

**TRANSPARENCY IN THE FAMILY COURTS IMPLEMENTATION GROUP
DATA COLLECTION WORKING GROUP**

Tuesday 1 March 2022 at 4.45pm (on MS Teams)

Attending

Nicola Shaw (Chair)
Olivia Kirkbride (Secretary) (Coram Chambers)
Dr Natalie Byrom (Director of Research and Learning, The Legal Education Foundation)
Lisa Harker (Director, Nuffield Family Justice Observatory)
Dr Julie Doughty (Senior Lecturer in Law, Cardiff University)
Olive Craig (Senior Legal Officer - Rights of Women)
Clare Walsh (Family Rights Group)
Femi Ogunlende (Barrister, No.5 Chambers)
Ministry of Justice, Head of Public Law Policy [MoJ Official]
HMCTS family Jurisdiction and Operational support Manager [HMCTS Operations]
Senior Analyst, Cafcass [Cafcass Official]
FJYPB Co-ordinator, Cafcass [FJYPB Official]
Emily Fei (Chief of Staff, Office of the Domestic Abuse Commissioner)
Department of Education Family Justice Policy [DfE Policy]
Assistant Director Safeguarding, Worcestershire CC [Worcester CC Official]

Apologies

HMCTS Family Service Manager

Guests

Professor Rosemary Hunter (Professor of Law and Socio-legal Studies, University of Kent)

Professor Mandy Burton (Professor of Law and Socio-legal Studies, University of Leicester)

MINUTES

1. Minutes of the previous meeting for approval

The minutes were approved.

2. Actions arising

MoJ and HMCTS would confirm what data was held on court files and what was held as management information. Natalie Byrom suggested that the group could then consider the different ways in which data could be used in relation to transparency, or be available for research, or be included in an annual report.

Action: Once it was determined what data MoJ and HMCTS already held the group would then discuss the ways that data could be used at the next meeting.

3. Presentation on the Domestic Abuse Commissioner (DAC) Data collection pilot by Professor Rosemary Hunter and Professor Mandy Burton

Nicola Shaw welcomed Prof. Hunter and Prof. Burton to the meeting. One of the MoJ Harm Panel's recommendations was the setting up of an ongoing oversight and monitoring mechanism, within the Office of the DAC, to increase accountability and transparency in child arrangements cases involving allegations of domestic abuse, and to ensure consistency and dissemination of good practices.

The DAC and the Victims Commissioner had published a report in 2021, setting out their vision for the National Monitoring Mechanism together with some detailed research questions for the pilot. Prof. Hunter and Prof. Burton had been asked to design the pilot phase of the monitoring mechanism (involving a data scoping exercise and an intensive court study).

The scoping exercise: this would examine the data sets held by HMCTS, Family Man, Cafcass, Cafcass Cymru, the Family Court Data First and the Legal Aid Agency, and consider whether the new private law Core Case Data system would provide greater access to relevant information. Data from the evaluation of the Pathfinder Courts and the Integrated Domestic Abuse Court Pilot would also be looked at; and liaison would take place with the University of Lancaster's Centre for Child and Family Justice Research Unit. Issues identified from public correspondence (received from the Office of the DAC, the Victim Commissioner's Office and national specialist domestic abuse organisations) also provided a good data source.

The intensive court study: three court sites would participate; this involved:

- A contextual overview of the court
- A review of a sample of closed case files
- The observation of a range of hearings
- Focus groups and interviews with survivors of domestic abuse, alleged perpetrators, and children regarding their experience of private law proceedings

Contextual overview of the courts: there would be site visits to each court location to gather information about the composition of the Judiciary, gate-keeping and allocation practices and outcomes, safety and security facilities, court support services on site, how interpreters can be requested and arranged, and procedures for implementing the Practice Direction on the prohibition of direct cross-examination (following the Domestic Abuse Act 2021). Interviews would be conducted with focus groups and family justice professionals regarding local

barriers, challenges and good practice in implementing the Practice Directions, including PD 12J; information would also be sought from local specialist domestic abuse support services regarding users' feedback at the three courts.

The review of a sample of closed case files: it was recommended that there was a target sample of 300 case files, i.e. 100 files per court, looking at Section 8 applications closed between July 2021 and March 2022. On the basis of previous research, it was estimated that 50% - 70% of the files would involve domestic abuse allegations.

Observation of a range of court hearings: i.e. fact-finding hearings and final hearings. Approx. 15-20 hearings would occur at each court in order to capture data which was not evident on the written files, to help understand how things were done, what happened in practice, the interactions between the professionals and the parties, and the impact of the court process on the parties.

Focus groups and interviews: these would involve survivors of domestic abuse, with a particular focus on minority and marginalised groups. They were recommending three focus groups in each court area: one with survivors facilitated by the Domestic Abuse Service, one with survivors organised by specialists and one with alleged perpetrators; they were also scoping out the ability to carry out interviews with children (under the age of 10) subject to court proceedings and domestic abuse cases – this would involve enhanced ethical clearance and the utilisation of specialist interviewers.

The pilot phase's aim was to produce a report which would set out findings from the scoping exercise and the intensive court study; it would make proposals for the ultimate design of the monitoring mechanism (it was envisaged that this would involve the regular collection and reporting of nationally representative statistics, thematic deep-dives of areas of concern and mechanisms for the identification and dissemination of best practices, while providing a reliable avenue for feedback for survivors and children).

The DAC would decide whether to accept the recommendations for the design of the pilot, and then commission it – a report would be produced setting out the proposals for the ultimate design of the monitoring mechanism. It was noted that the monitoring mechanism could be useful for transparency purposes.

Natalie Byrom congratulated and thanked Prof. Hunter and Prof. Burton for progressing this important work. She felt that their presentation had set out the type of methodology that the group should be adopting when thinking of the data that it needed to obtain; i.e. it had to first map out the priority issues of concern which impacted upon the public's trust and confidence in the justice system. The second stage was identifying the data which was required to provide assurance that these issues were being dealt with, before working out how much of it was currently held, where it was held and what its quality was. The next stage would involve costing and working out the best way to fill any gaps, before deciding which format which the data needed to be available in and to who.

Natalie Byrom stressed the need to have flexibility in the system so that whatever was developed could be adapted and evolved in the future to report on issues as they emerged; she flagged that access to recordings in bulk would require changes to the Procedure Rules.

Lisa Harker said it would be helpful to have an annual report, from the President of the Family Division, about the family justice system; it was also necessary to identify areas where priority action was needed; there was the need for a process which had to be built in stages.

Prof. Hunter emphasised the challenge of trying to systematically obtain information from people going through or who had been through court and the impact that the process had had on them over time; the transparency pilot had to be alert to this. The challenge with interviewing people as they go through the process is that there is a risk of interference in the process itself. The challenge with surveys after a case is that response rates to such surveys are very low. Nevertheless, the DAC Harm Panel had recommended that the court should review how orders were working after a period of time and this approach would therefore be the pathfinder for establishing the impact of the court process on those involved.

Prof. Hunter emphasised that it was important to consider which questions you were seeking to answer in deciding what data to collect. For example, one of the questions they wanted to establish was that whilst DA is alleged in more than 50% of cases, they wanted to determine in how many cases DA is proven.

They had also considered the cost of the pilot and estimated that it would be between £150k and £200k for one year, but that if a data group was established within the DAC office then the costs could be reduced as expertise could be grown in house.

Nicola Shaw noted that DAC membership of the sub-group provided a key opportunity for information sharing between both.

4. Follow up questions following the video provided by HMCTS

Action: there had been issues accessing this; the group would work out how best to do this prior to the next meeting — trying options of whats app or Wetransfer. All members of the group were asked to share their mobile numbers with PFD Office.

5. AOB

Action: A document would be circulated to group members (e.g. an online form) seeking their views about the relevant issues and how to take the group's work forward.

6. Date of next meeting

Monday 28 March 2022 at 4.45pm.