccuracies. Some survivors felt that the workers who produced the reports lacked the knowledge and experience of sexual violence or domestic abuse to make relevant recommendations.

Cafcass workers are Safeguarding Social Workers and are directed by the court to complete the reports unless the local authority is involved with the family.

**The most recent Ofsted report into Cafcass work states:**

- Cafcass practitioners' effective and authoritative practice adds value and leads to better outcomes for the majority of children. In the vast majority of cases, Family Court Advisers (FCAs) and children's guardians provide the courts with cogent, well-balanced and analytical risk assessments. These help the courts to make child-centred and safe decisions.
- Strong, evidence-based and succinct reports minimise the need for experts. They also reduce delay and the need for further appointments. In a very small number of cases seen, delay in establishing children's views and progressing cases quickly enough was linked to poor case planning.

In some cases where there has been significant Local Authority (LA) involvement, the LA may be required by the court to complete the report. In these cases, it would also be trained Social Workers responsible for producing the reports.

There are also concerns raised about the timeliness of reports being produced and the impact of this on proceedings.

Additionally, professionals including solicitors highlighted that reports must follow PD 12-J and include a risk assessment. There were concerns that this isn't always being done.

Survivors responses to survey questions:

	Agree	Disagree
Reports ordered by the court were accurate and timely	30%	52%
The court had all the information that they needed to make a judgement	20%	55%
Court proceedings were timely and concluded without delay	25%	50%

During the stakeholder consultation (held on 15<sup>th</sup> January 2019), professionals highlighted the challenges with obtaining statements for reports. Some suggested that, where there are welfare concerns such as domestic abuse, a mandated protocol that ensured all agencies involved with a family, including schools and health professionals shared information.

*"Cafcass asked for a section 21 report to be carried out by social services. The male social worker had no understanding of domestic abuse and did not believe that my ex had raped me as he said he didn't think that anyone would stay in a relationship where they were raped.*

*"Luckily my ex withdrew his application for contact. If he had been awarded contact i have no doubt that he would kill or injure my children, he had already been prosecuted and found guilty of harming them. I am constantly worried that he will go back to court and ask again for contact. I feel unable to move on."* – **Anonymous survivor (#38 Non-Molestation order took 3 weeks. Child arrangements order took 6 months. Divorce with financial agreement took two years)**

In addition to this, some professionals report that their experience of giving evidence in court has been unpleasant, leaving them with concerns about proceedings. There were also concerns expressed that cross examination seeks to undermine them as professionals rather than glean more information or to probe the details of the statement provided.

## 2d. Separated Parent's Information Programme (SPIP)

The SPIP programme may be ordered by the court at the First Hearing Dispute Resolution, or following later hearings, to assist parents with contact arrangements and managing ongoing communications about children following separation. These courses have not been developed to address the specific needs and risks experienced by survivors of domestic abuse. Cafcass, who commission the programmes nationally, suggest that those deemed at 'standard-risk' of domestic abuse may benefit from attending. Anecdotally, judge's order SPIP even when there is evidence of domestic abuse. Additionally, survivors report that while they attended the course, their partners did not attend. Survivors felt that this was not considered a factor in deciding on the case.

A review of the course content delivered in North Yorkshire highlighted several concerns for survivors of domestic abuse. These included:

- The expectation for participants to change their behaviour to accommodate their partner
- The expectation for them to communicate directly with their partner
- Lack of discussion of warning signs of domestic abuse or child abuse

The course content that was reviewed may increase risk for survivors of domestic abuse where there is any ongoing abuse post separation.

Carol Goodman, the lead for the Cafcass National Commissioning Team says of the programme:

*“ The Separated Parents Information Programme (SPIP) is a parent education course designed to help separated parents become clear about what their children need most from them and learn the fundamental principles of how to manage conflict and difficulties – including how to put this into practice.*

*We get substantial positive feedback from parents/carers attending the course and our view from the feedback is that the level of concern that parties have about how Domestic Abuse is addressed is low. Some of this feedback indicates that additional services might be needed for some families, but that participants have still gained useful insights and benefits from attending the course. In such cases additional services will be identified and signposted.*

*The course is court ordered and parents/carers will all have had police and local authority safeguarding checks prior attending a SPIP. As part of Cafcass’ Work to First Hearing a Cafcass social worker will have been required to undertake a safeguarding assessment which includes speaking with both parties, screening the checks received and preparing a safeguarding letter for the parties and court. Where risks including Domestic Abuse have been identified our social workers would not recommend a SPIP to courts. Each course participant gets a handbook which covers how to deal with issues of DA and how these might be raised as we are aware that disclosure can happen at unpredicted times. Providers have safeguarding processes and are required to address and deal with any safeguarding and risk issues that might come up during the course. Our most recent observations of a SPIP highlighted that there is provider knowledge on this issue.*

*We are reviewing the SPIP course content and delivery model with a view to better address individual parents/carers needs, particularly with much more modular material.*

*We are also developing new Domestic Abuse Perpetrator courses intended for differing levels of need. The courses will be in addition to the currently commissioned, court ordered Domestic Abuse Perpetrator Programme (DAPP), which includes a victim support service.*

*To further help with the context, in 2017-18 we had 26,532 parents referred to a SPIP as part court proceedings and we had 795 families directed by courts to be involved with Domestic Abuse Perpetrator Programmes and support services.”*

## 2e. Domestic Abuse Perpetrator Programmes (DAPP)

Domestic Abuse Perpetrator Programmes commissioned by Cafcass can be court ordered by a judge. A brief report is provided to the court with a full report at the end of the programme.

Perpetrator programmes are often ordered when domestic abuse has been proven and the course is considered a way of mitigating the risk posed to a child and the parent who experienced the abuse by the perpetrator. The programme can only work with perpetrators who admit to the abuse and take responsibility for it.

There are concerns that perpetrators can perform for programmes in order to get contact with their children. There is no way of ensuring that the work done during such a programme can prevent further harm. Perpetrator programmes can give the courts a useful insight into a perpetrator's behaviour, however skilled perpetrators can be very manipulative and convincing.

Additionally, the commissioned service providing the DAPP raised concerns about standard-risk perpetrators attending programmes with high-risk offenders as there is a risk of minimisation and comparing themselves with offenders who have perpetrated higher-risk offences. There is also a risk of them taking on board the practises of high-risk offenders.

Attendance can take many months, particularly if a perpetrator fails to attend and must restart the course. A survivor who is required to pay Legal Aid contributions may have to continue to pay for these for the duration of the perpetrator programme as the case must remain open to Cafcass whilst proceedings are ongoing. Stopping Legal Aid would then require another application to restart the support.

Survivors raised concerns that their ex-partners' non-attendance did not seem to impact upon whether contact was ordered. Survivors felt that non-attendance was a clear demonstration of contempt for both the court and for their children and should be taken seriously.

## 2f. The voice of the child

One of the most repeated themes in survivors' responses to the survey was that the child's voice wasn't being heard.

This was also reinforced by professionals who also shared concerns that children's voices were being lost.

Some survivors reported that children were being rushed into overnight contact before they were ready, that Cafcass officers disclosed safeguarding concerns to the other parent putting the child at risk of repercussions, and that children's reports of being afraid, harmed, and unreasonably punished were disregarded. Parents reported informing social care when children came back from contact having been threatened or made to feel afraid, but their concerns were not investigated.

Many survivors expected Cafcass to speak with their children and were surprised when this didn't happen. Although the engagement with children during child arrangement proceedings is clearly defined in Practice Guidance 12-B, and Cafcass have a 'Domestic Abuse Pathway', many survivors felt that their children should have been spoken to and that their voices were not heard.

In responses to the survey and to interviews with professionals, it was raised on at least two occasions that the details of a safeguarding referral had been shared, by Cafcass, with the parent that the safeguarding concern was about which resulted in a child being put at risk. On one occasion, the parent then confronted the child who had made the disclosure leading to the safeguarding referral. They also phoned the agencies that had made the safeguarding referral demanding information.

Whilst there are protocols for sharing information relating to Safeguarding, the possible risks to the child in sharing this information with a parent who could be abusive may be being overlooked.

### **Excerpt from Cafcass' Ofsted report:**

14. Inspectors consistently found strong evidence of how children's wishes and feelings are actively sought and how the voice of the child influences future planning. Particular strengths are direct work and engagement with children of varying ages. Children are seen and seen alone when this is in their best interests.



*"Ultimately, I was able to secure a prohibitive steps order against my ex so that has had a huge positive impact on me and especially the children. However, that was hard work to obtain, constant pushing and fighting to get where I need to be. Financially I was able to secure legal aid, however now I am appealing it looks like I will have to fund the rest which is very financially and emotionally draining. The emotional impact is horrendous not only am I sat within a few feet from the man who abused me all these years I am having to fight him as well as the legal system in order to keep my children safe. It is very clear that professionals involved have very little understanding of domestic abuse and coercive control and the huge impact it has on children and are very quick to push the case through and I quote from my social worker "we strive to give some sort of contact to the father at ALL COSTS" – **Anonymous Survivor** (#1 Non-Molestation order 2017, Child Contact Arrangements 2018)*

**Q: What has the impact of Family Court proceedings been on you and your children?**

*"Very negative, took me and my mind away from her, she started bed wetting when father was due to collect, she still won't sleep alone and she hasn't seen him for 2.5 years" –*

**Anonymous survivor (#9)**

*"I had to travel to Leeds Court. My children were interviewed by CAFCASS. They were interviewed by the judge. They were asked their opinions which were then ignored. Their father was allowed unsupervised access which resulted in the children suffering prolonged psychological abuse and my youngest being physically injured by her father when he reversed his car into her. 5 years in they don't want him in their life & still suffer the psychological effects of being forced to have a relationship they didn't want.*

*"The whole proceedings have traumatised both mine & my children's lives even now. My ex was allowed to bully me through mediation and in the court room. He would then terrorise me by saying he wasn't returning the children and deliberately bringing them home late." –*

**Anonymous survivor (#16 2 years of court proceedings)**

*"The court and social services have twice disregarded my children's wishes and feelings, my youngest child is now being tested for autism/adhd when arguably she is suffering from anxiety as she witnessed physical and emotional domestic abuse and being told by her dad at 3 years old that mummy is bad and that she would be taken from me. They have been forced by court order to spend every weekend with their dad and only school days plus two sundays a month at home, they are missing me and don't want to go to school so they can see me more. I think the judge missed what has happened to my family and the children's wishes entirely, they took my frustration as me being difficult rather than us having to endure a controlling narcissist, his barrister did what he paid her for, we could not afford that. The inequity shows in the outcome of the hearing. The ongoing fallout is indicative of a poorly reasoned judgement." –* **Anonymous survivor (#28)**

*"It has helped long term to find a steady path forwards for all of us. However, during the process it was emotionally and financially draining and extremely stressful. Cafcass were good with the children but my eldest no longer feels safe talking to professionals about personal issues as a result of cafcass telling her father things she said which then meant she was reprimanded by her father for saying the things she had. I found myself in thousands of pounds of debt for legal bills. I have now paid these off but it hasn't been easy. My ex never paid any maintenance so it was clear efforts to pressurise and control me further. In the end the courts and cafcass saw through the lies of my ex and eventually ordered indirect contact only. Since then, a year of no contact passed and eventually the children have begun seeing their father. all is going well. I feel that because the courts came down hard on him and his patterns of behaviour, he now feels unable to control any further. For that, I am grateful." –*

**Anonymous survivor** (#30 Child arrangements 4 court cases over 6 years)

## 2g. Children's safety

A review of Serious Case Reviews for the last four years showed that 8 children have been intentionally killed, seriously injured or sexually abused during contact with a parent with a known history of domestic violence where contact was ordered by a family court. Anecdotal evidence suggests that there are many more.

**During the review, several survivors reported that their children had either been threatened with violence or had been physically injured during court ordered contact. Many others said their children were afraid, experienced neglect during contact, or were showing signs that contact was having a negative impact, such as bed wetting.**

The 3 Planets Model outlined by Hester M (2011) in 'The three planet model – towards an understanding of the contradictions in approaches to women and children's safety in contexts of domestic violence' outlines the contradictory positions that survivors of domestic abuse are put in when navigating Family Court and Child Contact Arrangement Orders.

### **The three planets are outlined as follows:**

Civil and Criminal Law:

Focus on offence and offender and changing him; woman as victims; child invisible.

Child Protection, Public Law:

Child as victim, mother seen as failing to protect; focus on changing her behaviour and preventing contact with abusive man, father often invisible and not culpable.

Child contact (Private law):

Mother's resistance to contact considered hostile; presumption of contact; father victim (?) of parental separation.

Whilst going through the Family Court, survivors are pulled between these three planets and report feeling disempowered with no clear guidance or support to help them safeguard their children. The following case study highlights this:

## Domestic Abuse Best Practice: Survivor's Case Study

This is a summarised case study which does not include all details and reports, it is based on a telephone discussion with Lucy (not her real name).

Lucy was a victim of domestic violence at the hands of her abusive ex-partner who was a martial arts expert. They were together for 17 years before they split up in 2013. Since separating, there have been numerous proceedings over child contact. Lucy's partner has never been charged for the physical assaults on Lucy which included picking her up by the windpipe and hurling her to the floor. He received a caution, and later a harassment warning when he forced entry into the family home leaving the locks broken and the house unsecure. He was served with a non-molestation order following an attack in 2015 when he found out that Lucy had a new partner. He attempted suicide shortly after receiving the order. Following this, contact was ordered to be limited to two hours and supervised, it progressed to unsupervised overnight contact. In 2016, Lucy's concerns for the safeguarding of the children escalated and she took the difficult decision to stop contact. The children were reporting being regularly hit and one of them was running away from the father's residence. There had also been safeguarding referrals from school. The family were being supported by local authority prevention and healthy child team. Lucy was engaged with those services. Lucy's ex-partner brought the order back for enforcement and contact was increased, despite the children and Lucy's concerns. Since then, Lucy has been managing difficult contact arrangements, and her concerns for the children's safety have never been allayed.

At the time of writing this report (February 2019) Lucy's ex-partner had been arrested for hitting his son.

Lucy's case had been signed off by social services and she was confused about what to do. Her partner was on bail and his bail conditions would end on a day when his contact order stated that he should collect the children from school. Lucy didn't want him to have contact, even if he wasn't charged, because she was afraid that he would hurt the children again. Social Services made it very clear that she was responsible for safeguarding the children and so she felt that not allowing contact would be the safest way forward. However, she was terrified of the repercussions if she disobeyed the court order. She was scared about making an application to the court to have to go through the whole thing again. Lucy is torn between the fear of her partner being given increased contact or residence and her immediate need to stop contact to prevent the risk of further harm to the children. Lucy reported having to weigh up whether facilitating contact that she knows is not safe would be better than risking another order increasing the contact time or being held in contempt for not complying with the order. Lucy could not afford representation and wouldn't qualify for Legal Aid.

Lucy's experience highlights the situation that survivors are placed in where they facilitate contact that they do not believe is safe and take measures as best they can to mitigate the damage caused because of the contradictory positions on each of the three planets. On planet 'Child Protection', Social Services make it clear that she must safeguard the children and that failure to do so would impact on social services view on whether she is a safe parent. On planet 'Child Contact', the court have ordered contact and failure to comply could result in enforcement, increased contact, a change of residency, or even prison. On planet 'Criminal Law', Lucy is seeking justice through the criminal justice system. A conviction would enable her to protect her children, but the burden of proof is very high. Without a conviction or evidence of the abuse Lucy is stranded between the three planets.

## 2h. Abusers using courts to control survivors and their children

Many cases where domestic abuse is a factor return to court year on year, either to vary contact arrangements or to enforce them. Despite the courts having powers to prevent the system being abused, it is unclear how often or in what circumstances these are applied.

Repeated or prolonged court proceedings can have a detrimental effect on the resident parent and the children. The stress and anxiety experienced as a result of court proceedings and the time and energy required to fully participate, can only restrict the emotional availability that the resident parent has for their children. Additionally, there are financial implications, even if the resident parent has Legal Aid support, such as travel, childcare, and time off work. Many survivors report having to borrow extensively to pay legal bills and cover the associated costs.

Cafcass audit shows that 30% of cases returned to court in 2016/17. Four principal causes for returning cases were identified: safeguarding concerns raised by parties; high conflict between adults; changes in life circumstances, and the child's wishes and feelings.

*"Dreadful experience, 8 years of family courts in York, all which continued the domestic abuse, in fact it was actively encouraged by the court, everything was about the other person, absolutely no help or protection, or acknowledgment of anything, any mention of any abuse was instantly dismissed, and you were made to feel as a non person, insignificant, and well the children's needs weren't even ever looked at, a quote I remember from a barrister was " your children can live in a tent, your children have no needs". I also experienced a solicitor lying in the court, which I proved and complained about, but nothing was done, apart from the solicitor not been present again. A lot of extremely sexist behaviour. Over the 8 years I saw the same things time after time, women trying to protect themselves and their children, visually upset, while abusers were laughing, and in complete control, controlling the woman and obviously children. Completely distressing and barbaric behaviours witnessed. A very confusing experience, thinking why this is allowed. What laws and society are we living in? It was a eye opener to how laws are wrong, and how abusers get to further abuse, while victims continue to suffer further, all which is deemed acceptable, and right and the law. The only one piece of useful advice I was given was " leave your morals at the door and pick them up on the way out". Which sums up the family court experience well. My conclusion, no care for children, in fact the worst possible outcome is likely, which children will be left to cope with, having adverse effects going into adulthood. Forced contact with a abuser does not create a relationship what it does is create hurt and damaged children. My children now have no contact at all, but it is only their ages that protect them and not the law. They had to wait to be free from abuse, while going through it, and I had to watch it, as prison was my only other option."* - **Anonymous survivor (#11)**

*"Horrendous ordeal, every single time. Abusive father of children took great pleasure from the court arena and used this to further control and intimidate me."* – **Anonymous survivor (#30)**

Additionally, anecdotal reports from survivors suggest that concerns about parental alienation are being prioritised over the risks associated with domestic abuse and the links between domestic abuse and child abuse.

In 2018, Cafcass announced that it would be approaching parental alienation with the introduction of a 'high-conflict pathway' and 'Positive Parenting' courses to prevent alienating behaviours. Cafcass stated that parents who were deemed to be manipulating their children into alienating or resisting contact with the non-resident parent could risk having their children removed and placed with the non-resident parent.

<http://www.transparencyproject.org.uk/cafcass-parental-alienation-and-the-law/>

Some survivors report that their concerns about the welfare of their children are being dismissed or interpreted as attempts to obstruct contact and alienate the abusive parent. In many cases, this is despite survivors having facilitated court ordered contact and not objecting to it on principle.

In some of the cases included in this review, children resistant to contact were being forced into having contact with the non-resident parent to avoid parental alienation rather than exploring other options, such as indirect contact. Survivors reported being told that they were putting ideas into their children's heads if their children voiced concerns about contact.

During the review, survivors spoke about being threatened with prison sentences for stopping contact when they were concerned for their children's welfare or because their children were so resistant to contact, they were struggling to make them go.

There is a risk that concerns about parental alienation are being balanced against the well-known and documented risks associated with domestic abuse with equal weight, negatively impacting both survivors and their children.

Both the courts and Cafcass agree that if contact is unsafe then there should be no contact. However, the testimonies of survivors could suggest that survivors feel they need to be able to prove that contact is unsafe for their concerns about the welfare of their children, or their experiences of domestic abuse to be given the same weight as concerns about parental alienation.

### Domestic Abuse Best Practice: Survivor's Case Study

#### **Case study from telephone interview.**

This is a summary of the conversation with Beth and gives an overview of her experiences.

Beth (not her real name) explained that her and her children have been brought back to court five times in four years. Beth expressed concern for her children's welfare as they were regularly returned after contact in dirty clothes and even soiled nappies to the point the child's bottom was blistered from the sores. She continued to facilitate contact for a few years. She raised concerns about emotional abuse and neglect.

In November 2017, Beth explained that the children were not returned from contact for a long period, in addition to the concerns for the children's welfare, Beth decided that she needed to stop contact. Beth explained that her ex-partner then brought the case back to court for enforcement of the order which was heard by magistrates. Beth reported being accused of parental alienation and that she was told that a 9 and 5-year-old do not know how they feel and that this was down to her. She said that she was also reminded five times during the court hearing that she would be sent to prison if she didn't comply with the order.

Throughout court proceedings Beth felt that her experience of domestic abuse was not taken seriously, despite her ex-partner having been arrested for assaulting her in front of the children.

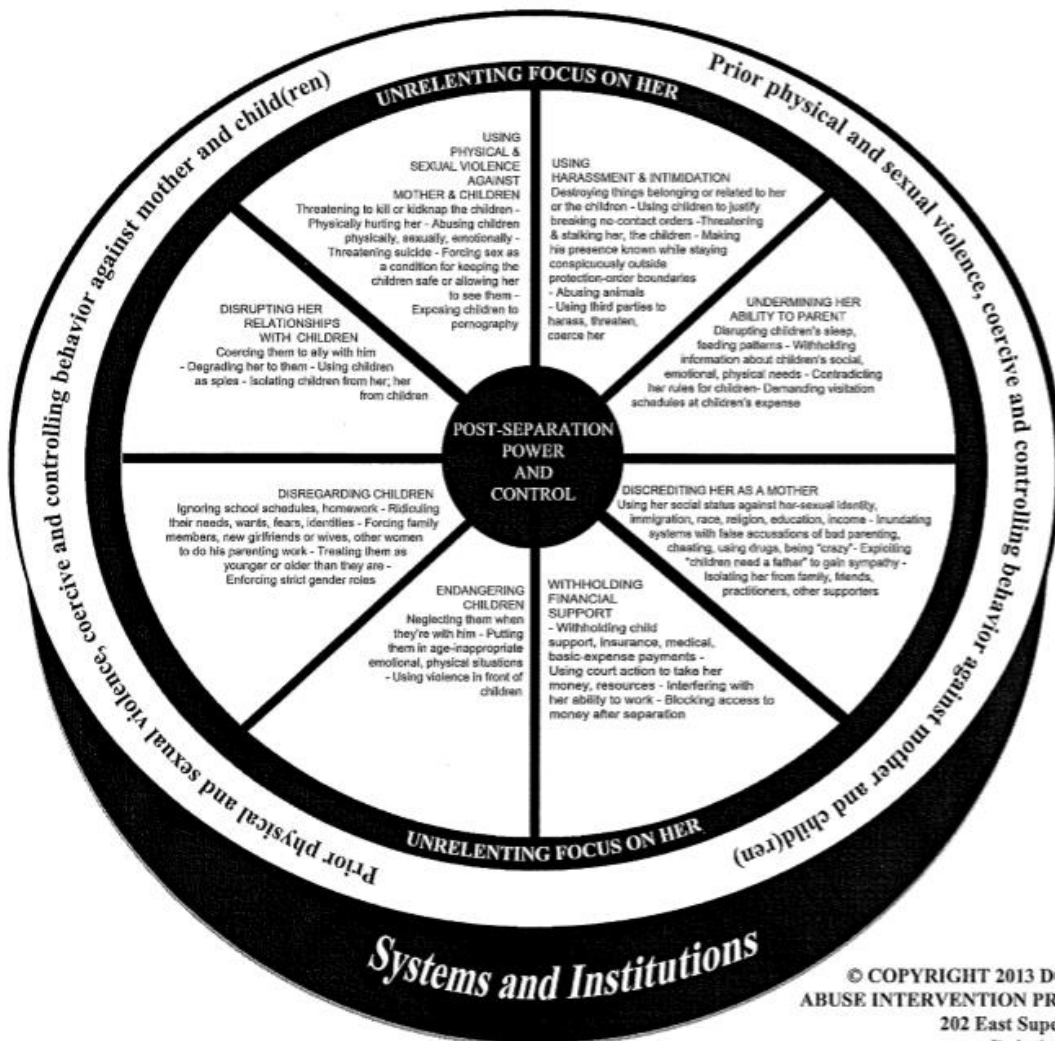
Beth felt that her voice and the voice of the children were not heard and that concerns about her abusive ex-partner being alienated from his children were of more concern.

*"I am fortunate to be eligible for legal aide yet i still have to pay bus fares to and from court as there is a 30min bus journey to and from court. Meaning my 2 youngest children have to be minded - at further cost and also older child with additional needs has to often be collected from school (she is used to myself collecting her and doesnt cope with change ) I suffer with anxiety and depression - for me the whole court process to date has been a very stressful one and has triggered my anxiety and depression. I feel unheard, during fact finding i had been told we can only stick to certain things from the Non - Mol order yet at the hearing my barrister asked why certain facts (with proof) hadnt been given as evidence .. my reason was that i was told they would not take it intk account My greatest fear would be the children having contact with thwir[sic] father due to his unstable lifestyle and unpredictable behaviours. Yet the courts state that even with facts given nd drug use he could be given supervised contact and be told a time to stop taking drugs to enable him to spwnd timw [sic] with them? I was used for my ex to stay in the UK, he did not spend time with the children and did not provide for them yet not his visa has expired he suddenly wanted contact as meens to stay. I feel unheard and am petrified for the childrwn [sic] as he is also drug dealing in the local area and deiving [sic] numerous cars without licence yet he may be dewmwd [sic] fit for contact .. He had already stated he would snatch the children if he had to return to hia country , the children do not know who this man is yet the above options still apply . My thoughts are .. Where is the safeguarding and best interest of the children when they are being used to gain solely for himself ."* -

**Anonymous survivor** (#26 "proceedings ongoing at time of completing the survey, non-molestation order in place until June 2019, prohibitive steps ongoing 6 months, awaiting Cafcass assessment to decide whether or not Father can have contact")



The Duluth Model provides an analysis of domestic abuse post-separation, including how perpetrators of abuse use children. The full version of the wheel can be accessed via the link provided below.



© COPYRIGHT 2013 DOMESTIC ABUSE INTERVENTION PROGRAMS  
 202 East Superior Street  
 Duluth, MN 55802  
 218-722-2781  
[www.theduluthmodel.org](http://www.theduluthmodel.org)

<https://www.theduluthmodel.org/wp-content/uploads/2017/03/Using-Children-Wheel.pdf>

## Theme 2: Outcomes

The following provides an overview of the outcomes, under this theme of the project.

### Consultation

A consultation event was held with over 50 people attending from a range of agencies. Survivors were also invited to attend.

Social Care	5
Victim Support	0
Cafcass	3
Police	3
CAB	1
Drugs & Alcohol	0
Judges & court staff	3
Foundation	0
Housing	1
Councillor	0
NHS	1
Solicitors	10
Probation	0
Other	23
Total	<b>50</b>

### Training

Three training sessions on coercive and controlling behaviour were offered to all stakeholders. Over 112 people attended.

This was funded by the project.

Following the training, Cafcass requested specific training for their teams and are running their own development sessions for all FCAs as well as online Coercive and Controlling Behaviour Training.

Social Care	27
Victim Support	1
Cafcass	0
Police	42
CAB	1
Drugs & Alcohol	5
Judges & court staff	5
Foundation	3
Housing	1
Councillor	3
NHS	1
Solicitors	11
Probation	1
Other	11
Total	<b>112</b>

## 2a. Outcomes and recommendations: Mediation Information and Assessment Meetings (MIAM)

Outcomes	Further action to be taken
<p>IDAS staff have been made aware of the mediation exemption and a template letter will be written for clients to allow them to be exempted from MIAM.</p>	<p><b>Locally</b></p> <ul style="list-style-type: none"> <li>• Mediators should all be made aware of IDAS services.</li> </ul> <p><b>Nationally</b></p> <ul style="list-style-type: none"> <li>• A review of the accreditation process and training for mediators should be carried out to ensure that domestic abuse is considered carefully, and adequate safeguards are in place.</li> <li>• A review of the policies and guidance that mediators work to when domestic abuse has been identified and their responsibility to refer for support and adequately risk assess.</li> </ul>
<p>Mediators have been invited to join the Family Court Domestic Abuse working group and email distribution list.</p>	

## 2b. Outcomes and recommendations: Safeguarding checks and risk assessment

Outcomes	Further actions to be taken
<p>Survivors report that the safeguarding checks are not thorough enough and that they often do not reveal important information that would highlight that domestic abuse is a factor. CFCLC has highlighted this with Cafcass and discussed the possibility of mandating checks from all agencies involved in the family if there are any concerns about domestic abuse. At the consultation, numerous people felt that a protocol for ensuring that information was requested and shared would help to build a complete picture of what was happening with the family and avoid information coming to light later in proceedings or never coming to light at all. A protocol would also ensure that people were clear about why information sharing was important, ultimately improving the safeguarding of survivors and their children. When discussed, Cafcass felt that this would delay the checks and give too much information for a Cafcass officer to work through. It was felt that the current situation was adequate.</p>	<ul style="list-style-type: none"> <li>• A pilot scheme should be introduced to trial mandatory checks with all agencies involved with a family where domestic abuse is or may be a factor to see if this assists with informing the Cafcass officers' recommendations and improves the safeguarding of survivors and their children. This should be done in partnership with an independent research team to evaluate the pilot.</li> <li>• In North Yorkshire, there is the potential to develop a pilot that would enable Cafcass to access the Police National Database so that they can be party to a wider range of intelligence to inform their recommendations.</li> </ul>
<p>CFCLC has investigated Civil Disclosures and identified that the pathways are not clear for survivors to obtain a disclosure. This is being addressed and information will be published on the IDAS Family Court website.</p>	<p><b>Nationally:</b> The links between civil and criminal need to be improved so that family courts are apprised of anything that could be relevant to proceedings in advance rather than orders needing to be made. A court version of the Domestic Violence Disclosure Scheme.</p> <p><b>Locally:</b> Further work is ongoing to ensure that more Litigants in Person can access disclosures to assist with their case.</p>

Survivors report that by the time the Cafcass worker has contacted them they have already contacted the perpetrator and the perpetrator has manipulated them. CFCLC delivered 3 training sessions on coercive or controlling behaviour attended by over 112 people.	<b>Nationally:</b> Cafcass to work with specialist domestic abuse agencies for specialist training. <b>Locally:</b> Cafcass to work with IDAS to give regular, reciprocal inputs at team meetings. This is being coordinated between Cafcass and IDAS Regional Managers.
Survivors report EIT calls occasionally not being made before the first hearing. CFCLC has discussed this with Managers at Cafcass and highlighted this as a concern in relation to safeguarding survivors.	<b>Locally:</b> Further investigation is recommended into how adequately cases are being checked and where opportunities to identify domestic abuse are being missed. <b>Nationally:</b> Cafcass accountability and making data available publicly on the number of successful safeguarding checks where both parties are called.

## 2c. Outcomes and recommendations: Reports ordered by the court and professional giving evidence

<b>Outcome of the project:</b>	<b>Further actions to be taken:</b>
Discussed concerns identified in the report with Cafcass Manager and Social Care.	<b>Nationally</b> <ul style="list-style-type: none"> <li>• Cafcass to signpost to IDVAs from local specialist organisations to assist in cases where there is domestic abuse.</li> <li>• Cafcass to develop a robust process to enable clients to challenge reports in a structured way with an independent reviewer.</li> <li>• IDVAs to attend court when domestic abuse is a factor to provide an assessment based on their expertise.</li> </ul>

## 2d. Outcomes and recommendations: Separated Parents Information Programme (SPIP)

<b>Outcomes of the project</b>	<b>Further actions to be taken</b>
Concerns about the appropriateness of SPIP programmes for survivors of domestic abuse have been raised both nationally and locally with providers, Cafcass and the judiciary. Providers aim to make individual adaptations when they are aware that participants are survivors of domestic abuse but suspect that others may be victims, but the abuse has not been identified or was not considered a factor in the case.	<b>Nationally:</b> <ul style="list-style-type: none"> <li>• Cafcass to consider the risks associated with survivors of domestic abuse attending a parenting programme aimed at parents who are in dispute over child contact, where no domestic abuse has taken place.</li> <li>• Cafcass to consider a specific programme for survivors where domestic abuse may be a factor.</li> <li>• Cafcass to review the existing course content so that it takes into consideration the risks associated with domestic abuse. The course should also make specific reference to red flags relating to child abuse, domestic abuse and other safeguarding concerns.</li> </ul>
IDAS piloted a dedicated programme for survivors of domestic abuse.	

## 2e. Outcomes and recommendations: Domestic Abuse Perpetrator Programmes (DAPP)

<b>Outcomes of the report:</b>	<b>Further action to be taken:</b>
<p>Meetings held with providers of domestic abuse perpetrator programmes who suggested a dedicated shorter course for Family Court may be appropriate.</p> <p>Concerns about the risks of the current perpetrator programme shared with Cafcass.</p>	<p><b>Nationally:</b></p> <ul style="list-style-type: none"> <li>• It is recommended that a national review is undertaken to establish the effectiveness of perpetrator programmes to establish how they are used in Family Court and whether they are too heavily relied on for making contact safe.</li> <li>• Data to be made public on attendance of perpetrator programmes and recidivism and return hearings for enforcement for safeguarding.</li> </ul>

## 2f & g. Outcomes and recommendations: Children's safety and voice

<b>Outcomes of the project:</b>	<b>Further action to be taken:</b>
<p>Identified the need for a longitudinal study on the impact court orders on children. Particularly where a child resists contact but it is ordered to prevent 'parental alienation'.</p>	<p><b>Nationally:</b></p> <ul style="list-style-type: none"> <li>- A national inquiry into the family courts.</li> <li>- Cafcass to publicise data on the percentage of cases where interviews have taken place with children.</li> <li>- The number of times their recommendations and the final judgement have been counter to the child's wishes.</li> <li>- National Family Justice Board to develop guidance for parents to assist them when their child resists contact and/or there are safeguarding concerns.</li> <li>- Additional resources are required to assist with supervised contact where there are potential risks for the children and/or parent.</li> </ul>

## 2h. Outcomes and recommendations: Abusers using courts to control survivors and their children

<b>Outcomes of the project:</b>	<b>Further actions to be taken:</b>
<p>An input provided to court staff by an IDAS worker. An IDAS IDVA attended a meeting of court staff at York court to give an overview of IDAS services and answer and questions that staff might have.</p>	<p><b>Locally:</b></p> <ul style="list-style-type: none"> <li>• Courts to consider setting up a forum for survivor’s experiences of Family Court to be fed back to the Judiciary.</li> <li>• IDAS to attend the Local Family Justice Board.</li> </ul> <p><b>Nationally:</b></p> <ul style="list-style-type: none"> <li>• Data to be obtained to understand how often judges use their powers to prevent abuse through the courts.</li> <li>• Data to be obtained to understand how often Cafcass use their powers to appeal against orders on safeguarding grounds.</li> </ul>
<p>Cafcass were asked for data about return hearings and enforcements to understand the extent to which cases were returning again and again and for what reasons but this data wasn’t available. General national data was available in the annual report which has been included in this report.</p>	
<p>Domestic Abuse &amp; Family Court working group established with a range of key stakeholders. This will meet every quarter oversight from the North Yorkshire and York Domestic Abuse Joint Commissioning Group.</p>	

## Theme 3. Links between Criminal and Civil Courts

Many survivors are **not** aware that the Criminal and Civil courts do not automatically share information. Most expect that the details of ongoing criminal proceedings will be shared with Family Court judges. In many courts, both the criminal and civil proceedings happen in the same building. Anecdotally, survivors have reported that they have been in court for criminal proceedings one day, only to attend Family Court within a few days for judges to proceed with no awareness of what has happened in the criminal proceedings. Non-molestation orders cross over between the criminal and civil justice systems and play a key role within the Family Court in evidencing domestic abuse and safeguarding survivors. The review identified that there was limited information available to ensure that orders were effective.

*"My ex had a non mol and a restraining order against him and has up to date been charged and sentenced on 4 breaches and is currently awaiting court date for a further 18 breaches. The family court were not aware of any of this until I instructed my solicitor to bring it up. Even then it was down to me to provide paper work to prove the charges as my ex was trying to say that he hasn't been charged. There were quite willing to take his word for it until I presented paperwork! Also, I have taken it upon myself to write a detailed report of the 16 years abuse sustained by my ex in order to give the court a better understanding of his mental well-being before a decision is made. They are yet to read it and are totally unaware of the abuse inflicted over them years many in front of the children. Different judge each time no consistency."*— **Anonymous survivor (#1 Proceedings 2017 and 2018)**

### **Case Study taken over the phone.**

Lydia (not her real name) explained that she struggled to leave her relationship which had become physically abusive. She had children with Paul (not his real name) who she tried to protect from the abuse. One-night Lydia went on a rare night out with friends. When she returned Paul was abusive towards her; she reacted, and an altercation occurred. Paul called the Police and accused Lydia of attacking him. The Police locked her up overnight even though she had a very small baby and she was the victim of abuse.

Finally, Lydia managed to leave Paul, but he stalked her relentlessly and pursued her through the family courts for contact with their children. Returning from contact on one occasion the children were in soiled clothes and had welts from being in a wet nappy for so long. Lydia was concerned for the safety of her children and also that Paul was using the courts as a way to get to her with little interest in the children's welfare

Lydia has spent thousands on legal representation. At times she has represented herself due to the escalating costs.

Paul has had multiple civil injunctions and restraining orders which he has breached on multiple occasions. Despite reporting breaches to the Police he continued to stalk and harass Lydia and use social media to intimidate her. Lydia moved to a village, but Paul would find excuses to be there. She repeatedly reported breaches to the Police with very little action taken.

Following six years of continued abuse, Paul was convicted of multiple breaches of his order and was given 16 months in jail.

### **3a. Protective Orders and Injunctions**

The Family Courts can assist with a range of protective orders. The review highlighted significant concerns around non-molestation orders, the processes involved in obtaining an order and the enforcement of orders. Therefore, this report has prioritised investigating these. With additional resources, a similar investigation into other protective orders is recommended.

A non-molestation order is a civil court order for a person not to contact or come within a certain geographical area of the person taking out the order. It is a civil order, but a breach is a criminal offence.

The process of obtaining a non-molestation order is not clear to applicants if they do not have legal support. Therefore, there are risks that appropriate forms and the witness statement may not be completed in enough detail, and safeguards may not be in place.

In some cases, emergency orders can take days to obtain due to court opening times, accessing legal support and Legal Aid applications.



North Yorkshire Police Officers responding to incidents may refer victims to agencies such as NCDV, Domestic Violence Assist and National Legal Service. However, anecdotally concerns were raised by stakeholders and survivors about the standard of service offered by these national agencies without local offices. Some of these concerns include sections of witness statements being copied and pasted from other documents and solicitors arriving at court having never spoken to the victim. There are also concerns about the process servers instructed by these agencies not collecting orders from the court to be served to the respondent.

“Because my ex-husband was not convicted [for breaches of protective orders], he continued to harass us. My daughters have both been diagnosed with PTSD as a result of the abuse and one of my daughters has anorexia, believed to be caused by PTSD/trauma. At the final hearing, the CPS did not bring the full file to court. My ex husband was not convicted even though he subjected my children and I to a terrifying campaign of domestic abuse.” – **Anonymous survivor (#23)**

### 3b. Service of non-molestation orders to the Police to enable enforcement

Non-molestation orders are often not being served to the Police in a timely fashion.

Discussions with survivors, North Yorkshire Police and Court staff made it clear that the process of serving non-molestation orders to the Police was not consistent across courts.

Bailiffs were serving orders to the Police in different ways, including delivering them by hand to the local Police Station front desk and sending them by post.

Anecdotally there is evidence that non-molestation orders are not always being recorded on the Police database as they are not being served in a consistent way. The Police report that there are no delays to them being recorded if they are received via the correct channels.

This increases the pressure on victims to carry a copy of the order with them at all times so that it can be enforced.

A review of available data suggested that the Police did have the same number of orders recorded as were made by the family courts in North Yorkshire. However, there were discrepancies over the number the Police had records of being served to the respondent. This would have a negative impact on the Police's power of arrest.

### 3c. Managing breaches of non-molestation orders

Breaches of non-molestation orders were criminalised in 2004 under section 1 of the Domestic Violence, Crime and Victims Act and are punishable by a prison sentence of up to 5 years. This came into force on 1<sup>st</sup> July 2007.

An unintended consequence of a breach being made a criminal offence is that the orders may act as less of a deterrent and be more difficult to enforce. There are two reasons for this:

1. The burden of proof is that of a criminal court, beyond all reasonable doubt.
2. The breach must go through the two-stage process to be heard in court. This means that the alleged perpetrator will likely be bailed if they were arrested pending investigation or a court date, if the breach makes it to court.

Before the change in 2007, under Civil Jurisdiction, an arrest for breach of non-molestation order would result in a court hearing the next day for contempt of court with a maximum prison sentence of two years. The burden of proof would be based on the balance of probabilities, the same circumstances under which the order was made. This meant that there was no delay in enforcement and that the alleged perpetrator was in custody from the moment of arrest until their case was heard in court and their punishment decided upon by the magistrates, much the same as Domestic Violence Protection Orders are enforced currently.

### 3d. Police enforcement of non-molestation orders

There is a lack of clarity on the expectations of officers and how to respond to breaches. In conversations with Officers and Domestic Abuse Coordinators, the description of the response that survivors could expect differed. There was also some confusion about whether the Police could arrest for a breach of a non-molestation order. Survivors reported breaches but were disappointed at the burden of proof required for the Police to pursue a criminal conviction. An online training programme has been created by Northumbria Police and shared with officers. In some cases, survivors suggested that the Police did not follow up on breaches because they felt that the victim had instigated contact or gone along with it.

<https://www.cgi-group.co.uk/en-gb/white-paper/why-civil-and-criminal-justice-need-to-work-better-together-to-protect-victims-of-domestic-abuse>

*"Non-Mol, ex is to stay 25m away from my home yet can stand at the top of my cul-de-sac drive in full view of my home as its classed as over 25m yet is my only exit with children."* – **Anonymous survivor (#26)**

## Theme 3: Outcomes and further actions

The following table provides an overview of the outcomes, under this theme of the project, and suggested further actions

Outcomes of project	Further actions to be taken
<p>Work has been undertaken with the Police legal team to improve access to Police records, 'Subject Access Requests' and 'Civil Disclosures' for litigants in person. The dedicated Family Court website will feature information which will also be shared with key stakeholders.</p>	<p><b>Nationally:</b> Improve the information being made available to the courts that is held on Police systems to enable the courts to make informed decisions.</p>
<p>Working with the University of York, Street Law Project, CFCLo has developed a dedicated Family Court web site with information about order and injunctions and a searchable database of solicitors.</p>	<p><b>Locally:</b></p> <ul style="list-style-type: none"> <li>• Police to consider the appropriateness of directing victims to national agencies.</li> <li>• Police to hand out new IDAS postcards at each incident where appropriate so that victims can access support via the online database of local solicitors with Legal Aid contracts.</li> </ul>
<p>CFCLo brought together a range of stakeholders for a workshop with Crest and CGI to discuss how the Police PND could be used to record non-molestation orders. The workshop also discussed the mechanisms that could be put in place to ensure service of the order to the police. A pilot programme is in development for both North Yorkshire Police and Durham Constabulary.</p>	<p><b>Locally:</b> Further work to be undertaken to ensure adequate safeguarding around non-molestation orders.</p> <p><b>Nationally:</b> A national review of protective orders conducted as a joint initiative between the National Oversight Group on Domestic Abuse, Ministry of Justice, the National Family Justice Board and the National Police Chiefs Council leads on domestic abuse.</p>
<p>Following a strategic meeting attended by CFCLo, support was given for ensuring consistent pathways for serving non-molestation orders to the Police were identified and shared with stakeholders. This was identified as an important priority to safeguard victims and survivors. CFCLo assisted with identifying an effective process for serving orders to the Police. This has been documented and shared with the courts.</p>	<p>This should build on existing research conducted by Nick Dale and Martin Jebb at CGI supported by the Sussex Police Crime Commissioner Katie Bourne. <a href="https://www.cgi-group.co.uk/en-gb/white-paper/why-civil-and-criminal-justice-need-to-work-better-together-to-protect-victims-of-domestic-abuse">https://www.cgi-group.co.uk/en-gb/white-paper/why-civil-and-criminal-justice-need-to-work-better-together-to-protect-victims-of-domestic-abuse</a></p> <p>This is particularly pertinent because of the introduction of Domestic Abuse Protection Orders. Once introduced, applications for these orders will be made in Family Court as well as via magistrates and can be applied for by the Police, the victim and other agencies, such as social care. A breach will be a criminal offence with a maximum prison sentence of 5 years.</p> <p>The review that has been recommended should include:</p> <ul style="list-style-type: none"> <li>- Data to analyse the effectiveness of non-molestation orders e.g. how many are made, breaches, convictions for breaches, and the number of incidents of serious injury and death where a non-mol is in place.</li> <li>- The impact of criminalising breaches on the safeguarding of survivors.</li> <li>- The impact of criminalising breaches on the ability to enforce orders.</li> </ul>

	<ul style="list-style-type: none"> <li>- Survivors experience of the effectiveness of non-molestation orders and other protective orders.</li> </ul>
<p>Police attended coercive and controlling behaviour training.</p>	<p><b>Nationally:</b> The National Police Chiefs' Council (NPCC) leads for domestic abuse should consider a standardised, force wide training programme is to upskill front line officers on recording accurately and with sensitivity when responding to incidents which may be domestic abuse related. Enforcement of protective orders and debunking myths relating to domestic abuse.</p>
<p>Review of the strategic boards</p>	<p><b>Locally:</b> Improve links between the Local Family Justice Board and the Local Criminal Justice Board.</p>

## Conclusion

The project has benefited from wide ranging support from stakeholders and many have given their time to talk to the CFCLC in person, in telephone interview and at events and consultations. The North Yorkshire Courts have been helpful in sharing their knowledge and experience as have Cafcass, children's social care and some members of the judiciary, North Yorkshire Police have also worked closely on the project giving their insights and looking for opportunities to make improvements, particularly around recording of non-molestation orders and enforcement. Over 50 people attended the consultation event.

Over 60 survivors took part in the online survey and participated in telephone interviews, shining a light on the complex and challenging situations they found themselves in. Overwhelmingly, fears for the safeguarding of the children was a key concern for survivors. They were concerned that their children's voices were not being heard. Some survivors reported feeling unable to safeguard their children for fear of the consequences of Family Court judgements.

Survivors and stakeholders highlighted that there was a lack of understanding of domestic abuse and coercive and controlling behaviour, having a negative impact on proceedings and the decisions of the court, possibly putting survivors and their children at risk. Free training was offered to all judges, magistrates and Cafcass. A dedicated session was provided at York Court. In total over 112 people attended the three training events with a high number from both the Police and Social Care.

Another key theme was fear of the perpetrator when attending court. Survivors described the impact this had on their ability to access justice. During the project, work has been carried out to make it easier for survivors to access special measures and to ensure that everyone attending court knows that they can ask for support. This was supported by the development of an information pack for everyone attending for Child Arrangement Orders and the development of a dedicated Family Court website for survivors of domestic abuse. Staff at York Court have done a lot of work in this area and Scarborough Justice centre have also made arrangements to facilitate a separate entrance and additional waiting areas to ensure survivors are able to give evidence safely.

The project has raised awareness of the issues affecting survivors and their children and brought together stakeholders to address these creatively and collaboratively. During the project, a steering group has been convened to develop a volunteer programme to provide support for litigants in person as there is no PSU in York and North Yorkshire and Citizens Advice have very limited capacity to assist. Furthermore, a Domestic Abuse and Family Court Working Group will now meet quarterly to share information and work together. This will be overseen by the Domestic Abuse Joint Coordinating Group to ensure that there is continuity and accountability to carry the recommendations forward.

The lack of access to legal support and the subsequent impact of this on the number of people attending court unrepresented cannot be underestimated. The report highlights that vulnerable people, some with learning disabilities or low literacy levels are navigating the complex legal system alone. Many survivors also report the negative impacts that the cost of proceedings has on them and their children. Anecdotally, judges suggest that managing cases with unrepresented parties has a negative effect on proceedings and the information available that may be relevant to the making of an order.

One of the outcomes of the project has been the development of a dedicated website for survivors of domestic abuse navigating the family courts. The website will help people to find the information they need to be empowered through the process. Combined with a searchable database of local solicitors, the website will be an invaluable tool and a significant legacy of the project. Law students at the University of York assisted with the project, creating video guides and writing some of the content for the website. The website will be promoted on postcards that have been developed for the Police to distribute which also highlight the warning signs of domestic abuse and the assistance provided by IDAS.

A key recommendation of the final report is for an independent review of the family courts and associated stakeholders to be undertaken and for that review to include data to provide insights into the performance of the courts and partner agencies in relation to the safeguarding of survivors and their children.

The project has secured several improvements and established two working groups to ensure the improvements are sustainable and that the work continues beyond the end of the project.

## Acknowledgements

Thank you to the many survivors who shared their experiences. A special thanks to Claire Throssell for sharing her experience at the consultation and for her tireless efforts to draw attention to the issues around Family Court proceedings.

Several organisations have been working in this area and some of their work is referenced in the report. The reports and resources created by these organisations have been essential when conducting this review, these include: Rights of Women, Advice Now, Women's Aid Child First campaign and accompanying report, CGI report on the links between civil and criminal courts and the Family Law information website for Bristol Family Justice Centre. The Law Society and the Legal Aid Agency statistics bulletin to name just a few.

Thanks also to North Yorkshire Police, Cafcass, the many firms of Solicitors who have assisted with the work, the Court staff and judiciary at York Court and the North Yorkshire Courts, and the staff at IDAS.

Thank you to everyone who has given generously of their time to facilitate this review.