



# Family Court Reform

**A briefing exploring the problems experienced by those using the Family Court in England & Wales, an analysis of the reasons these problems occur and recommendations for practical improvements.**

**Final report**

**July 2022**

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## About this document

*This report is a response to Dominic Raab's request for "something quite drastic and bold" which would give "better outcomes and cut delays".<sup>1</sup>*

*It has been compiled by the [Family Court Reform Coalition](#) through consultation with a wide group of contributors including three online seminars in February and June 2022. (see 'Secretariat and endorsements' p16)*

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<sup>1</sup> <https://www.lawgazette.co.uk/news/raab-invites-drastic-and-bold-ideas-to-keep-family-matters-out-of-court/5110764.article>

# Family Court Reform (England and Wales)

## Desired outcomes for the reforms

*Better outcomes for children and their parents.  
Lower cost to both taxpayer and parents.*

## Summary

Our Report is in four main sections:

### Part1: The problem

We identify the specific issues and statistics which need to be addressed:

1. the harms done to the children and families who use the service
2. high and rising costs both to the public purse and to the individual parent

### Part 2: 'Analysis'

We identify the three broad sets of reasons why these problems have developed:

1. a vicious cycle of perverse incentives which drive the process in the opposite direction to the one intended.
2. a lack of standardised practice, combined with an approach which is unnecessarily adversarial, creates delays, drives up costs and damages children
3. a lack of systematic research into the effectiveness of outcomes so that the system cannot learn and improve

### Part 3: Lessons from pilots, trials and other jurisdictions

We look at the lessons learnt from past attempts to improve the system and also more successful examples in other jurisdiction.

1. Less adversarial approaches: successes and failures
2. Presumption of shared care: outcomes for children

### Part 4: Proposals:

These are built not only on the analysis in Pt 2, but also on the experience of other jurisdictions in Pt 3. In Part 2 we saw that the current system includes a vicious cycle which rewards the person with majority or sole care (resident parent) for not making an agreement. We want a system with a virtuous cycle which rewards parents for reaching an agreement and sticking to it.

To achieve this we suggest:

1. Significant reduction in perverse incentives to go to court
2. Inclusion of incentives to form and stick to an agreement
3. A less adversarial, rules-based process with a presumption of shared-care and the maintenance of contact (when safe and practical)
4. Improved enforcement of Orders
5. Independent assessment and research to guide improvement

These changes could also progress towards a better, co-parenting approach. The existing perverse incentives act mostly against the non-resident parent, creating the perception by the children that one parent is more important, competent or deserving than the other.

## Pt 1: The problem

There are two main types of problem related to:

- the harm done to both the children and parents involved
- the cost, delay, rising case numbers

They are, of course, connected: for example, delays in the process of examining evidence of alleged abuse results in damage to the bond between the accused parent and the child.

### 1.1 General principles

Section 1 of the Children Act 1989 sets out general principles:

- ‘the child’s welfare shall be the court’s paramount consideration’;
- ‘any delay in determining the question is likely to prejudice the welfare of the child’;<sup>2</sup>

The current system appears to be failing in those duties.

### 1.2 Harm to participants

#### Harm to children

##### *Additional Adverse Childhood Experience*

Experiences which harm children, known as ACEs (Adverse Childhood Experiences), can include violence, neglect, etc. The current Family Court process can add another ACE in the form of unnecessary separation of a child from one parent or the child’s experience of the effects of polarisation of their parents.<sup>3 4 5</sup>

##### *Enabling Alienating Behaviours*

Alienating behaviours occur when parent A ‘bad mouths’ parent B to the child to the point where the child no longer wants contact with B. While this can happen in the absence of the Family Court, the adversarial process encourages ‘*the other parent is bad*’ thinking which makes this behaviour more likely.<sup>6 7</sup> (These behaviours (though not the term) have been acknowledged in the Statutory Guidance for the Domestic Abuse Bill 2021 and by Cafcass.)

##### *Unnecessary separation*

Besides the more obvious value of the mother, there is a wealth of international evidence showing the beneficial effects of fathers and the links between fatherlessness and a range of negative life chances, including education, crime etc.<sup>8</sup>

When the court unnecessarily separates a child from one parent, they add to these statistics. For example: when accusations of domestic abuse result in one parent being denied contact while a

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<sup>2</sup>Children Act 1989 Section 1. <https://www.legislation.gov.uk/ukpga/1989/41/section/1>

<sup>3</sup> Norfolk NHS consider ‘loss of contact with a biological parent’ as an ACE.

<https://www.justonenorfolk.nhs.uk/digital-health-profiles/keeping-safe/adverse-childhood-experiences>

<sup>4</sup> Manchester University NHS Trust consider ‘Losing a parent through divorce, death or abandonment’ to be an ACE. <https://mft.nhs.uk/rmch/services/camhs/young-people/adverse-childhood-experiences-aces-and-attachment/>

<sup>5</sup> Hardt, J. & Rutter, M. Validity of Adult Retrospective Reports of Adverse Childhood Experiences: Review of the Evidence. *J. Child Psychol. Psychiatry* **45**, 260–73 (2004).

<sup>6</sup> Harman, J. J., Matthewson, M. L. & Baker, A. J. L. Losses experienced by children alienated from a parent. *Curr. Opin. Psychol.* **43**, 7–12 (2022).

<sup>7</sup> Miralles, P., Godoy, C. & Hidalgo, M. Long-term emotional consequences of parental alienation exposure in children of divorced parents: A systematic review. *Curr. Psychol.* (2021) doi:10.1007/s12144-021-02537-2.

<sup>8</sup> Hadley, R. Deconstructing Dad. in *The Palgrave Handbook of Male Psychology and Mental Health* (eds. Barry, J. A., Kingerlee, R., Seager, M. & Sullivan, L.) 47–66 (Springer International Publishing, 2019). doi:10.1007/978-3-030-04384-1\_3.

fact-finding process takes place. Even if contact is later restored, it can damage the child-parent bond.<sup>9 10</sup>

## Harm to parents

### *Hostility promoted*

Under the current system, since there is no default level of contact, if the non-resident parent wants more time with their child, they need to convince an adversarial court that this is in the best interests of the child.<sup>11 12</sup>

The current system may well be unwittingly promoting Intimate Partner Violence as, when joint custody is introduced, there is a reduction in IPV.<sup>13</sup>

### *Increasing suicide*

Besides the stress caused to both parents, there is evidence that, of the 4000 male suicides each year in the UK, perhaps 20% are linked to relationship breakdown, loss of contact with their children etc.<sup>14</sup>

### *Accusations of Domestic Abuse*

Even when these claims are later not proven or even disproven, they can have a long-term, seriously damaging effect.<sup>15 16</sup>

### *Financial cost*

The financial, stress and time costs to the parents involved is itself damaging.<sup>17</sup>

## 1.3 Systemic problems

### *High and rising costs of the Family Court*

Family Court cost the government £970m in 2019/20 in England and Wales, with the Court sitting for 463,000 hours. Legal Aid accounts for 62% of the cost to government, whilst HMCTS and judiciary costs 26% and Cafcass 12%. While private law cases are a significant minority of the State's costs, litigants may themselves spend further £millions per annum on their own lawyers and court costs.<sup>18</sup>

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<sup>9</sup> Moss, E. & St-Laurent, D. Attachment at school age and academic performance. *Dev. Psychol.* **37**, 863–74 (2001).

<sup>10</sup> Verrocchio, M. C., Marchetti, D. & Fulcheri, M. Perceived parental functioning, self-esteem, and psychological distress in adults whose parents are separated/divorced. *Front. Psychol.* **6**, (2015).

<sup>11</sup> Bentley, C. & Matthewson, M. The Not-Forgotten Child: Alienated Adult Children's Experience of Parental Alienation. *Am. J. Fam. Ther.* **48**, 509–529 (2020).

<sup>12</sup> L. Baker, A. J. The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study. *Am. J. Fam. Ther.* **33**, 289–302 (2005).

<sup>13</sup> [Bargaining under Threats: The Effect of Joint Custody Laws on Intimate Partner Violence | IZA - Institute of Labor Economics](#)

<sup>14</sup> Seager, M. From Stereotypes to Archetypes: An Evolutionary Perspective on Male Help-Seeking and Suicide. in *The Palgrave Handbook of Male Psychology and Mental Health* (eds. Barry, J. A., Kinglerlee, R., Seager, M. & Sullivan, L.) 227–248 (Springer International Publishing, 2019). doi:10.1007/978-3-030-04384-1\_12.

<sup>15</sup> Avieli, H. False Allegations of Domestic Violence: A Qualitative Analysis of Ex-Partners' Narratives. *J. Fam. Violence* (2021) doi:10.1007/s10896-021-00342-w.

<sup>16</sup> Taylor, J., Bates, E., Colosi, A. & Creer, A. Barriers to Men's Help Seeking for Intimate Partner Violence. *J. Interpers. Violence* 088626052110358 (2021) doi:10.1177/08862605211035870.

<sup>17</sup> Berger, J. L., Douglas, E. M. & Hines, D. A. The mental health of male victims and their children affected by legal and administrative partner aggression. *Aggress. Behav.* **42**, 346–361 (2016).

<sup>18</sup> Hines, Douglas, E. M. & Berger, J. L. A self-report measure of legal and administrative aggression within intimate relationships. *Aggress. Behav.* **41**, 295–309 (2014).

## Long delays in the system

### *Increases in length of proceedings*

Even before COVID, the length of time of family law proceedings was increasing at an alarming rate, mainly due to the increased number of litigated cases. HMCTS Annual Reports shows the time taken for cases in the family court has risen from 23 weeks in 2016-17 to 40 weeks in 2020-21.<sup>19</sup>

Up to 30% of the private family law proceedings are returning cases, largely the result of violations of orders made.<sup>20 21</sup>

Parents report legal teams arriving unprepared for the scheduled session and asking for adjournment.

### *Increasing numbers of cases*

Increasingly, separating couples with children are going to the Family Court. Cases in the Family Court have risen by around 8% each year since 2015 and it is estimated 38% of all separating couples with children will use the Family Court.

### *The high and growing number of accusations of domestic abuse*

Cases of alleged domestic abuse have risen from 30% in 2008 to 50% in 2015 and 62% in 2017. These accusations significantly add to both the cost, delay and harm to participants when no abuse is proven.<sup>22</sup>

There are few consequences for a malicious parent who makes allegations of DA which are not found true. False allegations and vexatious claims add further burdens to the system. Some members of the Judiciary have observed that many of these allegations would not meet the standards applied in criminal law proceedings.<sup>23</sup>

## Perceived bias in the Judiciary and Cafcass

Many non-resident parents perceive a bias against them in the court process.

This promotes further Family Court time (and expense, stress etc) when they return to court in an attempt to redress findings they judge as not based on evidence.<sup>24 25</sup>

## 1.4 Vicious cycle

Parents resort to the Family Court when they cannot agree amicably. However, a vicious cycle can set in because the costs, delays and polarisation of the court process can aggravate their disagreement, leading to even greater demands on the Family Court process.

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<sup>19</sup> HMCTS Annual Reports <https://www.gov.uk/government/publications/hm-courts-tribunals-service-annual-report-and-accounts-2020-to-2021>

<sup>20</sup> <https://www.cafcass.gov.uk/2017/11/28/cafcass-publishes-new-research-private-law-cases-return-court/>

<sup>21</sup> <https://fnf.org.uk/latest-news/press-releases/825-fnf-family-court-delays-latest-moj-data-press-release>

<sup>22</sup> <https://www.cafcass.gov.uk/wp-content/uploads/2017/12/Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf>

<sup>23</sup> Hans, J., Hardesty, J., Haselschwerdt, M. & Frey, L. The Effects of Domestic Violence Allegations on Custody Evaluators' Recommendations. J. Fam. Psychol. (2014) doi:10.1037/fam0000025

<sup>24</sup> Douglas, E. M. & Hines, D. A. The Helpseeking Experiences of Men Who Sustain Intimate Partner Violence: An Overlooked Population and Implications for Practice. J. Fam. Violence 26, 473–485 (2011).

<sup>25</sup> Hine, B., Wallace, S. & Bates, E. Understanding the Profile and Needs of Abused Men: Exploring Call Data From a Male Domestic Violence Charity in the United Kingdom. J. Interpers. Violence 088626052110280 (2021) doi:10.1177/08862605211028014.

## Pt 2: Analysis

This section examines the reasons why the above problems have arisen.

### **2.1 It's a family-breakdown, mental health and distress problem, not just a legal one.**

The primary driver of these problems in the Family Court is the breakdown of the family. If families were more stable there would be less demand on the Family Court.

Currently, family breakdown is treated primarily as a legal issue. However, the consequences of family breakdown are not only legal; they are family dynamics, child and parental emotional distress, damage to mental health etc.

As highlighted below, public funds are used primarily for the legal process with little being used for treatment (eg mental health) of the participants. The emotional needs of the children are not being met.

### **2.2 Perverse incentives**

These are side-effects which create a 'vicious cycle', acting in the opposite direction to the one intended. While these incentives remain, attempts to improve the system are unlikely to succeed.

#### **The incentive to go to court**

Jurisdictions with a presumption of a default level of shared care have a lower percentage of cases going to court. Current UK practice promotes the opposite.

#### **The legal-aid incentive**

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed the right to legal aid in Family Court unless there was an allegation of domestic abuse. This has created perverse incentives for the parent opposed to contact with the other parent to make allegations of domestic abuse to obtain legal aid. The process is further prolonged because one party benefits by over-claiming,

#### **The public-funding incentive**

In complex cases the professionals are awarded a certificate (up to £25k) and can apply again when that is spent. This incentivises the legal professionals to prolong the legal process.

#### **The Child Maintenance incentive**

The formula used to calculate Child Maintenance payments is based on the number of nights the child spends with each parent. This incentivises one parent to reduce contact with the other as this results in them receiving higher support payments.

#### **The expanding definition of abuse.**

As the definition of domestic abuse has expanded to include, for example, coercive control, the potential to accuse the other parent expands as well.

#### **Vested interests**

As with any industry, those working in the Family Court, lawyers representing their clients, Cafcass and those offering services to Domestic Abuse victims all derive their incomes from the current system. As such, they have no incentive to make the whole system more efficient, streamlined, less adversarial etc.

#### **Risk distortion**

For fear of a tiny number of serious harms, professionals are often treating one parent as potentially harmful and separating far more children from one parent (usually the fathers) than the evidence suggests would be appropriate.



## 2.3 Problems arising from the court process

### Lack of standard practice

There are, for example: no default division of a child's time between the parents. Judges, Cafcass etc do not cooperate to develop standard approaches. Judges have wide discretion, use their 'professional judgement', and so the process is unpredictable. This lack of predictability leads to a higher level of dissatisfaction with the court orders (by one party) and hence an increase in appeals. The complexity of the appeal process causes further delays.

### The adversarial approach

This sets parties apart and promotes court involvement and delay. Being derived from the criminal courts, Family Courts are unsuited to reconciliation or dispute de-escalation.

### Threshold of harm

In public law, the 'threshold of harm' is set high: it takes good evidence for Social Services to remove a child from its parent. However, in private law cases, a child can be separated simply while allegations are investigated.

### Lack of enforcement

When one party breaks a contact order (for example), the Family Court does not enforce their own orders. Some claim that, because the enforcement options are too draconian, they are not used.<sup>26</sup>

### Delays in the system

Where accusations of domestic abuse are made, evidence may not be requested till late in the process, causing unnecessary delays.

### Unequal starting points

If one parent has majority care, the status quo is not easily changed. The non-resident parent needs to prove their case, not assert their right.

## 2.4 Lack of research, evaluation of outcomes etc

Because hearings are in private (secret), little research is done on effectiveness. Judges get little feedback on success/failure of their Orders. Outcomes are not measured.

In the absence of a standardised monitoring of outcomes, it is not possible to assess the long-term benefits/harms of the decisions made.

## 2.5 A one-sided narrative and training

There appears to be a pervasive narrative which brands men as dangerous and as perpetrator.<sup>27</sup>

This systemic, unconscious bias permeates professionals who work with the Family Court, judiciary, Cafcass. This is most apparent when it comes to allegations of Domestic Abuse. Social workers, media etc start with the assumption of male-as-perpetrator, mother-as-protector.

Gamma bias is a term which describes society's tendency to amplify the harms done by men and minimise those done by women while minimising the positive actions of men and celebrating those of women.<sup>28</sup>

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<sup>26</sup> <https://www.voiceofthechild.org.uk/kb/judicial-enforcement-of-child-arrangements-orders-some-data/>

<sup>27</sup> Hogan, K., Clarke, V. & Ward, T. Men's experiences of help-seeking for female-perpetrated intimate partner violence: A qualitative exploration. *Couns. Psychother. Res.* 21, (2021).

<sup>28</sup> Seager, M. & Barry, J. A. Cognitive Distortion in Thinking About Gender Issues: Gamma Bias and the Gender Distortion Matrix. in *The Palgrave Handbook of Male Psychology and Mental Health* (eds. Barry, J. A., Kingerlee, R., Seager, M. & Sullivan, L.) 87–104 (Springer International Publishing, 2019). doi:10.1007/978-3-030-04384-1\_5.



Many Family Law training courses are still based on such things as the (discredited) Duluth Model, which, because it was originally produced by a team dealing with 'battered wives', takes a one-sided view. It has not been found to be effective, is not evidence-based and was disowned by one of its creators, Ellen Pence.<sup>29</sup>

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<sup>29</sup> Pence, Ellen (1999). "Some Thoughts on Philosophy". In Shepherd, Melanie; Pence, Ellen (eds.). *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond*. Thousand Oaks, CA.: Sage. pp. 29–30.

## Pt 3: Lessons from pilots, trials and other jurisdictions

### 3.1 Less adversarial systems

We recommend research into jurisdictions which already use a less-adversarial system for family court. These can provide a blueprint for reform.

#### Settlement Conferences Pilot

*“In a settlement conference, a trained family judge adopts an inquisitorial approach in order to encourage cooperation between parties with a view to reaching an agreement that is in the children’s best interests.”*<sup>30</sup>

The pilot appears to have been successful with about 50% of suitable cases reaching agreement.<sup>31</sup> One component appears essential to success: the judge who proposes the settlement is not the same as the one who hears the case should the parties not agree to the settlement.

#### Family Court in Israel

The Israeli Family Courts have:

- a unified Family Court with comprehensive jurisdiction and wide powers to deal with all family disputes, together with religious courts (Jewish, Muslim Druze and Christian) which have parallel jurisdiction in some matters of personal status.
- only lawyers who have knowledge and experience in family law can become judges of the Family Court and of the religious courts.
- support by in-house Family Court Social Services units
- a ‘One Family – One Judge’ policy for continuity and efficiency.
- mandatory pre-filing information and Alternative Dispute Resolution sessions for litigants and an immediate and swift procedures when abuse and maltreatment are alleged;
- wide powers to enforce decisions by imposing sanctions on non-compliant litigants.<sup>32</sup>

### 3.2 Shared Parenting systems

There are now many jurisdictions which have already implemented shared-care. These are examples:

- Kentucky, USA 2018: Creates a presumption that joint custody and equally shared parenting time is in the best interest of the child<sup>33</sup>
- Arkansas 2021<sup>34</sup> gives effect to ‘equal parenting time’ by requiring the court to make a contact schedule that “Maximizes the amount of time that each parent has with the child”
- Belgium 2006 (Joint physical custody: recommended 50% and minimum of 35%)<sup>35</sup> “joint physical custody, compared with sole custody (either by the mother or father), provides a better framework to shape a post-divorce parent–child relationship with both parents in terms of open communications and support”<sup>36</sup>

<sup>30</sup> <https://www.judiciary.uk/publications/settlement-conferences-pilot/>

<sup>31</sup> <https://www.gov.uk/government/publications/the-implementation-and-delivery-of-the-family-court-settlement-conferences-pilot-a-process-evaluation>

<sup>32</sup> *The Israel Family Court – Therapeutic Jurisprudence and Jurisprudential Therapy from the Start* in the International Journal of Law and Psychiatry. Volume 63 (2019). p. 68-75;

<sup>33</sup> <https://legiscan.com/KY/bill/HB528/2018>

<sup>34</sup> <https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB18.pdf>

<sup>35</sup> <https://www.sharedparenting.scot/shared-care-law-works-well-in-belgium/>

<sup>36</sup> Bastiaens K, Pasteels I. Is joint physical custody in the best interests of the child? Parent–child relationships and custodial arrangements. Journal of Social and Personal Relationships. 2019;36(11-12):3752-3772. doi:10.1177/0265407519838071

- Netherlands 2009 (Joint legal custody only, joint physical custody recommended<sup>37</sup> 'Soft' requirement means EPT occurrence about the same as pre-reform levels after initial surge<sup>38</sup>)
- Sweden: (Children and Parents Code Ch 6 Sec. 3) '*If a decree of divorce is granted between the parents, both parents shall continue to have custody of the child....*' In line with active promotion from the government, Swedish courts have adopted 50:50 alternating parenting as the default assumption.<sup>39</sup> "children in JPC have better mental health and fewer behavioural problems than children in SPC families"<sup>40</sup>
- Spain: some regions implemented shared parenting and some did not. Their live, longitudinal research demonstrates the benefits.<sup>41</sup>
- Israel: Both parents are equal guardians of their children, regardless of marital status, and have joint decision making powers in anything concerned with the child's upbringing. On separation, if there is no agreement, the court decides on all issues, including how much time the child spends with each parent, on the basis of the needs of the child and the abilities and availabilities of each parent.

### 3.3 What does not work

#### More resources

Simply adding to the resources of the Family Court will not solve the problem. The processes which have been amplifying the problem still exist and, without reform, will soon absorb any extra funds made available.

#### Mediation assessment alone

The introduction of a requirement for mediation assessment (MIAMS) in April 2014 has had no significant mitigating effect on the number of cases going to court.<sup>42</sup> Without further legislation and the removal of the 'perverse incentives' outlined above, one party can simply refuse to engage in the mediation process.

#### The Manchester pilot

This pilot ran in the Manchester area in early 2018. Of 1190 cases, only 14% (171) were deemed suitable for dispute resolution outside court. Of these, 27% (47) cases reached some level of agreement. This gives a 'success' rate for reducing cases going to court of 47/1190 or about 4%. These are poor results. However, our analysis above suggests that if the 'perverse incentives' are still in place, we should not expect a significant success rate.

<sup>37</sup> <https://iclg.com/practice-areas/family-laws-and-regulations/netherlands> at [6.7]

<sup>38</sup> Poortman, A. R., & van Gaalen, R. (2017). Shared residence after separation: A review and new findings from the Netherlands. *Family Court Review*, 55(4), 531-544.

<sup>39</sup> Blomqvist, Paula, and Maria Heimer. "Equal Parenting when Families Break Apart: Alternating Residence and the Best Interests of the Child in Sweden." *Social Policy & Administration* 50.7 (2016): 787-804.

<sup>40</sup> Fransson, E., Hjern, A., & Bergström, M. (2018). What can we say regarding shared parenting arrangements for Swedish children?. *Journal of Divorce & Remarriage*, 59(5), 349-358.

<sup>41</sup> [The impact of equal parenting time laws on family outcomes and risky behavior by teenagers: Evidence from Spain - ScienceDirect](#)

<sup>42</sup> <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2021>

## Pt 4: Reforming the Family Court in England and Wales

There are three core ways to improve:

- **Preventative measures:** which reduce the likelihood of the case ending up in the Family Court (these are the most cost-effective)
- **Improvements to the process:** which make it quicker, cheaper, less traumatic and give better outcomes for children
- **Restorative measures:** which aim to repair the damage done (not covered in this report).

These proposals seek to address the problems identified in Pt 1, using the analysis in Pt 2 and drawing on the positive evidence and lessons in Pt 3 of this report.

### Primary objectives

- To promote positive outcomes for the children and their families involved in separation/divorce.
- To reduce the financial cost to both those parents and also to the state.

### 4.1 Support for families

#### Preventing family breakdown

Rates of family breakdown and failure to agree contact with children are clearly the main drivers of Family Court problems. Any additional support that can be given to families to work out their problems, stay together as a family, reach agreement, not make unfounded allegations etc will all both reduce the demand on the Family Court, but also give better outcomes for children.

#### Redirect funding from litigation to family/child therapy/treatment

The vast majority of the current public funding of the Family Court goes to court and legal professional costs. The reforms we propose will free up funds to tackle the underlying problems which have led to family break-up and litigation.

### 4.2 Reducing incentives to go to court

#### Reduce the legal aid incentive

This could be moderated by either making it available to both parties, or to neither. Our proposals for a more simplified, rules-based system greatly reduce the hours of legal representation and hence reduce the claims of DA.

More men could apply for legal aid using, for instance, the SafeLives domestic violence checklist.<sup>43</sup>

#### Consequences for false allegations

There should be legal consequences for making allegations proven to be false including prosecution and the recovery of any legal aid payment. Allegations of Domestic Abuse should be tested in a criminal court.

The recently launched Contempt of Court form FC600 should be discussed as part of a mandatory checklist at the beginning of all proceedings with litigants by law firms<sup>44</sup>.

<sup>43</sup> <https://safelives.org.uk/sites/default/files/resources/Dash%20risk%20checklist%20quick%20start%20guidance%20FINAL.pdf>

<sup>44</sup> <https://www.gov.uk/government/publications/ask-the-court-to-consider-an-allegation-of-contempt-of-court-form-fc600>

### **Reduce the public funding incentive**

Public Funding Certificates should only be used in extreme cases as these prolong the case.

### **Reduce the child maintenance incentive**

Change the child-maintenance formula so that it no longer rewards one parent (usually the resident parent) to limit nights with the other parent. This promotes litigation by the parent who is burdened with both higher payments and reduced child contact time.

Ensure that the outcome is not one parent living in luxury while the other is in poverty.

### **Recognising the effects of vested interests**

It should be recognised that professionals and advocacy groups intrinsically favour policies which increase their income or power. It is unlikely that reforms, such as those proposed here, will be supported by these professionals if they are seen as reducing the market for their services.

They should not take part in the evaluation of the outcomes and any evidence they offer should be independently assessed for bias.

Checks should also be made to ensure that publicly-funded groups are not using those funds to lobby for more funding.

## **4.3 Promoting out-of-court settlement**

### **Keep non-domestic abuse cases out of the court**

Since around 40% of cases in the Family Court have no allegations of mistreatment, if these had an alternative route, court resources can be directed to the needy cases.

### **A less adversarial approach**

Develop and adopt a process which brings the sides together to compromise and find agreement.

Promote out-of-court settlements. One option is an inquisitorial process where judges (or other trained professional) play an active role in driving the investigation and examination of the evidence. This would look at the whole situation of the family, and work out how they can best move on in a separated-parent environment.

### **Promotion of mediation**

Since either party can, at present, simply refuse to enter mediation, implementation of processes which increase the proportion of those who agree to this route are needed.

### **A rules-based system**

This would have standard outcomes for cases with common characteristics. It could be a clerk (or website/app) following defined rules/guidelines/Practice Directions. The court process would only be needed if a variation on this standard was demanded by one parent.

### **Shared parenting as a starting point**

We should recognise the value of direct contact with both parents (with the usual caveats for abuse etc). Start with (rebuttable) presumption of shared care. The research shows this to be significantly beneficial (even when the parents are hostile to each other). This will reduce the numbers going to court.

Shared parenting benefits those mothers who wish to continue careers or seek a work/life balance.

### **Maintain contact**

With the usual caveats, safe, regular contact with both parents should be maintained while a long-term contact-agreement is reached. The ‘threshold of harm’ should be set using similar criteria in private law as applied in public law.<sup>45</sup>

### **Use Standing Temporary Order**

When a divorce petition or child arrangements order is filed, the court automatically issues an order which is designed to preserve the status quo, as far as possible, and to set out the way in which the parents are expected to conduct themselves in the interim in both children and financial issues.

### **More use of Family Assistance Orders**

By reducing the costs of the system, funding should be given to Family Assistance Orders to support families to support parents who are struggling to implement the court decision.

## **4.4 Improving the court process**

### **Reduce delays**

The private Family Court process should be given a legally enforceable time limit to minimise delays (which harm children). Where domestic abuse is alleged, evidence of allegations should be required at the start of the process, with no extension without very good reason.

### **Improve enforcement**

Make enforcement options practical, eg take away driving licence, small fines etc for violations. If a Penal Notice is used in an Order, this allows police to intervene without a return to court.

### **Reform of the role of Cafcass**

Convert the role of Cafcass from writing reports to providing support and assistance. Change the key performance indicators so they reflect outcomes for children.

## **4.5 Evidence-based training and practice**

### **Not stereotyping men as dangerous, perpetrator etc**

This is not specific to the Family Court. It exists at the cultural level in society and, consequently, is harder to address as much of it is unconscious and absorbed from the cultural environment.

However, judges are paid to enact the law fairly. The review process we propose would challenge judges to apply the law equally.

Training of staff should be along gender-neutral lines using established evidence, official data etc.

Better data collection and training in risk-assessment is needed to minimise both risk distortion and vested interests.

### **Independent oversight**

There should be independent oversight of Family Court advisors with an audit of hearings and cases to check biased conduct.

### **Assessment and research**

National, anonymised data should be made readily available to the public and should be widely shared. A standard format, such as used on coroner’s reports, (perhaps using an online checklist, ) would aid research and comparison.

Longitudinal research is needed to assess long-term outcomes of court decisions to guide improvements.

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<sup>45</sup> Children Act 1989 section 31 <https://www.legislation.gov.uk/ukpga/1989/41/section/31>

## In conclusion

We assert that implementing policies, such as those recommended in Part 4, which address the concerns expressed in Part 1 and the analysis in Part 2 will make a significant contribution to the objectives of better outcomes for children and parents and lower cost to the taxpayer.

## Secretariat and endorsements

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