



**Public Accounts Select Committee**  
**Inquiry into improving family court services for children**  
**Bar Council written evidence**

## About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

## Overview

1. As a result of chronic under-funding over a period of many years, the family justice system is failing the most vulnerable children who are the subject of legal proceedings. This failure results from numerous systemic problems that directly impact child welfare. This submission provides an analysis of 11 significant challenges within the family justice system which each contribute to suboptimal outcomes for children and families.
2. We address public law children proceedings (involving state proceedings against parents and other carers) and private law proceedings (involving parents litigating against one another). These cases can involve a full range of allegations of bad parenting of all kinds of sexual, emotional and physical abuse as well as abduction and wrongful retention of children away from their parents domestically and internationally.
3. Finally, we propose a series of solutions aimed at addressing some of the identified issues, ranging from structural investment to specific programmatic expansions. The overarching theme is the urgent need for comprehensive reform to ensure timely, effective, and child-centred justice.

## Challenges within the family justice system

### Delays

4. Delay stands out as a primary and pervasive issue within the family justice system. Delay is not just inconvenient, it creates prolonged uncertainty for children, which is inherently prejudicial to their welfare.
5. Statistics reveal a stark reality. The Office for National Statistics (ONS) found that, as of December 2024, there were almost 48,000 outstanding family cases, of which 10,121 were commenced by a local authority and 37,541 by a parent. Therefore, most outstanding cases relate to living and contact arrangements for children. Over 4,000 children were caught up in proceedings lasting two or more years.<sup>1</sup> Initiatives such as the Private Law Pathfinder (see below) may assist with the backlogs and delays but only if properly resourced.

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<sup>1</sup> <https://www.nao.org.uk/press-releases/government-has-more-to-do-to-reduce-family-justice-delays/>

6. In the public law arena, there have long been attempts to adhere to a 26-week target<sup>2</sup> for completion of care proceedings. The Public Law Outline was relaunched in January 2023 following findings in 2021 that care applications were taking an average of 46.1 weeks to conclude and that only 24% of public law cases were completed in 26 weeks.<sup>3</sup> Despite these initiatives, the sheer volume of outstanding cases indicates that delay remains a significant barrier to effective justice.

### Access to legal aid

7. The introduction of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 led to an enormous increase of unrepresented parties in private law proceedings. Legal aid remains universally available in public law proceedings. Between April and June 2024, 40% of family law cases involved judges dealing with situations where neither party was legally represented.<sup>4</sup> Apart from the waste of judicial time dealing with litigants in person (LIPs), there is an emotional cost to the litigants (and therefore to the children). This is often worse when one side is legally represented because they have alleged domestic abuse and the other is angry because they are not represented. The management of these feelings used to be for solicitors and barristers instructed on behalf of the alleged perpetrators and now there is no filter. The recent serious assault on a Circuit Judge in Milton Keynes in such a case is an example of raw emotions leading to safety risk to the judiciary and morale issues for the judiciary more generally.<sup>5</sup>
8. The cuts to and elimination of legal aid, limiting who qualifies for it and what has to be alleged in order to be eligible, have had devastating effects on all aspects of family courts.
9. More unrepresented parties causes delays because more time is needed for the judge to explain legal concepts to litigants who appear without even basic legal advice. This impacts the rest of the system as more cases progress to further hearings and judges have less time to deal with matters in busy, overcrowded lists.
10. A Family Recorder (barrister) sitting in a two-week Nightingale Court aimed at reducing the backlog in private law cases in the Chelmsford area in May 2025 reported that, in the cases she dealt with, some of which required separate fact finding, many of the cases had been live for more than 50 weeks with serious allegations. Only two cases in two weeks did not have a Protecting a Vulnerable Person (PVP) warning on the files.

### Retention and recruitment

11. The ability of the courts to function effectively is severely hampered by difficulties in retaining and recruiting judges. This shortage directly contributes to delays and logistical challenges in court listings.

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<sup>2</sup> Target set by section 14 Children and Family Act 2014 and section 32(1)(a) Children Act 1989

<sup>3</sup> <https://www.judiciary.uk/guidance-and-resources/local-practice-note-ensuring-adherence-to-the-public-law-outline-in-london/>

<sup>4</sup> [https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2024/family-court-statistics-quarterly-april-to-june-2024?utm\\_source=chatgpt.com](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2024/family-court-statistics-quarterly-april-to-june-2024?utm_source=chatgpt.com)

<sup>5</sup> [Judge taken to hospital after family court assault - BBC News](#)

12. In 2022, the Lord Chief Justice's Annual Report indicated that a shortage of District Judges would have adverse consequences for family and civil courts.<sup>6</sup> In 2023, there was reported to be a 40% vacancy rate at District Judge level in London.
13. In 2024, the UK Judicial Attitude Survey for England and Wales courts, coroners and UK tribunals found that the number of salaried judges saying they intend to retire or leave their position early within the next 5 years had risen from 400 (23%) in 2014 to 681 (39%) in 2024.<sup>7</sup> Levels of stress were particularly high among Circuit and High Court Family law judges, a third of whom reported extreme levels of stress.<sup>8</sup>
14. Without a stable and supported judiciary, the family justice system cannot deliver timely, safe or effective outcomes for children<sup>9</sup>.
15. The Bar Council's Barristers' Working Lives survey gathers information about barristers' working habits and attitudes. In 2023, 49% of respondents reported they were managing their workloads well, but a third (31.4%) indicated they weren't coping. Barristers working in family and criminal law have the lowest wellbeing scores of all practice areas.<sup>10</sup>
16. Often, when dealing with the most serious cases in care proceedings, barristers' rates of legal aid pay as well as the volume hours worked for no remuneration, are known to lower morale. The system depends on the commitment and goodwill of childcare lawyers who continue to work for no pay on many aspects of cases. This leads to exodus from that part of the profession by some of the best practitioners.
17. The rates that are paid for legal aid work have been stationary and eroded by inflation for many years. It has been almost 30 years since rates of payment for civil cases were last raised in 1996 and they were reduced by 10% in 2011-2012.<sup>11</sup> A review is needed to stop the haemorrhage of people moving to privately funded work.
18. There is also a severe shortage of ushers who understand the system and who traditionally would informally offer assistance and direction to litigants in person (LIPs) yet at the same time, there is a significant increase in the number of LIPs caused by legal aid cuts.
19. In the High Court, associates and judges' clerks with years of experience are retiring and being replaced by short term junior/young people who wish to use these jobs as stepping stones. This results in a lack of experience and expertise which impacts the day-to-day functioning of the courts. In the Family Division, there used to be an associate in every sitting court whereas now, there is one between three courts. The experienced associates have moved elsewhere or left the court service completely. The effect of the decrease in administrative support is the work that has to be done by barristers and/or judges instead – more work for the same or less remuneration.

## Children and Family Court Advisory and Support Service (CAFCASS)

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<sup>6</sup> [https://www.judiciary.uk/wp-content/uploads/2022/10/14.142\\_IO\\_Lord\\_Chiefs\\_Justice\\_Annual\\_Report\\_2022\\_WEB.pdf](https://www.judiciary.uk/wp-content/uploads/2022/10/14.142_IO_Lord_Chiefs_Justice_Annual_Report_2022_WEB.pdf)

<sup>7</sup> <https://www.ucl.ac.uk/news/2025/feb/judicial-system-facing-looming-crisis-recruiting-and-retaining-judges>

<sup>8</sup> Ibid [5].

<sup>9</sup> It is important not to think that more cases should be allocated to magistrates. A minimum level of district judge is needed to deal with these cases which can involve various types of abuse allegations – true and not true.

<sup>10</sup> [Wellbeing at the Bar report 2024](#)

<sup>11</sup> [Government's management of legal aid](#)

20. The observation of the call for evidence that “Cafcass has been rated outstanding by Ofsted, although some past challenges identified by the PAC still apply today, including the pressure caused by high caseloads” is noted. The acknowledgment of the pressure of high caseloads is valid. The suggestion that the service provided is outstanding is one that would be very likely to surprise family law practitioners and perhaps even CAFCASS practitioners.
21. CAFCASS caseloads are notoriously high. Wait times for a basic section 7 report in London’s Central Family Court is above 20 weeks. Outside London, for example, in the Chelmsford area in May 2025, CAFCASS timescales for a report was 23 weeks.
22. The heavy caseloads carried by CAFCASS practitioners have an impact on their work in terms of quality and sickness absence. Many CAFCASS officers express feelings of being overwhelmed and struggling to manage their workloads, leading to burnout and high turnover rates.<sup>12</sup> There is a recruitment shortage causing delays and forcing junior practitioners to take on complex cases.
23. Structural problems persist within CAFCASS as the MP for Coventry North West indicated in a debate in the House of Commons: “CAFCASS is in desperate need of reform, and it requires funding to protect children subject to care proceedings”.<sup>13</sup>
24. The court backlog also impacts CAFCASS, meaning the organisation has “unprecedented demand” for its services.<sup>14</sup> This leads to one aspect of the two-tier justice that exists in children’s cases. Wealthy people are able to instruct independent social workers (ISWs) to complete the same or better reports in 8 weeks that CAFCASS are taking more than 20 weeks to complete.
25. The backlog in CAFCASS workload also means that they are less likely to take an appointment to act as the guardians for children in private law cases due to lack of available personnel. In cases where the children need separate representation, this is not an acceptable situation.
26. The National Youth Advocacy Service (NYAS), a charity with specialist case workers, used to take up some of the excess work without which CAFCASS could not cope. That is no longer the case as NYAS too have reached capacity and, for a period in late 2024, had stopped taking any new cases.

## Infrastructure

27. Court buildings are crumbling and dilapidated. The state of the buildings leads to around 100 unplanned court closures each day, exacerbating delays.<sup>15</sup> Interiors are long-term neglected: lifts can be out of order for months or completely decommissioned; chairs are broken but still in use; carpets and furniture covers stained and torn; walls and windows dirty; temperature control in most courts is not usable for those in charge of the court rooms meaning that they are usually too hot or too cold.

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<sup>12</sup> <https://www.incourt.co.uk/post/lack-of-experienced-trained-cafcass-officers-and-its-impact-on-child-arrangements-and-child-custody#viewer-k16nn137595>

<sup>13</sup> <https://hansard.parliament.uk/commons/2023-03-22/debates/C99320D8-67DC-43AC-9D2A-5EC66F9AD2C2/FamilyCourtReformAndCAFCASS>

<sup>14</sup> <https://www.communitycare.co.uk/2024/04/04/consistently-high-standards-of-social-work-earns-cafcass-across-the-board-outstanding-rating/>

<sup>15</sup> <https://www.independent.co.uk/news/uk/home-news/court-closures-trials-delays-justice-b2480820.html>

28. In January 2024, the Lady Chief Justice warned that a further 200 court rooms come close to being rendered unusable by dilapidation problems each month.<sup>16</sup>
29. As public buildings, courts, like schools and hospitals, need to be functional to deliver effective justice. Investment is needed to make the courts function. Conference rooms that are available in the Family Courts, including in the High Court, are often locked, being reserved for those who can pay to rent them and often lying empty whilst intimate and private issues concerning children are discussed in the corridors outside the locked rooms.

### **Marginalisation of the child's voice**

30. The right of children to participate in decisions affecting them, and the duty to take their wishes and feelings into account, is well-established in both domestic and international law.<sup>17</sup> It is a principle reflected in domestic law.<sup>18</sup> Children's voices are heard through a guardian being appointed for them in public law proceedings. However, there is no such universal process to ensure that their voices are heard at all in private law proceedings. In fact, resource pressures mean that children's voices are often filtered out of the private law system altogether or otherwise unaccounted for. Many cases are resolved with no direct engagement with them about decisions that affect them. This is particularly true of those who cannot afford to instruct independent social workers to carry out this work. CAFCASS resource pressures and those on the courts are such that there is a decrease in their engagement in the process.
31. Nuffield Family Justice Observatory (NFJO) carried out research on the issue of hearing children's voices in private law proceedings. They could find no indication in almost half of cases that there had been any involvement or participation by the children in the cases about their lives.<sup>19</sup> Additionally, in England, 40% of children aged 10 to 13 had not formally participated in the court proceedings. This amount increased among elder teenagers.<sup>20</sup> Strikingly, the study details that a child's age has little effect on whether they participate in proceedings.
32. Even when children choose to visit the judge involved in their case, existing legal rules expressly prohibit a judge from taking into account anything that the child expresses to them. This situation means that the system is effectively giving children the impression their views are being taken into account by the person making the decision when in fact, they are forbidden by law from doing so. This rule has the effect of marginalising the child's voice even further.

### **Care Proceedings and parents with learning disability and difficulties**

33. A significant and often overlooked issue is the treatment of parents with learning disabilities and difficulties in care proceedings.

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<sup>16</sup> Ibid [9].

<sup>17</sup> Article 12 of the United Nations Convention on the Rights of the Child; Article 8 of the European Convention on Human Rights.

<sup>18</sup> Children Act 1989, section 1

<sup>19</sup> <https://www.nuffieldfjo.org.uk/resource/uncovering-private-family-law-how-often-do-we-hear-the-voice-of-the-child>

<sup>20</sup> Ibid [7].



34. Research published in January 2025 by the NFJO identified that individuals with additional needs often miss the chance to access and engage in pre-birth services, which might be able to develop or improve their parenting abilities.<sup>21</sup> This is because support is not adapted to their needs. They identified that one third of parents at risk of having their babies removed from their care had learning disabilities or difficulties, yet in three-quarters of cases, parents' learning difficulties had not been identified until the court proceedings began.<sup>22</sup> Without appropriate support, children are removed from their parents which negatively affects their welfare.
35. In his recent Guidance on Neurodiversity in the Family Justice System for Practitioners<sup>23</sup>, the President of the Family Division has explicitly acknowledged that the failure to recognise and accommodate neurodivergence leads to unequal access to justice: "It is clear that the failure to recognise and accommodate and accommodate neurodivergence within the Family Justice System leads to parties, witnesses and children not being able to participate fully. Equal access to justice is fundamental to a functioning and fair system."

### Addiction and parental capacity

36. Alcohol and drug misuse is a frequent and recurring theme in both public and private law cases, however, courts often lack access to timely expert assessment or integrated treatment planning. The court's approach to addiction often misses opportunities for recovery or reunification of families potentially leading to sub optimal long-term outcomes for children.
37. The work of the Family Drug and Alcohol Courts (FDAC), with its multi-disciplinary and constructive approach and proven outcomes on its effective intervention, is struggling to exist due to a chronic and ongoing lack of investment.

### Treatment of allegations of domestic abuse and alienating behaviours

38. When a case begins, there is evidence of inadequate 'gatekeeping' to identify the most serious cases at an early stage. This is likely due to a lack of training of those charged with looking at the applications when they are lodged. A large proportion of cases are allocated by a legal advisor working at the magistrates' court level. These advisors are often inexperienced and not adequately trained. There is also a lack of consistency in their approach to allegations. A lack of proper consideration at an early stage can lead to many months (or years) of a child having no contact with an absent parent when they should have contact or a child having contact with a dangerous parent when they should not be having any.
39. There is a real risk, when eligibility for legal aid is based on having to be a victim of domestic abuse, that false allegations are being made or exaggerated. Recently, CAFCASS appears to have adopted a policy on domestic abuse which tends to presume that such allegations are true which often leads to a recommendation that there be no contact until the allegations are investigated. And yet, there are still many examples of litigation where a parent uses

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<sup>21</sup> <https://www.nuffieldfjo.org.uk/resource/babies-in-care-proceedings-what-do-we-know-about-parents-with-learning-disabilities-or-difficulties>

<sup>22</sup> <https://www.nuffieldfjo.org.uk/news/one-in-three-parents-at-risk-of-having-their-babies-removed-from-their-care-have-learning-disabilities-or-difficulties-often-not-identified-until-court>

<sup>23</sup> <https://www.judiciary.uk/wp-content/uploads/2025/01/Family-Justice-Council-Guidance-on-Neurodiversity-in-the-Family-Justice-System-for-Practitioners.pdf>

allegations of domestic abuse as a way of withholding any contact between a child and their parent.

40. There are still many examples of litigation in the Family Court being used to continue a pattern of coercive control of a former partner. Inclination to drop more cases into the magistrates' court must be resisted and should only deal with the most routine cases in either public or private law.

### Transparency and confidentiality

41. The recent Transparency Pilot<sup>24</sup> has broadened the media's ability to report on Family Court proceedings, aiming to enhance openness and public understanding of its work. However, this shift raises important concerns about children's right to privacy. There is a response to the perception that closed/confidential nature of the Family Court that the courts deal secretly and often only with divorce and money. The aim is to disabuse the public of this misapprehension. In fact, the reality of children's work mirrors the criminal court's terrain up to and including the alleged murder of infants and brutalisation of children physically, sexually, emotionally. They also deal with rape and murder of mothers and complex medical issues at the cutting edge of science where benign causes can mimic inflicted injury.
42. Although children's names are typically anonymised—except in rare, high-profile cases such as the tragic death of Sara Sharif—there remain insufficient safeguards to prevent the reporting of sensitive or identifying information. References to characteristics such as a child's local authority area, religious background, or disability can lead to jigsaw identification, where the child can be indirectly identified by piecing together various details.
43. Greater care and clearer guidelines are needed to strike the right balance between transparency and the protection of the identity of vulnerable children.

### Experts

44. The shortage of experts willing to provide opinion evidence, particularly medical evidence in complex public children proceedings, is a significant concern recently noted by the Family Justice Council (FJC). They observed: "Many public law cases involve issues of enormous complexity; specific expert evidence is essential - often across a range of complementary disciplines - in areas of medical science in which the state of knowledge is ever-increasing. The family courts are appropriately concerned that proper enquiry is undertaken of the issues so to achieve a true outcome."<sup>25</sup> The scarcity of these experts directly impacts the court's ability to thoroughly investigate complex matters and ensure a "true outcome."
45. Due to the general backlogs in cases and pressure on resources, there is a prevailing attitude amongst leadership judges that those representing parents in the most serious cases rarely, if ever, need to question the experts instructed in those cases. There are many examples of cases where this very questioning has avoided wrongful findings of blame on parents who have done no wrong but who stand to lose their children. A recent example is *LB Croydon v D (Critical Scrutiny of the Paediatric Overview)* [2024] EWFC 438<sup>26</sup> where questioning of the single joint expert led the judge to return a child to his parents after rejecting the expert's written evidence under cross-examination. The attitude now frequently adopted by the

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<sup>24</sup> <https://www.judiciary.uk/extensions-to-family-court-transparency-pilots/>

<sup>25</sup> <https://www.judiciary.uk/wp-content/uploads/2022/07/The-Use-of-Experts.pdf>

<sup>26</sup> <https://www.bailii.org/ew/cases/EWFC/HCI/2024/438.html>

judiciary charged with bringing down length of hearings is that the lawyers must satisfy the court that the attendance for questioning of an expert is necessary. This goes beyond the statutory test as to when questioning should be allowed.

### Proposed solutions for systemic improvement

46. There are a series of practical solutions designed to alleviate the identified problems and improve the functionality of court services for children.

### Investment

47. The fundamental solution is immediate, substantial and overdue investment.
48. Investment is needed to reduce delays and aim for better outcomes in:
  - a. CAFCASS
  - b. The courts
  - c. judicial recruitment
49. Such investment would start to ensure that cases would be heard promptly, reducing the strain on families, improving access to justice and benefiting society.

### Legal aid

50. Urgent reform of entitlement to legal aid that is not dependent on making allegations of domestic abuse is needed – and for both sides of any dispute. Private family law proceedings need lawyers to be advising rather than judges attempting to give basic legal advice to one or both parties.
51. If neither parent is represented, it might be worth considering the children being represented from the outset. At least then, there would be a neutral person from the beginning who could advise the parents from a neutral perspective. This would free up significant judicial resources currently being wasted by the judge being the first lawyer that the parents see.
52. The current eligibility criteria for legal aid are overly restrictive. Except for those who automatically qualify, such as victims and survivors of domestic abuse, many applicants are excluded. To qualify, individuals must have a gross monthly income below £2,657 and a disposable income of no more than £733.<sup>27</sup>
53. With the rising cost of living, even those earning just above the threshold are usually unable to afford legal representation. This results in more litigants representing themselves, which contributes to further delays and inefficiencies in the family court system.
54. Barbara Mills KC set out in her inaugural speech in January 2025 that this lack of availability of legal aid “results in serious dis-function in our justice system – cost, delay, injustice, fear, uncertainty and lives put on hold are the bitter fruits of under-investment.”<sup>28</sup>
55. The culture of pro bono work at the Bar has been expanded upon and relied upon to fill gaps in an inappropriate manner. In recent years there has been an unprecedented increase of over 50% in the number of new cases brought to Advocate, the Bar’s pro-bono charity.<sup>29</sup> Over 4,

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<sup>27</sup> <https://www.gov.uk/legal-aid/financial-eligibility>

<sup>28</sup> <https://www.barcouncil.org.uk/static/3b4dde75-7092-4c37-b2ef9866458be4b6/Barbara-Mills-KC-inaugural-address-8-January-2025.pdf>

<sup>29</sup> [Advocate: Created by the Bar, Sustained by the Bar - Justice Week 2022](#)



500 barristers volunteer their time with Advocate,<sup>30</sup> with the majority of the cases being in family and employment.<sup>31</sup>

### Allocation and guidance on issue

56. A fresh approach is needed to the allocation of cases on issue. Consideration by a trained and able lawyer is needed to properly consider whether a case is urgent and what level of seriousness the content suggests.
57. Without this early assessment, some of the most serious risks are missed leading to risk for children. The corollary is that wealthy and experienced lawyers with time and energy are able to engage in a form of queue jumping by starting a case on an allegedly urgent basis to secure an earlier hearing than other cases.
58. Refinement of the issues at an early stage will avoid children not seeing parents who present a real risk to them and seeing those who should, in the child's interests, be seen. The requirement to mediate before issue should be more carefully considered and enforced than it has been since it was introduced many years ago.

### Expansion of the Pathfinder project

59. A new approach to private law cases is currently being piloted in North Wales, South-East Wales, Mid and West Wales [comprising the whole of Wales], Dorset, Birmingham and West Yorkshire.<sup>32</sup>
60. The Pathfinder court is a 'problem-solving court' which has introduced a more child-centred approach. CAFCASS will have spoken to the parents and child(ren) before the case is heard by the court. The pilot has been very successful and well-received. Most cases are resolved at the first hearing, reducing the backlog of cases and associated delays, which often exacerbate family tensions.<sup>33</sup>
61. The Welsh Government's research 'Children and young people's experience of participation in private proceedings in the family courts'<sup>34</sup> published in December 2023, evaluated the pathfinder model and reported that Family Court Advisors:
62. felt the Pathfinder model put children's views to the forefront, accorded them greater and more detailed consideration earlier on, and that courts were taking their views seriously; and
63. involved children earlier on reduced stress for them and their parents by allowing them to intervene before further hostility had the opportunity to build up.
64. In addition, NFJO suggests that the pilot Pathfinder courts use a mechanism through which all children can have an opportunity for their wishes and feelings to be heard from the start. "Points that the expansion of this type of model would enhance the voice of the child."<sup>35</sup>

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<sup>30</sup> [Our history](#)

<sup>31</sup> [Advocate Monthly Top Ten May 2025.pdf](#)

<sup>32</sup> [Private Law Pathfinder delivery update - GOV.UK](#)

<sup>33</sup> <https://www.hogans.co.uk/post/a-new-era-in-family-justice-the-july-2024-view-from-the-president-s-chambers#:~:text=Most%20cases%20are%20resolved%20at,more%20durable%20resolution%20of%20issues.>

<sup>34</sup> <https://www.gov.wales/sites/default/files/statistics-and-research/2023-12/children-and-young-peoples-experiences-of-participation-in-private-proceedings-in-the-family-courts-report.pdf>

<sup>35</sup> <https://www.nuffieldfjo.org.uk/resource/uncovering-private-family-law-how-often-do-we-hear-the-voice-of-the-child>

65. His Honour Judge Simmonds, one of the lead judges on this pilot in Dorset, highlights that the challenge of limited resources calls for new innovative ways of working, he said, "Limited judicial resources, limited court staff, are not a bar to making pathfinder work. CAFCASS are the lynchpin, as are local authority resource, they've been able to provide domestic abuse staff, who have been great and we're so thankful for that. It's about multi-agency working to recognise and respond at the earliest possible opportunity. Taking early steps to identify domestic abuse and managing risk."<sup>36</sup>
66. We would encourage the pathfinder model to be rolled out across more courts as it reduces delays, the length of proceedings and achieves better outcomes for children. However, it cannot work with the current CAFCASS workloads. There would need to be a very significant increase in the number of CAFCASS workers to handle the increase in their work. With current timescales and backlogs, especially in urban areas, it would not be possible to roll this programme out more widely.

### More use of non-court dispute resolution (NCDR)

67. There has been another recent push towards alternatives to litigation and this needs to be maintained and enforced.
68. Mediation is cheaper, more constructive, faster and more likely to be long-lasting than imposed judicial decisions.
69. Arbitration is an option that needs to be promoted. The advantages it has over litigation is primarily speed and choice of tribunal. The choice means that the parents know how experienced the arbitrator is and that their advisers, if they have them, trust them. They cost more money than a judge but, if it saves months of other litigation costs, it represents a cheaper option than waiting for court. It is an option only for those with sufficient funds to pay the additional costs of the arbitrator.

### Monitoring of outcomes

70. There is currently no empirical measurement of outcomes from court proceedings. There is no monitoring of the performance of any constituent part of the family justice system.
71. At the very least, CAFCASS (or similar) could follow up with families at stages after a case is complete. A basic interview with the parents and children, like the current standard safeguarding letter that is provided at the start of every case might be more useful than the initial interview on its own (as currently is the case).

### Expansion of the Family Drug and Alcohol Court (FDAC)

72. The FDAC is an alternative court for public law proceedings designed to assist parents with drug and alcohol addiction. The FDAC is solution-focused, and parents go through 'a trial for change' period where they work with professionals to overcome their addictions. Toward the end of the proceedings, the FDAC liaises with the local authority to give an opinion on whether the parent(s) can safely care for their child.

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<sup>36</sup> <https://www.nuffieldfjo.org.uk/story/the-private-law-pathfinder-transforming-domestic-abuse-victims-experiences-of-a-previously-brutal-system>

73. Foundations reported several positive outcomes in the FDAC court in their 'Evaluation of Family Drug and Alcohol Court' report published in August 2023. The key successes of the FDAC are:
74. children with a primary carer in FDAC care proceedings were more likely to be reunified with their primary carer at the end of the care proceeding in comparison to children with a primary carer in non-FDAC care proceedings (52.0% versus 12.5%).<sup>37</sup>
75. a higher proportion of FDAC than comparison parents had ceased to misuse drugs or alcohol by the end of the proceedings (33.6% versus 8.1%).<sup>38</sup>
76. As of June 2025, 14 FDAC teams are operating across 22 courts in England. Given its positive impact, the FDAC model should be expanded to support more families and improve long-term outcomes for children.

### Judges writing to children

77. The President has recently published guidance for family judges on when, how and why to write to children in family proceedings.<sup>39</sup> The guidance includes a toolkit to be used by judges to help them draft letters to children. Examples are also provided.
78. The guidance makes clear that by a judge communicating with a child, they will have their voice and wishes expressly recognised. Further, children are entitled to be given an account of what the court decided by the judge who made the decision. Helping children understand the court's decision will allow them to move forward with the rest of their lives.
79. Writing these letters is a further burden on the already over-loaded judiciary and resource should be provided to judges to carry out this important function.

### The Bar Council June 2025

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<sup>37</sup> <https://foundations.org.uk/wp-content/uploads/2024/02/FDAC-report.pdf> at p.9.

<sup>38</sup> Ibid [25].

<sup>39</sup> <https://www.judiciary.uk/wp-content/uploads/2025/02/Writing-to-Children--A-Judges-Toolkit-V1.7-1.pdf>