

What do we know about adults in private family law proceedings?



Introduction

Private law is the part of the family justice system dealing with challenges faced by families in reaching agreements regarding the care or upbringing of their children – typically after parental separation. In 2022, there were over 54,000 private law applications made in England and Wales, for more than 90,500 orders relating to over 80,000 children (Ministry of Justice 2023).

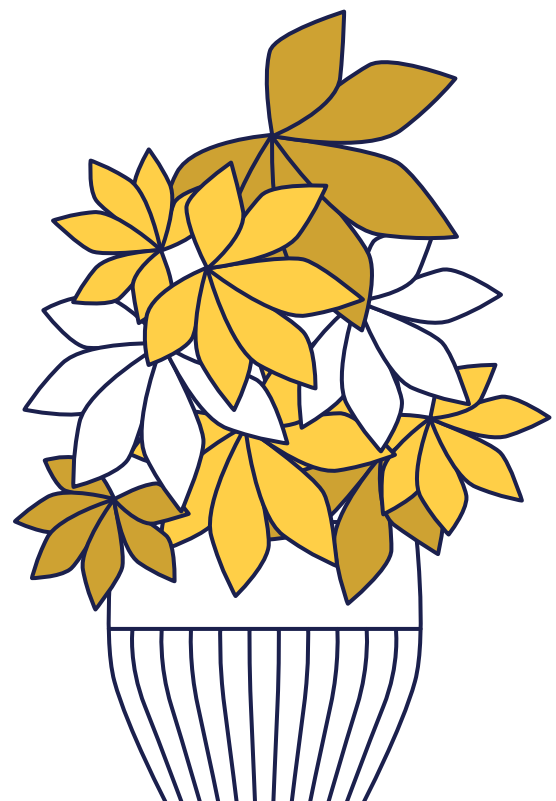
In terms of the characteristics and experiences of the court population, the evidence base is less developed for private law proceedings than for public law proceedings (which concern local authority applications for care and supervision orders), despite there being over three times as many private law applications each year in England and Wales.

Nuffield Family Justice Observatory (Nuffield FJO), with the help of the Family Justice Data Partnership – a collaboration between Lancaster University and Swansea University, funded by Nuffield FJO – has

been working to build a greater understanding of these families.

This Spotlight Series paper highlights what we know about adults in private law proceedings, focusing on the evidence about different vulnerabilities.¹ The aims of the paper are to:

- shed light on the adults involved in private law cases and to think about how their characteristics may affect their needs when they go through court
- examine the court experiences of key groups described in the literature, noting the type of information and support that could improve these experiences
- support professionals working in the family justice system to reflect on the emerging messages from the research and to encourage them to come forward with ideas for making the system work for everyone involved in private law cases.





Key points

Evidence suggests court is a last resort for separating families

– Only a small percentage of separating parents go to court to make arrangements for their children. Families prefer to avoid court due to costs, stress and concern for their children’s well-being.

Families in private law proceedings are often facing deprivation

– Research shows that the majority of families involved in these cases are from the most deprived areas. Limited access to resources affects the level of support available to adults and their court experience.

While the majority of adults in private law proceedings are White, there is an over-representation of adults from some other ethnicities

– Adults who are Black or who have mixed or multiple ethnicities are over-represented in private law proceedings. Evidence suggests that women from ethnic minorities often have worse experiences in court due to the impact of cultural stereotypes.

Not all adults involved in private law proceedings are parents

– Around 10% of private law applications involve people other than parents. A significant number of these applications are made in situations where children are being cared for by extended family members, which could indicate a background of child protection concerns.

Many families going through court have experienced health issues

– Adults involved in private law proceedings have a higher likelihood of experiencing mental health issues before they come to court, including depression, anxiety and self-harm. They are also more likely to have substance misuse problems.

Domestic abuse is an issue for many families involved in private law proceedings

– Evidence emphasises that domestic abuse is a common issue in private law proceedings. Victims of domestic abuse often have negative experiences in court, including concerns about being believed as well as worries for

their physical safety and mental well-being. Research shows that legal professionals can improve victims’ experiences through actions such as understanding domestic abuse, actively listening to victims, and involving court independent domestic violence advisors (IDVAs).

A growing number of adults in private law proceedings are representing themselves in court

– A growing proportion of parties in private law proceedings do not have legal representation. Their court experience is often negative, but can be improved if legal professionals take time to support them, and if they have an understanding about court processes.



Research, evidence gaps and limitations

For this Spotlight Series paper, we reviewed studies over the last 20 years (2003–2023) that had information about the characteristics and experiences of adults in private family law proceedings, with a focus on England and Wales.

Our search strategy identified 48 studies that met the inclusion criteria. Several themes emerged regarding the vulnerabilities of many people in the system.

There are a number of limitations to the evidence base. Much of the existing research looking at adults' characteristics is limited – often to only age and gender – as much

of it is based on analysis of court files, which do not routinely collect additional demographic information. There is a need to capture a broader set of information about the families going through the private law system, including their ethnicity and wider socio-economic circumstances, so we can consider whether their experiences differ according to their personal characteristics.

While there is evidence about the experiences of litigants in person, many of the studies relate to people who were in court before important changes to the system took place – notably the introduction of the Legal Aid, Sentencing and Punishment of

Offenders Act (LASPO) in 2013. With the expansion in the number and proportion of litigants in person in private law proceedings, more up-to-date analysis is required to understand their characteristics, needs and experiences. New research on the other aspects of private law would also be useful.

Some of the literature we reviewed – especially the research relating to experiences of proceedings – is based on relatively small, qualitative samples. While the indicative results from these studies are insightful and important, it would be beneficial to have results from larger and more representative studies in order to inform practice and policy.

For further information about our review, including full details of the papers included, please see:

Saied-Tessier, A. (2023). *What we know about adults in private family law proceedings: A summary of reviewed literature*. <https://www.nuffieldfjo.org.uk/resource/what-do-we-know-about-adults-in-private-law-proceedings-spotlight-series>

For our Spotlight Series paper on the characteristics and experiences of children in private law proceedings, please see:

Roe, A. (2021). *Children's experience of private law proceedings: Six key messages from research*. <https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/10/Childrens-experience-of-private-law-proceedings.pdf>

Evidence suggests that court is a last resort for separating families

There is a consensus in the evidence base that only a minority of separating parents use the courts to resolve issues about child arrangements. Hunter (2021) outlines that the best evidence points to around 10% of separating families using court for child arrangements and that this figure has been consistent over time. Though these estimates are acknowledged as being robust, there are concerns that the surveys used only include small numbers of separating families and more up-to-date estimates would be helpful given the changing numbers of private law applications (Cusworth, Bedston et al. 2021). Alternative methods for estimating court usage based on administrative Cafcass and Cafcass Cymru data show there are fewer than 100 applications per 10,000 families with children in England and Wales each year, which is less than 1% of households with children coming to court (Cusworth

et al. 2020; Cusworth, Bedston et al. 2021). While current data does not provide an exact figure, all estimates highlight those in court are the minority of separating families.

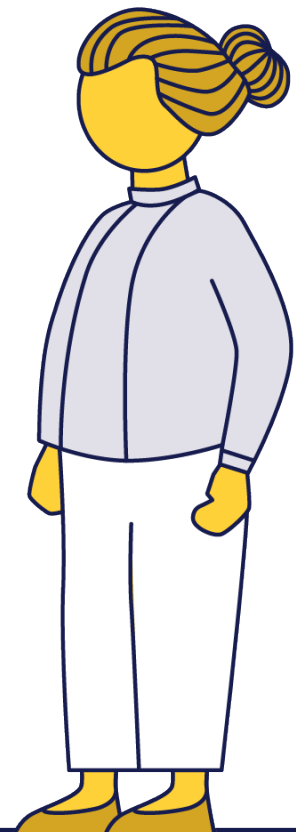
Qualitative research shows that the reasons separating families seek to stay out of court include: wanting to avoid the associated costs and stress; worrying that court would increase conflict in relationships with former partners; and wanting to protect the well-being of the children (Symonds et al. 2022; Pereira et al. 2015).

'[When asked why they did not go to court] Because I didn't want it to get too messy for the children I suppose and maybe financially I couldn't justify it. I think because of my support network I – if I didn't have them to fall back on then I probably would have needed to go down that route...' (Symonds et al. 2022, p.30)

When asked, separating parents often say they see court as a last resort, with a strong preference for avoiding it if possible (Jones et al. 2023; Symonds et al. 2022; Pereira et al. 2015). Families will usually exhaust all other options first (Hunter 2021). Reasons for seeking a court resolution for child arrangements include: problems reaching an agreement; enforcing mediation agreements; a lack of trust in the other party; and/or safeguarding concerns such as domestic abuse, which features frequently in private law cases (Trinder et al. 2005, 2013; Pereira et al. 2015).

Points for reflection

Does our current response to families when they reach court reflect an understanding that it is likely to be an option of last resort?



In 2019/20, 29% of fathers and 31% of mothers making a private law application in England lived in the most deprived quintile with 52% of fathers and 54% of mothers living in the two most deprived quintiles (Cusworth, Bedston et al. 2021).

Families in private law proceedings are often facing deprivation

The majority of families in private law cases live in the most deprived areas of England and Wales. Research shows that over half of parents making an application live in the two most deprived quintiles (Cusworth, Bedston et al. 2020; 2021). For the significant minority of applications involving non-parents, the link between deprivation and private law is similar and sometimes even more pronounced (Cusworth and Hargreaves 2023).

Constrained resources limit people's ability to access support. Evidence from qualitative studies suggests there are many types of support that families may find helpful on separation (whether going through court or not), ranging from friends and family offering them somewhere to stay, to more formal services like counselling, mediation and legal advice (Symonds et al. 2022). Many of these more formal services require access to material or financial resources.

In addition to how limited resources affect available support, there are also potential impacts on family stress and parental mental health (Masarik and Conger 2017). The findings about deprivation for families involved in private law proceedings are therefore of particular significance because they suggest that people may have limited

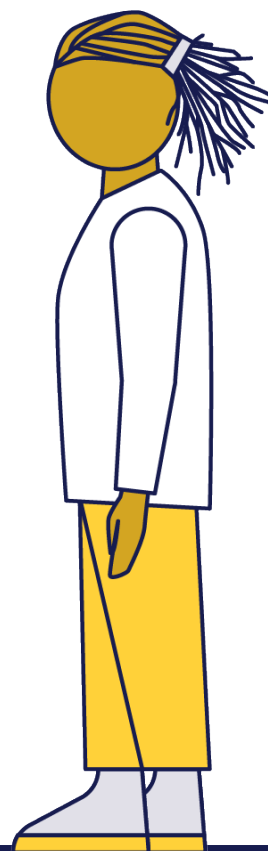
access to resources beyond the legal process to help them navigate separation.

Deprivation may also affect experiences of court. Evidence gathered during the COVID-19 pandemic highlighted a digital divide, with some families lacking access to Wi-Fi, sufficient data, or the technology needed to participate in remote hearings or to research information online (Harker and Ryan 2022; Barry 2020). As the family justice system becomes progressively more digitised, the potential for the exclusion and disadvantaging of people facing deprivation is particularly important. Research suggests that providing information and assistance in a broad range of formats, including face-to-face and by phone, can help remove the barriers to access to justice that can arise from a lack of technology. Given the wide-ranging potential implications of deprivation for those involved in court proceedings, further research is required to understand how different elements of deprivation – such as educational opportunities, health and barriers to housing – might affect families' experiences of court, as well as how court responses can support their needs.

Points for reflection

How can the family justice system respond to families in a way that is mindful of – and responsive to – the financial strain they may be experiencing?

How can any new services outside of court be developed in a way that is accessible to those facing deprivation?



While the majority of adults involved in private law proceedings are White, there is an over-representation of adults from some other ethnicities

There is limited evidence on the ethnicity of the adults involved in private law proceedings and how experiences of the system may differ accordingly. Analysis of improved Cafcass data shows over 80% of adults and over 75% of children in private law proceedings in England are White (Alrouh et al. 2022). While people from Black, African, Caribbean or Black-British, and Mixed or multiple, and 'Other' ethnic groups (see note below) make up a smaller proportion of private law cases (6%, 3% and 3% respectively), they are over-represented compared to the general population. In contrast, adults who are recorded as Asian or Asian-British are involved in 8% of private law cases – which is the same as in the general population. This is in contrast to public law proceedings where Asian or Asian-British groups are under-represented. Further work is needed to understand these findings and what they mean for those involved.

One area where there is evidence of the experiences of people from different ethnic groups is in the domestic abuse literature. There is a consistent finding in research that victims of domestic abuse from ethnic minorities, and/or those who experience language barriers, find private law proceedings especially 'anxiety provoking, confusing, lengthy and disruptive' (Thiara and Harrison 2016, p. 18). Evidence received by the Harm Panel described additional barriers to women from ethnic minority backgrounds who faced cultural and gender stereotypes. This evidence also highlighted that stereotypes were compounded by racism, sexism and class prejudice (Hunter et al. 2020). This evidence underlines the importance of considering how different forms of disadvantage and/or discrimination can interact.

Points for reflection

How can we improve the recording of ethnicity in private law data to help us understand how experiences and outcomes vary by ethnic group, and to help ensure equity and equality?

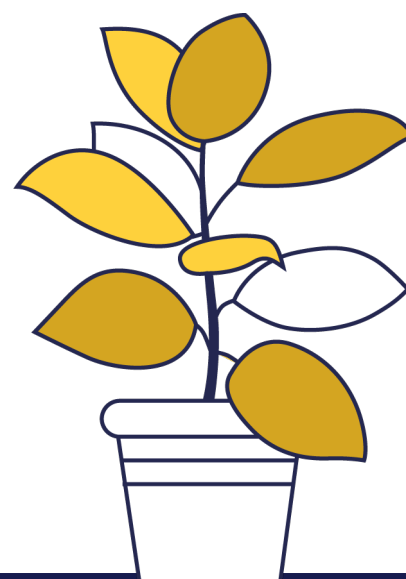
What might the reasons be behind the over-representation of adults from Black, African, Caribbean or Black-British, Mixed or multiple and Other ethnic groups in private law proceedings?

How can we improve our understanding of how gendered and cultural stereotypes might present and interact in our family justice system, and how can we respond in a way that minimises disadvantage and discrimination?

Data on ethnicity

As noted by Alrouh et al. (2022), there are challenges in defining a person's ethnicity. Here we use the same classifications as Alrouh et al., which are based on the same five high-level ethnic group categories as the 2011 census in England and Wales: Asian or Asian British; Black, African, Caribbean or Black British; Mixed or multiple ethnic groups; White; and Other ethnic groups.

Since 2015/16, there have been improvements in the recording of ethnicity in the Cafcass data. However, information about ethnicity is not currently captured in the Ministry of Justice's family court data, which limits our understanding of the ethnicity of families in private law proceedings.



Not all adults involved in private law proceedings are parents

While the majority of private law cases involve two parents, around 10% of applications feature adults who are not the biological parent of the child or children involved. This significant minority equates to around 5,500 applications in England and 300 in Wales each year (Cusworth et al. 2023). 'Non-parents' can include grandparents (the most common group), aunts, uncles, siblings, step-parents, intended parents (in surrogacy cases) and putative fathers.

The relationships between adults and children – and the orders being applied for by this group of non-parents – vary significantly (Cusworth et al. 2023). Cases can relate to step-parents seeking to formalise their roles in children's lives or intended parents seeking legal recognition following surrogacy. However, the largest group of applicants are extended family members seeking child arrangements orders and, in England (where the data currently allows for more detailed analysis than in Wales), the majority of these applications are for 'lives with' orders.

Cusworth et al. (2023) note that a significant proportion of cases involving non-parents appear to relate to situations where an extended family member is caring for a child or applying to do so. Such applications include those for a 'live with' child arrangements order or a special guardianship order. They also involve applications by parents for a child arrangements order to see a child or have a child returned to live with them where an extended family member is the current carer. The authors estimate that at least 38% of applications involving non-parents in private law fall into this category and note that uncertainty in the data means this figure could be much higher. They also discuss the potential for child protection concerns in these kinship care cases and the possible 'overlap' with the types of family circumstances more usually associated with public law cases. However, many of the rights and safeguards associated with public law cases (such as automatic legal aid for parents and automatic

separate representation of the child) are not the same in private law. There is a significant research gap in terms of understanding the needs and experiences of this group. Further information is needed to ensure the system fully understands their circumstances and is better prepared to respond to their particular needs.

Points for reflection

How well does the current private law system work for cases involving non-parents?

How does the language that is used in the private law system recognise the involvement of members from a child's wider family?

How can we ensure that families facing similar challenges receive the right support, whether they enter the family justice system through a private or public law route?



Many families going through court have experienced health issues

There is an emerging evidence base that highlights the enhanced health needs of adults in private law proceedings. Research in Wales suggests that these adults are more likely than their peers to have contact with health services about a number of issues before coming to court.

Using administrative court data linked to health records, Cusworth, Hargreaves et al. (2021) demonstrated that men and women in private law cases in Wales were around twice as likely to have visited their GP or a hospital because of depression or anxiety in the year prior to involvement in private law proceedings than their peers (who had been matched based on age, gender, local authority and deprivation quintile). The authors also showed that adults in private law proceedings were substantially more likely to self-harm to a point that required either contact with a GP or admission to hospital. Women in private law proceedings were 5.5 times more likely to have had a hospital admission due to self-harm than those who had not, while men were 4.5 times more likely.

A number of earlier, smaller-scale studies also highlight mental health as an issue for families in private law proceedings. These studies report on parental mental health when it is recorded as a potential safeguarding concern in court files. A Cafcass/Women's Aid 2017 study of applications for child arrangements orders showed 56% of cases involving a domestic abuse allegation and 18% of cases that did not involve a domestic abuse allegation highlighted parental mental health as being raised

as a concern by someone in the case.

Substance misuse is another issue for many families in private law proceedings. Cusworth, Hargreaves et al. (2021) found that adults in private law proceedings were more likely to have problematic drug and/or alcohol use recorded in their health records than the comparison group. Women were over three times as likely to have contact with a GP or a hospital admission for substance use, and men almost twice as likely. The Cafcass/Women's Aid study from 2017 also showed that parental substance misuse was raised as a concern in 68% of cases involving a domestic abuse allegation and 11% of cases that did not involve a domestic abuse allegation.

Issues of neurodiversity are sometimes captured in the health records of those involved in private law proceedings, though we recognise they are not medical conditions, and this is a largely under-researched area. One study reports that, as with other public services, autistic people may face particular challenges in accessing

the family justice system (George, Crane and Remington 2020). The authors note that, for example, the reduced affect (restricted display of emotions) commonly displayed by autistic individuals, can be interpreted as apathy or a lack of sensitivity. Autistic people are diverse, with variations in experiences. Some may face difficulties understanding legal language (which is often not literal), or non-verbal cues, such as facial expressions. Others may struggle with the sensory experience of being in court, which could affect how they are perceived by legal professionals. The authors found the lack of experience and preconceptions about autism led to misunderstandings and autistic people not being believed, which may have affected case outcomes. Positive examples included having someone to support them who could explain what was happening and understand their needs, such as by providing a separate waiting room. These positive examples were rare, with problems in accessing suitable adjustments and support being more commonly reported.

Points for reflection

How can we adapt current court processes to be more responsive to the needs of parents and/or children struggling with their mental health? Could legal professionals build more integrated relationships with local health provision to better understand what might be on offer to parents and children and signpost support?

The Equalities Act (2010) requires

public services to anticipate and prevent discrimination against people with disabilities. How can the family justice system meet this legal obligation and improve experiences of people where medical needs equate to disabilities?

Should mental health support feature more explicitly in alternative resolution, such as mediation, and how might that be provided?

A recent literature review showed that between 49% and 62% of private law cases include allegations of domestic abuse (Barnett 2020).

Domestic abuse is an issue for many families involved in private law proceedings

There is a substantial body of evidence highlighting domestic abuse as a common issue within private law proceedings. While court statistics do not currently record when allegations or findings of domestic abuse have been made, the evidence around the interaction between domestic abuse and private law proceedings is more developed than for many other issues in private law. There are, however, less developed parts of the evidence base, such as evidence about male victims of domestic abuse.

The experiences of court reported by victims of domestic abuse is overwhelmingly negative. There were a number of reasons given for the adverse experiences relating to victims' physical safety in court, concerns about the safety of their children, and their mental well-being. Irrespective of case outcome, being in court was described as being re-traumatising (Hunter et al. 2020).

'I will never be able to express the fear and indescribable stress of going through the court process with someone I was so terrified of: Mother, call for evidence. (Hunter et al. 2020, pp. 106)

Research shows that victims of domestic abuse often feel they are not believed. Eassom (2018) notes evidence of domestic abuse being dismissed and judges only recognising the most severe forms of physical abuse as domestic abuse. A number of studies highlight how victims

frequently report feeling that domestic abuse is marginalised by legal professionals who do not understand its dynamics and impacts. This has implications for victims raising allegations of domestic abuse and about the perception of the credibility of allegations. Victims in a number of studies outlined how they were encouraged by legal professionals not to raise domestic abuse allegations, which led to feelings of confusion and frustration. When victims did raise allegations, they felt they were perceived negatively – for example, either as being obstructive, difficult or neurotic (Birchall and Choudhry 2018; Barnett 2020). Hunter et al. (2020) heard from organisations supporting male victims that gender stereotypes made raising allegations difficult and that male victims also feared not being believed.

For some victims, remote hearings may provide a better experience than in-person hearings – but research shows they are not universally preferred. Some victims described relief at not having to face a perpetrator in court, while others reported finding it upsetting to see and hear their abuser in their home (Harker and Ryan 2022).

In terms of improving domestic abuse victims' experiences in court, research suggests practitioner understanding of domestic abuse can make a big difference. Where judges and lawyers were felt to have listened and demonstrated knowledge

about domestic abuse, people felt supported by the court. Another factor that improved experiences was the presence of a court independent domestic violence advisor (IDVA). SafeLives (2021) found that 37% of people who had experienced domestic abuse reported an improved experience because of a court IDVA. Recent practice guidance has strengthened the right of victims to have an IDVA in court. However, the availability of court IDVAs is severely limited, with almost 4 in 10 people who have experienced domestic abuse going through family court with no support (SafeLives 2021). In response to the Harm Panel report (Hunter et al. 2020), a wide range of initiatives have commenced with the aim of improving domestic abuse victims' experiences of court.

Points for reflection

There are encouraging examples of good practice regarding improving the experience of domestic abuse victims in court – how can we share best practice and ensure this becomes the norm in all family courts?

How can we improve consistency in the understanding of domestic abuse among professionals working with families following separation or in private law proceedings?

A growing number of adults in private law proceedings are representing themselves in court

The number of adults representing themselves in court (litigants in person) is at an all-time high. Research suggests there are a number of reasons for this – including because those involved are unable to obtain legal aid and/or cannot afford the cost of representation (Jones et al. 2023; Trinder et al. 2014; McKeever et al. 2018; Moorhead and Sefton 2005). Since the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in 2013, eligibility for legal aid has been further reduced for many private law cases. Beyond an inability to afford legal representation or qualify for legal aid, other reasons for non-representation included litigants feeling they knew their cases best, and negative views about legal professionals.

Litigants in person are diverse in terms of their characteristics, experiences, understanding of court process and how they access advice. Research, both pre- and post-LASPO, indicates that litigants in person are more likely to have low levels of education and income (Williams 2011; Mant 2020; Lee and Tkacukova 2017) and that low levels of literacy prevent unrepresented adults from understanding and being able to engage with court processes (Barry 2020). Some research has found people's ability to effectively navigate court proceedings depends on their prior experience of court and their legal understanding rather

than educational attainment (Barry 2020). Despite variation in familiarity with legal processes, some tasks were difficult for almost all litigants in person, such as the preparation of bundles (Trinder et al. 2014).

'Because this is about my child... It's intimidating and it's worrying as well that you are going to get something wrong because you haven't got someone else there to help you out...' (Trinder et al. 2014, p. 81)

The experience of being in court is negative for many litigants in person. Some do not understand what is happening and feel 'out of their depth' (Trinder et al. 2014, p. 16; Barry 2020) and qualitative evidence showed many felt anxious or fearful of court, which is often reported to be intimidating and confusing (Trinder et al. 2014; Barry 2020; McKeever et al. 2018). Trinder et al. (2014) noted that vulnerabilities including mental health, being a victim of abuse, and drug or alcohol problems, were likely to increase the challenges of the case (legal and procedural) and meant that some struggled with court.

However, there is evidence that experiences of court can be improved, such as by judges playing a more investigative role, lawyers looking to actively assist, and more proactive court staff (see Trinder et al. 2014 for examples). Redesigning forms with litigants in person in mind, or providing court staff that could assist

with the completion of forms, would be helpful (Grieshofer 2022a; Trinder et al. 2014). Proactive judges who enquire about parties' positions and try to help broker agreement were also mentioned as a way of addressing some challenges.

There is a lack of consistency in what support is available and the research indicates that this can prompt litigants in person to seek support from less reliable sources such as social media and online forums (Grieshofer 2022a; 2022b). This support is often ad hoc and not based on a full understanding of the individual's needs.

Points for reflection

How can information and advice better support litigants in person before they come to court? Is the current information provided in a way that is sufficiently accessible, consistent and specific?

How do we ensure practitioners have access to the necessary training and relationship skills to support litigants in person effectively through the process?

How can we improve consistency across family courts so all professionals in the system know what they can do to effectively support litigants in person?

Conclusions

The emerging evidence base demonstrates that many adults in private law proceedings may be dealing with a range of challenges in their lives beyond the courtroom – such as deprivation, health issues and domestic abuse – and that a growing number are facing the justice system with no legal representation. All of this can have an impact on their experiences in court.

Some of the adults in private law proceedings share significant similarities with adults in public law proceedings in terms of characteristics, circumstances and experiences. Some of the issues being discussed in private law also bear significant similarities to features of public law cases. Domestic abuse, mental ill health, constrained resources and substance use are

common issues for adults in public law cases and, as the literature we reviewed shows, also feature for adults in private law proceedings. In 10% of private law applications, we see non-parents as parties in proceedings, including extended family members caring for the children involved, with indications that the background circumstances in those cases could be similar to those of families in public law proceedings. At the moment the private law system is not usually well integrated with external family support services – but the emerging evidence about the wider needs of the families in private law proceedings suggests this might be an area where further system development is needed.

For the minority of families who turn to the court to help resolve issues when making arrangements

for their children, there are some frequently shared experiences – anxiety about being in court and a lack of understanding about legal processes and language. But there are also common factors that improve experiences, such as when the court takes a non-adversarial approach, professionals who take the time to explain proceedings, a culture and environment where people feel listened to, and the option to have someone in court to provide support.

The research reviewed for this report suggests that while the adults involved in private law proceedings are facing a wide variety of issues, there are tangible steps that can be taken by individual professionals, and by those designing policy responses, to improve their experiences of court.

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About Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

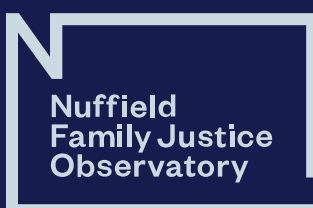
Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics. Nuffield FJO funded the development of this briefing paper. Any views expressed are not necessarily those of Nuffield FJO or the Nuffield Foundation.

This paper was written by Aliya Saied-Tessier.

The author would like to thank all external reviewers for their insightful comments on earlier drafts of the paper including Vas Crawford (Cafcass), Dr. Linda Cusworth (Lancaster University), Dr. Julie Doughty (Cardiff University), Lauren Doyle (Cafcass) Professor Ben Hine (University of West London), Professor Emma Hitchings (University of Bristol), Professor Rosemary Hunter (University of Kent), Chris MacDonald (Rotherham Metropolitan Borough Council), Andrew Powell (4PB), HH Judge Alison Raeside, Anna Sinclair (Cafcass Cymru), Dr. Jon Symonds (University of Bristol) and Saif Ullah (Cafcass). Thanks also to Jude Eyre, Associate Director, for her valuable input at all stages of producing this Spotlight paper.

Recommended citation:

Saied-Tessier, A. (2023). *What do we know about adults in private family law proceedings?* Spotlight series. Nuffield Family Justice Observatory <https://www.nuffieldfjo.org.uk/resource/what-do-we-know-about-adults-in-private-law-proceedings-spotlight-series>



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