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Dear Mr Nielson,

We write in response to your email dated 17 July 2020, addressed to Sir David Evennett MP, and to your letter dated 20 August 2020, also addressed to Sir David. We do not consider either communication to comply with the requirements of the Pre-Action Protocol for Judicial Review, but in the interests of resolving any dispute provide the following response on behalf of our client, the Secretary of State for Justice (“the Secretary of State”).

The factual background

1. On 21 May 2019 the Secretary of State announced a public call for evidence to be steered by a panel of experts from across the family justice system (“the Panel”). It aimed to gather evidence on how the family courts protect children and parents in private law cases concerning domestic abuse and other serious offences. The aim of the work was to better understand the experiences of those involved in such proceedings, identify any systemic issues and to build a more robust evidence base to inform improvements.
2. The Secretary of State gave careful consideration to the appropriate make-up of the Panel. The Secretary of State wanted to ensure that there was representation from across the system, including those in Wales (Welsh Women’s Aid) and those who specifically support women (Women’s Aid) and men (Respect) as victims of domestic abuse. The Panel also included members from the judiciary, and members of the legal profession with long-standing and extensive experience of working with a range of families.
3. The call for evidence ran from 19 July to 27 August 2019. This received 1,115 useable responses from individuals and organisations across England and Wales (see the Final Report at paragraph 2.2.2).
4. The Panel also held three roundtable events: (i) in London with members of the judiciary, (ii) in London, with a broader range of practitioners, including those working in social care, domestic abuse support services, the third sector, Cafcass, the legal sector and other relevant services in England; and (iii) in Cardiff, with a broad range of practitioners and professionals from across family justice in Wales, including

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legal professionals, Cafcass Cymru, domestic abuse support services and men's support services. Further, the Panel held ten focus groups across England and Wales. Sessions were held with: (i) mothers who had been involved in private family law proceedings as victims of domestic abuse and other serious offences including a session specifically for women of BAME backgrounds.

5. To aid the work of the Panel, the Secretary of State commissioned research produced by Dr Adrienne Barnett, "*Domestic abuse and private law children cases: A literature review*" (2020) ("**the Literature Review**"), namely a review of the literature on the risk to children and parents involved in private law cases of domestic abuse and other serious offences. The Literature Review has been published. The Literature Review explains the quality assurance undertaken, namely by searching only for peer-reviewed literature and practice-based research undertaken by or with academic researchers for nationally and internationally recognised organisations (paragraph 3.1). The Literature Review identified and reviewed 44 peer reviewed academic journals, articles or books and 39 reports. Nevertheless, the Literature Review also explains and acknowledges the limitations on the research undertaken (paragraph 3.2).
6. The report, "*Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report*" (June 2020) ("the Final Report") reflects the Panel's findings. The Panel made a number of recommendations (summarised at pages 9-12 of the Report). These include an urgent review of the presumption of parental involvement in section 1(2A) of the Children Act 1989 in order to address its detrimental effects ("**the CA 1989**") (see paragraph 11.4).
7. At the same time as the Final Report was published, the Secretary of State published an implementation plan, "*Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan*" (June 2020) ("**the Implementation Plan**"). In respect of the Panel's recommendation concerning the presumption of parental involvement, the Implementation Plan stated that under the leadership of the Family Justice Board, the Secretary of State would review the presumption of parental involvement. The Implementation Plan added: "*We recognise that there is further work to do to investigate how the balance is being met between the welfare of children and parent victims and the rights of children and parents to a family life*" (at pages 4-5).

Response to any proposed claim

8. The Final Report and the Literature Review are not decisions that are amenable to judicial review. The Final Report sets out a set of proposals for the Secretary of State to consider. The Implementation Report explains what steps the Secretary of State has decided to take in the light of those recommendations. In respect of very many of the recommendations (including that concerning section 1(2A) of the CA 1989) the Secretary of State recognises that further work must be undertaken before a final decision can be made.
9. The Final Report does not have any status in law: it cannot, and does not purport to, effect changes to primary legislation or to the common law. Neither does it oblige the Secretary of State to take any particular steps. It does not reflect Government policy. The Final Report makes this clear, section 1 states (page 13): "*we welcome the report and the robust challenge it has provided us with, but the below findings should not be read as an indication of MoJ or wider government policy*". Precisely the same points apply in respect of the Literature Review. As such, the Secretary of State contends that neither the Final Report nor the Literature Review is a decision of the Secretary of State amenable to judicial review.
10. The Secretary of State accepts that in principle the Implementation Plan is amenable to judicial review, but your communications do not identify any specific steps that the Secretary of State proposes to take that you wish to challenge.
11. Dealing with the points you raise in the August letter:
 - (i) The Secretary of State does not accept the criticisms you make of the Literature Review (Issue 1). Further, the Secretary of State notes that some of the examples given in the Final Report came from the consultation responses and roundtables described above.
 - (ii) The Secretary of State has explained above the reasons for the composition of the Panel, and the reasons for including the charity Respect in the Panel's membership (Issues 2 and 3). The

decisions as to the composition of the Panel were lawful. Further, any challenge to the membership of the Panel is now significantly out of time.

- (iii) The Secretary of State notes your observations as to the evidence relied on by the Panel (Issue 4). It was open to the Panel, and lawful, to acknowledge the limitations of the evidence received whilst still concluding that the evidence was sufficient to support the recommendations made.

- 12. For these reasons the Secretary of State considers any proposed claim to be unarguable. Should you issue proceedings, the claim will be resisted and I am instructed to seek my client's legal costs of defending such proceedings.

All further correspondence should be addressed to Lisa Vincent on behalf of the Treasury Solicitor via that contact details set out in the letterhead and citing the case reference at the top of this letter.

Due to COVID-19 and the current circumstances all documentation should be sent by e-mail rather than by post to limit the handling of materials. Service of court documents may be effected by email to NewProceedings@governmentlegal.gov.uk.

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