



FJC Open Meeting on 22 July 2024

Questions and Responses

1	<p>We received four questions on the topic of alienating behaviours including seeking an update on the publication date for the FJC guidance and regulation of experts.</p>
	<p><u>Response:</u> Thank you for your interest in the work of the council and this workstream.</p> <p>The first draft of the FJC Guidance on responding to allegations of ‘alienating behaviours’ was circulated to stakeholders by way of consultation on 24 August 2023. We received over 90 responses. All were individually analysed by members of the Working Group with a view to appropriate amendments being discussed and incorporated. These responses were considered alongside the developing caselaw which impacts on case management and best practice.</p> <p>Additionally, there has been an important body of research evidence both domestically and internationally which has had a bearing on best practice.</p> <p>We hope to publish the revised guidance in the Autumn. It will have important implications for all stakeholders in the Family Justice System and will aim to unpick some of the complexity associated with these difficult cases.</p> <p>It would be inappropriate to comment on content until the guidance is fully signed off by the Council however it is progressing well and will address the following important aspects which stakeholders felt were particularly important including;</p> <ul style="list-style-type: none"> • Use of the term ‘parental alienation’ • Research evidence and ‘pseudo science’ • Alienating behaviour raised in cases where there is domestic abuse • Guidance on case management <ul style="list-style-type: none"> i. Allocation ii. Finding of fact hearings iii. Allegations of domestic abuse • Judicial function and the appropriate use of suitable experts • The voice of the child • Welfare decisions <p>It is noted that the previous Government referred the matter of unregulated experts to the Family Procedure Rules Committee and we understand that they have set up a work stream on this topic.</p>

2.	Do you find Pathfinder is working better within the family courts compared to the older system?
	<p><u>Response:</u> In response to this question, we asked the Ministry of Justice for an update on the work of the Pathfinder pilot:</p> <p><i>The Pathfinder pilot aims to improve the experience and outcomes for children and parents/carers involved in private law proceedings, and particularly those who may need additional support, such as domestic abuse survivors. As it has been in operation in the first two pilot sites, North Wales and Dorset, since February 2022, we have some feedback from delivery partners on how the model is operating. Early insight on case duration, the level of outstanding private law caseloads, and returning cases is positive. Initial feedback from the pilot areas suggests that the Child Impact Report (a key part of the Pathfinder model) helps to focus the proceedings on the needs of the child, allowing the court and parties to focus on the core issues for the child and their welfare, rather than the wider disputes between the parties. Pathfinder stakeholders and partners report that the closer relationship with local domestic abuse agencies has increased the number of survivors accessing support services and has brought an improved understanding of domestic abuse earlier into proceedings. In light of these promising results, we extended the new approach to South East Wales and Birmingham in April and May 2024 respectively to test the model in larger court areas. Formal evaluation of the pilot is underway, including a second stage of work to capture the experiences of children and families. We hope to publish results of the first stage of evaluation in the autumn.</i></p>
3	We also received a question about whether there is an alternative to Fact finding when a case involves domestic abuse.
	<p><u>Response:</u> As noted in the previous answer, the Pathfinder pilot is developing a different way of approaching child arrangements cases generally, which is more proactive regarding the impacts of domestic abuse on child welfare and other family members, rather than placing so much reliance on fact-finding hearings. We are looking forward to the publication of the pilot evaluation and whether the pathfinder model can be rolled out further.</p> <p>In other types of cases a fact-finding hearing is not required simply because the parents or parties disagree about factual issues. A fact-finding hearing is only necessary when an adverse finding made against a parent or party, particularly in relation to allegations of domestic abuse, may be relevant to the court's determination of the welfare arrangements for the child. In such cases it is incumbent upon the court to ensure the hearing is limited to these allegations, the evidence is limited to that necessary to determine these allegations and all the safeguards and special measures provided for in the Family Procedure Rules are available for the vulnerable party or parties.</p>
4	We have received several questions from practitioners regarding the 'Suspected Inflicted Injury Service Pathway' pilot that started in April, including what role the FJC has played in the creation of the pilot, whether there has been any consultation with stakeholders and how the pilot sites were selected etc.
	<p>We have received the following response from the Department for Education team that is leading on the pilot:</p> <p><u>Aims and scope of the pilot</u> The Suspected Inflicted Injury Service (SIHIS) pilot commenced in April 2024 and is planned to run until 31 March 2025. The pilot is funded by His Majesty's Treasury's Shared Outcomes Fund, which supports initiatives to address a wide range of issues which impact</p>

multiple Departments; this pilot is supported by the DfE, DHSC and MoJ, and is being delivered by NHS Trusts.

The pilot is **not** a legal pilot, it is a clinical one. It does not change legal processes, impact on any protections that the child is already entitled to or replace Part 25 experts.

The pilot aims to provide earlier assessment of the child by more experienced, senior clinicians at the **initial** stage when a child is flagged as suspected of abusive head trauma in the NHS Trust, rather than later in the clinical process. The clinicians will complete one clinical report, which **does not** replace the multiple clinical reports that the judiciary already receives but provides the clinical information in a single report in a clearer, more organised format.

The pilot is aiming to improve the organisation and efficiency of processes that already occur within the NHS. The current process can create potential delay later in proceedings and can sometimes create unnecessary confusion leading to the need for further (potentially unnecessary) part 25 experts to be instructed at a later stage .

The role of the Family Justice Council

The role that the FJC has played in the development of the pilot is:

- In July 2019 at the Symposium the Experts Working Group held in London, there was a discussion about how changes to the way healthcare was commissioned could influence the willingness of clinicians to make the transition into becoming experts.
- Several possible ideas were raised, which included a suggestion for a more fundamental shift in the way suspected child abuse cases were dealt with within the NHS.
- After the FJC established the Experts Committee (FJCEC), sub-groups were established to convert the 22 Experts Working Group Report recommendations into action.
- One of the sub-groups was Commissioners and NHS Trusts which looked at how commissioning within the NHS might be improved to support experts. That discussed a proposal for a Suspected Physical Injury In Children (SPAIC) pathway at the Birmingham Symposium in October 2022 and is covered in the Briefing Note for that event.
- The DfE attended this Symposium, and took forward an idea for the SPAIC pathway to be piloted, aiming to achieve (among other things): the production of better quality 'clinical' reports, which would reduce the need for as many 'expert' reports in the Family Justice System, widening the pool of part 25 'experts' from whom reports could be obtained where the court considered it necessary, enabling clinicians to develop both greater expertise and familiarity with children's social care and court processes.

Who is involved in the pilot?

The clinicians taking part in the pilot are those that are already employed by the NHS Trusts who bid for the funding to deliver this pilot.

There is an independent evaluator which has been appointed to evaluate all 3 pilots being delivered as part of the 'Reducing Family Court Delay' Shared Outcomes Fund scheme.

Information sharing

The Department for Education, with the support of the FJC Secretariat, has provided information about the Pilot to stakeholders including NHS trusts, judiciary, local authorities, and legal practitioners.

The DfE were due to arrange a broadcast session to share information with practitioners when the purdah restrictions put this on hold, in the interim they circulated an information document. **The broadcast session has now been planned for Thursday 25th July at 4:30pm**, hosted by the Department for Education where they will answer questions from practitioners.

5.	<p>Do the Council have any suggestions how to address the lack of Welsh speaking providers of NCDR (cannot locate any mediators or arbitrators that could provide their services in Welsh). How will this impact the Courts approach with Welsh speaking parties, in light of The Welsh Language Measure 2011.</p> <p>Our Family Mediator representative, Ruth Hay, has liaised with the Family Mediation Council on the response to this question.</p>
	<p>The Family Mediation Council (FMC) asks mediators what languages they mediate in, and they have 30 different languages registered thus far but only two Welsh speaking mediators, one chooses not to mediate in Welsh and the other is working towards accreditation.</p> <p>The FMC, as part of our discussion with them, are looking to convene an online discussion with mediators based in Wales and the wider area to identify the level of interest in the issue and to explore how they could support the development of Welsh speaking mediators.</p> <p>Family Options Hub Southwest Wales holds a list of mediators working in the area, but none currently appear to be offering services in Welsh. The FMC will continue to liaise with the Hub on this matter.</p>
6.	<p>Will the FJC be monitoring the impact of the recent Part 3 rule changes and if so, how and when please.</p>
	<p>The Family Mediation Council are monitoring the impact of the rule changes by asking mediators for feedback and by considering data available from the Legal Aid Scheme which shows the number of legally aided MIAMs that take place.</p> <p>Feedback so far from mediators has been mixed - some have noticed a significant change in the behaviour of their local courts and solicitors, and some less so, although they may have already been sending potential applicants to non-Court dispute resolution alternatives prior to the change.</p>
7	<p>Is there any appetite for a clear escalation pathway for cases that are drifting unacceptably without the need to appeal decisions</p>
	<p>The Family Justice Council issues clear and practical guidance with the aim of improving the fairness, efficiency, and effectiveness of the Family Justice System. One of its objectives is to be a critical friend of the Family Justice Board. Accordingly, it is appropriate for the council to identify or emphasise steps which are being taken to improve the system beyond its active workstreams and proposed new guidance documents.</p> <p>The Family Justice Board has published a number of key priorities which include steps to be taken to conclude the longest outstanding public and private law cases.</p> <p>The President of the Family Division will be re-emphasising the key principles of the PLO which was re-launched in January 2023. The aim is to ensure the fair and timely completion of all public law proceedings but particularly those outstanding for more than 52 weeks.</p> <p>MoJ and Cafcass statistics indicate that since the re-launch of the PLO, a very significant number of the public law cases issued after January 2023 have concluded by final order with fewer hearings and more expediency than those before.</p> <p>The Designated Family Judges, in partnership with HMCTS, are each implementing initiatives in their area to improve the progress of public and private law cases through the Family Court. These include 'blitz' courts where private law cases that are ready for final hearing are listed more speedily than would otherwise be the case. The experience of Birmingham and Cardiff</p>

	<p>& South Wales, who have been preparing for the introduction of Pathfinder in their areas, has been extremely positive in achieving huge reductions in the backlogs of private law cases.</p>
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	<p>Accordingly, whilst a great deal remains to be done to improve the timeliness of public and private law cases, various initiatives are making considerable inroads into concluding the longest outstanding cases and moving children's cases more speedily through the Family Court.</p>
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* Responses may not be verbatim what was shared in the meeting.