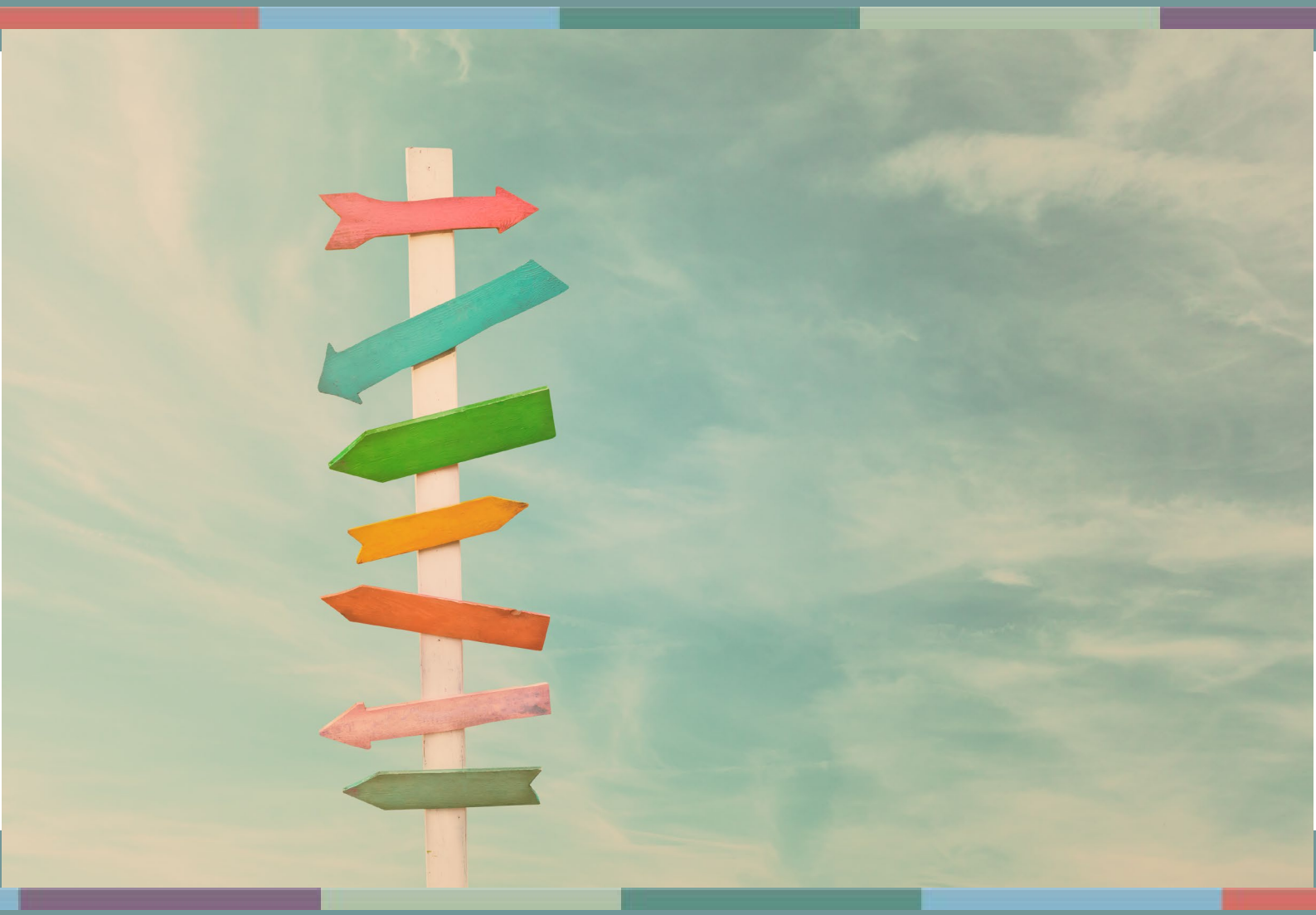
Centre for Child & Family Justice Research

Lancaster University

Exploring Routes through Court for Families in Private Law Proceedings:

A Review of the Evidence



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The Centre for Child and Family Justice Research (CFJ) is co-hosted by the Department of Sociology and the Law School at Lancaster University and works in collaboration with the Data Science Institute, bringing together academics, practitioners, and policy makers. Research in the Centre studies the operation of family justice systems, and questions about social justice and inequalities more broadly. The Centre's mission is to progress cutting edge research which aims to improve the lives of children, young people and families.

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Introduction

Private family law cases are triggered by the decisions of private individuals, typically separated parents, who are seeking to resolve disagreements about arrangements for a child's upbringing, such as where they should live and/or who they should see. This is in contrast to public law (or child protection) cases, which are brought by the local authority as state intervention, where a child is identified as being at risk of harm.

In 2023, 53,066 private law applications, involving 77,928 children, were made and started their journeys through the family courts, as compared to 15,754 public law applications involving 26,802 children (Ministry of Justice (MoJ), 2025). Despite the much higher numbers, the evidence base to inform policy and practice is much less developed for private than public law. The *Uncovering Private Law* series of reports by the Family Justice Data Partnership (FJDP, a collaboration between Lancaster and Swansea Universities, funded by Nuffield Family Justice Observatory [NFJO] between 2019 and 2024) made significant strides in addressing the deficit.[1]

This evidence review has been prepared as part of an NFJO-funded project that seeks to understand the journeys private law applications can take through the family court (see https://www.cfj-lancaster.org.uk/projects/routes-through-court). This project builds on earlier work by the FJDP, using anonymised population-level data collected by the family courts (Family Man data), Cafcass (Children and Family Court Advisory and Support Service) and Cafcass Cymru to examine the dynamics of private law cases, including how long proceedings last, how many cases return to court, and whether pathways through the family court vary by family demographics or geography.

The review explores key messages from existing research, and highlights gaps in knowledge, to provide a foundation for the analysis. We start by examining evidence relating to the number and type of applications that are made each year, the legal order(s) being sought, and the characteristics of the individuals involved. We then consider some of the features of private law cases, such as types of applications, the presence of welfare concerns and length of proceedings, before moving on to try and unpick the differing terminologies that have been employed by those examining some of the complex, long-lasting or returning cases that find themselves in the family court, including chronic litigation, high-conflict cases and repeat litigation. The characteristics of these cases and reasons for return are explored. We also reflect on cases where private family law and public family law collide or overlap.

[1] Through analysis of population-level administrative family justice data, the series considered who is coming to court in England (Cusworth et al, 2021a) and Wales (Cusworth et al, 2020); the characteristics and vulnerabilities of adults involved (Cusworth et al, 2021b); the mental health needs of children (Griffiths et al, 2022); what the data can tell us about children's participation (Hargreaves et al, 2022, 2024); and the characteristics and circumstances of private law applications involving non-parents (Cusworth et al, 2023).

Private family proceedings: setting the scene

Various different orders can be applied for in private family law cases, primarily coming under section 8 of the Children Act 1989. In all cases, the fundamental principles of the Children Act 1989 apply, and the court's paramount consideration must be the child's welfare. A number of factors must be considered when determining what will be in the best interests of the child, often referred to as the 'welfare checklist' (section 1(3)). These include the child's ascertainable wishes and feelings (in light of their age and understanding), their needs and characteristics, any harm the child is at risk of suffering or has suffered, and how capable the child's parent or other relevant carer is of meeting their needs.

The most common type of section 8 order applied for in private law cases is a child arrangements order (CAO), which regulates arrangements relating to where a child should live and with whom they should spend time. The single CAO was introduced by the Children and Families Act 2014 to replace separate orders for contact and residence.[2] In practice, CAOs are still regularly described as either 'live with' or 'spends time with', and are recorded as such in the family court and Cafcass administrative data (in England, but not until more recently in Wales) to reflect the practical arrangements and the reality of children's lives.

Two other orders are available under section 8 to address other parenting disputes that may arise. A specific issue order (SIO) can be made where parents or others with parental responsibility are unable to resolve a specific matter regarding a child's upbringing, such as which school they should attend. A prohibited steps order (PSO) forbids a particular action from being taken by someone who holds parental responsibility for a child, such as taking them abroad without permission.

Where a CAO is in place, but the arrangements have not been complied with, a parent or other carer may apply for enforcement of that order under section 11J of the Children Act 1989.

The majority of private law applications – around 90% – are between two parents. The other 10% involve one or more adults who are not the child's parent, most commonly grandparents and other extended family members, but also special guardians, step-parents and intended parents (in surrogacy cases) (see (Cusworth et al, 2023). A number of other legal orders are available in these types of cases, including adoption orders, special guardianship orders (SGO) and parental orders (surrogacy). A private application for a standalone parental responsibility order can also be made by a father without automatic parental responsibility, a second female parent, or the spouse/civil partner of a parent with parental responsibility.

Before an application can commence in the family court, in most cases the applicant would need to have attempted mediation. Mediation and other forms of alternative dispute resolution have been encouraged for some time, although take-up has been

[2] The terms 'contact' and 'residence' were introduced in 1991 by the Children Act 1989, to replace the concepts of 'custody' and 'access'.

low, dropping significantly following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, which largely removed legal aid funding for private law cases, and thus the role of family lawyers in signposting mediation (MoJ/Legal Aid Agency, 2020). The Government launched a Mediation Voucher Scheme in March 2021, giving eligible parents/carers a £500 voucher towards the cost of mediation, also launching a consultation on making mediation compulsory in private family law disputes (MoJ, 2023). As discussed later, a significant proportion of private law cases (between approximately half and two-thirds) involve allegations of domestic abuse or raise safeguarding concerns (Hunt and Macleod, 2008; Harding and Newnham, 2015; Newnham and Harding, 2016; Cafcass/Women's Aid, 2017). Whilst domestic abuse allegations do not necessarily preclude mediation, it is vital that appropriate and safe access to court is maintained. Given longstanding concerns that the legal presumption of parental involvement has been pursued at the expense of safety in these cases, a panel of inquiry was set up by the MoJ, reporting in June 2020 (Hunter et al, 2020). The panel found evidence of "deep-seated and systematic issues that were found to affect how risk to both children and adults is identified and managed" (p3). The panel's implementation plan (MoJ, 2020) called for major changes in how the family courts approach domestic abuse cases. In response, Pathfinder courts (initially piloted in Dorset and North Wales in February 2022, before expansion to South East Wales in April 2024, Birmingham in May 2024, Mid and West Wales in March 2025, and West Yorkshire in June 2025) are an attempt to introduce a less adversarial and more problem-solving approach, preventing the re-traumatisation of domestic abuse survivors and enhancing the voice of the child. Initial evaluation is positive, with the Pathfinder model bringing substantial improvement both in terms of the experiences of children and families, as well as system efficiencies (Barlow et al, 2025).

Until April 2014, family cases were dealt with at Family Proceedings Courts (which were part of the magistrates' courts), at county courts, or in the Family Division of the High Court. These cases are now dealt with in the Single Family Court and the High Court. Once an application has been made to the family court for a private law order, the case is allocated to the appropriate tier of judiciary, usually based on its complexity.[3] A case will either be heard by magistrates, a District Judge or a Circuit Judge, although cases can move from one level of the judiciary to another. For example, a case might initially be allocated to a District Judge, but then be transferred to a Circuit Judge during proceedings.

Some individuals in private law proceedings find themselves before the family court (either through choice or as a result of the changes brought about by LASPO 2012), without legal representation. These individuals who appear in court without the assistance of a solicitor or a barrister are referred to as litigants in person.

[3] This decision is made considering the President's Guidance on Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 (Private Law) (2014) (The President of the Family Division, 2014).

Before the parties involved in a private law matter attend court for their first hearing, Cafcass (Cafcass Cymru in Wales)[4] undertakes initial safeguarding inquiries. These involve checks with police and children's services and separate 30-minute phone calls with the applicant(s) and respondent(s). A safeguarding report should be made available to the court and the parties before the first hearing. Cafcass' role in private law proceedings (pursuant to section 12 of the Criminal Justice and Court Services Act 2000) is to provide the family court with independent advice from social work professionals to help the court safeguard and promote children's welfare.

Cafcass might also be directed to produce a report 'on such matters relating to the welfare of the child as are required' (Children Act 1989 section 7 (1)). These reports are referred to as welfare or section 7 reports or as a 'Child Impact Analysis' in Wales, and, where appropriate, the child would be seen by the report writer as part of their investigations. The local authority may be asked to produce these reports, if there is current or previous involvement with the family.

In some private law cases, children may be made a party to proceedings by the court under rule 16.2 of the Family Procedure Rules 2010, with a children's guardian appointed under rule 16.4 to independently assess the child's wishes and feelings, and welfare needs. The children's guardian is usually from Cafcass/Cafcass Cymru, but in England a caseworker from the National Youth Advocacy Service (NYAS) can provide representation for children and young people in certain circumstances.

The pilot Pathfinder courts take a problem-solving approach to dealing with disputes between parents over arrangements for children. Aimed at preventing the re-traumatisation of domestic abuse survivors and enhancing the voice of the child, this model provides for engagement with children before the first hearing to determine their circumstances, preferences for engagement and initial wishes and feelings at the outset of proceedings, through the preparation of a Child Impact Report prior to the first hearing (Practice Direction 36z).

Methodology

To underpin the research design and analysis plan in the wider project, this review was undertaken to identify existing evidence and gaps in knowledge relating to the pathways families take in private family law cases. The key research questions were designed to increase the evidence base around private law, with a view ultimately to improving the experiences and outcomes of children and families, and were as follows:

- What pathways do adults involved in private family law take?
    - What applications and orders are being made?

[4] The Children and Family Court Advisory and Support Service (Cafcass in England and Cafcass Cymru in Wales) is the organisation that represents children's best interests in family justice proceedings.

    - How many hearings are held, in what tier of court and over what duration?
    - In how many cases are welfare reports ordered, or a guardian appointment made?
    - How many adults are involved in multiple applications, long-running cases and returns to court?
    - How many cases overlap with public law?
- Can a typology of pathways be created?
- What individual, family and case characteristics distinguish adults with different pathways?

The review was not intended to be a systematic review, rather a scoping review, where the purpose was to map existing evidence and identify knowledge gaps, in support of our empirical work (Arksey and O'Malley, 2005; Munn et al, 2018). The main focus was on major pieces of research relating to England and Wales, completed since 2014, with searches primarily conducted using Web of Science and Lexis+UK. Search terms employed are included in Appendix 1. Titles and abstracts were screened, and 48 papers and reports were identified as relevant. This strategy was supplemented by further searches of 'grey' literature, including policy reports. Although, due to capacity, the scope of our search strategy was limited to evidence from England and Wales in the last 15 years, a number of key pieces of earlier or international work are also included. Much of the empirical evidence comes from research reports, rather than academic journal articles. It is important to bear in mind that most of what we know is based on a fairly small number of studies (including Hunt and Trinder, 2011; Trinder et al, 2013; Rodger and Clark, 2015; Halliday et al, 2017), some of which are now quite old and have relatively small sample sizes. A number of more recent studies (for example Jay et al, 2019; Cusworth et al, 2021a), based on the analysis of administrative data, have started to change this picture, but there are still significant evidence gaps.

How many families use the courts to make child arrangements?

According to MoJ data there were 51,473 private law cases started in England and Wales in 2024 (MoJ, 2025). But the number of cases has not been static over recent years. Analysis of administrative data from Cafcass and Cafcass Cymru (Cusworth et al, 2020, 2021a) illustrates that a steady rise in private law applications was seen between 2007 and 2013. The following year saw the introduction of LASPO (2012), which removed access to legal aid for most private law cases and led to a significant reduction in the number of applications to the court. This seemed to have mainly paused or delayed applications, as year-on-year increases then followed until the start of the Covid-19 pandemic; since then, the numbers of new cases have declined slightly, although delays caused significant backlogs and extended case durations.

Focussing on the number, or volume, of private law cases is useful in understanding demand on the courts, but this does not tell us what proportion of families in the general population turn to the family court for help to resolve disputes associated with arrangements for children. Many families make informal arrangements between themselves, without the court's assistance, although, as discussed by Cusworth and colleagues (2021a), establishing an estimate is methodologically challenging and has been the subject of some dispute. Although now some time ago, several government omnibus surveys[5] have been used to identify separated families and ask them whether they had used the courts to make child arrangements, finding that around 10% or less had done so (Blackwell and Dawe, 2003; Lader, 2008; Peacey and Hunt, 2008). Similar estimates of 8-9% have been established using nationally representative cross-sectional or longitudinal cohort studies (Summerfield and Freeman, 2014; Goisis et al, 2016). More recently, Williams (2018) used a combination of figures and estimates to infer that a third of separating families were using the courts, far more than the 'one in ten' usually quoted. This estimate was subsequently modified in a speech by the President of the Family Division to the Resolution Conference 2019 (McFarlane, 2019) to suggest that 38% of separated families resort to litigation, indicating this to be a 'major societal problem'. There were criticisms of the way in which these estimates were calculated, in that they included non-parental and repeat applications in the annual figures, thus likely to be a significant overestimate. Not without its own limitations, analysis for the Nuffield Family Justice Observatory (Cusworth et al, 2020, 2021a) calculated the rates of private law applications per 10,000 families with dependent children in the population to establish that less than one per cent of families bring disputes to the family court in England and Wales each year.

However the proportion of families litigating over arrangements for children each year is estimated, the current volume of applications brings significant pressure on the courts. There is also evidence that conflict between separating parents, often lengthened by involvement of the family courts, is harmful to children's wellbeing and life chances (Grych and Fincham, 1990; Harold et al, 2016; Acquah et al, 2017). The President of the Family Division has raised concerns that too many families are turning to the courts when matters could be resolved in other ways (McFarlane, 2019; Family Solutions Group, 2020), and there has been significant policy focus on diverting cases from court, where this is appropriate, in order to allow court resources to be focussed on families and children who are most in need of the court's involvement and protection.

Who are the families involved?

In this section, we consider the characteristics of both the adults and children involved in private family law cases. We draw on evidence from statistics published

[5] The Office for National Statistics (ONS) Omnibus survey (now called the Opinions and Lifestyle Survey) is a monthly survey which collects data on multiple topics (see www.ons.gov.uk/aboutus/whatwedo/paidservices/opinions/opinionsandlifestyleinformationguide).

by Cafcass/Cafcass Cymru and MoJ, together with a number of key case file studies, research based on analysis of population-level administrative data, and qualitative work.

About the adults

The vast majority of private family law applications are between two separated parents, although around one in ten involve one or more adults who are not the child's parents (Cassidy and Davey, 2011; Harding and Newnham, 2015; Cusworth et al, 2020, 2021a). In several studies in the last ten years, around two-thirds of all private law cases between separating parents are driven by male applicants, typically non-resident fathers (Harding and Newnham, 2015; Cusworth et al, 2020, 2021a). Similar findings are seen in an earlier study of contact orders in Essex, with 90% involving non-resident fathers (Trinder et al, 2005).

Analysing administrative data held by Cafcass/Cafcass Cymru, Cusworth and colleagues (2020, 2021a) established that the majority of parents involved in private law applications were in their late twenties and thirties, with father applicants somewhat older than mother applicants. In England, the percentage of applicants under 25 years old was seen to decline over time: in 2010/11, 11% of fathers and 21% of mothers were under 25, but by 2019/20 this had fallen to just 5% and 9% respectively, with a similar picture seen in Wales (Cusworth et al, 2020).

In terms of non-parent cases, Harding and Newnham's study (2015) of 197 case files from five County Courts in England and Wales found that 12% of cases were not disputes between parents. These non-standard cases most commonly involved applicant grandparents, followed by step-parents and aunts/uncles. More recent analysis of administrative data indicated similar findings at a population level (Cusworth et al, 2023).

Previous research, based on relatively small case file samples, identified a number of indicators of vulnerability experienced by adults in private law cases (specifically focussed on litigants in person), including being a victim of abuse, depression, alcoholism, drug use, mental illness, learning difficulties, physical ill-health and language difficulties (Moorhead and Sefton, 2005; Trinder et al, 2014b). Using anonymised linked private law and healthcare data, Cusworth and colleagues (2021b) exposed the heightened vulnerabilities of women and men in private law proceedings in Wales between 2014/15 and 2019/20. Compared with a matched comparison group of adults, those involved in private law applications had higher levels of health service use and higher levels of mental health problems, substance use and self-harm in the year prior to proceedings.

About the children

Children involved in private family law cases are typically young, appearing on their own or in small sibling groups, with no evidence that gender influences litigation (Hunt and Macleod, 2008; Harding and Newnham, 2015; Jay et al, 2019; Cusworth et al, 2020, 2021a). Based on analysis of population-level Family Man data, Jay and colleagues (2019) found that the majority (79%) of children in private law cases

started between 2011 and 2016 were aged under 10 years old, a finding reflected in more recent analysis of Cafcass data in England (Cusworth et al, 2021a) and Wales (Cusworth et al, 2020). Almost two-thirds of these cases involved a single child.

Most children live with their mothers following relationship breakdown, regardless of court involvement (Blackwell and Dawe, 2003; Lader, 2008; Haux et al, 2015), reflecting gendered care patterns and expectations pre-separation. Unsurprisingly, this is reflected in studies of families appearing in private law proceedings, which are just as likely to be mother-resident families as in the wider community. The case file study by Harding and Newnham (2015) found that, where arrangements had been established, 83% of children were living with the mother, 13% with the father and 3% had shared care at the time of the application. Cusworth and colleagues' (2021a) analysis of the Cafcass data indicated a similar pattern, with a majority of children (67–69%) involved in proceedings inferred to be living with their mother at the time of application, and between 14% and 15% known to be living with their father. Due to data limitations, the resident parents for more than one in ten children (16–19%) could not be determined.

Exploration of ethnicity of children involved in private family law proceedings has been limited in previous studies, partly because of high levels of missing data in the administrative data (see Alrouh et al, 2022 and North et al, 2022 for a discussion, including of the considerable efforts to improve recording in recent years). In the study by Jay et al. (2019), information on ethnicity was missing for almost four-fifths of children between 2011 and 2014, improving by 2016 when a third of children had missing data. Indeed, Alrouh and colleagues (2022) illustrate that ethnicity data were available for 86% of children in private law in 2018/19 (lower than the 94% of children in public law cases). Notwithstanding these limitations, between 2017/18 and 2019/20, the majority of children in private law proceedings were White, although were under-represented compared to the general population, with those from Black, African, Caribbean or Black British, Mixed or multiple, and other ethnic groups over-represented (Alrouh et al, 2022). Cafcass also now include data on the heritage of children with whom they work each year in their annual reports (Cafcass, 2024).

Previous studies have also examined other characteristics or vulnerabilities of children involved in private family law proceedings. Jay and colleagues (2019) analysed linked Department for Education and Cafcass data, and, despite some data limitations, identified that around 13-16% of children in private family law cases in 2011-2013 had Special Educational Needs. Since 2021, Cafcass have published data about the number of children with disabilities, although the data is not complete. In 2023-24, information in respect of disability or health conditions was recorded for 78% of children in private law, and of those 15% of children had at least one disability or health condition recorded, below the national average of 18% (Cafcass, 2024). Through novel linkage of health data to administrative data from Cafcass Cymru, Griffiths and colleagues (2022) identified that children involved in private law proceedings were more likely to experience depression and anxiety than their peers.

Geography

As with public law, significant regional variation in rates of private law applications has been found. In England, levels of need for assistance from the court varied by region. Rates of private law applications were consistently highest in the North East, North West, and Yorkshire and the Humber regions, and consistently lowest in London and the South East (Cusworth et al, 2021a). In Wales, the highest rates of private family law applications (per 10,000 family households in the population) were seen in the Swansea and South West Wales Designated Family Judge areas (Cusworth et al, 2020).

Deprivation

Socio-economic status has an impact on family stress and breakdown, which are possible triggers for private law disputes and a point of possible intervention to prevent disputes starting or escalating. Over recent years there has been a considerable focus on poverty and deprivation as a key causal factor in public law or child protection cases (Elliott, 2020). There is also a growing body of literature that evidences the concentration of public law cases in the most deprived parts of England and Wales (Bywaters et al, 2016; Harwin and Alrouh, 2017; Alrouh et al, 2019). In contrast, the depth of evidence in private family law lags behind. There has been some prior suggestion that private law parents may be more economically disadvantaged than the wider population, with previous research identifying lower income levels (Goisis et al, 2016), lower levels of work activity (Trinder et al, 2005), and lower occupational level (Blackwell and Dawe, 2003). Analysis of linked administrative data established a clear link between area-level deprivation and private law cases between separating parents in England and Wales for the first time, with a majority of private law applications being made by applicants living in the most deprived areas (Cusworth et al, 2020, 2021a). In 2019/20, 29% of father applicants and 31% of mother applicants in England lived in areas in the most deprived quintile, with 52% of fathers and 54% of mothers living in the two most deprived quintiles (figures for Wales being 51% and 56% respectively).

Features of private family law cases

In this section we explore existing evidence relating to some of the features of private law cases, including the types of orders being applied for, the length of proceedings, and the prevalence of allegations of domestic abuse and other welfare concerns.

Types of applications

Analysis of population-level administrative data held by Cafcass/Cafcass Cymru has highlighted the variation in the type of legal order being applied for in cases between two parents (Cusworth et al, 2020, 2021a). A majority of applications are for child arrangements orders, although, as a proportion of all applications, this declined from two-thirds (69%) in 2010/11 to just over half (52%) in 2019/20 in England, with

proportional increases in applications for other private law orders, including prohibited steps orders, specific issue orders and enforcement (Cusworth et al, 2021a). There were substantial differences in the orders applied for by mothers and fathers, with around four of five applications made by fathers concerning child arrangements, compared with just over two in five applications made by mothers, who made higher proportions of SIO/PSO applications. Within the scope of child arrangements, fathers were more likely to be applying for 'spends time with' CAOs and mothers for 'lives with' CAOs.

Newnham and Harding (2016) also found a clear gendered pattern in both applications and combinations of final orders. They examined 174 cases between two parents where a final order was made between February and August 2011 and found that the most common arrangement was for a child to live with their mother, with their father granted a 'contact' order[6] – 96% of all applications for a contact order were made by fathers. When examining applications for residence orders, most mothers who applied for a residence order were doing so to preserve the status quo, whereas most fathers applying for this order were seeking a change in the child's day-to-day living arrangements.

Regarding applications involving a non-parent, Cusworth and colleagues (2023) discuss the complex range of orders applied for, which includes kinship care arrangements (through a CAO or SGO), parental orders (in surrogacy cases) and step-parent adoption.

Some research studies have focussed only on certain types of application or order type, such as contact orders (Trinder et al, 2005; Hunt and Macleod, 2008) or enforcement (Trinder et al, 2013), which needs to be borne in mind when considering case features and characteristics.

Length of proceedings

Unlike public law (care proceedings) cases, there is no statutory time limit outlined for private law cases, and the timeframe can vary depending on the specific case and court. According to MoJ figures, in the first quarter of 2020, it took an average of 32 weeks for a private law children's case to be completed, itself an increase from 22 weeks seen in 2017. But due to a backlog of cases built up during the pandemic, a peak mean case duration of 46 weeks was reached in the first quarter of 2023, since when case length has reduced slightly (MoJ, 2025). Analysis by the National Audit Office found significant regional differences in the average duration of private law proceedings, from 18 weeks in Wales to 70 weeks in London in December 2024 (National Audit Office, 2025). Cafcass report on the length of cases slightly differently, focusing on those where their involvement continues after a first hearing, where, between January and March 2024, average duration was 58 weeks. Where a case involved a rule 16.4 appointment this increased to an average of 102 weeks (Cafcass, 2024). There is evidence of reduced delays and overall case length in Pathfinder pilot areas (Barlow et al, 2025).

[6] This research predated the introduction of child arrangements orders.

Research by Harding and Newnham (2015) considered the length of proceedings prior to the changes to legal aid brought about by LASPO 2012, identifying that 35% of child arrangements cases completed within six months, a further 50% took between six and twenty-four months to complete, and the remaining 15% took over two years. The proportion of cases taking more than two years was higher than in an earlier study by Hunt and Macleod (2008), which found that 6% of applications for contact lasted more than two years. The remaining two-thirds (65%) of cases took less than 12 months. In 2003, Smart and colleagues found that a clear majority of a random sample of 430 cases in three courts which began with a section 8 application in 2000 (of which 60% were for a residence order) were resolved within a year. Despite considering different types of cases and using slightly different measures, these studies do support the finding that the number of lengthy private law cases has increased.

Although useful, existing evidence on the length of private law proceedings relies either on MoJ figures, which don't offer any differentiation in terms of order type, or case file studies mentioned above, which are now quite old and don't claim to be representative. Attempts have been made to use Family Man and Cafcass data to consider case duration for cases started between 2011 and 2016 (Jay et al, 2019). However, several limitations were identified. The Cafcass database records the extent of its involvement in a case, which often ends at first hearing, thus 'case closure' dates generally refer to the closure of the case on their system, rather than the end of proceedings. Analysis of the Family Man data by Jay and colleagues identified fluctuations in case duration, with a spike in case closures in the summer months of 2014, which the authors suggest "indicates a possible administrative exercise of 'filling in' missing end dates" (p15), distorting the picture. There is a need to further explore case length, on a larger scale, to investigate which cases and application types take longest.

Tier of court

We found no research that considered whether a private law case was heard by a magistrate, Circuit Judge or District Judge, which might be considered to indicate the perceived complexity of the case, or whether a case moved between tiers, was related to the path of the case through court. Some previous research (prior to the changes to a Single Family Court) focussed only on cases in the County Court (e.g. Harding and Newnham, 2015).

Legal aid funding and litigants in person

Prior to 2013, legal aid was available to private law litigants (adult parties). However, following the Family Justice Review (MoJ, 2011), which established a clear government policy that court should be the last resort for parents, the introduction of LASPO removed legal aid entitlement to all private law cases, except for certain cases involving domestic abuse. There was a focus on encouraging families to resolve disputes out-of-court, through mediation or other forms of alternative dispute resolution, with most parents required to attend a mediation information and assessment meeting (MIAM) prior to applying to court.

The introduction of LASPO had significant implications for the family courts, and for the families using the courts. Although many litigants had always had to represent themselves in court, the impact of legal aid changes means that the majority of private law cases now involve litigants in person (MoJ/Legal Aid Agency, 2025). This raises challenges for litigants, some of whom may experience difficulty in understanding and participating in proceedings due to a variety of personal and circumstantial disadvantages, including communication difficulties (Trinder et al, 2014b; Mant, 2022). It also raises issues for the courts as they are having to deal with lay parties who do not understand the process, which has largely developed on the assumption that litigants would have legal representation. The evidence is that cases where neither party is legally represented take a disproportionate amount of court time and resources (Williams, 2011; Harding and Newnham, 2015).

General headline statistics on family mediation assessments (MIAMs), mediation starts and agreements reached is publicly accessible through Legal Aid Quarterly Statistics (MoJ/Legal Aid Agency, 2025). These statistics will be an under-representation, as they do not include MIAMs, mediation starts and agreements funded privately. Additionally, MoJ publishes statistics on legal representation in private law cases within their quarterly Family Court Statistics. In October to December 2024, in only 18% of disposals were both parties legally represented, with neither party represented in 38%, and the remainder involving just one represented party, more frequently the applicant (MoJ, 2025). Questions remain about the length and pathways of cases with different levels of legal representation.

Allegations of domestic abuse

Research consistently shows that allegations of domestic abuse are widespread in private law children cases (Barnett, 2020b). Previous studies (Hunt and Macleod, 2008; Harding and Newnham, 2015; Cafcass/Women's Aid, 2017) estimated that between half and two-thirds of cases feature such allegations, while recent research for the Domestic Abuse Commissioner reported evidence of domestic abuse in 73% of observed hearings and 87% of reviewed files (Burton and Hunter, 2025). Despite this prevalence, systemic concerns endure. The MoJ Harm Panel identified "deep-seated and systematic problems with how the family courts identify, assess and manage risk" (Hunter et al, 2020, p39), and the Court of Appeal in Re H-N [2021] criticised the reframing of domestic abuse as "part of a 'high conflict' relationship, where both parties are responsible" (described in Burton, 2021, p472).

Scholars argue that, despite the statutory definition of domestic abuse set out in the Domestic Abuse Act 2021 recognising abuse as a continuing pattern of behaviour, legal processes remain overly incident-focused and criticise the courts' continued reliance on Scott Schedules (Bishop, 2021; Burton, 2021; Burton and Bettinson, 2022). As Bishop (2021) notes, incident-based frameworks obscure the ways coercive behaviours impact upon every aspect of a victim's life "reducing their autonomy to the point they become entrapped in the relationship" (p166). In addition, fact-finding hearings remain rare even when allegations are widespread. Walsh (2023) found only one completed fact-finding in 102 section 8 cases, with similar results in the Cafcass/Women's Aid (2017) study of 216 files. It has been suggested

that courts interpret the necessity and proportionality requirement for having a fact-finding hearing very stringently, that some unrepresented litigants in person struggle to evidence their lived experience in the way the court requires, and that some victim-survivors may be reluctant to pursue allegations of domestic abuse due to fears counter allegations of parental alienation may be raised (Harwood, 2019; Birchall and Choudhry, 2022; Walsh, 2023).

The presumption of parental involvement

The statutory presumption of parental involvement, inserted into section 1(2A) of the Children Act 1989 by the Children and Families Act 2014, has generated extensive academic critique, particularly in cases involving domestic abuse. Although conceptualised as a limited, rebuttable presumption consistent with the welfare principle, scholars argue that it has reinforced an already powerful *pro-contact culture* (Kaganas, 2013; Hunter et al, 2018; Birchall and Choudhry, 2022). The Harm Panel concluded that the presumption has at times been applied as a starting point rather than a qualified consideration (Hunter et al, 2020). Although PD12J directs courts to consider carefully whether the presumption applies in cases involving domestic abuse, research suggests inconsistent implementation (Macdonald, 2016; Doughty et al, 2018) and case law, such as Re H-N, has highlighted the need for a more sophisticated understanding of coercive control.

In October 2025, the Government announced that the presumption will be repealed[7] – five years after the Harm Panel recommended urgent review – though without a clear legislative timetable beyond action "when parliamentary time allows". This creates a transitional period in which the presumption remains legally operative, yet its normative legitimacy has been publicly questioned. The proposed repeal has been welcomed by domestic abuse organisations and the Domestic Abuse Commissioner, aligning with a broader body of research arguing that statutory or cultural prioritisation of parental involvement has contributed to unsafe contact arrangements (Birchall and Choudhry, 2022; Barnett, 2024).

Parental alienation

Parental alienation has a contested and problematic history, originating with Gardner's discredited 'parental alienation syndrome' (PAS) (Meier, 2009, 2020). Despite much criticism and ultimate rejection by the scientific community, Birchall and Choudhry (2022) argue that the concept has continued to be "recycled and repositioned" in the family courts in discussions of "parental alienation", "implacable hostility" and "child resistance or refusal" (p117). Research highlights its frequent use in cases involving domestic abuse, frequently raised in response to abuse allegations, and often with severe consequences for victim-survivors (Ayeb-Karlsson, 2024; Burton et al, 2024). Grey (2023) argues that the threat of punitive action if contact falters replicates coercive control within proceedings, and Birchall and

[7] https://www.gov.uk/government/news/government-action-to-protect-children-from-abusive-parents#:~:text=Children%20exposed%20to%20the%20family,the%20forefront%20of%20decision%20making.

Choudhry (2022) found that over a third of their participants had their children removed following alienation allegations.

Gendered patterns are well-documented: Barnett (2020a) identified only one case where a resident father was found to have alienated the child against the mother, persistently breaching contact orders, finding that the court effectively "gave up" on trying to restore the child's relationship with the mother (p22). The authors of a review of research and case law on parental alienation commissioned by Cafcass Cymru noted that "a number of the reported cases relate to dissatisfied non-resident parents who made unsubstantiated and unproven allegations against the resident parent as a means of contesting the terms of a court order. These claims were more often, but not always, brought by fathers against mothers" (Doughty et al., 2018, p35).

Recent guidance from the Family Justice Council (2024),[8] building on *Re C (Parental Alienation)* [2023] EWHC 345 (Fam), reframes the issue as *alienating behaviours* and requires courts to identify (1) the child's resistance, (2) whether this is justified, and (3) whether a parent's behaviour has caused unjustified rejection. Crucially, the guidance states that alienating behaviours cannot be found where domestic abuse explains a child's reluctance – recognising that alienation allegations may function as post-separation abuse tactics.

Welfare concerns

In their study, Harding and Newnham (2015) found that in 79 of the 174 parent cases (45%), allegations of welfare concerns were made against one or both parents, with a high prevalence of welfare-related concerns in non-parent cases. This included problematic alcohol or drug use, mental health, and child abuse or neglect (but not domestic abuse, which was considered separately). This is consistent with earlier research by Hunt and Macleod (2008), which found 'serious welfare issues' in 54% of their cases (this also included domestic abuse). In their study looking at domestic abuse allegations in child contact cases, Cafcass and Women's Aid (2017) found that other allegations were recorded in 73% (158) of all cases in the sample, with the most common being parental substance misuse, parental mental health, and emotional abuse of the child.

As mentioned above, several studies have identified a number of indicators of adult vulnerability, potentially indicating welfare concerns in private law cases (Moorhead and Sefton, 2005; Trinder et al, 2014b; Cusworth et al, 2021b). Gaps remain in knowledge around the prevalence of welfare concerns in different types of cases and the association with case trajectories and legal outcomes.

[8] https://www.judiciary.uk/wp-content/uploads/2024/12/Family-Justice-Council-Guidance-on-responding-to-allegations-of-alienating-behaviour-2024-1-1.pdf

The use of section 7 reports

A section 7 report is produced by either Cafcass/Cafcass Cymru or a local authority in relation to a child's welfare. This report is also called a Child Impact Analysis in Wales. A local authority is usually directed to carry out the section 7 report if it has current or recent involvement with the family, for example if there have been previous public law proceedings or the child is receiving care and support in Wales (under the Social Services and Wellbeing (Wales) Act 2014) or is a child in need in England (under section 17 of the Children Act 1989).

In England, Cafcass reports annually on the number of requests they received for section 7 reports. In 2023/24, this was 20,367 (including 6,148 addendum reports), an increase of 1.3% on the previous year (Cafcass, 2024). A number of research studies have considered the proportion of private family law cases in which a section 7 report has been ordered or carried out. Using administrative data held by Cafcass, Jay and colleagues (2019) found that a section 7 report was prepared by Cafcass in 43% of private law section 8 cases started between 2011 and 2016. Hargreaves and colleagues have also analysed administrative data held by Cafcass and Cafcass Cymru to consider the presence of a series of 'markers' that children had participated in private law proceedings (with enquiries made in preparation of a section 7 report being one such indicator). In England, within section 8 cases that started in 2019/20, a section 7 report was completed by Cafcass within 12 months of the case start date in around a third of cases (34%) and by a local authority in 10% of cases (Hargreaves et al, 2022). Later analysis at a child-level (Hargreaves et al, 2024) found that Cafcass were instructed by the court to undertake a section 7 welfare report within three years of the case start date for 38% of children in section 8 cases started in 2019 in England, with the local authority ordered to undertake a section 7 report for 11% of children. In Wales, over a third of children (36%) were in a case that included a Cafcass Cymru Child Impact Analysis report, with a further 7% having a local authority section 7 report.

In their case file study, Harding and Newnham (2015) found that a section 7 report was ordered by the court in 51% of section 8 cases, although in some cases a report was requested but never delivered, mostly because the dispute was resolved before the report could be completed.

Interestingly, in Jay's study (2019), the presence of welfare concerns (defined as the ordering of a section 7 report, but also included where a rule 16.4 guardian appointment had been made or a section 37 report ordered, see below) in an index private law case did not predict return to court to either private or public law proceedings, nor voluntary accommodation under section 20 of the Children Act 1989. In an earlier study, Buchanan and colleagues (2001) conducted interviews with 100 separated parents in 73 cases where a section 7 report had been completed. In around half of those cases (52%), parents self-reported that they were a return litigant. It would be beneficial to investigate whether twenty-five years on, welfare reports are more likely to be directed in cases where there had been a previous application to court.

Appointment of a children's guardian

In private law applications, there are usually two parties: the applicant(s) and the respondent(s). In particularly difficult or complicated cases and where it is considered to be in their best interests, under rule 16.2 of the Family Procedure Rules, the court may make the subject child(ren) party to proceedings. Where a child is made a party, the court must appoint a guardian under rule 16.4. The children's guardian is usually from Cafcass/Cafcass Cymru, but in England a caseworker from the National Youth Advocacy Service (NYAS) can also be asked to provide representation for children. The role of the guardian is to independently assess the child's wishes and feelings and welfare needs, appointing a solicitor to represent the child, and to conduct proceedings on the child's behalf.

Between April 2023 and March 2024, Cafcass reported that the number of rule 16.4 appointments made decreased by 4.6% compared to the previous year and was 44% lower than in 2019-20 (pre-Covid-19), when a record number of appointments (2,876) were made. Cases involving a rule 16.4 guardian appointment were taking significantly longer to complete in 2023/24, however: on average 102 weeks compared to 73 weeks in 2019/20 (Cafcass, 2024).

In their analysis of administrative data from Cafcass and Cafcass Cymru, Hargreaves and colleagues found that 7% of children in England and 11% of children in Wales were made party to proceedings, with the appointment of a children's guardian, within three years of their case starting in 2019 (Hargreaves et al, 2024). An earlier analysis of the Cafcass administrative data at a case-level (Jay et al, 2019) found that a small, but rising, proportion of private law cases had a rule 16.4 appointment (4% of cases starting in 2016, compared with 1% cases starting in 2011). These studies do not provide detail of which organisation were appointed as children's guardian, although a separate study by Rodger and Clark (2015) found that NYAS only handled a very small number of rule 16.4 cases compared to Cafcass. It would be interesting to see if those numbers have increased and if NYAS is now handling a greater number of these cases.

In 2022, Cafcass Cymru carried out a detailed audit of 50 rule 16.4 cases (involving 86 children) which closed between January and June 2021 (Cafcass Cymru, 2022). This highlighted that proceedings involving a guardian lasted an average of 76 weeks from application to a final order being made, running for an average of 30 weeks before the child(ren) were made party to proceedings. A fifth of the children (19, 22%) had been the subject of proceedings for at least 60 weeks by the time a guardian was appointed.

The report also illustrates the complexity of cases where a rule 16.4 guardian appointment was made. There was a high prevalence of allegations of domestic abuse and other safeguarding concerns. The audit also identified over a quarter of the children as having disabilities and/or additional needs, including emotional needs attributed to trauma, witnessing domestic abuse and witnessing interparental conflict. Almost half of the children (42, 49%) had been subject to at least one previous set of proceedings, with 27 of these children (31%) having experienced two or more previous sets of proceedings. Two thirds of the children had experienced local

authority involvement at some point, with around a third of cases open to the local authority at the time of the children's guardian appointment. For 4 of the 86 children, the rule 16.4 case was superseded by care proceedings and 70% had some form of ongoing professional involvement after the conclusion of proceedings.

Repeat litigation and return to court

As with public law, there is increased awareness and some concern about repeat applications in private law. Whether repeat applications are made for a new order, or to vary or to enforce an existing order, they have implications for children, families and the courts and wider family justice system.

Repeat applications suggest that children may be experiencing long periods of time in arrangements that are not working for them, either because circumstances have changed, the original order was inappropriate, or adults and/or children are not complying with the order. In this sense, return to court may be positive for a child where it resolves issues or improves arrangements, although there is also robust evidence that unresolved conflict, which centres on the child, is damaging (Acquah et al, 2017). Repeat litigation is also likely to be a major source of stress and anxiety for adults, potentially impacting their mental health and parenting capacity (Whiteside and Becker, 2000; Bream and Buchanan, 2003; McIntosh and Long, 2006; Trinder et al, 2008). Repeat litigation also has an impact on the family justice system, adding to existing pressures on resources.

As discussed below, we found significant evidence on the proportion of private family law cases where there have been previous proceedings or there is a later return to court, the different types of scenarios, and possible explanations for repeat litigation. Differences in definitions and timeframes make establishing a clear picture difficult and there were gaps in the evidence.

Extent of return to court

Previous research has established that a sizeable minority of private law cases return to court in England and Wales. Caution should be applied when making any comparisons either between studies or over time, as there is significant variation in sources of data, sample sizes, timings (both in terms of the period and length of follow-up), and whether previous or subsequent litigation (or both) is the focus.

In their study of contact cases in Essex, Trinder and colleagues (2005) found that a majority of parents had no previous experience of the court system. The current application was the first application in 71% of cases, with only one in ten parents having been involved in more than one previous application.

Similarly, in 2006 Trinder and colleagues looked at in-court conciliation (a brief intervention designed to help litigating parents reach agreement about contact arrangements), reporting that 36% of parents attending court in relation to an application for contact had been to court before. Half of these parents (18% of the sample) were returning to court for just the second time. Looking at subsequent

litigation within two years of the intervention, Trinder and Kellett (2007) found that 40% of parents had made a fresh application. Overall, 14% of parents in the sample had litigated both before and after the baseline application, being on average 5.7 years from separation.

Hunt and Macleod (2008) carried out an analysis of court files, finding that in a quarter (23%) of cases where there was an application for a contact order (the predecessor of the 'spends time with' child arrangements order) there had been previous proceedings, but only 3.6% had had more than one set of previous proceedings.

More recently, a number of studies have analysed administrative data held by Cafcass (and Cafcass Cymru) to consider the proportion of private law cases that return to court. Again, the definition of return, time period and focus on children, adults or cases affects the findings, with each study acknowledging a set of limitations. Halliday and colleagues (2017) found that of the 40,599 applications received by Cafcass in 2016-17, 30% were returns, based on at least one previous application (either public or private law) having been made in respect of the eldest child. For the majority, this was the first return (that is, the second case), but a third of returning cases (32%) represented at least the third occasion that this family had been in court. At a child-level, 18,540 children (of 59,091 subjects in 2016-17 applications) were involved in return cases (31%), with the average age of the eldest child involved in return cases being 7 years old. Almost two-thirds (63%) of returning cases involved an application made within two years of the previous case being closed to Cafcass, although a quarter (23%) returned at least three years later. The authors found that "cases that had returned to court more times were more likely to return" within a two-year window (p9).

Jay and colleagues (2019) examined the number of children with an index private law application in 2011 who had returned to court by the end of March 2015 (a 4-year period) – thus looking forwards, rather than backwards (as Halliday did). They found that, overall, 21% of children returned in a subsequent application for a section 8 order (child arrangements, prohibited steps or specific issue), special guardianship order applications, or public law application for care or supervision. Most returned into further private law proceedings (19%), but 3.4% returned into public law. The overlap between private and public law is explored in a later section of this evidence review. This study did not consider how long after the initial proceedings that a return application was made.

Also based on analysis of Cafcass administrative data, but adopting a slightly different methodology, with a focus on applicants rather than children, Cusworth and colleagues (2021a) reported that between 24% and 27% of private law applications in England between 2013/14 and 2019/20 were made by an applicant who had been involved in a previous application in the last three years, with mothers having a slightly higher return rate of between 26% and 31%, compared with between 23% and 25% for fathers. The level of return observed in Wales was slightly higher, although in both countries the rates of return increased slightly over the time period covered (Cusworth et al, 2020).

Differentiating returning cases

Whilst some studies, particularly those where return to court was not the key focus of the research, simply reported the prevalence of return, others attempt to differentiate between types of cases, characteristics and possible reasons for repeat applications being made. In general, families could find themselves returning to court for two main reasons. Firstly, a new issue might have arisen since the parties were last before the court. For example, having required the family court's help to decide their children's day-to-day care arrangements in an initial application for a child arrangements order, a former couple might find themselves unable to agree which secondary school their child should attend and make an application for a specific issue order. Secondly, one party might be unhappy with the way in which the family court's original order is working, which could present itself in one of two ways: an application to vary the existing court order to make it a 'better fit' for the family, or an application to enforce the original order to make sure it is complied with.

In their analysis of the Cafcass administrative data, Halliday and colleagues (2017) found that most return applications (62%) were for child arrangements orders (38% spend time with, 25% live with), with one in ten (10%) for a specific issue or prohibited steps order, and a quarter (24%) for an enforcement order.

Hunt and Trinder (2011) considered the international evidence relating to types of re-litigating cases, finding that in one study virtually all residence re-applications were to modify existing arrangements, with a tiny minority being to enforce them. By contrast, around two thirds of contact re-applications were to modify existing arrangements, with almost half including an application for enforcement (citing Koel et al, 1994).

Some studies compare applications and returns to court made by mothers and fathers. In the small number of cases in their study where a fresh application had been made, Buchanan and colleagues (2001) found the majority were brought by non-resident fathers, to either enforce or modify contact arrangement. Similarly, Smart and colleagues (2003) reported that the majority of returning cases were over contact (61%) and brought by fathers. They do not specify whether the application was to modify or enforce contact but report that the most common reason for bringing the case was because contact was denied or had broken down (48%) or because the arrangements were not working satisfactorily (27%). Returning residence cases tended to be prompted either by the child's expressed wishes or a change in parental circumstances.

In terms of litigation role in repeat cases, of those returning to court as an applicant between 2013/14 and 2019/20, Cusworth and colleagues (2021a) found that fathers were more likely to have been an applicant in a previous application (58–68%) than mothers (25–29%). Conversely, mothers were more likely to have been a respondent in a previous application (57–61%) than fathers (21–30%). A small proportion of both mothers and fathers bringing a private law application in 2013/14–2019/20 had been both an applicant and a respondent in previous applications. Thus, it appears that fathers are far more likely to be repeat applicants, whereas

mothers are more likely to issue their own application after being a respondent on a previous application.

In addition to analysis of the Cafcass administrative data on all applications received in 2016/17, Halliday and colleagues (2017) studied 100 cases in more detail, finding that returns did not always involve a breakdown in child arrangements; some involved practical reasons to vary arrangements, and just under half concerned a new issue that had not been raised during previous proceedings. They created four categories to code the main (but not necessarily sole) reason a case returned to court.

Conflicted adults were the primary driver for returning cases (39%), reflecting high levels of mistrust, difficulties working together and with communication. The majority of these applications involved issues raised previously, and they were the type of case most likely to return to court within two years. As Halliday and colleagues write, "it does seem that where enduring parental antipathy triggers applications … courts are more able to promote behavioural than attitudinal change" (2017, p3). This mirrors a conclusion of the Private Law Working Group, that the family court is not always able to resolve the 'real issues' in a case, with the report quoting from a litigant in person who said there had been a "final hearing but no solution" (Private Law Working Group, 2020, p61). The question is whether these cases can be identified at an early stage, with intensive support and dispute resolution provided at an early stage, before or alongside a court application.

In 36 cases of the 100 in Halliday's sample, safeguarding concerns were the primary driver of a return to court. This included a range of welfare matters, including abuse or neglect of the child, parental substance misuse and escalating aggression at handover. Some applications were triggered by new child protection allegations, others by the applicant's view that previous problems, such as mental illness or alcohol abuse, had abated. It is noteworthy that, in 17 of these 36 cases, the local authority had been recently involved. Within this group, many applications related to domestic abuse, including attempts to establish contact or to enforce existing contact arrangements. Although not mentioned specifically by Halliday and colleagues, numerous studies were identified in Barnett's (2020b) review of the evidence about domestic abuse and private law children cases which "have revealed how perpetrators of domestic abuse may use continuous and protracted litigation as part of an ongoing pattern of control and harassment" (p7).

A change in life circumstances, such as a house move (including relocation abroad), drove 16 cases, with many of these returning over five years after the preceding case. The child's wishes and feelings were the principal drive in nine cases, with four of these returning between five and ten years after the previous cases, perhaps an indication of the child now being more able to articulate their wishes. As noted by the Private Law Working Group (2019), "for cases that are settled at the first hearing, there is no automatic imperative to seek the child's wishes and feelings independently" (p16). Thus, cases may return to court when the child's voice is heard more loudly. One of the principles of the Pathfinder model is to assess

children's wishes and feelings at a much earlier stage, so there is some hope that this might reduce the number of cases that need to return.

Whatever the reasons behind private law cases returning to court, and accepting that there may always be new circumstances or issues that arise necessitating proceedings, it is clear that for a significant proportion of families, their first appearance in the family court either did not aid the parties' communication to enable them to work together as separated parents or sufficiently address (from the perspective of at least one of the parties) safeguarding concerns or a concern about the children's welfare. Halliday and colleagues (2017) observed that arrangements "remain fragile, and breakdowns can be triggered by seemingly small incidents" (p3). They made some tentative policy recommendations to try and reduce the number of cases that return to court, promoting the use of alternative dispute resolution (ADR) to address and resolve new or ongoing issues, without resorting to court intervention. Consideration of how private law disputes, including recurrent cases, might be safely resolved outside of court has been considered in other pilot programmes, including the 'Separated Parent Information Programme Plus' (Trinder et al, 2014a) and the Manchester 'Support with Making Child Arrangement' pilot (Cafcass, 2016).

One suggestion from respondents to the Private Law Working Group's consultation (2020) was that the reduction in review hearings had led to greater numbers of returners, as final orders were made amidst continued uncertainty, without ensuring a "tested and working solution is in place" (p62). The Pathfinder model initially included a review stage, following the Harm Panel Report's recommendation for "a proactive follow up three to six months after orders are made to see how they are working" (Hunter et al, 2020, p176). Early evaluation of the Pathfinder pilot indicates challenges and variation in use, with some confusion about the purpose of the review stage and when it should be used. This led to the removal of the review stage from the process in December 2024 when the model was refined (MoJ, 2025). Although robust data on the numbers of cases returning to court within the Pathfinder pilot sites was not available, frontline practitioners who took part in qualitative interviews did suggest fewer cases were returning (Barlow et al, 2025).

Use of enforcement orders

As indicated above, some returns to court are applications to enforce an existing child arrangements order, made via a C79 application, under S11J of the Children Act 1989. Sanctions – fines, imprisonment or change of the child's residence – are available to the courts, although are rarely used, as they may be impractical or harm the child. Partly in response to concerns from policymakers and fathers' groups about contact orders being 'flouted' and not enforced robustly by the courts, a new sanction of unpaid work (community service) was introduced by the Children and Adoption Act 2006.

In some studies, it is difficult to entirely disentangle returning cases for a further/varied child arrangements order and applications for an enforcement order. In this section, we draw on the specific evidence on enforcement applications. Applications for an enforcement order made up about a quarter (24%) of returning

cases in Halliday et al's 2017 study (7% of all applications recorded by Cafcass in 2016-17). Cusworth and colleagues analysed the proportion of all applications in England (Cusworth et al, 2021a) and Wales (Cusworth et al, 2020) over time which were for an enforcement order. They found a proportional increase in applications for enforcement orders from 3% in 2010/11 to 8% in 2019/20 in England and from 3% in 2011 to 12% in 2018 in Wales, with a jump in applications from 2014 onwards. This may reflect greater difficulties with making contact arrangements work, possibly in the post-LASPO absence of solicitors who might signpost other routes to address contact difficulties, such as mediation. A greater proportion of applications by fathers than mothers were for enforcement.

Trinder and colleagues (2013) conducted the first (and only) major study on contact enforcement in England, analysing 215 electronic case files for all 205 enforcement applications, involving 312 children, made by parents in England and Wales in March and April 2012, together with a further 10 cases from November 2011 to October 2012 where the court made an enforcement order for unpaid work. They found that a majority of these applications (86%) were made by non-resident fathers, including cases where contact had broken down completely. For most applicants, the enforcement application was their second time before the family court, but a small minority had been involved in multiple sets of proceedings. There was a high incidence of safeguarding allegations, with concerns about domestic abuse, child abuse or neglect in a third of cases. Despite public perception, "implacably hostile" mothers represented only a "small minority of enforcement cases" (p2). The most common type of case involved parents whose conflicts with each other prevented them from making a contact order work reliably in practice. The second largest group involved cases with significant safety concerns, followed by cases where older children themselves wanted to reduce or stop contact. Although the authors identified different approaches to enforcement cases by the courts, in nearly half of cases a problem-solving approach was adopted, with a punitive approach in fewer than a tenth of cases. Only 3% of applications ended in an order for unpaid work. A third of cases saw the application being withdrawn, dismissed, an order not being made or an order of 'no order'.

The Private Law Working Group recommended that the C79 application form (for enforcement orders) be taken out of circulation "given that many returner cases are not truly about enforcement, but often raise new child welfare issues" (Private Law Working Group, 2019, p54). They also suggested this would remove the potential for this sort of application to be used as a form of control of the respondent, given that these orders, and the available punitive sanctions rarely actually used in practice, go against the spirit of collaboration and co-parenting the court seeks to promote in private law proceedings.

It would be useful for future work to take an up-to-date look at the proportion of private law applications that are for enforcement orders, the characteristics of these cases and the families involved, and how they play out in the courts.

Chronic litigation

In their 2011 review of the international research evidence, Hunt and Trinder defined chronic litigation as “private law cases that return repeatedly to court over a long period of time, whether in the form of fresh applications or very protracted proceedings and are also characterised by very high and ongoing levels of parental conflict” (p3). Whilst we have already discussed some of the evidence relating to length of proceedings and repeat litigation, this section pulls together what we know about these particularly complex or lengthy cases.

Although families experiencing one return to court is not uncommon, as the evidence above highlights, chronic litigation or multiple returns are rare. Only 3% of the 40,599 children in the sample in Halliday’s (2017) study returned to court more than once, consistent with the (limited) international evidence (Hunt and Trinder, 2011). The case file analysis by Smart and colleagues (2003) found that less than 1% of parents had five or more previous applications. However, Smart’s definition of ‘protracted’ included proceedings lasting more than 12 months, as well as those where there had been previous proceedings – together this accounted for almost a quarter of cases in their study.

Although representing a small proportion of all cases, these “very entrenched and bitterly fought cases can have a devastating impact on the children” (Hunt and Trinder, 2011, p3) as well as impacts on the court, in terms of taking a disproportionate amount of court time and resources, often without a satisfactory conclusion (Kelly, 2003). In their review of the international evidence, Hunt and Trinder (2011) found no research that identified factors which specifically ‘predicted’ chronic litigation, although many of the features were present in non-chronic cases, including domestic abuse, poor communication, mental health and substance misuse. Further research in this area would be helpful, in order to attempt to identify families who may benefit from earlier intervention and support, to prevent cases becoming entrenched.

Overlaps with child protection and public law

Private and public law are typically defined as in contrast – private applications involve disputes between private individuals, whereas public law applications are brought where the dispute is between the state (or local authority) and family members. However, Bainham (2013) argued that “this binary classification disguises the reality that many such cases are hybrid, containing elements of both” (p138). There are several ways in which the two overlap, either through a family being involved in public law (care proceedings) before or after a private family law case; through local authority involvement; or because the circumstances surrounding a private law case mirror those more likely seen in public law proceedings. Here it is important to remember that around ten percent of private law proceedings involve adults who are not a parent to the subject child, in many cases where the child is

being cared for away from their parents, likely with child protection concerns playing out in the background (Cusworth et al, 2023).

Local Authority involvement

Given the levels of child welfare concerns seen in a significant proportion of private family law cases, it is unsurprising that local authority involvement is a feature in many cases. In their study, Newnham and Harding (2016) found that local authority children's services departments were involved in 43 of the 174 parent applications (25%), in many cases conducting a child protection assessment at the same time as the private law proceedings. There was some evidence that in some cases the section 8 application had been made on the advice of the local authority, with the issuing of care proceedings "the only alternative" in 15 cases (p41). Similarly, in Halliday and colleagues' study (2017) of returning private law cases, in 17 of the 36 cases which they coded as returning due to safeguarding concerns, the application or proposed change to arrangements were supported by the local authority or prompted by local authority involvement with the family at either child in need or child protection levels (p17).

Within proceedings, a private law case might raise such serious welfare concerns that the court considers the threshold might be met for a care or supervision order to be made. In these cases, the court can direct a local authority to carry out an investigation into the child's circumstances and prepare a report under section 37 of the Children Act 1989, but it does not have the authority to order them to issue care proceedings. Depending on the outcome of local authority investigations, this may lead to tensions between the role of the court and the role of the local authority (Harding and Newnham, 2017). A court might have a strong view that the threshold for issuing care proceedings is met, but, in the event public law proceedings are not commenced by the local authority following its section 37 investigation into the child's circumstances, is left to manage the concerns in private law proceedings. It would be interesting to consider the number of private law cases in which section 37 reports are directed and to follow the pathway those cases take.

Two research studies, based on analysis of population-level Cafcass data, have considered the proportion of private law cases where a section 37 report is ordered by the court. Jay and colleagues (2019) found that 1.9% of private law applications issued in 2011 featured a section 37 report, increasing to 2.6% in 2016. Hargreaves and colleagues (2024) found that 3.7% of children in England and 1.2% of children in Wales were the subject of section 37 reports by local authorities within three years of a case starting in 2019. There is a gap in the evidence relating to the number of directed section 37 reports that lead to the issuing of care proceedings by the local authority.

In their study, Jay and colleagues (2019) investigated the proportion of children in private law cases started in 2011 who subsequently returned to court for a public law order. Overall, 2.9% of children with identified welfare concerns (which included the ordering of a section 37 report, but also a section 7 report, or rule 16.4 guardian appointment) returned in public law proceedings, which was slightly lower than the

proportion of children without identified welfare concerns (3.9%), although no suggestion is made as to the significance of this.

Previous or subsequent care proceedings

We found no specific evidence that considered what proportion of families making a private law application had previously been involved in care proceedings (under section 31 of the Children Act 1989), despite this being a possible trajectory for families who have contact with the family justice system. For example, an application brought by a local authority that concluded in a special guardianship order to an extended family member could be followed by a private law application by the parent(s) against the special guardian for a 'spends time with' CAO. These types of private law applications were included in Cusworth and colleagues' (2023) analysis of administrative data relating to all applications involving non-parents, but they did not look specifically at the nature of previous cases.

Slightly more attention has been paid to previous private law applications which are then followed by care proceedings or a child entering 'voluntary' care (under section 20 of the Children Act 1989). Jay and colleagues (2019) noted that 3.4% of children in a private law case started in 2011 returned to court in public proceedings for a care, supervision or emergency protection order, with 1.9% received into care under section 20 and 0.06% under police protection, by the end of March 2015. As noted above, the presence of welfare concerns in the index private law cases did not influence the likelihood of re-entering court for public law proceedings or entering care under section 20.

Non-parent cases

As highlighted in the introduction, the majority of private family law applications involve two parents, struggling to agree arrangements for children after separation. Around ten percent involve one or more adult who is not a parent to the child subject(s) and this group of applications were the focus of a study by the Family Justice Data Partnership (Cusworth et al, 2023). Although such proceedings are conducted in the private law sphere, a significant proportion, up to three quarters (73%), were characterised as potentially overlapping with public law. In the earlier study by Harding and Newnham (2015), 12% of their case file sample involved disputes between a parent and a non-parent. This group of cases were very different from what is perceived to be the typical private child law dispute, usually involving a kinship carer; they also make different demands on the court in terms of time and resources. There was heavy local authority involvement in many of the non-parent cases observed in this study, with "the use of section 8 orders as a functional alternative to public law proceedings" (p138). In such cases private law orders may be being used as an alternative to care proceedings. More in-depth research is needed to investigate the circumstances surrounding these cases, including the presence of previous care proceedings or local authority involvement and their passage through the court process, including legal aid and other support and mechanisms for hearing the voice of the child.

Discussion

Although we identified some key, high-profile studies on private family law, we also identified a number of gaps in the literature or areas where reliance on older studies, often based on small or un-representative case file samples, raised questions about more recent trends and experiences.

There is still a need to know more about cases that return to court, based on analysis of a larger cohort with longer follow-up periods. There was limited evidence about the characteristics or features which might help the family justice system identify cases most likely to return. There is also a need to differentiate more clearly different types of returning cases: those that might return once and those that might return multiple times over a significant period of time.

Another key gap in knowledge relates to the overlap between public and private family law, again distinguishing between the different types of cases. In addition to establishing an up-to-date measure of the proportion of families in private law proceedings who, either previously or subsequently, experience public law (care) proceedings, there is a need to understand more about the timing of these applications, the 'gap' between sets of proceedings and the legal outcomes. It would also be interesting to consider the proportion of private law cases where the court is so concerned about the welfare of the child as to order the local authority to undertake section 37 investigations, but it appears that care proceedings do not follow. 'What happens next' for those cases would also be of interest: is this one of the occasions where a court might consider joining the child as a party to proceedings to ensure their welfare, wishes and feeling are fully considered?

Although there has been some recent work on private law applications that involve non-parents, there is a significant gap in understanding here, particularly in relation to what proportion of these cases follow or precede care proceedings, return to court for further private law proceedings, or indeed overlap with 'standard' parent cases.

In responding to the key research questions underpinning the 'private law pathways' research project, this review has identified a number of areas which it would be most interesting and beneficial to focus on and has informed the development of the analysis plan and analytic dataset. Fresh, up-to-date analysis of population-level data will further the evidence base, feeding into reforms of the family justice system and bringing better experiences and outcomes for the children and families involved.

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Appendix 1: search strategy

We used the following search terms in Web of Science and Lexis+UK to identify relevant evidence published in England and Wales since 2014 (when the Child Arrangements Programme was introduced):

TOPIC = "private family law" or "private law children" or "private law" or "proceedings" or "child arrangements" or "section 8" or "prohibited steps" or "specific issue order*" or "contact order*" or "residence order*" or “shared care”

AND

TOPIC = “child*” or ”family”

AND

TOPIC = “duration” or “length of proceedings” or "tier of court" or "magistrate" or “high court” or “district judge” or “circuit judge” or "parallel" or "cross" or "section 7" or “section 37” or "welfare concerns" or "16.4" or "guardian" or "conflict" or "repeat" or "return" or “recurrent” or "chronic" or “long-running” or “protracted” or “public law” or “care proceedings” or "trajectory" or “pathway” or "overlap" or “domestic abuse” or “parental alienation”

This strategy was supplemented by further searches of ‘grey’ literature, including research and policy reports, with older research and publications from other jurisdictions included where relevant.