



appg on family separation

Better outcomes for the children of separating parents

- **problems experienced by separating families in England & Wales**
- **analysis of the reasons these problems occur**
- **recommendations for practical improvements**

Interim report

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This is not an official publication of the House of Commons or the House of Lords. It has not been approved by either House or its committees. All-Party Parliamentary Groups are informal groups of Members of both Houses with a common interest in particular issues. The views expressed in this report are those of the group.

Foreword by Nick Fletcher, Chair, All-Party Parliamentary Group on Family Separation

When I was first elected in 2019, like many other MPs, I started to receive requests for help regarding separation and Family Court from my constituents. Ideally, of course, we do not want parents to separate at all. As a society, we need to do all we can to cherish the family unit.

Some of the stories we hear from separating parents are harrowing and, given the level of pain and the fact that things do not seem to be getting better, there is clearly a problem that Parliament must address.

It is painful for the parents and more importantly, for the children. The interests of the children must always come first yet for many, the system seems to drive bigger wedges between the separating parents. Ultimately this makes matters worse for those children, even though, we all know that children do best when both parents are fully involved in their lives – whether together or not. Barring any safeguarding concerns, of course.

I was delighted, therefore, to have the opportunity to chair this APPG which aims to look at the whole process from when a couple starts to think about separation to when they can implement a mutually agreed outcome. This includes the help they may need to resolve their situation without going to the Family Court as well as the actual court process for those who cannot agree between them. The Family Court should always be seen as the last resort.

In the course of this inquiry, the sheer complexity of the problem is laid bare. Besides the parents and children themselves, there are advisory groups, professionals, professional bodies, government agencies, local authorities, service providers and others involved. Each of these has different motivations and incentives, which may be part of the reason that change has proved so elusive.

In our evidence sessions, we received 16 different presentations from people, expert in one area of the family separation process.

The cards seem to be stacked against the parents right from the start. There is no central place for them to go to get help at the start of their separation journey. Some support groups seem to polarise the situation, too many parents end up in the Family Court with no idea what they have let themselves in for. Some whose income relies on the process have little incentive to move it forward at pace.

A central problem seems to be that what is essentially a relationship problem is treated as though it were simply a legal one. The connection with the legal profession means that even the language used in the process is dehumanising and polarising.

On top of this we found that there is no one government department responsible, so that, even though it would be better use of resources to provide help early in the system, that expense would be borne by one department while another department would benefit later from lower demand on court resources.

Our message in this report, however, is optimistic. The Pathfinder Pilot courts in the UK are already proving to be an improvement and are being rolled out more widely. Besides this, there are many positive lessons we can learn from abroad. Some countries already have less adversarial systems. Other jurisdictions have clearer guidelines on shared parenting responsibilities. Other places deal with allegations of abuse more quickly.

This means that the overall message of our report is a positive one. The report ends with a brief outline of what an improved process would look like. On top of this, a growing proportion of professionals and their representatives agree that change is needed.

The APPG plans to be a forum through which these good intentions can finally be put into action and our aim of *'Better outcomes for the children of separating parents'* can be realised.

Nick Fletcher, MP for Don Valley

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Executive summary

Reform of Family Separation (England and Wales)

Desired outcomes for the reforms

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

Given the changing nature of the Family Separation process, this is an interim report.

It looks at the whole process experienced by families from the time parents feel they need to separate to when they have come to a workable agreement concerning parenting time with children and other arrangements.

The majority of separating parents come to an agreement on their own or with minimal help from relatives, religious leaders, mediators etc. Only a minority need extended help, either to come to an agreement outside of court or through the family court processes.

There is wide agreement that the process is not working well enough. Far too many parents find themselves caught up in lengthy proceedings which are costly both to them and to the state and which have a damaging effect on their children.

This report claims that significant improvements could be made to the system in England and Wales and that, by giving more support early in the process, much of the heartache and expense could be significantly reduced.

Our report is in five sections:

In Part 1, we look at the problems. These include the harm done to children, mental and financial harm to parents and unnecessary hostility created by the system. We identify systemic problems such as the availability of legal aid and the high and rising costs and delays in the system.

Part 2 looks at lessons we can learn both from within the UK and from abroad.

The current Pathfinder Courts are making significant progress and there exists a range of initiatives to support parents through the process. We look at less adversarial systems, such as those in Israel and The Netherlands and also at the success of shared parenting schemes such as those in Spain and some American states.

In Part 3 we look for the causes of the problems we found in Part 1. These include the fact that the separation process is treated as a legal issue rather than a mental well-being one. We find that no ministry or office is responsible for the whole process so no-one can take charge of the change process.

There is a lack of data collection, so lessons can neither be learnt nor research carried out. This lack of data polarises the debate as it allows claims to be made which are difficult to challenge as there is neither evidence offered in support nor available to refute the claim. There are a wide range of perverse incentives which polarise parents and prolong the process and a long list of problems with the whole court process from the adversarial language used through risk-aversion to a lack of training for professionals. Children's voices are often not heard.

Our Part 4: Proposals, is, however, quite optimistic. We show that considerable improvement can be made across the whole process. We see many of these solutions as a 'win-win' as the quality of the outcome for children can be improved while, at the same time, reducing the cost to the state.

We propose a responsible minister or office to drive the changes and investment in data to guide reform.

We call for better information for separating parents and support from a local hub. We call for an early 'triage' process so that more families can come to an agreement outside court.

We welcome the progress being made in Pathfinder courts which address issues more quickly. We propose changes to reduce the perverse incentives which prolong the process.

We propose something along the lines of 'One family, one judge' to maintain momentum and save wasted time and want clearer guidelines on things like shared parenting and common outcomes so that parents can see likely outcomes for their case.

Part 5 summarises the proposals. While Part 4 suggests specific reforms, Part 5 outlines what a more effective family separation process might look like.

Taken together, these ideas, many of which do not require higher expenditure, would go a considerable way to achieve our objective of:

- Better outcomes for children and their parents.
- Lower cost to both taxpayers and parents.

Introduction

Why an 'interim' report?

The family separation process is in flux. The government has undertaken a review of early resolution. Pathfinder Courts are being trialled. Well-informed groups are running conferences, creating websites and writing reports.

Therefore, while parts of this report will be going out-of-date even as it is published, it serves a valuable function: in attempting to cover the whole process from when parents decide to separate through to when stable arrangements have been made, it is an overview with general principles.

Polarisation and pain

Very few people are happy with the current state of family separation in England and Wales. This is reflected across the Anglosphere and the world with similar problems being cited.

Fathers complain of false accusations of domestic abuse while mothers complain that the courts are giving parenting time to abusive fathers from whom they are trying to protect their child.

Governments are concerned about the long delays and rising costs.

Clearly, something is wrong. We feel confident that this report can offer evidence-based reforms which will improve this situation.

Barriers to reform

In drawing up this report we were struck, again and again, how widespread the view was that the family separation process and Family Court are in dire need of reform.

As can be seen in the supporting documents and references, there is also wide agreement on the sorts of reforms that would be helpful. It is not just campaign groups, but also members of the judiciary and even successive presidents of the Family Division.

The question therefore arises: "Why are changes not taking place?"

We suggest several reasons for this:

- Cogs in a machine. The family separation process is not staffed by evil people trying to destroy families. Each member of the team, whether family solicitor, Cafcass officer, court official, judge, social services officer, are all 'doing their job'. It is not them who are at fault – it is the system they are part of over which they, as individuals, have little or no control.
- Complexity. The whole subject is immensely complex: from the parents, children, solicitors, Cafcass, domestic abuse, and maintenance payments, the whole subject is so huge it is difficult for a single human being to comprehend it.
- Fragmentation. As a result of the complexity outlined above, those working for change focus on just one part of the process. In drawing up this report, the secretariat was informed by a wide range of experts in their fields, who sometimes had conflicting solutions or different priorities.
- Confused messages to politicians. Few busy politicians can give the time necessary to gain an overview of the subject and instead experience being pulled in different directions by different 'experts'. They become confused themselves and this results in no action.
- Lack of political responsibility. Responsibility for the welfare of children of separating parents is divided between several ministries with the Ministry of Justice only becoming responsible once the case reaches court.

Pt 1: The problem

This section lists the problems identified with the current family separation process.

1.1 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.^{1 2 3} The current system gives too little opportunity for the child to be consulted or informed

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 parenting time with B.⁴ 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.^{5 6} (These behaviours have been acknowledged in the Statutory Guidance for the Domestic Abuse Bill 2021 and by Cafcass.⁷)

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.⁸

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 parenting time while a fact-finding process takes place, even if parenting time is later restored, it can damage the child-parent bond.^{9 10}

¹ 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>

² 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/>

³ 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).

⁴ [See Cafcass definition.](#)

⁵ 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).

⁶ 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.

⁷ [Cafcass definition of 'alienating behaviours'](#).

⁸ 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.

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

¹⁰ 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).

Harm to parents

Mental distress

Groups working with parents in the separation process all report emotional distress as a major part of their work. We heard, for example, from Ros Barton¹¹, MatchMothers on the support they give to mothers who have no parenting time with their child.

Hostility promoted

Under the current system, 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.^{12 13}

The current system may well be unwittingly promoting Intimate Partner Violence as, when joint child arrangement is introduced, there is a reduction in IPV.¹⁴

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 parenting time with their children etc.¹⁵ Dads Unlimited, a UK-based charity supporting separating fathers, reports over 40% of the fathers they support have suicidal ideation.¹⁶

Handling accusations of Domestic Abuse

Some parents report that the court does not take their allegations seriously while others claim the court believes false allegations. Professor Rosemary Hunter, University of Kent described the inadequacies of the current system.¹⁷ She was the lead author of the 'Risks of Harm' report 2020.¹⁸

Even when these claims are later not proven or even disproven, they can have a long-term, seriously damaging effect.^{19 20}

Late accusations

Parents report that accusations of domestic abuse or alienating behaviours sometimes do not appear at the beginning, but part way through the court process. This greatly impedes the process of coming to an agreement and prolongs the process.

¹¹ [Ros Barton in evidence to this APPG](#)

¹² Bentley, C. & Matthewson, M. The Not-Forgotten Child: Alienated Adult Children's Experience of Parental Alienation. *Am. J. Fam. Ther.* **48**, 509–529 (2020).

¹³ 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).

¹⁴ [Bargaining under Threats: The Effect of Joint Custody Laws on Intimate Partner Violence | IZA - Institute of Labor Economics](#)

¹⁵ 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.

¹⁶ Nav Mirza, Dads Unlimited in written evidence to this APPG.

¹⁷ ["Reforming the family courts' approach to domestic abuse."](#) Prof. Rosemary Hunter in evidence to this APPG

¹⁸ [Assessing Risk of Harm to Children and Parents in Private Law Children Cases 2020](#)

¹⁹ 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.

²⁰ 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.

Financial cost

The financial, stress and time costs to the parents involved are themselves damaging.²¹ Separating parents who can afford two dwellings and who have the ability to pay for support of various kinds, suffer much less than those who cannot.

Loss of contact with relatives

Often, when a child does not see one parent, they also lose contact with that whole side of the family: aunts, uncles, cousins and, importantly, grandparents.

1.2 Perceptions of bias

Most people agree that accusations of domestic abuse are not currently handled well by Family Court. Some parents, often mothers, claim that their allegation or concern has not been treated seriously. Other parents, often fathers, claim that too many allegations are taken to fact-finding and that they lose parenting time with their child during this long, drawn-out process.

These can be driven by unhelpful narratives that brand men as dangerous perpetrators²² and women as victims. Some claim unconscious bias permeates professionals who work with the Family Court, judiciary, Cafcass, social workers, media etc.

We heard testimony from Sir Andrew McFarlane, President of the Family Division, that both sides made these claims and from Prof, Ben Hine and Prof. Rosemary Hunter that their research revealed a widespread perception of bias from fathers and mothers respectively.²³

1.3 Systemic problems

Unfairness and inefficiency of only one party having legal representation

One side only getting legal aid is intrinsically unfair. A litigant-in-person (LiP) is at a considerable disadvantage if the other parent is represented.

This is also highly inefficient of the court's time as judges/courts have to spend time supporting the LiP

Legal aid process

Allegations of Domestic Abuse (DA) can be used to gain legal aid or to prevent the child from spending time with their other parent until a finding-of-facts. These 'interim' outcomes can be difficult to reverse after prolonged delay and can therefore lead to poor long-term outcomes for the child.

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%. Litigants may themselves spend further £millions per annum on their own lawyers and court costs.²⁴

²¹ 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).

²² 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).

²³ Sir Andrew McFarlane, Prof, Ben Hine and Prof. Rosemary Hunter in evidence to the APPG.

²⁴ 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 show the time taken for cases in the family court has risen from 23 weeks in 2016-17 to 40 weeks in 2020-21.²⁵

Up to 30% of the private family law proceedings are returning cases, largely the result of violations of orders made.^{26 27}

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 that 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.²⁸

However, there is no evidence to support the increase: domestic abuse as set out by the ONS has been decreasing since 2006.²⁹

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.

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.

1.5 Unintentional harms

This is a summary of a common story of a case where harm is done unintentionally by the system. A fuller version, by barrister Alan Bates can be found in Appendix 4.

The common course of a Children Act case is as follows:

- Parent A is unjustifiably cut off from seeing the child by Parent B.
- Parent A has little choice but to go (reluctantly) to family court.
- Parents take part in statutory mediation assessments (MIAMs).
- Parent B does not cooperate (there are no consequences).

²⁵ HMCTS Annual Reports <https://www.gov.uk/government/publications/hm-courts-tribunals-service-annual-report-and-accounts-2020-to-2021>

²⁶ <https://www.cafcass.gov.uk/2017/11/28/cafcass-publishes-new-research-private-law-cases-return-court/>

²⁷ <https://fnf.org.uk/latest-news/press-releases/825-fnf-family-court-delays-latest-moj-data-press-release>

²⁸ <https://www.cafcass.gov.uk/wp-content/uploads/2017/12/Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf>

²⁹ [Domestic abuse in England and Wales overview - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/domestic-abuse-in-england-and-wales-overview)

- Parent A then files a C100 to open the court process.
- Cafcass does a safeguarding letter, based on short phone conversations with both parents. This can take up to 8 weeks.
- The bond with parent A is breaking.
- The case goes to First Hearing and Dispute Resolution Appointment (FHDRA) often with a 3-4 month delay. This is supposed to be for dispute resolution but is now only 30-45 minutes long.
- Most cases are heard by lay magistrates with a court legal advisor.
- The Cafcass letter may contain allegations of Domestic Abuse by Parent B (or by both parents) which were not raised at the MIAMs.
- The judge/magistrate instructs each party to do a 'Scott Schedule' outlining their claims. These often contain exaggerated and/or inappropriate allegations to be made which tint the rest of the proceedings if not investigated thoroughly and quickly for the veracity of the claims.
- Due to the allegations, the court orders a fact-finding.
- The fact-finding can take months or years to resolve.
- By the time Parent A can show their innocence, the bond with their child is broken. The court may then order that the status quo is maintained.
- The bond with Parent A remains broken.

Pt 2: Lessons from pilots, trials and other jurisdictions

This section looks at practices both at home and abroad which have been shown to produce better outcomes for separating families.

2.1 Successful UK practice

Parental responsibility

Section 2 of the 1989 Children Act includes the assumption that both parents have responsibility post-separation.

Alternatives to court

There are a wide range of non-court options available.³⁰ These include: Mediation; Child Inclusive Mediation; Collaborative Law/Practice; Arbitration; Solicitor Neutral (or one lawyer for one couple); Early Neutral Evaluation.

Moj Family Mediation Voucher Scheme

This scheme is “designed to support parties who may be able to resolve their family law disputes outside of court” with up to £500 towards the costs of mediation from mediators authorised by the Family Mediation Council (FMC).³¹

Settlement Conferences Pilot

In a settlement conference, a trained family judge adopts an inquisitorial approach to encourage cooperation between parties with a view to reaching an agreement that is in the children's best interests.³²

The pilot appears to have been successful with about 50% of suitable cases reaching agreement.³³ 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.

The Pathfinder Pilots: a kinder and faster process

These pilots take a problem-solving approach in private proceedings and are popular with many of those involved due to the kinder, less brutal process.

A recent report (2023)³⁴ on the progress made by Pathfinder courts shows promising results, and the Government is due to expand them (2024) to Birmingham and Cardiff.³⁵

Baroness Elisabeth Butler Sloss³⁶, former President of the Family Division, gave us an update on the progress of the Pathfinder Pilots which she recommended as positive progress from her experience.

³⁰ [\(Almost\) Anything But Family Court](#)

³¹ <https://www.gov.uk/guidance/family-mediation-voucher-scheme>

³² [The implementation and delivery of the family court settlement conferences pilot - A process evaluation \(publishing.service.gov.uk\)](#)

³³ <https://www.gov.uk/government/publications/the-implementation-and-delivery-of-the-family-court-settlement-conferences-pilot-a-process-evaluation>

³⁴ <https://assets.publishing.service.gov.uk/media/646e0e7eab40bf00101969b4/annex-integrated-domestic-abuse-courts.pdf>

³⁵ <https://www.gov.uk/government/news/childrens-wellbeing-at-the-heart-of-family-court-reforms>

³⁶ [Baroness Butler-Sloss in evidence to this APPG](#)

Planning Together for Children

Planning Together for Children³⁷, which replaces the Separated Parents Information Programme (SPIP), combines e-learning, group work and online support for parents involved in private law family court proceedings. Around 24,000 parents are referred to a SPIP course every year and their feedback has been used to develop this new set of resources.

ReFLEx - Improved comprehensive non-legal knowledge for lawyers

A series of training courses on the broader emotional and psychological issues involved in family conflict. It provides vital, non-legal knowledge and skills for stronger client relationships and long-lasting, beneficial settlements.³⁸

Along with the above benefits, these developments have also resulted in savings in cost, time, and emotion for all stakeholders (parents, children, legal professionals and governments).

2.2 Learning from abroad

We recommend further research into jurisdictions which already use a less-adversarial system for family court. These can provide valuable evidence of effective approaches and guide reform in England and Wales.

Family Court in Israel

- A unified Family Court with comprehensive jurisdiction and wide powers to deal with all family issues including child protection (Public and Private Law).³⁹
- Only lawyers who have knowledge and experience in family law can become judges of the Family Court, and they receive annual in-service training seminars.
- Support by in-house Family Court Social Services units, which enable the voice of the child to be presented impartially, and provide mandatory pre-filing information and conciliation sessions for litigants.
- Immediate hearings before a judge when abuse, neglect or parenting time interference are alleged.⁴⁰
- Appointment of a lawyer for the child in disputed cases, at no cost to the parents, via Legal Aid.
- Wide powers to enforce decisions by imposing sanctions on non-compliant litigants.

USA: New Ways for Families

This teaches parents key skills to better handle their situation and reduce the impact of conflict on children.⁴¹

- a training programme from the USA with online learning and individual coaching. Teaches separating parents new skills to better handle their situation, reach agreement and reduce the impact of conflict on children.

³⁷ [Planning Together for Children](#),

³⁸ <https://www.reflextraining.co.uk/>

³⁹ P. Marcus. Innovative Programs in Israel for Prevention & Responding to Parental Alienation: Education, Early Identification and Timely, Effective Intervention in Family Court Review, Volume 58 Issue 2, April 2020

⁴⁰ P. Marcus. Speedy Handling of Applications Alleging Maltreatment of Children In Israel: First Hearing Within 14 Days of Filing International Society of Family Law Bulletin Summer-Fall 2023, pp 15-16

⁴¹ [Shared Parenting Scotland report. 'Learning from Abroad'](#).

The Netherlands: Uitelkaar.nl

Empowers separating parents to gain control over the process by using technology.

- an online dispute resolution platform. Flexible hybrid support, online or offline, allows people to work at a pace and location they feel comfortable.

De Gezinsadvocaat

Tailor-made, people-oriented solutions to problems

- an initiative where two parents jointly use a team made up of a family lawyer and behavioural scientist. This team connects providing legal services with care, understanding and peace in the process.

Alaska: The Early Resolution Project

Support for self-representing litigants

- free unbundled legal assistance and mediation for self-representing litigants. Simplified, swift process with opt-in pro bono obligation for lawyers that lasts only as long as the hearing (typically up to 3 hours!).

Singapore: Therapeutic Jurisprudence

An inter-disciplinary, problem-solving approach to achieve healing, restoring and lasting outcomes.

- a concept that sees the role of the "law" as a "therapeutic agent." An inter-disciplinary, problem-solving approach to achieve a healing, restoring and lasting outcome.

The Panel of Therapeutic Specialists Scheme

Families receive access to support through their journey of healing.

- collaboration between psychiatrists, psychologists and counsellors to increase access to support for court users. Approach understands the importance of rehabilitation and supports families through their family proceedings in a healing way.

Portugal: Civil Code

This provides for joint decision-making by parents relating to their children, both during marriage and after dissolution. If the parents disagree, the court first refers them to conciliation. Only if this fails will courts make a decision. Joint responsibility continues unless the court finds that this is not in the interests of the child.

Australian Family Law Reform

An evaluation was carried out in 2011 by AIFS (Australian Institute for Family Studies). 'Evaluation of the 2006 Family Law Reforms'⁴². While less successful with high conflict cases, *"there has been more use of relationship services, a decline in filings in the courts in children's cases, and some evidence of a shift away from an automatic recourse to legal solutions in response to post-separation relationship difficulties.*

A significant proportion of separated parents are able to sort out their post-separation arrangements with minimal engagement with the formal system."

⁴² <https://aifs.gov.au/research/family-matters/no-86/aifs-evaluation-2006-family-law-reforms>

2.3 Shared Parenting Systems

There are now many jurisdictions which have already implemented shared care as a starting point. These are examples:

- Kentucky, USA 2018: Creates a presumption that joint custody and equally shared parenting time is in the best interest of the child⁴³
- Arkansas 2021⁴⁴ gives effect to 'equal parenting time' by requiring the court to make a parenting time schedule that "Maximizes the amount of time that each parent has with the child"
- Belgium 2006 (Joint physical custody: recommended 50% and a minimum of 35%⁴⁵ "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"⁴⁶
- Netherlands 2009 (Joint legal custody only, joint physical custody recommended⁴⁷ 'Soft' requirement means EPT occurrence about the same as pre-reform levels after initial surge⁴⁸)
- 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.⁴⁹ "children in JPC have better mental health and fewer behavioural problems than children in SPC families"⁵⁰
- Spain: some regions implemented shared parenting and some did not. Their live, longitudinal research demonstrates the benefits.⁵¹
- 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, based on the needs of the child and the abilities and availabilities of each parent. (1951 Israel first country to enact 'shared parenting')

A meta-analysis of 60 studies comparing outcomes from joint physical custody with those from sole physical custody found significant benefits of joint responsibility.⁵²

⁴³ <https://legiscan.com/KY/bill/HB528/2018>

⁴⁴ <https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB18.pdf>

⁴⁵ <https://www.sharedparenting.scot/shared-care-law-works-well-in-belgium/>

⁴⁶ Bastaits 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

⁴⁷ <https://iclg.com/practice-areas/family-laws-and-regulations/netherlands> at [6.7]

⁴⁸ 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.

⁴⁹ 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.

⁵⁰ 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.

⁵¹ [The impact of equal parenting time laws on family outcomes and risky behaviour by teenagers: Evidence from Spain - ScienceDirect](https://www.sciencedirect.com/science/article/pii/S0926641017300000)

⁵² <https://www.tandfonline.com/doi/full/10.1080/15379418.2017.1422414>

Pt 3: Analysis

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

3.1 The nature of the problem

Family breakdown is a public health, 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 there were greater support for families leading up to or in the aftermath of separation, it would be a healthier society with better outcomes for children and, as a secondary benefit, there would be less demand on the Family Court.

In the absence of a public health perspective, 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 support (eg mental health) for the participants. The emotional needs of the children are not being met.

Some of the delay in the current system is due to a lack of resources. Greater capacity would shorten the process and benefit children.

Vulnerability of families

Work by the NFJO shows that, of those parents who end up in court, a significantly higher proportion are suffering financial and/or mental health challenges. Poor parents are also more likely to try to represent themselves.⁵³

3.2 Lack of ministerial responsibility

If we ask the question: 'Who, in government, is responsible for the children of separating parents with unresolved conflict?', we find that the answer is that responsibility is either spread between departments or, in some areas, no-one is responsible. Appendix 2 'The Ministry Gap', spells out the problem in more detail.⁵⁴

The children of separating parents who are in conflict are a vulnerable group; however, responsibility is currently shared between different Ministers, including Justice, Education, Work and Pensions, Children and Families. In total, at present, family breakdown spans 14 departments. These departments do not have an incentive to incur small amounts of additional expenditure which would save a different department a much larger amount of money. This leads to misallocation of resources and poor outcomes for children and society.

3.3 Poor data

The complex picture is further confused by a lack of good data and the use of poor-quality research analysis. The Nuffield Family Justice Observatory has created a useful infographic⁵⁵ showing where data is available, partial or missing. Very little is marked in their 'What we know', category.

Jude Eyre told us that, if the information needed was a 100-piece jigsaw, we currently have only 4 or 5 pieces of that jigsaw.

⁵³ https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/nfjo_whos_coming_to_court_England_full_report_FINAL-1-.pdf

⁵⁴ [Political Oversight - Family Solutions Group](#)

⁵⁵ <https://www.nuffieldfjo.org.uk/infographic/children-in-the-family-justice-system>

Another consequence of the dispersed responsibility we highlight elsewhere is that currently, data on private family law processes is not held by a central service provider and so is hard to access.

Lack of research evaluating outcomes

Because hearings are in private (few Family Court judgments in 'private law' Children Act proceedings are reported), little research is done on effectiveness. Judges get little feedback on the success/failure of their Orders. Outcomes are not measured.

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

In the absence of good data, there is the risk that the most emotionally powerful argument will be the one heard most.

Nuffield Family Justice Observatory⁵⁶ confirmed that there are no large-scale data sets analysing outcomes for families and insufficient data to confirm or refute a wide range of claims made about family separation matters.

An evaluation of different data sources can be found in Appendix 3.

Anecdotes and survey results

Anecdotes are sometimes used by way of 'evidence' to make unwarranted, generalised statements. Some research uses results from a survey where little attempt has been made to gain a representative sample of responses. It is far too easy to obtain the results you want by offering your questionnaire on social media in ways that limit the audience to those who are more likely to agree with you.

The use of anecdotes can be helpful in giving real illustrations of the data, but do not form reliable evidence themselves.

Surveys which aim to capture the views of one section are valid in doing that, but that data cannot be generalised to apply to the whole population. Vested interest creates unreliable evidence.

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 (often the father) than the evidence suggests would be appropriate.

One example: Extrapolation from the outrageous case. If in a few cases where care of the child was transferred to a parent of a specific gender, the parent murdered the child, this is used as grounds to conclude that no child should be transferred, regardless of the 99.9% of cases where there was no murder or even harmful effects.

Because of the fear of the consequences of not protecting a single child, magistrates feel obliged to limit or remove parenting time based on non-evidenced accusations of abuse. They need clear guidelines on risk assessment.

An anecdotal story of the harm done to an individual child by one parent carries more weight than drier statistics.

The question "Is it safe?" does not have a yes/no answer. All choices carry a level of risk – it is this which needs to be assessed, not a focus on tragic anecdotes.

⁵⁶ [Jude Eyre, evidence to this APPG](#)

3.4 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

There is no explicit presumption, by statute or in case law, that, where safe to do so, a child's healthy development is best served when both parents are actively involved in their upbringing. This incentivises litigation.

Jurisdictions with a presumption of a default level of shared care have a lower percentage of cases going to court.

The incentive to refuse mediation

While mediation is offered, the ability of a parent to refuse to be involved in mediation, ADR etc. and the lack of sanctions for not attending MIAM or mediation act as an incentive to avoid these. We suggest potential sanctions in part 4.

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 those opposed to parenting time with the other parent to make allegations of domestic abuse to obtain legal aid. Because one party benefits by over-claiming, the process is prolonged.

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 parenting time with the other as this results in them receiving higher maintenance payments.

Lack of enforcement

When one party breaks a parenting time order (for example), the Family Court does not enforce its own orders, despite this being recognised as a form of domestic abuse in the Statutory Guidance for the Domestic Abuse Act 2021.⁵⁷ This creates an incentive for the other party to go back to court.

Some claim that, because the enforcement options are too draconian, they are not used.⁵⁸

Dealing with accusations of Domestic Abuse

Domestic Abuse and Violence are very serious matters which require robust consequences. It is therefore imperative that we can differentiate significant harm from other bad behaviour.

The expanding definition of abuse.

As the definition of domestic abuse (DA) has expanded to include, for example, coercive control, the potential to accuse the other parent expands as well. There is a lack of differentiation between

⁵⁷ [Domestic Abuse: statutory guidance.](#)

⁵⁸ <https://www.voiceofthechild.org.uk/kb/judicial-enforcement-of-child-arrangements-orders-some-data/>

types of DA which should result in no parenting time, safe parenting time and that which has no bearing on parenting time.

The fact that one (and, often, both) parents have been found to have behaved improperly at various times cannot and should not mean that the child automatically loses a relationship with one or both parents.

Delay in dealing with allegations

The current system causes delays and damage.⁵⁹ First, the allegation is made, then there is a Cafcass report, and then a fact-finding is ordered. Further delays in the process have two perverse outcomes:

- Courts are reluctant to order a fact-finding due to the delays, costs etc, so some parents, often the mother, feel that their complaint has not been taken seriously
- The accused parent, often the father, can lose parenting time with their child while the whole process drags on (sometimes for years).

Vested interests

While there are organisations such as Resolution and the Family Law Bar Association who focus on helping parents come to agreement, as with any industry, those working in the Family Court: lawyers representing their clients, Cafcass and those offering services to Domestic Abuse victims or providing support to parents, all derive their incomes from the current system. While these actors are well-meaning, they have little incentive to make the whole system more efficient, streamlined, less adversarial etc.

Former family solicitor, Andrew Isaacs⁶⁰ explained how simply 'doing your job' as a lawyer acting for their client polarises the process and increases the difficulty of the parents coming to an agreement.

In a private family law case where the parents are represented by solicitors, the two solicitors owe their professional duty to their client, the parent. Their role is to maximise the outcome for that parent, which by definition means diminishing the outcome for the other parent. The parents are represented against each other. Nowhere in this dynamic is the child represented.

3.5 Problems arising from the court process

We note:

- the majority of the resources of the family court are taken up by a small percentage of cases
- the majority of separating parents come to agreement without going to court

Lack of 'voice of the child'

The needs of children going through a family separation have been overlooked. It is normal for children to be affected by family separation, some may experience family separation as a relief, but many children will struggle; how it is handled can have a long-lasting impact.⁶¹

In many private law proceedings, no-one has asked the child what they would like to see happen and why.

Parents are not always the best judge of how their children are coping. Children need information and support to help them navigate a family separation, but there are no nationally coordinated services or information, universally accessible to all children. These are desperately needed.

⁵⁹ See section 1.6 'Unintentional harms'.

⁶⁰ [Andrew Isaacs in evidence to this APPG](#)

⁶¹ <https://assets.publishing.service.gov.uk/media/5a7f96cced915d74e33f75c9/voice-of-the-child-advisory-group-report.pdf>

Access to justice

Many parents start with wrong ideas about the process and do not know how to navigate it. Parents with low literacy skills or English as a second language are particularly vulnerable.

Too many parents who find they are unable to come to an agreement themselves, then go to court, rather than be guided to alternative provision.

Language

Language for separating families has evolved out of an adversarial legal system: it is accusatory and divisive. It is also potentially harmful, increasing conflict through battle metaphors while parents compete for justice and control of their children.⁶²

Harmful words include: Custody, Versus, Contact, Opponent, Rights, Dispute, Parties.

Helpful words include: Using first names, Collaboration, Problem solving, Together, Our Children, Co-parenting.

The best interest of the child

While this is enshrined in law, there is no definition of what the 'best interest of the child' means. It is left to the court to decide, making the term almost meaningless. Almost any judgement can be justified by claiming it is 'in the best interest of the child'. A definition is needed which includes maintaining safe parenting time with both parents.

Lack of standard practice

There is, for example: no default division of a child's time between the parents. Each case starts with a blank sheet, rather than standard practice. Judges, Cafcass etc do not cooperate to develop standard approaches. Judges have wide discretion, use their 'professional judgement', and so the process is unpredictable. Each parent (and their advisors) is aware that there is 'everything to play for' and so holds out for what they want.

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 parents apart and promotes court involvement and delay. The adversarial system makes it difficult for Family Courts to promote reconciliation or dispute de-escalation.

Polarisation feedback loop

Conflicting views obscure the problems.

Mothers complain that their allegations of abuse are not taken seriously and that the court allows fathers to make claims of 'parental alienation' to continue to abuse their children. Fathers complain that the court takes false accusations of abuse seriously so they lose parenting time with their child for no good reason.

These two effects are driven by the same polarisation which is prolonging the process. Once lawyers and advisors are involved there is an incentive to paint the other parent in as negative a light as possible as this gives an advantage in court.

After some time of repeating these allegations, the parents, who started off just not wanting to live together, have demonised the other to the point where they feel obliged to protect their child from the demon. The stress created can lead to mental illness or even suicidality.

⁶² <https://www.familysolutionsgroup.co.uk/language-matters/>

Lack of knowledge of Attachment

Family Court professionals are insufficiently aware of the process by which a child develops an attachment to a parent or other significant adult. While seeking to protect the child from abuse, courts therefore make orders which break parenting time and so, unnecessarily, damage that attachment.

There remains the incorrect view that ‘attachment’ refers only to the link between a child and its mother. The research evidence is clear: human babies make multiple attachments to a range of adults in their early life and breaking those bonds has harmful effects.⁶³

Low ‘threshold of harm’

In the Family Court, the threshold of harm is set low so that, in some cases, a child can be separated simply while allegations are investigated. By contrast, in public law, it takes good evidence for Social Services to remove a child from its parent.

Narrow definition of ‘harm’.

Sometimes a narrow definition of harm is applied which only considers potential harm to the child by one parent. However, this definition ignores the almost certain harm done when parenting time is lost with one parent.

Delays in the system

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

Unequal starting points

If one parent starts with majority or sole care, they have a natural advantage in the court proceedings. The status quo is not easily changed. The non-resident parent needs to prove their case, not assert their right.

3.6 Lack of training

Lack of adequate training for professionals

While many judges and lawyers do undertake training in these areas, this is not the case for all professionals working on these issues:

- The complex familial dynamics in some cases
- The spectrum of co-parenting
- Child development, including attachment.
- Relationships and their breakdown.
- Introduction to mental health, mental diseases and personality disorders, trauma and its presentation
- Mediation and other ADR
- Child protection
- Child maltreatment, including physical, sexual and psychological maltreatment
- The effects of parental separation/divorce and child-parent contact interference on children
- The role of grandparents, siblings and other relatives in raising children
- Recognising victims and perpetrators of both sexes
- Viewing cases without prior assumptions or prejudices (eg. relating to sex, race, socio-economic background etc)

⁶³ <https://www.tandfonline.com/doi/full/10.1080/14616734.2020.1840762>

Pt 4: Proposals

Introduction

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’;⁶⁴

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.

A changing scene

This report is written during a time of change in the family separation process. There are several initiatives in progress, consequently, these proposals remain interim.

Early resolution consultation

The Ministry of Justice has undertaken consultation on early resolution. The consultation outcome has been published during the drafting of this report. ‘Supporting earlier resolution of private family law arrangements.’⁶⁵

Pathfinder

These pilots, running in N Wales and Dorset, are trialling a new approach which has many of the same features we highlight here.⁶⁶ They are being rolled Birmingham and Cardiff and subject to resources, will be rolled out across the country.

Continuing research and reports

Research and reports covering this area continue to be produced. A list of some of those we consulted can be found under ‘Reports and organisations’ at the end of this document.

Approach

The current system is high cost and low satisfaction. These proposals are a ‘win-win’: better outcomes at lower cost.

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

This section is in three parts:

- 4a: General improvements to the family separation system
- 4b Promoting out-of-court settlement and early resolution
- 4c: Reforming the Family Court in England and Wales

⁶⁴ Children Act 1989 Section 1. <https://www.legislation.gov.uk/ukpga/1989/41/section/1>

⁶⁵ <https://www.gov.uk/government/consultations/supporting-earlier-resolution-of-private-family-law-arrangements/supporting-earlier-resolution-of-private-family-law-arrangements>

⁶⁶ Assessing Risk of Harm to Children and Parents in Private Law Children Cases. Annex - Integrated Domestic Abuse Courts, Ministry of Justice 2023

Pt 4a: General improvements

4a.1: A responsible minister

The children of separating parents who are in conflict are a vulnerable group. However, responsibility for this group is currently shared between ministers including Justice, Education, Work and Pensions, Children and Families. In total, at present, family breakdown spans 14 departments.

With one responsible office, existing funds could be allocated to early resolution which would make greater savings in the long-run by keeping families out of the costly, prolonged, adversarial process.

We need one department or office to take responsibility to ensure family separations are managed safely for all children.⁶⁷

4a.2: Reliable research evidence

An urgent priority is reliable sources of research and evidence. Our inquiry has revealed a shocking shortage of reliable evidence. With the extensive resources of the Ministry of Justice and all the law departments in universities, this absence of data cannot be justified.

Without good data it is near-impossible to judge the difference between:

- a successful and a less-successful strategy
- a claim which is valid and one which is false
- claims based on anecdotes, surveys from a narrow group, cherry-picked data, surveys from a representative sample or large control-trials etc
- long-term outcomes for parents and their children

Reliable evidence comes from national data sources, surveys which have a representative sample and large data sets.

A comparison of different evidence-sources is given in Appendix 3. We recommend that anecdotes, case studies and surveys which are not representative samples are not used to guide public policy.

Review of University Law Research

We recommend a review of the way law research topics are chosen and funded in UK universities. The aim would be to understand why they are not producing the kinds of useful evidence which could guide the family justice process and what changes are needed to ensure that they do so in future.

National database

It is impossible to evaluate the effectiveness of Orders and arrangements unless anonymised data is collected on the majority of cases, particularly those which involved the Family Court. This will allow longitudinal studies to be carried out providing vital evidence for future improvements.

The work of the Nuffield Family Justice Observatory in doing this role should be welcomed and developed.⁶⁸

International data

There are several jurisdictions around the world which have implemented elements of the proposals we outline here. Research on the data collected from these sources should be made accessible to UK researchers.

⁶⁷ <https://www.familysolutionsgroup.co.uk/political-oversight/>

⁶⁸ <https://www.nuffieldfjo.org.uk/our-work/private-law>

4a.3: Invest early: ‘a stitch in time’

Preventing family breakdown

Rates of family breakdown and failure to agree on parenting time with children are 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 an agreement, not make unfounded allegations etc will both reduce the demand on the Family Court and 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 when they separate.

Funds should be used for the prevention of unnecessary family breakdown, early identification of problems and immediate intervention.

Elisabeth Coe, National Association of Child Contact centres, reported the positive feedback from parents who had attended a parenting programme and that around 30% of cases which currently go to court could be resolved elsewhere.⁶⁹

4a.4: Information and support hub for parents

There should be a local, central place where separating parents can find information and support. This could, for example, be in a Family Hub⁷⁰.

Currently, many newly separating parents who enter the Family Court process have little idea of the likely outcomes of that route. Many find the process far worse than they ever imagined and would choose a different route had they been aware of it.

Besides information about services available etc, parents need to be informed about probable outcomes, costs, time-scale, childcare requirements, stress etc of different routes.⁷¹

National website

Information for parents should also be made available via a central, national website which can direct parents to local services and hubs.

Engaging the children

Since the primary concern of the family separation process is the welfare of the child, it is vital that, wherever possible, children (even young ones) are consulted and informed as decisions are taken.⁷² We endorse the practice in the Pathfinder Courts where children are routinely consulted before the first hearing.

These proposals are also central in the JUSTICE report⁷³.

4a.5: Language

The language used for separating families has evolved out of an adversarial legal system: it is accusatory and divisive. It is also potentially harmful, increasing conflict through battle metaphors while parents compete for justice and control of their children.

⁶⁹ [Elisabeth Coe, in evidence to this APPG](#)

⁷⁰ [Family Hubs - Family Hubs and support](#)

⁷¹ <https://www.nuffieldfjo.org.uk/resource/separating-families-experiences-of-separation-and-support>

⁷² Family Solutions Group report: [What about me?](#)

⁷³ [Improving Access to Justice for Separating Families](#) JUSTICE (see diagram p 150)

Appropriate language is needed through every part of a family's separation: at the school gate, with their wider family and friends, in the media, on government websites, with support services and throughout any legal process.⁷⁴

Suggested changes are outlined in Annex 5.

4a.6: Early triage

Separating parents who are unable to reach agreement on their own should be directed to a single point where they have an interview with a trained professional who will guide them on their next step. A primary objective is to find a way for them to come to agreement outside of the adversarial process⁷⁵ and to direct parents to any support services they may need.

We heard both from barrister Alan Bates, and from Ellen Lefley, JUSTICE⁷⁶ the huge advantages of providing support for separating parents early in the process.

Alternatives to court

Besides mediation, there are a wide range of options available which can support separating parents come to agreement without going to court. A full list is available in Appendix 6,⁷⁷ and includes arbitration, collaborative law and neutral solicitor.

4a.7: Maintain the relationship with both parents

Subject to the usual caveats concerning cases with serious allegations⁷⁸, safe, regular parenting time with both parents should be maintained while a long-term parenting agreement is reached. The 'threshold of harm' should be set using similar criteria in private law as applied in public law.⁷⁹

Supervised parenting time can include relatives such as grandparents. The use of a formal contact centre may not be needed unless there are concerns about maltreatment. Full use can be made of electronic parenting time (phone, Zoom, etc).

The courts should not normally allow relocation of the child if it would result in reduction or cessation of parenting time. Unauthorised relocation should be seen as interference with parenting time.

4a.8: Evidence-based training, practice and research

Training for professionals

Building on the good work done, for example, with judges and lawyers, all working on these issues such as Cafcass officers, social workers, educators, health visitors, GPs and should have training in the following:

- Mental health, mental diseases and personality disorders
- Mediation and alternative dispute resolution processes
- Relationships and their breakdown
- Domestic abuse
- Child development, including attachment
- Hearing 'the voice of the child'

⁷⁴ [Language matters - Family Court Reform Coalition \(fcr.org.uk\)](https://www.familycourtreformcoalition.org/)

⁷⁵ P. Marcus. Triage in Family Courts: When it is Needed and How To Do It. *Id-Dritt: the Law Journal of the Malta Law Students Association Għaqda Studenti tal-Liġi at the University of Malta*, Vol XXXIII, 2023, 100-116

⁷⁶ Alan Bates, Ellen Lefley in evidence to this inquiry.

⁷⁷ [\(Almost\) Anything But Family Court](https://www.familycourtreformcoalition.org/)

⁷⁸ Clause 16 of the Victims and Prisoners Bill specifically removes parental responsibility from a parent who has murdered the other parent, subject to a hearing in the Family Court.

⁷⁹ Children Act 1989 section 31 <https://www.legislation.gov.uk/ukpga/1989/41/section/31>

- Child protection
- Child maltreatment, including physical, sexual and psychological maltreatment
- The effects of parental separation/divorce and child-parent contact interference on children
- The role of grandparents, siblings and other relatives in raising children

Untrained staff should not make decisions in matters of family separation.

Improving case management

Judges need control of case management. Unnecessary delays occur when the Listing Office reschedules an adjourned case for a distant date. The practice with Pathfinder Courts puts the judge in charge of the case.

Overcoming perceptions of bias

Testimony by both fathers and mothers show that there is a widespread perception that the family Court is biased against their sex. Addressing this perception (or fact) is therefore a vital part of improving outcomes for separating families.

Stereotyped views of mothers and fathers are unhelpful. While this is not specific to the Family Court, it is harder to address as much of it is unconscious and absorbed from the cultural environment. Consequently, training of all professionals involved should be along gender-neutral lines using established evidence, official data etc.

Assessment and research

National anonymised data should be made readily available to the public and should be widely shared. A standard format for recording the outcomes of a case, 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.

Further research is needed to better understand the relationship between allegations of abuse and the findings of the court. We do not know, for example, the proportion of malicious, false, mistaken, minor or proven/unproven allegations.

4a.9: Better definitions

'Best interest of the child' defined

While this term is enshrined in law, in the absence of an agreed definition, in practice the court can make any decision and claim it is 'in the best interest of the child'. Courts need a definition which incorporates the evidence that children thrive best when they have parenting time with both parents and both sides of their family. This must be a rebuttable presumption.⁸⁰

A wider view of 'safeguarding'

Currently 'safeguarding' is focussed on whether the non-resident parent is a physical risk to the child.

Concerns in this area are the driving force behind the long delays, for example, for fact-finding. This approach ignores the psychological harm done to the child when there is a breaking of the relationship with one parent.

A wider view of safeguarding is needed which includes consideration of both these concerns.

⁸⁰ Article 18 of the UN Convention on the Rights of the Child.

Proportionality

The term 'domestic abuse' has too wide a definition, covering serious harm to shouting or historical hitting. To be relevant to decisions on parenting time between a child and their parent, the behaviours need to be assessed to see if they would be likely to lead to harm to the child.

Not all forms of abuse are the same: some behaviours, although unacceptable, do not imply that the accused should not see their children again. The safeguarding assessment needs to assess severity, frequency and circumstances.

This process needs to be as fast as possible so that unnecessary separation does not harm the child.

The question should be asked: 'Is the allegation serious enough to justify the likely harmful action of separating one parent while a fact-finding takes place?'

Dealing with accusations of Domestic Abuse

Accusations need to be assessed as quickly as possible with, in many cases, safe parenting time being maintained with both parents.

A speedy process ensures that more accusers will feel heard and more accused will have the stress and cost of delays etc reduced. Damage to relationships with children will be significantly reduced. We endorse the Pathfinder Pilots practice of addressing the accusations of domestic abuse right at the beginning of proceedings

4a.10: Reducing incentives to go to court

Reduce the legal aid incentive

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

Alleging abuse is too easy. For example: Parent A can visit their GP and say "Parent B hit me." The doctor writes a letter saying "Parent A says that Parent B hit them." This can then be part of the 'evidence' that parent A uses to make an allegation which then leads to them getting legal aid.

'Family Aid' rather than 'Legal Aid'

For those who are not financially able to pay for their support, in some cases, a new system of Family Aid could replace Legal Aid.⁸¹ Currently, Legal Aid is awarded to parents who see separate lawyers and can be given advice against each other. Neither lawyer meets the other parent, nor do they represent the child.

Family Aid could look at the whole family and their needs and could encompass:

- 1 or 2 counselling sessions for each parent;
- attendance at a separated parent programme;
- the opportunity for children or young people to be consulted;
- mutual legal advice, which is not polarising and does not set the parents against each other and is based on the solicitor meeting both clients separately and giving mutual legal advice.

Consequences for false allegations

If allegations of domestic abuse are then proven, there are consequences for the perpetrator. However, currently, there are no consequences for making allegations which are later proven untrue.

⁸¹ [Helen Adam, Family Solutions Group, in evidence to this APPG.](#)

All allegations of Domestic Abuse should be required to be provided at the start of the case, and not part way through.

If the allegations are serious, and then proved to be untrue, government should consider proposals for consequences.

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 firms⁸². Contact orders should have a penal notice attached.

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

This report does not offer a solution to this. We recommend research, including from abroad, to discover:

- a) whether there are systems of child maintenance available which do not incentivise the resident parent to restrict access
- b) whether payments should continue to be solely related to income rather than to the cost of care for the child

Recognising the effects of vested interests

It should be recognised that some professionals (and even some advocacy group members) intrinsically favour policies which maintain their income or power. It maybe that reforms, such as those proposed here, may not be supported by some professionals if they are seen as reducing the market for their services.

Checks should also be made to ensure that advocacy groups which receive public funding are not using those funds to lobby for more funding.

Pt 4b Promoting early resolution and 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 used the alternative routes we propose, 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 professionals) 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.

This principle is part of the successful Pathfinder Courts which are being extended as this report goes to press.

⁸² <https://www.gov.uk/government/publications/ask-the-court-to-consider-an-allegation-of-contempt-of-court-form-fc600>

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 is needed. To discourage refusal, the court should enquire why a parent refuses to take part and be able to draw conclusions from an unsatisfactory response.

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.

Parents should be given a 'likely outcomes' assessment: informing them of the probable length, cost and conclusion of different routes.

Shared parental responsibilities as a starting point

We should recognise the value of direct parenting time with both parents (with the usual caveats for abuse etc). Start with a (rebuttable) presumption of shared parental responsibilities. 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 as the normal outcome.

This is enshrined in UK law in Section 2 of the Children Act 1989 which speaks of parental responsibilities (not parental 'rights').

Shared parenting also benefits those mothers who wish to continue their careers or seek a work/life balance.⁸³

Early neutral evaluation

This process gives parents a clear idea of the likely outcomes if they pursue their claims so that time/money is not wasted. Few parents have experienced the separation process before and so have little idea what to expect.

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

'One Family-One Judge'

So far as possible, a specified judge (or trained professional) should be in charge of each case.

Maintaining parenting time.

In public law cases, ensuring appropriate parenting time is maintained is part of the formal process even though the risk factors have already been assessed to be greater. However, in private law cases, there is no such presumption.

Psychological harm, such as that caused by unjustified lack of child-parent contact, should be included in the list of harms to be considered.

Reduce delays

The private Family Court process should be given statutory time-limit targets to minimise delays (which harm children). Where domestic abuse is alleged, courts should require that evidence of allegations is given at the start of the process, with no extension without very good reason.

⁸³ <https://www.sharedparenting.scot/what-is-shared-parenting/research-evidence/>

Research and trials should be initiated to discover how much court timetables can be shortened without loss of justice.

A higher standard of evidence is needed to warrant any delay. Practice Direction should specify when adjournment is warranted.

Penalties should be imposed on police forces and other agencies for causing delays by failing to provide disclosure that has been ordered by the court.

One benefit of the 'One Family-One Judge' policy is that the judge can achieve better case management. For example, they can immediately defer the case to an early space in their diary, not wait for the listing office to find the next available date.

Shift from sequential to parallel action

Currently, the next step in the process is not initiated until the previous step fails. Examples:

- Allegations of abuse need to be supported by a statement. Currently, the statement is not requested till after the allegation has been heard.
- Ask the parents for their preferred outcome at the first hearing. This prevents unnecessary polarisation identified above.

Role-out of Pathfinder

Given the success of the Pathfinder trials and also the fact that they implement several of the recommendations in this report, we urge a fast roll-out of this improved approach.

Improve enforcement

With around 30% of the Court's time being taken by returning cases resulting from breach of an Order, effective enforcement could significantly reduce demand on the court.

There should be a presumption that any Contact Order is in the best interest of the child so that any breach is not. The Court should enforce its Order. Delay is harmful: the court should not revisit the welfare case on breach.

Like most other areas of law, the Family Court should insist on orders being complied with and applications concerning breach of contact orders should be listed for hearing within 7 days and ideally with the same judge.

Enforcement options should be practical, including small (increasing) fines, cost orders to the other parent (especially if time is wasted) and imprisonment only as a last resort, where contempt of court is proven etc for violations. A Penal Notice should be included in an Order so that police can intervene without a return to court.

Pt 5: New Routes for Separating Families

Taking into account the information above, particularly the evidence from more effective systems abroad and in consultation with legal professionals with experience of the Family Court, we propose a new route for those families that separate:

- Initial triage at a Family Hub (or similar) which provides a service which is the first port of call. The same hub has information and advice for parents available.
- Information is also made available via a national website where parents can find local information and services.
- Parents are allocated to one of three routes:
 - 1 Those with no accusations of abuse are directed to the services which will help them come to an agreement
 - 2 Those families where the level of accusation does not warrant any restriction of parenting time with one parent are directed to one of the routes available such as mediation, arbitration etc are applicable
 - 3 Only where serious accusations have been made, are these referred to court. A social worker should meet with parents and children within 7 days
- One family, one judge. When parents are directed to Family Court, they will be allocated a judge who will, as far as possible, stay with their case until resolution.
- Allegations of domestic abuse must be raised by the first hearing and a supporting statement or evidence provided.
- The court does its own triage at the initial FHDRA. This meeting should have sufficient time for as many cases as possible to be resolved that day. Needs a longer FHDRA so that the judge has time to work out 'what are the real issues' and set out a timetable for speedy resolution. Judges can send parents off, for example, to complete formalities.
- Some level of shared parenting will be taken as the starting point for the agreement process.
- Judges will take account of, and draw conclusions from, the parent's willingness to engage with mediation and other services, failure to attend, making fresh allegations etc..
- Where resolution is not possible, interim parenting time is ordered based on the broadened safeguarding considerations outlined above.
- Improved case management is used to reduce the unnecessary delays outlined above in this document. The timetable for the case will be as fast as possible.

Implementation

Overcoming barriers to reform

There is a widespread view that the family separation process and Family Court are in dire need of reform. There is also wide agreement on the sorts of reforms that would be helpful. This is not only campaign groups, but also members of the judiciary and even successive presidents of the Family Division.

The question therefore arises: “Why are changes not taking place?”

We identified several reasons for this:

- It’s a system problem: The family separation process is not staffed by evil people trying to destroy families. Each member of the team, whether family solicitor, Cafcass officer, court official, judge, social services officer, are all ‘doing their job’. It is not them who are at fault – it is the system they are part of over which they, as individuals, have little or no control.
- Complexity. The whole subject is immensely complex: from the parents, children, solicitors, Cafcass, domestic abuse, and maintenance payments, the whole subject is so huge it is difficult for a single human being to comprehend it.
- Fragmentation. As a result of the complexity outlined above, those working for change focus on just one part of the process. This report was informed by a wide range of experts in their fields, who sometimes had often conflicting solutions to the problem or different priorities.
- Confused messages to politicians. Few busy politicians can give the time necessary to gain an overview of the subject and instead experience being pulled in different directions by different ‘experts’.
- Lack of political responsibility. Responsibility for the welfare of children of separating parents is divided between several ministries with the Ministry of Justice only becoming responsible once the case reaches court.

Approach

In working towards implementation, we recognise these barriers and so will be working along the following lines:

1. Put pressure on government to create a single agency responsible for coordinating the whole process.
2. Bringing together the groups concerned with family separation to find common ground.
3. Communicating the ‘common ground’ message to politicians and journalists.

Confidence

Given the wide support for reform we are confident that if the barriers can be overcome that the changes we propose in this report can be implemented and the objectives we set at the start of this report can be achieved:

- Better outcomes for children and their parents.
- Lower cost to both taxpayers and parents.

Reports and organisations

In drawing up this report, the following reports have been studied and groups consulted.

Reports

- [Family Justice Review](#).
- [Voice of the Child](#) Advisory Group report.
- [Private Law Working Group report](#)
- Family Solutions Group: [What about me?](#)
- Church of England: [Love Matters](#)
- Prof. Ben Hine, [Lost Dads: The Fathers and Family Breakdown, Separation and Divorce \(FBSD\) Project | University of West London \(uwl.ac.uk\)](#)
- Family Solutions Group: [A Child's Right to Matter](#)
- [Improving Access to Justice for Separating Families](#) A Report by JUSTICE
- Integrated Domestic Abuse Courts, Ministry of Justice 2023: [Assessing Risk of Harm to Children and Parents in Private Law Children Cases](#). Annex
- Family Justice Council. [Draft guidance on responding to allegations of parental alienation](#).

Organisations consulted

- Family Solutions Group
- JUSTICE
- Nuffield Family Justice Observatory
- National Association of Child Contact Centres
- MatchMothers
- Dads Unlimited
- Families Need Fathers
- Shared Parenting Scotland
- Only Mums and Dads

Presentations of evidence

Recordings of evidence given to the APPG for this report [can be viewed here](#).

- Helen Adam, Family Solutions Group: 'The Case for a Family Solutions System.'
- Philip Marcus, Judge (retired), Jerusalem Family Court: 'Diverting from the Family Court.'
- Elizabeth Coe, NACCC. 'Early intervention and diversion from courts.'
- Prof. Ben Hine: University of West London. 'Changing our approach to separation - Starting at the beginning.'
- Philip Marcus: Judge (retired), Jerusalem Family Court: 'What does the Israeli Family Law system have to offer?'
- Sarah Squires: Director, The Nurturing Coach: 'Family breakdown is a mental health issue.'
- Ian Maxwell: Shared Parenting Scotland: 'Advantages of a presumption of shared parenting.'
- Nav Mirza: Dads Unlimited. 'High suicide rate for separating parents.'
- Bob Greig: Only Mums and Dads: 'Support for families going through divorce and separation'
- Prof. Rosemary Hunter: 'Reforming the family courts' approach to domestic abuse.'
- Alan Bates, barrister: 'Can Family Court do a better job for children whilst public money is tight?'
- Andrew Isaacs, former family court solicitor: 'Acting for your client can polarise the case.'
- Baroness Butler-Sloss, Former president of Family Division: 'Pathfinder courts: an update.'
- Prof. Ben Hine, University of West London: 'Family Breakdown, Fathers, Abuse, and Suicide.'

- Prof. Gillian Douglas and Ellen Lefley, JUSTICE: ‘Improving Access to Justice for Separating Families.’
- Sir Andrew McFarlane, President of the Family Division of the High Court.: ‘There has to be a better way.’

Advisory Panel

While drawing up this report we have received assistance from members of the APPG’s Advisory panel.

- Helen Adam: Chair, *Family Solutions Group*
- Rosalind Barton: *Match Mothers*
- Alison Bushell: Director, *Child and Family Solutions*
- Elizabeth Coe: CEO, *National Association of Child Contact Centres*
- Catherine Gee: Family Barrister, Pump Court Chambers, child arrangement specialist.
- Prof. Ben Hine: *University of West London, School of Human and Social Sciences*
- Philip Marcus: Judge (retired), *Jerusalem Family Court*
- Ian Maxwell: *Shared Parenting Scotland*.
- Nav Mirza: *Dads Unlimited*
- Sam Morfey, CEO, *Families Need Fathers*.
- Jasvinder Sanghera CBE: *Grandparents United For Children*
- Martin Seager: *Consultant Clinical Psychologist*
- Sarah Squires: Director, *The Nurturing Coach*

Secretariat

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Appendices

Appendix 1 Commercial products

Many of the ways families can be helped in their separation are commercial products. We list some of them here. The APPG does not endorse any of them, but they are included here to give examples of potentially successful good practice.

Parents could access them locally via the local hubs we propose above.

New Ways for Families®

This is an online training and coaching programme now available in the UK following a very successful pilot exercise in Scotland.⁸⁴

The primary goal is to teach parents the skills necessary to effectively resolve co-parenting disagreements while remaining calm and protecting their children from conflict. Separated parents who work through the twelve online modules learn communication and understanding skills which will help them reach agreement. The three coaching sessions during this learning allow them to practise these skills before putting them into use.

The programme reduces the negative impact of conflict on children in family breakups, reduces stress levels and calms potentially high-conflict separation. This helps parents to avoid taking court action.

Children are at the centre of the New Ways for Families® approach. It's about putting them first, improving co-parenting and making decisions together out of court. When parents make their own decisions they are more likely to follow the agreements and protect their children from the detrimental effects of conflict.

Contact Centres or Family Time

The need for a parent to see their child/children after separation is one of the most vexing issues being dealt with when parents separate. To be able to see the child/children in a neutral safe environment can take the heat out of the situation. [Child Contact Centres](#)/Family time provides this, and, if it is the only issue, it may remove the need to go to court. This would reduce harmful delay for children who experience loss without understanding what has happened. The sooner family time is re-established the better.

Separated Parent Information Programmes

This course provides a safe place to learn what children need most when parents separate. It helps parents to develop practical skills and ideas to improve communication and reduce conflict. The parents themselves provide support for each other and help resolve problems that some may already have experienced and dealt with.

Getting the child into parenting time following a MIAM, then going on to a parenting programme and then further mediation could resolve all but the most intractable situations.

Collaborative Divorce?

A collaborative divorce is [a legal divorce process](#) that allows couples to negotiate all the terms of a divorce, without the need for mud-slinging or fighting in court. Couples will use a combination of mediation and negotiation to reach an agreement on the critical terms of divorce, like property and debt division, child arrangement and child support, and spousal support.

⁸⁴ <https://www.sharedparenting.scot/home/new-ways-for-families/>

Appendix 2: The Ministry Gap

‘Who is responsible for the children of separating parents with unresolved conflict?’

The context.

Many agree that too many separating couples end up in Family Court and that more should seek resolution in less adversarial routes, such as mediation or arbitration.

The question arises: “Why isn’t this happening?”

The table below suggests an answer: no-one is responsible. Once they reach the court, the MoJ is responsible.

With no-one responsible for these children’s welfare, there is no-one to ask to provide the services which would lead to early resolution.

Department	Responsible for	Protect the vulnerable group*
Ministry of Justice	Families who bring their issues to the family court	No
Dept for Education, Minister for Children	Family hubs	No
Dept for Health and Social Care	Children and Adolescent Mental Health Services (CAMHS)	No
DWP	Reducing parental conflicts programme	No
Children’s Commissioner	Promotes and protects the rights of children, especially the most vulnerable, and advocates for their views and interests.	No

* Children of separating parents with unresolved conflict.

Unmet responsibility	Detail	Who should be responsible
Providing information to family members	Providing an authorised website, so parents, children etc have access to reliable information and signposting.	DWP DfE?
Providing information to service providers	Providing clear information to schools, GPs, youth services, health visitors and other touchpoints for separating families.	DWP DHSC DfE?

Public awareness	Shaping public awareness of children's needs when parents live apart.	DWP: welfare DfE: Front-line first responders DHSC – child's mental health
Early Triage:	Provide early information and assessment to contain issues before they escalate and direct parents to appropriate support.	MoJ at entry to court. DfE?
Oversight of providers	Oversee a national body of Separated Parents Information Programmes, so there's easy access to a reliable programme by all parents who separate	CAFCASS?
Gather data	Gather data about the numbers of children who lose a parent relationship, outside of proceedings in the family court.	Nuffield Family Justice Observatory

Possible solutions

The above tables show the current problem – different needs of the *children of separating parents with unresolved conflict* are dealt with by different departments or are entirely missing.

Some people are concerned that this role should not be done by the MoJ as a central aim is to keep them out of the family court. Two further options:

- Extend the remit for the Minister for Children, Families and Wellbeing to cover these children.
- The role of the Children's Commissioner should be extended and appropriately resourced.

/ends

Appendix 3: Research Tools: comparison of methods

Policy-makers need to take care when looking at policy proposals to check the evidence provided. This table, provided for us by Prof. Ben Hine, outlines various ways in which researchers can obtain evidence and the value and limitations of each.

Research tool	Strengths/Advantages	Weaknesses/Disadvantages
Anecdotes and 'lived experience'	<ul style="list-style-type: none"> - Personal Insights: Anecdotes provide a deep, personal insight into individual experiences, making complex issues more relatable and understandable. - Engaging: They can be highly engaging and memorable, aiding in illustrating points vividly. - Initial Exploration: Useful for initial exploration of phenomena where little is known, offering starting points for further research 	<ul style="list-style-type: none"> - Lack of Generalizability: Anecdotes are not representative and cannot be generalized to a wider population. - Subjective: Highly subjective and prone to bias, as they are based on personal perspectives. - Lack of Rigor: They do not follow a systematic approach, making them less reliable for drawing solid conclusions.
Case Studies	<ul style="list-style-type: none"> - In-depth Analysis: Provide a comprehensive and in-depth examination of a single case or a small number of cases, offering detailed insights. - Contextual Understanding: Helpful in understanding the contextual realities of the case being studied. - Theory Development: Useful for developing and testing theories in real-world scenarios. 	<ul style="list-style-type: none"> - Limited Generalizability: Findings from case studies may not be broadly applicable to other cases or populations. - Time and Resource Intensive: Often require a lot of time and resources to conduct thoroughly. - Subjectivity and Bias: Researcher's bias may influence the interpretation of results.
Survey of a Group	<ul style="list-style-type: none"> - Broad Information: Can collect a wide range of information from a large group of people quickly. - Quantifiable Data: Provides quantifiable data that can be analysed statistically. - Comparability: Responses can be easily compared and analysed for trends. 	<ul style="list-style-type: none"> - Response Bias: Responses may be influenced by how questions are phrased or by respondents' desire to present themselves in a favourable light. - Limited Depth: May not capture the depth of respondents' feelings or experiences as open-ended questions are often limited. - Low Response Rate: Potentially low response rates can bias results.
Representative Sample Survey	<ul style="list-style-type: none"> - Generalizability: Findings can be generalized to the larger population if the sample is truly representative. - Efficient: Can provide a high level of insight into the population with a 	<ul style="list-style-type: none"> - Sampling Error: Risk of sampling error if the sample is not properly selected. - Non-response Bias: Non-response can still bias results, especially if certain groups are less likely to

	<p>relatively small, well-chosen sample.</p> <ul style="list-style-type: none"> - Accuracy: High potential for accuracy in reflecting the characteristics or opinions of the broader population. 	<p>respond.</p> <ul style="list-style-type: none"> - Complexity in Selection: Requires careful and often complex sampling methods to ensure representativeness.
Large, Quantitative Data Set	<p>Statistical Power: Large datasets provide the statistical power needed to detect even small effects.</p> <ul style="list-style-type: none"> - Generalizability: Findings are more generalizable, especially if the dataset is representative of the target population. - Diverse Analyses: Allows for a wide range of statistical analyses, including complex models. 	<ul style="list-style-type: none"> - Complexity in Analysis: Managing and analyzing large datasets require specialized skills and software. - Potential for Overwhelming Information: The sheer volume of data can lead to analysis paralysis or misinterpretation of data. - Impersonal: May lack the depth of understanding that qualitative methods provide.
Control or Comparison-Group Trial	<ul style="list-style-type: none"> - Causal Inferences: Allows for stronger causal inferences by comparing outcomes between control and experimental groups. - Control for Confounding Variables: The use of control groups helps in controlling for confounding variables. - Standardization: Procedures are standardized, increasing the reliability of results. 	<ul style="list-style-type: none"> - Ethical Considerations: May raise ethical issues, especially if withholding treatment from a control group. - Practical Challenges: Implementing control or comparison groups can be challenging in real-world settings. - Selection Bias: Risk of selection bias if participants are not adequately randomized.
Randomized Control Trial (RCT)	<ul style="list-style-type: none"> - Gold Standard for Causality: Considered the gold standard for determining causal relationships between variables. - Minimization of Bias: Random assignment minimizes selection bias and confounding variables. - Replicability: Standardized protocols enhance the replicability of findings. 	<ul style="list-style-type: none"> - High Cost and Complexity: RCTs are often expensive and complex to design and execute. - Ethical and Practical Limitations : Not always ethically or practically feasible to randomize participants to treatments, especially in certain fields like education or public policy. - Generalizability Issues: Results from RCTs may not always generalize to real-world settings due to the controlled conditions of the trial.

Appendix 4: Unintentional harms

The common course of a Children Act case is as follows:

- Parent A is cut off from seeing the child by Parent B. Parent B refuses to discuss the matter with Parent A or cuts off all parenting time with Parent A.
- Parent A decides he/she has no option but to take the matter to the family court.
- Parent A is required to attend a mediation information and assessment meeting (MIAM) in order to start proceedings. This adds delay and cost for Parent A, even though Parent B may refuse to participate in the mediation, making the MIAM pointless for Parent A.
- Parent A then files a C100 form to start Children Act proceedings in the Family Court.
- Cafcass produces a safeguarding letter, based on short phone conversations with both parents in which they are asked if they have any safeguarding concerns about the other parent. Information is also obtained from the Police and other agencies, who can sometimes be slow to respond. This process can take up to 8 weeks or, in some areas of the country, significantly longer than that.
- In the meantime, the child is not seeing Parent A. It is unclear what explanation the child is being given as to why Parent A has disappeared from his/her life and seems to have abandoned them. The bond of attachment between the child and Parent A is being weakened.
- The case goes to First Hearing and Dispute Resolution Appointment (FHDRA) often after a 3-4 month delay (or considerably longer in some regions). This hearing is supposed to be for dispute resolution but is now only 30-45 minutes long and often taken up with giving procedural directions, not with finding out what the real issues are and trying to resolve them at an early stage if possible and/or protecting the child's relationship with both of his/her parents.
- Most FHDRAs take place before lay magistrates or even before a court legal advisor (who, unlike magistrates and judges, have no powers to make substantive orders).
- The Cafcass safeguarding letter may contain allegations of Domestic Abuse made by Parent B against Parent A (or by both parents). It is not uncommon for new allegations to be raised by a parent at the FHDRA, using a Form C1A, which were not mentioned to the Cafcass officer who was producing the safeguarding letter. It may be difficult for the Court to know whether this is because the phone call between Parent B and the Cafcass officer was so short, or because Parent B is trying to cause delays. The reality is that very little has been done by Cafcass to work out what is really going on before the case has come before the Court for the FHDRA. It is rare for the Cafcass officer to have even seen the child at this stage.
- The judge/magistrate instructs each party to produce a 'Scott Schedule' outlining their allegations of domestic abuse. Another hearing is listed to take place in a few months' time (or up to 12 months' time in some regions). The Court may not order any interim arrangements for the child to spend time with Parent A, because Cafcass often advise against this in circumstances where the picture of the allegations being made against Parent A is still developing.
- When that hearing takes place, the Court considers the allegations and may order a fact-finding hearing. At this stage, the child may not have seen Parent A for over a year, and Parent B may be saying that the child is fearful of seeing Parent A and doesn't want to see him anymore. Cafcass will, in these circumstances, often think that it is not in the child's best interests to see Parent A until after the fact-finding has taken place.

- The fact-finding hearing may be listed for anything between 2 and 5 court days and may be listed for dates more than a year away. In the meantime, the child is still not spending time with Parent A.
- The fact-finding hearing is a very difficult experience for both parents, who are pitted against each other in arguing about examples of domestic abuse or other bad behaviour by each other in the past. A parent who does not have legal aid is likely to be either struggling to represent themselves with poor understanding of the court process, or to have been financially devastated by the costs of the proceedings (which can run into excess of £100,000 by this stage).
- Often, these fact-finding hearings result in relatively minor findings being made against one – and, commonly, both – parents. But these findings are often far less serious than the allegations being made by the parents against each other.
- The Court then, after all this delay, finally embarks on the process leading towards a final hearing at which the Court will decide arrangements for the child, including where he/she will live and how much time the child will spend with each parent. But the Court is now struggling to reintroduce the child to a parent whom the child has not seen for anything between 12 months and 3 years. Unsurprisingly, the child will be showing some resistance to spending time with Parent A. Parent A will be upset by this and claim that he/she is being 'alienated' by the other parent. The level of distrust and trauma that has been created between the parents by the court process is very high and operates as a huge barrier to finding constructive solutions.
- Even if and when the Court finally does order that Parent A be able to start spending time with the child again, this will almost always be 'supervised parenting time' in a contact centre, due to the long interruption of the relationship. Parent A may have to walk away at this stage because he/she cannot afford the costs of the contact centre (in the London area, for example, the costs of many contact centres exceed £100 an hour, and there is no public funding to help with this).
- If Parent B does. It co-operate with the court order, he/she must take the initiative to enforce it, The Police and social services will not assist with this. Instead, Parent A (often without legal assistance) will need to apply for an enforcement order. This process can itself take around 6 months.
- Reported judgments of the Family Court provide examples of parents in the position of Parent A who have spent 4 or 5 years going through the above-described process. By then, it is simply too late. For example, a child who was 10 and wanted to see parent A is now a 15-year-old who may be suffering from deep trauma from feelings of abandonment by Parent A and who has not seen that parent for 5 years.

from Alan Bates

Appendix 5: Language matters

Language in the Family Separation process: suggestions for change.

Language for separating families has evolved out of an adversarial legal system: it is accusatory and divisive. It is also potentially harmful, increasing conflict through battle metaphors while parents compete for justice and control of their children. Appropriate language is needed through every part of a family's separation: at the school gate, with their wider family and friends, in the media, on government websites, with support services and throughout any legal process.

Current language	Suggested alternatives
Case titles and headings: Shah v Shah (including in case reports)	(Example names) The family of Ali Shah and Keri Shah, with child/ren Casper Shah and Yasmin Shah etc. Documents to list family names with 'and' as the conjunctive not 'between' or 'vs'
How people are named: Applicant & Respondent Husband/H & Wife/W Mother/M & Father/F	Participant A & Participant B Alternative: participant choice.
Party/Parties	In children proceedings 'Parents' In finance proceedings 'Participants' 'Family members' for those who aren't parents,
Versus	And
Acronyms	Avoid wherever possible. If not, define clearly for all participants
Non-Court Dispute Resolution options (NCDR)	Non-Court Resolution
Dispute	Issue/problem to be resolved
Vacate	Cancel
Adjourn	Reschedule
Lodge	Send to
Seal	Court stamp or Court approval
Special arrangements/ reasonable adjustments	Practical arrangements to protect or support participants
Bundle	Hearing documents Hearing folder

Pleadings (in bundle indexes)	Court documents, or forms, or statements
Case summary and Chronology	Case summary and key dates
Position Statement	'Summary for judge' or 'Hearing summary' 'Approach' – The approach taken by [name]
Orders	Orders (the same!)
Language used – children	
Contact	'A child's time with a parent' or 'Parent time' 'Family time' or 'Time with mum' and 'Time with dad'
Residence	A child's home with a parent
Non-resident parent	[Child name] lives mostly with mum/dad/grandparent etc
'Live with' order	Day to day care and responsibilities
Section 7 report	'Social worker recommendation for court about child arrangements' or 'social worker recommendation'
First Hearing Dispute Resolution Appointment (FHDR)	First Hearing
Dispute Resolution Appointment	Resolution Hearing
Final/Contested hearing	Decision Hearing
Language used – finance	
Form E section 4 – 'bad behaviour'	Just refer to 'conduct relevant to financial matters'
Prayer	Orders requested
First Appointment	Administrative hearing
Financial Dispute Resolution Hearing (FDR)	Resolution Hearing (emphasis on settlement rather than dispute)
Final/Contested hearing	Decision Hearing
Section 25 statement	Final financial statement

[Table adapted from Family Solutions Group document.](#)

Appendix 6: Alternatives to court.

Twelve options for avoiding family court

Non-court option	Description
1. Do it Yourself (DIY) or Kitchen Table Agreements	You and your ex discuss how to sort out the finances and how to care for the children.
2. Mediation	A highly trained person provides you and your ex with assistance to sort things out.
3. Hybrid (or lawyer assisted/supported/integrative) mediation	One or both of you have your lawyers present in mediation.
4. Child Inclusive Mediation (CIM)	A specially trained mediator talks and listens to your children.
5. Collaborative Law/Practice (Collab)	Specially trained lawyers work together to help you both sort things out.
6. Round Table ('collab lite')	Where lawyers and you meet 'around the table' or online together.
7. Arbitration	Arbitrators are usually ex-judges, senior family law barristers or solicitors. They make the decision for you.
8. Arb Med (Arbitration-Mediation)	A combination of arbitration and mediation.
9. Online	Apps and online companies which offer help with the divorce application. Some also offer a separate coaching service.
10. Solicitor Neutral (or one lawyer for one couple)	One solicitor acts in a neutral and directive way to assist both of you.
11. Early Neutral Evaluation (ENE)	You both agree it would be helpful to ask (or instruct) a neutral person to tell you (in person /zoom or in writing) what might happen if the court was asked to make a decision on your case.
12. Private Financial Dispute Resolution (FDR) Judging	This is more formal than a straightforward early neutral evaluation and will usually mimic the court procedure.

Summary from *(Almost) Anything But Family Court*, Jo O'Sullivan