Picking up the pieces: domestic violence and child contact

A research report by Maddy Coy, Katherine Perks, Emma Scott and Ruth Tweedale

Rights of Women and CWASU 2012
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In 1997 Rights of Women published a research report Contact between children and violent fathers: in whose best interests? (Anderson, 1997). Our findings then indicated that mothers in child contact proceedings felt that their views about the risks to themselves and their children of contact with violent fathers were marginalised by professionals in the family justice system. They indicated a misuse of the law and legal procedures in child contact cases by violent ex-partners as a means of continuing their abusive behaviour, evidence of lawyers or judges allowing or even enabling this approach and case law and practice which emphasised contact as the desired outcome, whatever the circumstances. The research also raised issues around the function and standard of (then) Child Welfare Officers and their reports in contact cases.

Since 1997 there have been significant developments in the law and policy on domestic violence and child contact, yet anecdotal evidence from our family law advice line indicates ongoing failures and missed opportunities within the family justice system to protect women and children from violent ex-partners and a tendency by judges and other statutory professionals to minimise domestic violence in the context of applications for child contact.

This research explores the experiences of women and legal professionals of the law, policy and practice in child contact proceedings and, 15 years on from our original research, supports many studies revealing that women continue to have similar negative experiences of the family justice system's response to domestic violence. It makes a compelling case for significant change in the way that domestic violence is addressed by the family courts.
There must be a robust and statutory framework in place within the family justice system which ensures the early identification and effective response to women and children’s experiences of domestic violence, setting out the respective roles and responsibilities of all key professionals in the system.

Judges, solicitors, barristers, CAFCASS officers and mediators must receive compulsory, specialist training on domestic violence and its impacts on women and children’s lives.

Courts must seek risk assessments from specialist domestic violence organisations before making a decision about contact. Such risk assessments should follow the principles and guidance set out in Expert Domestic Violence Risk Assessments in the Family Courts (see Newman, 2010).

Adequate and appropriate safeguards, including effective screening for domestic violence and domestic violence awareness training for all legal professionals and mediators, must be in place within the system which enable women to voice their concerns about their and their children’s safety without putting them at further risk or risking them entering agreements which do not meet their or their children’s needs.

Any information produced by the Government about the family justice system must include reference to the law and policies on domestic violence to enable victim-survivors to make informed decisions about contact arrangements and better understand and navigate child contact proceedings.

Special facilities that mirror those available in criminal proceedings must be introduced in civil proceedings to prevent victim-survivors of domestic violence from having to face perpetrators in court.

Mirroring regulations which exist in the criminal justice system, the family justice system must protect victim-survivors from direct cross-examination by their perpetrators and contact with them inside court buildings. In any reorganisation of the court estate following the Family Justice Review this should, for example, include the provision of separate waiting areas.

The Government must monitor the impact of the Legal Aid Sentencing and Punishment of Offenders Act 2012 on the representation of parties in private Children Act proceedings, including disaggregating data about applicants and respondents by gender and status.

The Ministry of Justice must collect and record data on:
- the presence and extent of domestic violence (rather than allegations of harm) in private family law proceedings;
- whether or not finding of fact hearings are held where there are allegations of domestic violence;
- reasons for not holding finding of fact hearings where there are allegations of domestic violence.

Cases involving allegations of domestic violence must be flagged on family court databases, in a similar way to the way in which the Crown Prosecution Service flag violence against women in criminal prosecutions.

In cases where Practice Direction 12J has not been followed, there must be a method of reviewing judicial decisions and holding judges accountable for non-compliance. This should include a process of complaint by which women can question a judicial decision and have the option of having another judge review the file, without the expense and time constraints of appealing the matter.

Following the recommendation of the Family Justice Review (MoJ, DfE & WAG, 2011), there must be judicial continuity in the family justice system.

CAFCASS must review the decision to revoke their Domestic Violence Toolkit.

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1 Youth Justice and Criminal Evidence Act 1999 sections 34 to 39
• There must be an effective complaints process and a clear and transparent process for requesting a change of CAFCASS officer if it can be shown that they are not behaving in a fair and appropriate manner in accordance with their service standards.

• The Government must take into account the recommendations of the Family Justice Review and the wealth of evidence on child contact proceedings and domestic violence, and reconsider proposals to introduce a legislative principle or presumption that both parents should be involved in children’s lives.

• The number and geographical availability of specialist supervised contact centres/provision must be increased to address ongoing risks to women and children and ensure safe contact.

• The Government must urgently review the decision to restrict legal aid in family law cases, given the impact that this will have on the eligibility of women affected by violence.

• Any reorganisation of the family justice system following the Family Justice Review must include consideration of the needs of women and children in the timetabling and location of hearings to minimise the impact of proceedings on women’s ability to work and provide for their children.
About the authors

Child and Woman Abuse Studies Unit (CWASU)

The Child and Woman Abuse Studies Unit is located within London Metropolitan University and has a national and international reputation for its pure and applied research, training and consultancy. Established in 1987, we have completed over 100 research/evaluation projects covering the spectrum of violence against women and children. One of the unique features of CWASU is that we integrate work on abuse of children with that of adult women. We have a track record in research on children and domestic violence, and women’s experiences of criminal justice and civil responses. CWASU is led by Professor Liz Kelly, who is also Co-chair of the End Violence Against Women Coalition, one of two European Parliament appointed experts to the European Union Gender Institute, an expert on the European Women’s Lobby Policy Action Centre on Violence Against Women, an academic consultant to the Crown Prosecution Service on their Violence Against Women strategy, and a Fellow of the Royal Society of Arts.

Rights of Women

Established in 1975 to promote the legal rights of women throughout England and Wales, Rights of Women aims to increase women’s understanding of their legal rights and improve their access to justice so that they can live free from violence, oppression and discrimination and are able to make their own safe choices about the lives they and their families lead. Working from a rights-based approach to increase women’s legal literacy, we offer a range of services including legal advice telephone helplines, legal guides and handbooks and training courses and other events, equipping individuals and organisations with the knowledge and skills to assert women’s legal and human rights.

Since 1975 Rights of Women has been providing a critical analysis of the law and its impact on women, identifying gaps and omissions in the protection available to women and highlighting areas of discrimination in legislation and the application of the law. Rights of Women has lobbied and campaigned to improve women’s equality in the law and their ability to attain safety and justice.

As a grassroots organisation providing a range of legal advice and information services to women throughout England and Wales, we hear women’s experience of the law and legal systems on a daily basis. Through our training courses, conferences and other events we have regular contact with other professionals from the statutory, community and voluntary sectors providing services to women. This also gives us a broad picture of women’s access to justice and equality. It is this experience, alongside our experience as lawyers which we use in our policy work.

Maddy Coy, Deputy Director, CWASU. Maddy worked for several years in specialist support services for women and children experiencing violence, including in refuges. At CWASU she has led on research projects that included mapping specialist women’s support services across the UK, and evaluations of innovative forms of provision and practices. She is a member of the End Violence Against Women and Girls Prevention Network and the Canadian Observatory on Violence Against Women.

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For the full range of CWASU’s research reports, please see www.cwasu.org

For more information about Rights of Women’s services visit: www.rightsofwomen.org.uk
**Emma Scott, Director, Rights of Women.** Emma is a qualified solicitor who previously practised in all aspects of family law. She has contributed to our publications including the Domestic Violence DIY Injunction Handbook and Child Contact Handbook and regularly speaks at seminars and conferences on the law on violence against women. She is a member of the End Violence Against Women Coalition’s Expert Advisory Group and sits on a variety of Government stakeholder groups.

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**About the law and terminology**

This report focuses on the law in England and Wales, as this is the legal jurisdiction in which Rights of Women operates and in which we have expertise.

We use the term Government to refer to the UK Government which applies to England and Wales (and may also apply to Northern Ireland and Scotland). This is complicated by the devolution of power to the Welsh Assembly Government which, although it does not have full law-making powers and cannot pass new legislation, does have the power to make decisions on issues such as education, health, social care and local government.4

This report is not a guide to the law in England and Wales; nor is it intended to provide a detailed explanation of the law on child contact.5 Rather it aims to provide an analysis of the legislation and legal policy developed to address child contact and domestic violence.

The terminology used in this report reflects that used in the law and legal proceedings. Full explanations of frequently used legal terms can be found in the glossary. Throughout this report we refer to women affected by domestic violence as ‘victim-survivor’, to recognise both the victimisation that women have experienced and their agency in attempting to end violence, seek redress and/or deal with its impacts and consequences. We also refer to the perpetrators of violence as ‘he’ to reflect the gendered disproportionality of domestic violence: that most perpetrators are men and most victim-survivors women.

This report uses the term BMER women as shorthand for Black and/or Minority Ethnic and/or Refugee (including asylum-seeking) women. BMER women are a diverse group of women and we do not use the term to mean that those women falling within this category are homogenous; nor do we believe that all Black and Minority Ethnic women are refugees or seeking asylum. Rather, we use the term because we acknowledge that BMER women have shared experiences of the barriers they face when trying to access justice. In this report we have used the Equality and Human Rights Commission’s definition of ethnic minority, which means that a person is considered to belong to an ethnic minority if they identify as having an ethnic identity other than White British. This means that we include White Irish women and women from other parts of Europe as white ethnic minorities.

**Acknowledgements**

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4 For more information about devolution in Wales see the Welsh Assembly Government website: www.wales.gov.uk

5 For more information about Rights of Women’s other publications including a number of guides to the law visit: www.rightsofwomen.org.uk
research by signposting women to the project to be interviewed; Khatun Sapnara, Coram Chambers, and Adrienne Barnett, 1 Pump Court for assisting in the development of the survey for legal professionals; The Family Law Bar Association, Resolution and Rights of Women’s volunteer legal advisers, who disseminated a link to the online survey to legal professionals; to all the legal professionals who completed the survey; and to Joanna Sharpen for the inspiration to use a wordle to represent women’s descriptions of their experiences.

We are especially grateful to all the staff and volunteers of Rights of Women and colleagues at CWASU who supported the delivery of this project in so many ways, and to Trust for London for funding this project and for their continuing commitment, not only to our work, but to eliminating violence against women.

Most importantly, our sincere thanks to the women who shared their stories with us. Talking about your experiences was not always easy and we thank you for your willingness to speak out in the hope that your stories can bring about positive changes in the family justice system for other women and children. Your courage inspires us.
Section 1
Introduction

Whilst a minority (one in ten) of parental separations reach family courts in England and Wales as a means of settling disputes over the residence of, and contact with, children (ONS, 2008), domestic violence is the most common welfare issue raised in proceedings (Hunt & Macleod, 2008). Concern about how the family justice system responds to children having contact with fathers who have abused their mothers is not new. Specialist women’s support services have long highlighted that it is problematic to presume that the relationship between a child and abusive parent is unaffected by violence, and that contact proceedings are frequently invoked by perpetrators as a means of seeking to continue to control women and children. A wide range of studies has shown that judicial decisions about contact which fail to take safety into account endanger women and children physically and emotionally (e.g. Radford et al, 1997; Mullender et al, 2002; Harrison, 2008; Thiara, 2010; Thiara & Gill, 2012), and in some cases where courts have allowed unsupervised contact with violent men, children have been killed (Saunders, 2004). Yet a presumption that contact is always in the best interests of the child, combined with an increasing focus on fathers’ rights, casts long shadows over legal judgements, policy frameworks and individual cases.

The research on which this report is based examines child contact proceedings as a legal process, to identify if, how and when domestic violence was presented before the court and then factored into judicial decision making. Drawing on in-depth interviews with women who had recently completed, or were currently undergoing, proceedings and a survey of legal professionals, the project built on an existing rich body of knowledge about child contact to highlight specific points where private law Children Act proceedings can enable women to protect themselves and their children, or facilitate perpetrators’ attempts to continue power and control. The recommendations we make highlight where the current legal process could be revised in order to make a significant difference to women and children’s safety and wellbeing. We also point to promising practices that could be integrated into systems and processes.

A second aim of the research was to investigate the financial impact of involvement in proceedings for women who may have already been impoverished through financial abuse by their ex-partners and/or the expense of leaving their homes. Access to justice through family law remedies – whether in response to proceedings initiated by violent ex-partners or as a possibility for women to create safety buffers through the protection of court orders – is fundamentally dependent on available and sufficient resources. This is especially topical since reductions in central Government funding for legal aid will mean a reduction in the availability of legal aid for family law cases from April 2013, creating a further barrier to and burden on women. For women from minority communities, who may have fewer socio-economic and social resources, the diminished availability of legal aid has even more acute implications (Thiara & Gill, 2012). While explicitly asking about funding for legal representation, we also explored wider financial impacts here; to what extent preparing for court, attending hearings and facilitating contact affected women’s employment and income.

This report is structured through the journey of contact proceedings, beginning from histories of violence and separation and ending with the aftermath. First we present a brief overview of the current evidence base on domestic violence and child contact to contextualise our own research.

Children, mothering, fathering and domestic violence: key messages from research

Any discussion about child contact must be contextualised within the knowledge base on children’s experiences of domestic violence. A range of studies have documented the emotional and psychological impact of living with violence and their relationships with their mothers and the abuser. Key findings include:
• Domestic violence and abuse of children commonly co-occur; children are frequently physically or sexually abused in addition to witnessing the abuse of their mothers (Humphreys & Thiara, 2002; Mullender et al, 2002), and the impact of seeing or hearing domestic violence was recognised in legislation with an amendment to the definition of harm in Section 120 of the Children and Adoption Act 2002.

• Children also become involved in domestic violence in a number of ways: as witness; overhearer; intervener; help seeker (Mullender et al, 2002).

• Children who are living or have lived with domestic violence experience express anxiety, fear, a lack of security and reluctance to trust (McGee, 1997; Mullender et al, 2002; Buckley et al, 2007).

• Many violent men manipulate the relationship between mothers and children (Mullender et al, 2002; Humphreys et al, 2006; Morris, 2009; Thiara, 2010; Coy et al, 2011).

There has been a confluence of policy approaches to men as perpetrators of domestic violence and the promotion of separated fathers having an ongoing relationship with their children. Linked to this, concerns about possible implications for private law Children Act proceedings have led to abusive men's capacity to parent being explicitly explored in research. Studies indicate that:

• Few violent fathers understand violence against mothers as emotionally abusive to their children (Harne, 2003; 2011).

• Fathers who are violent to their partners are on average less engaged with their children and often provide inconsistent physical care (Harne, 2003).

• Some declarations of love for children by violent fathers reflect a view of children as a form of ‘emotional property’ existing for their benefit rather than expressions of a commitment to the child's wellbeing (Bancroft & Silverman, 2002).

While the knowledge base demonstrates that using violence against a partner impacts on men's ability to parent their children (Harne, 2003), there remains an enduring distinction in legal and social work thinking between violent men and good fathers (Hester & Harne, 1996). This separation of men's violence from their parenting capacity has been referred to as ‘childcare on different planets’ (Eriksson & Hester, 2001). On the domestic violence ‘planet’, women and children's safety is prioritised and abusive men are held accountable for their actions. On ‘planet’ child contact, the emphasis is on ‘good enough fathering’, accompanied by pressure on women to ensure access to, and contact with, children (Hester, 2004, 2011). In child contact proceedings, these contradictory discourses collide. Women engaged in contact disputes with abusive ex-partners are required to be ‘good’ mothers who protect their child(ren), yet also good mothers who do not shut fathers out (Eriksson, 2009; see also Radford et al, 1997).

### Child contact and private law proceedings

In private law proceedings, the significance of domestic violence, including after separation, and issues of safety and protection [are] persistently minimised

(Harrison, 2008: 389)

Research on child contact in the aftermath of domestic violence consistently identifies the following themes:

• Handover of children as a time when women and children are at further risk of violence\(^6\), threats and harassment, leading many women to seek to do this through third parties (Hester & Radford, 1996; Radford et al, 1997; Thiara, 2010).

• Contact as a route to continue manipulation of children – making negative comments about their mothers, asking them to repeat abusive messages, probing for details of her activities and relationships (Edleson et al, 2003; Harne, 2003; Holt, 2011; Thiara, 2010; Thiara & Gill, 2012).

• Inadequate general parenting skills of some domestic violence perpetrators, with children's basic welfare and comfort needs neglected during contact visits (Radford et al, 1997; Kaye et al, 2003; Harrison, 2008).

• Children who do not have contact with abusive fathers report feeling safer and more secure (Mullender et al, 2002).

A number of findings have specific relevance to private law proceedings:

\(^6\) E.g. in Hester and Radford’s (1996) study involving 53 women, almost all (n=50) experienced further violence during handover of children for contact, including verbal abuse, rape, knife attacks and threats to kill.
• There is an increasing trend towards a pro-contact philosophy based on the presumption that this serves the best interests of children (Anderson, 1997; Aris & Harrison, 2007; Harrison, 2008; Thiara & Gill, 2012).

• Initiation of contact proceedings is a means to continue harassment and control over women and children (Radford et al, 1997; Harrison, 2008; Thiara 2010; Thiara & Gill, 2012).

• Rigorous pursuit of contact through the family courts by some perpetrators is followed by failure to turn up for visits or in cases of indirect contact, to send letters/make telephone calls. This calls into question the extent to which genuine interest in a relationship with children is these men’s motivation for applying for contact (Thiara, 2010).

• Many women – and legal representatives for all parties – are under pressure to finalise contact arrangements by agreement rather than asking the judge to make a decision at a final hearing (Radford et al, 1997; Kaye et al, 2003).

• Mothers’ views and fears for their own wellbeing and that of their children often have little impact on outcomes (Anderson, 1997; Radford et al, 1997; Thiara & Gill, 2012).

• Children’s wishes are similarly subject to a ‘selective approach’; taken into account if they say they want contact but disregarded if they do not (Holt, 2011: 328; Mullender et al, 2002).

• Risk and safety are rarely adequately assessed when violent men are granted contact (Radford et al, 1997; Humphreys & Thiara, 2003).

Our focus here is to examine child contact proceedings as both an arena where different discourses around domestic violence and child contact are negotiated, and a mechanism by which women and children’s safety and wellbeing can be protected or jeopardised.
Section 2
Law and policy on child contact and domestic violence

Contact is the legal term used to describe continuing relationships between children and the parent they no longer live with. The law on contact is complex and there are no strict rules on how, when and where contact should take place. Legislation is set out in the Children Act 1989 (CA 1989). At its core is the principle that when the court makes any decision about contact with a non-resident parent, the child’s welfare must be the paramount consideration. There is also case law, that is decisions made in other cases, which can establish legal principles by which other courts should approach their decisions on child contact or the procedure they are required to follow. The procedure courts must follow in child contact cases is set out in the Family Procedure Rules (Amended) 20127 and Practice Direction 12J sets out the process and rules to be followed when domestic violence is raised as an issue in child contact proceedings.8

In proceedings involving disputes between parents regarding a child the court can make four different types of orders under Section 8 of the CA 1989: a contact order; residence order; prohibited steps orders and specific issue order. In most cases of direct contact arranged or ordered by the court, and where there are welfare issues, the court should consider supervised or supported contact. It is very rare for the courts to make an order for no contact; judicial statistics show that in 2010, just 300 Section 8 contact orders were refused of a total of 95,460 disposals (Ministry of Justice, 2011).

There are certain key principles that apply to all contact cases. These have been summarised as follows by the Court of Appeal in the cases of P (Contact: Supervision) [1996] 2 FLR 314 (applying Re O (A Minor) (Contact: Imposition of Conditions) [1995] 2 FLR 124):

- The welfare of the child is of overriding importance; the interests of the parents are only relevant in as much as they have an impact on the child’s welfare.
- Contact with a parent with whom the child does not live is almost always in the child’s best interests.
- In some cases immediate direct contact is not appropriate and should not be ordered.
- If direct contact is not appropriate then indirect contact is desirable, as it will let the child maintain a link with the parent and be assured that the parent loves them; establishing future contact is the goal.

The Welfare Checklist

When the court is making, varying or discharging a contact order (or any other order under Section 8 CA 1989) there is a list of factors to which particular attention must be paid, referred to as ‘the welfare checklist’.

- The child’s wishes and feelings, depending on her or his age and understanding.
- In most instances a CAFCASS officer will be responsible for seeing the child and finding out about their wishes and feelings about contact with their non-resident parent. Therefore, the amount of time a child spends with a CAFCASS officer and the quality of their research and recommendations has a significant impact on the outcomes of child contact proceedings. There are no strict rules in England and Wales governing the age at which a child’s wishes and feelings should be taken into account.
- The child’s particular needs – physical, emotional and educational.

The needs of the child are both material (e.g. accommodation and education) and emotional (e.g. attention, love, support and physical safety away from domestic violence).
- The likely effect on the child of a change of circumstances.

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7 Family Procedure Rules most recently amended in July 2012 for the full text of the FPR see http://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu
8 For the full text of Practice Direction 12 J see http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j
Change and disruption are generally considered to be undesirable for children. Thus what relationship or contact a child has had with her non-resident parent prior to the court’s intervention can significantly affect the outcome of the case.

- The child’s age, sex, background and any of the other characteristics which are considered relevant. This includes consideration of age with respect to proposed contact arrangements (e.g. travel, long stays), cultural or religious background and any needs related to disabilities.
- Any harm, abuse, or neglect the child has suffered or is at risk of suffering.
Harm is defined in Section 120 of the Children and Adoption Act 2006 as including witnessing or hearing the ill-treatment of another.9 This is therefore an issue the courts should address in cases where domestic violence is raised.
- How capable the person making the application and anyone else with parental responsibility is of meeting the child’s needs.
Here, the court should consider the parents’ individual situations and their ability to meet the child’s physical and emotional needs.
- The court must consider the range of different orders it can make and decide which is most appropriate (if an application is made for any Section 8 order, the court has the power to grant another order, for example, if an application for a prohibited steps order is made the court might decide to make a residence order).

The court has very wide powers in any application made under the Children Act 1989. It can make orders for which neither party has applied and/or reject the contact proposals of both parties and impose their own solution.

The delay principle (Section 1(2) CA 1989) also specifies that any delay in determining questions relating to a child’s upbringing is ‘likely to prejudice the welfare of the child’. This requires courts to consider making interim orders prior to reaching a final decision, or emergency orders during the proceedings.

The ‘no order’ principle (Section 1 (5)) sets out that the court should only make an order in respect of a child where it is necessary, the purpose being not to impose unnecessary formal arrangements regarding children where there are no significant disputes. For example, if the non-resident parent is not disputing residence, the court will not make a residence order.

**Contact, domestic violence and harm**

Historically, domestic violence was viewed by the law and the courts as only affecting the adults involved. In 2000, the landmark case of Re L; Re V; Re M; Re H 2000 2 FLR 334 (Re LVMH) dispelled this myth and set out clearly the detrimental impact and consequences that domestic violence can have on children as well as setting out comprehensive guidance for the courts on the issue of contact in the aftermath of domestic violence. The case underlined the need for a heightened awareness of the existence of, and consequences for children of exposure to, domestic violence between parents or other partners. The case reinforced the need for judges to take allegations of domestic violence seriously and proactively consider them by way of a finding of fact hearing (see glossary).

The decision in this case relied on the report of two child psychiatrists (Sturge & Glaser, 2000) which evaluated empirical research to underpin a series of important recommendations, including that there should be no automatic assumption that contact with a previously or currently violent parent is in the child’s best interests.

The following legal principles were established in this case:

- The conduct of both parents towards each other and towards the child, the effect of the violence on the child and the parent with care, and the motivation of the parent seeking contact should be considered. Specifically, the court should determine whether the parent seeking contact is doing so in the best interests of the child or as a means to continue violence towards the other parent.
- When considering interim contact, the court should ensure that the safety of the child and parent with care is secured before, during and after contact.
- Allegations of domestic violence should be investigated by way of a finding of fact hearing.
- If domestic violence is proved, Sturge & Glaser’s (2000) expert advice on the effect of child contact is very important.
- A finding that domestic violence has occurred should not, in itself, be a bar to contact.

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9 Harm in relation to a child means ill-treatment or impairment of health or development, including, for example, seeing or hearing ill-treatment of another. CA 1989 sections 31(9), 105 (1).
The court should apply the welfare checklist and consider the harm the child has suffered and is likely to suffer, if contact is ordered. Domestic violence and the harm it may cause is one factor in the difficult and delicate balancing exercise of discretion carried out by the judge, applying the welfare principle and the welfare checklist in Section 1 (1) and Section (3) CA 1989.

The court must weigh up the seriousness of the domestic violence, including the risks involved and the impact on the child, with the positive aspects, if any, of contact.

Where there is conflict between the rights of a child and those of a parent, the interests of the child have to prevail under Article 8 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

The guidance in this case is the starting point for all cases where domestic violence is raised as an issue, and it is unacceptable for a court hearing allegations of domestic violence to fail to have regard to this case (Re H (Contact: Domestic Violence) [2006] 1 FLR 943). The C1A form is the first opportunity for victim-survivors to raise allegations of domestic violence in child contact proceedings (see glossary). This form, which can be submitted at the application or acknowledgement stage, enables victim-survivors to briefly describe any harm child(ren) have experienced, including allegations of domestic violence. An evaluation of its use indicated that C1As contribute to alerting judges to allegations of violence at an earlier stage in proceedings, but it should not be relied on as the only screening tool (Aris & Harrison, 2007).

The principles of Re LVMH were reinforced in a Practice Direction for judges, recently updated as Practice Direction 12J – Residence and Contact Orders: Domestic Violence and Harm (PD12J). PD12J sets out the process to be followed in contact proceedings where domestic violence is an issue. In brief, this Practice Direction requires that the court:

1. enquire about domestic violence at the earliest opportunity even if it is not raised by the applicant or respondent;
2. consider the likely impact of allegations of domestic violence on the outcome of proceedings;
3. instruct CAFCASS to undertake an initial screening assessment;
4. order a finding of fact hearing in relation to any allegation of domestic violence before it can proceed to consider any final orders for contact, if any allegations would affect the case outcome;
5. where the court considers a fact finding hearing is not necessary, the judge must set out in writing the reasons for this;
6. order CAFCASS to prepare a Section 7 report, unless it is satisfied that it does not need to do so to safeguard the child’s interests;
7. consider the victim’s safety at court, and this would include considering whether special facilities are necessary to aid the victim in the proceedings;
8. carefully consider all proposed agreements on contact and apply the paramountcy principle;
9. endeavours to ensure judicial continuity unless it would cause unreasonable delay.

PD 12J further sets out that the court, when deciding on what order to make, should consider the following:

1. the effect of the domestic violence on the child and the parent with care;
2. the motivations for the application for contact by the non-resident parent and whether their motivation was to have a meaningful relationship with the child or to continue abuse and domestic violence;
3. the likely behaviour of the abusive parent during contact and the impact on the child;
4. the ability of the father to appreciate the effect of his past violence and the potential for future violence on the child or mother;
5. whether the abusive parent has the ability to change and to behave appropriately.

PD 12J requires the court to then consider making directions on how contact should proceed including:

1. whether or not contact should be supervised;
2. whether to impose conditions to be complied with by the violent father and, if so, the nature of conditions: for example, does the father need to attend a domestic violence perpetrator course or parenting classes?

For the full text, see: http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12J

The court must consider whether the party should seek advice (parenting classes) or treatment (for domestic violence, drugs or alcohol) as a precondition to a contact order being made and may request an organisation to file a report on it. For example, perpetrators may be required to complete a Domestic Violence Perpetrator Programme, and programme workers may then have to compile a report on their progress during the course and the outcome.
• whether the operation of the order needs to be reviewed. If the court believes the contact order needs to be reviewed then they should set a date for a review hearing;

• where the court does not consider direct contact appropriate, whether an order of indirect contact would be in the child’s best interests.

The importance of following the practice direction was noted in the case of Re Z (Unsupervised Contact: Allegations of Domestic Violence) [2009] EWCA Civ 430 in which the judge made clear that PD12J represents good practice and judges are not entitled ‘to take shortcuts which either run the risk of compromising the welfare of children or which fail to follow accepted practice’.

In addition to these developments in law and procedure relating to child contact, a number of significant inspections and reviews have also been undertaken in relation to child contact and domestic violence in the family justice system, which have led to various policy recommendations.

**HMICA Inspection of Domestic Violence, Safety and Family Proceedings**

In 2005 Her Majesty’s Inspectorate of Court Administration conducted an inspection of Family Proceedings with respect to domestic violence and safety. The inspectors found that ensuring both the safety of children and adults receives insufficient attention in decision making in the family justice system. It was highlighted that both Her Majesty’s Court Service (HMCS, now Her Majesty’s Courts and Tribunals Service) and CAFCASS needed to significantly improve safety within their service delivery, by implementing robust strategies to guide staff in how to handle cases where domestic violence is either alleged or proven to be an issue (HMICA, 2005).

This report made six recommendations to HMCS which would significantly improve the experience of women affected by violence in the family justice system:

1. Ensure information about court facilities is available to vulnerable parties before they attend court.

2. Develop and implement policies to address the availability and use of facilities for vulnerable or intimidated parties.

3. Ensure an appropriate balance is maintained between safety and service delivery, through the use of robust risk assessment procedures.

4. Identify, collect and use relevant management information regarding domestic violence cases.

5. Develop links with national and local community groups working with survivors of domestic violence.

6. Provide domestic violence awareness training for court staff.

To our knowledge, nearly seven years on, there has been no comprehensive review or follow up on the implementation of these recommendations by HMCS.

HMICA also made five recommendations in respect of the improvement of CAFCASS’ service to children and families:

1. To develop and disseminate a comprehensive information pack about family proceedings with particular reference to the needs of children and their families in domestic violence cases.

2. To ensure all cases, including conciliation at court, are subject to risk assessment, develop best practice guidance and procedures for preparing reports and ensure safety planning is undertaken in all cases.

3. To develop, implement and monitor a strategy and national standards to improve practice in domestic violence cases, create domestic violence champions and ensure safeguarding takes priority over agreement seeking.

4. To agree and implement a clear multi-agency protocol regarding information sharing and liaison in domestic violence cases.

5. To provide training in risk assessment, communication skills with children and awareness of domestic violence for all staff.

In response to these recommendations, CAFCASS published their Domestic Violence Toolkit in 2005, which was revised in 2007. In 2012, this toolkit was superseded by a Child Protection Policy with a brief section on domestic violence guiding officers to be mindful of risks of harm and safety.\(^\text{12}\)

\(^{12}\) See http://www.cafcass.gov.uk/pdf/CP%20Policy%20Final%20090312.pdf
The Family Justice Review

In 2010 a panel of children’s services and family law experts, headed by David Norgrove, was commissioned by the Ministry of Justice, the Department for Education, and the Welsh Assembly Government to undertake a thorough review of the whole of the family justice system in England and Wales. The Family Justice Review’s task was to look at all aspects of the family justice system, from court decisions on taking children into care to disputes over contact with children when parents separate.

Their final report, released in November 2011, made wide ranging recommendations for change to many aspects of the family justice system including private family law disputes. A key conclusion was that ‘family justice does not operate as a coherent, managed system. In fact, in many ways, it is not a system at all’ (MoJ, DfE & WAG, 2011: 44). Proposals therefore focused on:

- ensuring the voices of children and young people are heard, and that they understand the decisions that affect them;
- the creation of a dedicated, managed Family Justice Service;
- the need for improved judicial leadership and a change in judicial culture;
- improvements to case management;
- ensuring the way in which the courts are organised is streamlined and more effective; and
- ensuring there is a competent and capable workforce, through effective workforce development (MoJ, DfE & WAG, 2011: 45).

In respect of private law family proceedings the Review concluded that:

- many parents do not know where to get the information and support they need to resolve their issues without recourse to court;
- there is limited awareness of alternatives to court, and a good deal of misunderstanding;
- too many cases end up in court, and court determination is a blunt instrument;
- the court system is hard to navigate, a problem that is likely to become even more important as proposed reductions in legal aid mean more people represent themselves;
- there is a feeling (which may or may not be right) that lawyers generally take an adversarial approach that inflames rather than reduces conflict;
- cases are expensive and take a long time.

A summary of their recommendations in respect of private law family cases follows.

Making parental responsibility work: improving understanding of parental responsibility; no legislation to create or risk creating a perception that there is a right to substantially shared or equal time with both parents; encouraging Parental Agreements to set out arrangements for children post separation; repealing residence and contact orders in favour of child arrangements orders.

A coherent process for dispute resolution: establishing an online hub and helpline for information and support to separating couples; an expectation of attendance at mediation; a review of the Family Mediation Council and mediation standards; safeguarding checks at point of entry into the court system, establishing a tracking system for complex cases; ensuring judicial continuity; ensuring children’s voices are heard in cases about them; considering how children and vulnerable witnesses may be protected when giving evidence; no link between child maintenance and contact.

Divorce and financial arrangements: dealing with divorce proceedings using the online hub and administratively; an expectation of attendance at mediation; more joined up decision making in relation to finances and children; monitoring of the impact of legal aid reforms.

The Review did not focus specifically on issues relating to women and children affected by violence in the family justice system. In Rights of Women’s initial response to the Review’s call for evidence in September 2010 and in our joint response with Women’s Aid to their interim report in June 201113, we recommended special attention be paid to ensuring the safety of women and children in both decision making and practical arrangements in the family courts. We stressed the importance of advice, information and representation for women to their ability to fully engage in the process and voice their concerns and urged caution about the mandating of mediation and other forms of alternative dispute resolution. We called for the increased availability of special facilities in the

13 For the full responses, see http://www.rightsofwomen.org.uk/policy.php
family courts to improve women’s safety at court and improved judicial investigations and decision making in cases where domestic violence is an issue. The Review’s final report pays disappointing and cursory attention to these issues.

**The Government’s response**

In February 2012 the Government set out its response to the Family Justice Review (MoJ & DfE, 2012) and its guiding principles for reform:

- The welfare of the child remains the paramount consideration in any proceedings determining the upbringing of the child.
- The family is nearly always the best place for bringing up children, except where there is a risk of significant harm.
- In private law, specifically, problems should be resolved out of court, and the courts will only become involved where it is really necessary.
- Where court is the right option, that children deserve a family court in which their needs come first.
- Both in public and private law cases children must be given an opportunity to have their voices heard in the decisions that affect them.
- That the process must protect vulnerable children, and their families.
- That this is a task not limited in responsibility to one organisation or another, but something we must all work on together.
- That judicial independence must be upheld as the system is made more coherent and managed more effectively.

In respect of the Family Justice Review’s recommendations about the structure and function of the family justice system, the Government accepted key recommendations for the development of a unified Family Justice Service with a single family court replacing the current three tier system, the importance of judicial continuity and training for family judges and other court staff.

The Government accepted all but one of the Review’s recommendations on private law family cases and set out what action it intends to take in relation to them. The one issue on which the Government felt further consideration was needed was that of shared parenting. The Review made an emphatic recommendation that ‘no legislation should be
The project involved two core strands of data collection: exploration of women's experiences of child contact proceedings and a survey of legal professionals. These data were supplemented by a number of Freedom of Information (FOI) requests for national data on outcomes of contact proceedings and analysis of relevant policy documents.

**Interviews with women involved in contact proceedings**

The original intention was to track cases through child contact proceedings in London over a 12-month period, from a sample generated through a small number of specialist violence against women and girls (VAWG) organisations. Each would invite all eligible service users who were involved in contact proceedings to participate and in support sessions complete an initial pro forma about the case, with update sheets enabling changes/developments to be documented across the 12 months tracking period. A relational database was built in Microsoft Access for recording and analysis of completed pro formas and update sheets. Once the project was underway, however, it became clear that while the specialist services were extremely committed, funding cuts that began to bite in late 2010 meant their capacity was diminished to the point that participation in the research was no longer feasible. Some services lost their specific legal advisor posts; others found caseloads doubling or tripling. For one service, commissioners reduced the period for which they could provide women with support to just six weeks, which meant case tracking for the duration of the research was impossible.

The methodology was subsequently adapted to enable the research team to complete the pro formas through telephone interviews with women who were recruited through specialist VAWG organisations and advertisements on a number of websites and online forums, including on Rights of Women's website. While the case tracking element was lost, this approach enabled a more in-depth exploration of women's experiences whilst contextualising these within the project's detailed examination of family law proceedings. Questions explored included:

- how initial contact arrangements were reached;
- what led to the initiation of court proceedings;
- whether and how mediation featured;
- length of proceedings and numbers of hearings;
- whether and at what points in proceedings domestic violence was raised as an issue;
- whether finding of fact hearings were held;
- what reports were ordered to assist judicial decision-making, and how domestic violence was framed in them;
- how women and children's views were taken into account;
- to what extent interim and final orders reflected children and women's wishes;
- financial impacts of proceedings.

The interviews generated two sets of data:

- Quantitative data, including basic demographics (age, ethnicity, employment status, citizenship, number of children) and descriptive statistics related to the case (length of proceedings, numbers of hearings, who made the application for a contact order, whether specific hearings/processes took place). These data were analysed using the Statistical Package for the Social Sciences (SPSS).

- Qualitative data about women's perspectives on the family justice system and process: a brief history of their ex-partner's violence towards them and the children, including post-separation violence; how initial contact arrangements were reached and proceedings initiated; perceptions of safety and how proceedings could enhance safety or exacerbate risks; whether orders reflected children's and their own views and assessments of danger; the emotional and financial impacts and aftermath. These data were analysed in NVivo, a software package for analysis of qualitative data, and coded according to key themes.
A total of 34 interviews were conducted during February–July 2012. Whilst not representative, the sample was sufficiently diverse to explore and illustrate a range of experiences. Around two thirds of interviews (n=21) were audio-recorded with women’s permission; in all interviews detailed, where possible verbatim, notes were taken. In addition to the thematic analysis undertaken in NVivo, each transcript/set of interview notes was summarised into a case study, to build a picture that enabled identification of patterns across the whole dataset. Case studies included in this report are hybrids, created from more than one woman’s journey through proceedings, to preserve anonymity whilst highlighting common and salient experiences.

Ethical approval for the whole study was granted by London Metropolitan University Research Ethics Review Panel. Where women sought information about their rights and/or legal processes during the research, they were offered the contact details for Rights of Women’s family law advice line and other specialist support organisations as relevant.

**Survey of legal professionals**

An online survey was designed for solicitors and barristers asking baseline questions about: gender; ethnicity; what areas of London their practice covered; how long they had been practising; whether or not they had received training on domestic violence. Subsequent questions combined quantitative or scale data (typically ‘yes/no’ or ‘to what extent do you agree’) with free text boxes to explore understandings of domestic violence and practice experience of contact proceedings drawn from their caseloads. Specific questions focused on: motivations for making contact applications (for victim-survivors and perpetrators); compliance by judges with Practice Direction 12J; whether and how allegations of domestic violence are investigated by courts; use of finding of fact hearings; whether guidance for members of the judiciary is sufficient and appropriate; views on mediation; CAFCASS; availability of special facilities in courts. A link to the survey was disseminated through Rights of Women’s extensive networks. A total of 113 legal professionals (53 solicitors, two trainee solicitors, 56 barristers and two legal executives) completed the survey. As not every respondent answered every question, numbers and percentages in the report are baseline figures of responses to each question.

Findings from both datasets are presented throughout the report.
Section 4
Women and children’s experiences of violence, separation and initial contact arrangements

To contextualise women’s fears for their safety and that of their children during child contact proceedings, this section presents findings on their experiences of violence. We start with basic demographics about the women who participated and conclude with a discussion of how they escaped violence and initial contact arrangements made post-separation.

The women who participated

Of the 32 women who indicated their ethnicity, just over a quarter (28%, n=9) described themselves as White British (see Figure 1). Women from minority communities were therefore over-represented in the sample when compared to the London population.\(^\text{14}\) This mirrors studies on child contact in the UK and Australia, which had similarly disproportionate numbers of women from minority communities in their samples (Kaye et al, 2003; Harrison, 2008; Thiara & Gill, 2012). Possible explanations for this are multiple: that the ethnic profile is a reflection of the routes by which women are recruited to research; that BMER women are subject to greater surveillance from statutory agencies; that they have fewer sources of support and so are more likely to seek redress through formal routes (Harrison, 2008); or that extracting themselves from violence is more complex (Thiara & Gill, 2010).

\(^\text{14}\) Based on the 2007 estimate from the Office of National Statistics that almost a third (31%) of London’s population are from Black, Asian or minority communities (DMAG, 2009). In addition, following the Equality and Human Rights Commission (EHRC) definition of minority to include White Irish and White European, almost three quarters of women in the sample (72%, n=23) were from minority communities.

Figure 1: Ethnicity of women who participated

- White British (n=9) 9
- Mixed (n=5) 5
- White European (n=4) 4
- White Irish (n=3) 3
- Asian Bangladeshi (n=2) 2
- Asian Indian (n=2) 2
- Middle Eastern (n=2) 2
- Other Asian (n=2) 2
- Asian Pakistani (n=1) 1
- Black Caribbean (n=1) 1
- Other Black (n=1) 1
Women lived in 20 different London boroughs. We do not present a breakdown here to preserve anonymity, but note that of these 20, distribution was fairly even across city sub-regions\textsuperscript{15}: central boroughs (n=5); east (n=5); west (n=5); south (n=3); north (n=2). Three women lived just outside London in neighbouring counties, and two had fled to other regions of England, but all had had their cases at least part heard in London courts.

A total of 58 children were involved, ranging from infants under a year to adolescents aged 17 years, with the majority of cases (n=21) featuring one child. In all except three cases, women had residence of their children; one lived with their father, another with their grandparents, and in the third residence was shared. Just under half of women (n=15) lived in some form of social housing: seven in local authority accommodation, four in housing association properties and four in temporary accommodation. A third (n=10) lived in their own property, four rented privately and four lived with family. Most, therefore, had limited capital assets and/or did not have a permanent home. In addition, the majority (n=21, including three students) were not in employment. In section 7, we explore how involvement in proceedings affected women’s opportunities to engage in paid employment, but here it is worth noting that many reported wanting to work, but being unable to do so because of the time demands of attending multiple hearings. This has significant implications for the goal of reducing child poverty and enabling single parents to take up employment, particularly in London where the proportion of children living in poverty is higher than the average for England (MacInnes et al, 2012).

Experiences of violence

\textbf{I was walking on eggshells and could never predict if he would be a monster or be nice} \\
(Kaya)\textsuperscript{16}

While domestic violence is defined in current policy approaches as incidents of physical violence (Home Office, 2005)\textsuperscript{17}, victim-survivors and those working with them know that it is more accurately described as a sustained pattern of behaviours that comprise ‘coercive control’: violence; intimidation (including threats, surveillance, stalking, degradation and shaming); isolation (including from family, friends and the world outside the home); and control (including control of family resources and ‘micromanagement’ of everyday life) (Stark, 2007). For some BMER women, their ex-partners’ wider family members were also involved in the abuse (see also Thiara, 2010).

All women described their ex-partners’ violence in similar terms: emotional abuse; psychological tactics; mental bullying; mind manipulation; being belittled and demeaned. These behaviours served to isolate women from support networks and often made them question their own reality or feel that they were ‘going mad’ (Williamson, 2010). Examples included:

- refusing to tell women their shift patterns so they were unable to plan seeing friends or childcare;
- turning women’s alarm clocks off so that they were late for work;
- threatening to plant drugs on women and report them to the police if they tried to leave;
- undoing women’s housework then telling them they had not even started it.

Most of all, secrecy was central; preserving the family as a private space where abusive men could maintain absolute control over decisions, activities and routines. Women frequently spoke of perpetrators behaving like ‘Jekyll and Hyde’ (Enander, 2009), charming and affectionate in public, but domineering and abusive behind closed doors. This dual presentation of self made it even harder for women to speak about their partners’ violence, for fear of not being believed.

\textbf{Although he was a doting husband in public, in private he would change} \\
(Steph)

\textbf{He was a street angel and house devil} \\
(Kaya)

\textsuperscript{15} According to sub-regions defined in the London Plan (GLA, 2011).

\textsuperscript{16} All names have been changed.

\textsuperscript{17} From March 2013, the government definition of domestic violence is to be widened to include coercive and controlling behaviours.
In many accounts were evidence of what Anne Morris (2009) describes as an ‘abusive household gender regime’; a pattern where violence directed towards women and children is knitted into everyday routines, deeply embedded in notions of a ‘good woman/wife/mother’ and a gendered division of labour. For instance, women’s performance of household tasks was the focus of criticism and for some men served to justify their violence on the basis of their partner’s poor standards (Harne, 2003). This left women in a constant or semi-constant state of anxiety for their and/or their children’s safety, if they failed to maintain impossibly high (and constantly shifting) expectations (see also Thiara, 2010; Williamson, 2010). One woman reported that ‘cooking and cleaning’ were all she was allowed to do. For others, abusive household gender regimes served as monitoring mechanisms in and out of the house, as women anxiously sought to ensure that they had not transgressed the rules and boundaries set by their partner.

I was cooking for six hours a day, he wanted fresh meals, he wanted different items. I was cooking to keep the peace. If I was to go out with my friends, he would make sure that I had his meal ready in the oven or all mixed together so all he had to do was put the oven on. It so scared me that sometimes I would forget to do that and I’d run back from the station just to do that so I wouldn’t get in trouble

(Jas)

Simple arguments would trigger it. When we were living together it was things like, you are not a proper woman you don’t clean the house up properly. You don’t cook enough

(Beverley)

That women were so often punished for not upholding their ex-partners’ expectations and sense of entitlement shored up a traditional household regime, in which his model of gender was constantly reinforced. This is why the term ‘abusive household gender regime’ (Morris, 2009) is considered by some to more accurately reflect the lived reality of women and children.

Many perpetrators also displayed ‘jealous surveillance’ (Regan et al, 2007; see also Thiara, 2010), monitoring women’s whereabouts and making frequent accusations of unfaithfulness, even where women were mostly confined to the house.

He kept me up until all night accusing me of having an affair, he had no idea who I was having an affair with (because I wasn’t). I explained that this was ridiculous, that there was no time, working and looking after the child. He became obsessed that I was having an affair... he’d call my manager and question her on whether I was having an affair

(Hasina)

In addition to the micro-management of women’s lives, a key element of maintaining control was to limit women’s access to money (see also Thiara, 2010).
Financial or economic abuse can occur in four broad forms: interfering with women’s employment; preventing women from having money; refusing to contribute to household bills; creating debt for which women are liable (Sharp, 2008). All were present to varying degrees here. Some women talked of not being able to buy personal essentials (e.g. toiletries, underwear); others described how men had taken out loans and credit cards in their names which had left them with poor credit ratings and liable for significant debts.

I have so much debt – loans, credit cards – all because of his financial abuse. He did not allow me to work
(Natalie)

He always had my bank card, and I wasn’t allowed to have any money. All the time I only had £2, and he used to count that money every morning and every evening. He used to put money onto my Oyster card, and after two or three days or after a week, he used to take the statements out of my Oyster card about where I was going
(Nabeela)

He borrowed loads of money, £30,000 by the end. He stopped working, so I got into more and more financial mess because of him. He’d taken all the savings we had. I didn’t have a job and had just finished studying... I didn’t know how I was going to support myself
(Helen)

Abuse of children: beginning with violence during pregnancy

Violence during pregnancy is an act of ‘double intention’, since it is an assault on both the woman and unborn child (Kelly, 1994). Domestic violence frequently starts or escalates during pregnancy (Mezey & Bewley, 1997; Thiara, 2010) and is recognised as a significant risk factor for potentially lethal assault on most risk assessment tools (Coy & Kelly, 2011). A third of women here (n=13) referred to their ex-partner’s violence beginning or intensifying during pregnancy.

The actual physical violence started while I was pregnant with my first child, in the early stages of the pregnancy. Looking back, in retrospect, there were instances where he would shout, scream, say things, push me maybe or grab me by the arms, but the first time he physically struck me I was pregnant and it escalated from there
(Jessie)

I had him arrested when I was three months pregnant as he tried to strangle me then
(Tina)

The abuse became a lot worse during the pregnancy and again it worsened after the birth to the point where he was abusing me in front of my son
(Denise)

In many cases, children of all ages were directly abused by perpetrators in a number of ways including physical assault, abduction and sexual abuse.

When [son] turned three he started attacking him – humiliating him, verbally, psychologically, when he was crying he would slap him just because he was crying
(Suzanne)
The anger was there – he would hit her too hard – there were times when he just crossed the line, and times when he would go out in a rage, a ‘no holds barred’ rage. He strangled her and punched her and kicked her

(Steph)

When I was at work, he used to hit her. That’s why she doesn’t want to see him... he said he would kill her if she told anyone

(Hasina)

A minority of men were clearly authoritarian parents, demanding unconditional respect and deference from the children (e.g. being called ‘sir’), and where physical assault was framed as discipline. Given the range of abuses that children were subject to, it is unsurprising that women reported children being afraid, distressed, anxious, withdrawn and displaying behaviours that spoke of turmoil and anguish: bedwetting; nightmares; becoming clingy to their mothers; disruption to sleep and eating habits. These were also common among children who were not directly abused but were aware of their father’s violence.

‘My daddy hurts my mummy’: children’s awareness of violence

Once he shook me round like a rag doll. My little boy was hysterical. I was more focused on my little boy. He’s screaming at me and towering over me and I was just trying to calm my boy down

(Sophie)

In almost all cases (n=30), women reported that children were aware of their father’s violence. Two were too young to remember at the time of separation, although one had subsequently witnessed her father attempting to strangle her mother (the other was still a baby), and two women were confident they had shielded their children. Where children had been aware of violence, they often attempted to intervene to protect their mothers.

He was witness to it all. My ex would start an argument and as my son got older he would intervene and say please stop fighting. As he got older he would hide in his bedroom under his covers

(Michelle)

My son was smaller so doesn’t remember but my daughter does. Incidents took place in front of them. He would suddenly get angry and the children saw him hit me. My daughter would say ‘stop, stop, stop’

(Zahra)

It was also clear that children’s memories of violence lasted long past separation, a demonstration of emotional harms of living with domestic violence.

All he kept saying was, and he still says it every now and again – it’ll just come like a bolt out of the blue – ‘my daddy’s naughty, he hit mummy’. At the time he was telling virtually everybody. Every now and then he must just think of it, he says ‘my daddy hurts my mummy’

(Mel)

Maternal alienation

Women’s accounts also revealed that perpetrators sought to systematically alienate children from their mothers and prevent them from forming alliances – a process that has been termed ‘maternal alienation’ (Morris, 2009). This is often a deliberate strategy by perpetrators to undermine the trust and emotional relationship between woman and child, using tactics such as demeaning women in front of the children,
recruiting children in the abuse of their mothers, and diminishing women’s abilities as mothers (Mullender et al, 2002; Humphreys et al, 2006; Thiara, 2010). Several women had overheard children being told that their mothers would be replaced or were dead, that they were ‘evil’, ‘stupid’ or a ‘bitch’.

He is still saying things like ‘mum is not your family’, ‘mum is a cow’, which is emotionally damaging my son, it’s not very good for him
(Nabeela)

He involved my eldest son in the emotional abuse against me – saying things like ‘look at her’ and things like that
(Jessie)

He would say all the emotional and psychological abuse in front of [son], undermine my authority. He’d criticise me to him, say things about me to him, and then he’d say to me ‘Daddy said this about you’
(Danielle)

Understanding and naming these processes as part of abuse has been shown to be crucial in enabling women and children to rebuild relationships in the aftermath of domestic violence (Morris, 2009; Coy et al, 2011).

Recognition of how their mothering was interrupted, and even deliberately undermined, is critical (Hester & Radford, 2006). However, it remains the case that many professionals fail to identify disruption between mothers and their children as a consequence of intentional actions by the perpetrator. These attempts to undermine resident parents have been explicitly described by court experts as emotional abuse and a risk to children’s welfare (Sturge & Glaser, 2000). In the next section of the report we explore the extent to which CAFCASS officers, social workers and members of the judiciary recognised coercive control and maternal alienation as a key dynamic of domestic violence and if and how this was factored into decisions about child contact.

Post-separation violence

Women did not make the decision to leave abusive partners lightly; many had left and returned and repeatedly invested emotional energy in attempts to change their partner’s behaviour, seeking support from GPs, counsellors, churches and family before finally leaving. At the time of interview, length of time since separation ranged from six months to 12 years, with a median of three years (see Figure 2).
Few women managed to escape without support and assistance from family members, children’s teachers, friends and police. Civil remedies were also crucial to enabling women to leave safely, as they offered a buffer of protection and lever to remove abusive men from women’s lives and homes.

“I went to a solicitor and was very worried as in the last couple of weeks prior to me leaving him he had tried to rape me. I was advised to get an emergency ex parte non-molestation order and a Prohibited Steps Order and that’s how we separated”  
(Ella)

Every woman experienced post-separation violence, most commonly harassment, but often combinations of physical and sexual assaults and threats that were ongoing over many years (see also Radford et al, 1997; Humphreys & Thiara, 2003; Harrison, 2008). Many reported that their ex-partner’s violence escalated in severity once the relationship was over.

“Once I broke down and he was driving round and round my car. I was waiting for my [new] partner to come and help but I couldn’t get out the car as he kept driving past me and I felt very vulnerable. There have been other times he would turn up outside school when I was picking up my son and follow me back to my house. It’s just pure intimidation to let me know he is still around. He doesn’t want to get back together”  
(Ella)

“We lived in 13 different places, he kept following us so I kept having to move. He wanted us to live together again. He became more violent abusing me in the street in front of my son”  
(Celeste)

“He was constantly emailing, calling and texting me, things such as ‘Where are you, what are you doing, what are you wearing?’ He would call or text me to say ‘I’m outside, I’m coming in now’”  
(Denise)

The term ‘harassment’ covers a wide range of behaviours that women experienced as profoundly distressing and which many saw as clear attempts to prolong control. Some examples illustrate this:

- sending in excess of 100 abusive text messages every day or making similar numbers of telephone calls;
- verbal abuse (often taking place outside children’s schools);
- kicking doors off;
- breaking into women’s houses;
- smashing property;
- making malicious allegations to the police, social services, women’s employers, children’s schools;
- stalking women in the street.
Erika’s experience illustrates how her ex-partner adopted tactics which meant that he was never arrested, yet her public and private space was relentlessly invaded.

“He’s been harassing, he’s been stalking, it’s been a nightmare. Earlier this year he started trying to do the same behaviour to my daughter. I’ve had five or six years of it. About three years ago I asked the police for help and they said they couldn’t, because it’s not threatening. He’s very aware of the law, so it’s not threatening but it’s really nasty. Initially he was stalking and following and endlessly phoning and turning up and being obstructive, blocking my way, stopping very short of being physical but getting as close to it as possible... He has sent the police and social services to my home so many times. He’s not allowed to come to my house so it’s a sort of harassment by proxy.”

(Erika)

In some cases perpetrators appeared to be seeking to continue the abusive household gender regime (Morris, 2009), with their actions directed at re-establishing dominion over women and children’s living space. Rearranging furniture and photographs were common examples, and one man, when collecting the children for contact deliberately placed toxic substances in places where small children could access them.

The cumulative impact of this ongoing harassment was to deplete women’s emotional resources and diminish their ‘space for action’ (Jeffner, 2000); women avoided activities that might trigger their ex-partners’ jealousy, knowing their capabilities for damaging friendships, relationships and their employment opportunities.

“Going to court was the best choice I made. I would not have come this far without getting the injunction.”

(Zahra)

Two women were refused injunctions on the basis that the violence was not serious enough; a pattern of coercive control (Stark, 2007) was not viewed as sufficiently dangerous by the judge to grant protection:

“I tried to get an ex parte non molestation order, but the judge decided that the abuse wasn’t bad enough. I didn’t even get to see the judge, just the receptionist, and was told that was the judge’s decision and it was final.”

(Bianca)

Bianca ultimately resorted to accepting an injunction against her, although her ex-partner did not make allegations that she had been abusive, following advice from a judge that this was the way to secure an order preventing him from approaching her. Unable to afford legal representation, she did not realise that this decision would have grave implications for the future of the case.

Protective injunction orders

In half of cases (52%, n=16), women had been awarded an injunction against their violent (ex-) partners at the point of separation or, more commonly, some time afterwards. Three women were also granted occupation orders on homes they had shared with their ex-partners. For many, these civil remedies were a vital buffer to preserving safety.

“My whole life is affected. My social life. My sexual life. I can’t even have a boyfriend. He isolates me away from people. I don’t go to work because he’ll turn up to harass me.”

(Sophie)
The only way I managed to get a non-molestation order against him was to get one against me as well, despite there being no allegations of anything coming the other way... He said he won’t stop until he’s taken her off me... I just broke down and said I can’t live like this, I cannot go on like this. I have to have something that stops him being abusive to me and stops him harming our child... But his barrister refused to accept a non-molestation order unless we take one as well. By this time I’d been in and out of court, it was incredibly traumatic, I’d been subject to abuse for goodness knows how long, and if it means I get one as well I don’t have a problem with it because there’ll be one against him. The judge said well you should take one too, as he’ll take one that way. I wasn’t represented so I didn’t understand the consequences, but now a few months down the line, the perception of CAFCASS is that we’re as bad as each other

(Bianca)

In subsequent sections we explore how documented evidence of violence, including protective injunction orders, was factored into decisions about child contact.

**Initial contact arrangements**

In a third of cases (n=12), there had been no contact between the relationship ending and the contact application, sometimes because the application had been made within just a few days, or more commonly, because perpetrators showed no interest in seeing their children until the point when they applied to the court. Where contact had occurred, arrangements were mostly negotiated between women and perpetrators (n=18) with a tiny minority reached through solicitors (n=3) or Social Services (n=1). Agreement between parents/carers has been proposed as the optimum way to resolve contact disputes (Sturge & Glaser, 2000), and is further reinforced in current procedural reforms on mediation and parenting agreements.

Most women wanted their child(ren) to see their fathers and have a strong relationship with them, but they also wanted to know that they and their children would be physically and emotionally safe. Ensuring this proved elusive – echoing previous studies (Radford et al, 1997; Harrison, 2008; Thiara, 2010), almost all women were so afraid for their safety that they relied on family and friends when arranging handover.

I didn’t feel safe. The intimidation was still there – he was able to drive up and smirk and intimidate me. He’d park a few cars up from the police station. Knowing he was there I didn’t feel safe and the fact that his mum was the mediator made it more difficult. I had to have a friend come with me

(Michelle)

He was collecting my child from a friend’s house, every time he picked up the friend refused to do it anymore, because of his behaviour... I felt totally unsafe, personally unsafe. I didn’t feel very safe for my child either, because he was really erratic and he didn’t know what he’d do

(Helen)

It wasn’t safe. It was very stressful. It was the same violence in a different way, not in the home but in public. He was abusing me all the time

(Celeste)

A gradual escalation of harassment and intimidation, or a serious incident of violence, led to women withdrawing or reducing contact in order to keep themselves and the children safe.
When we first split up he was seeing the children for about a year and everything was ok. But then he wanted to come into the home and I didn’t want that and that’s when he was harassing me, the whole time popping his head up, when I picked the children up from school. He was basically stalking me for a long period of time. At the time I was a bit unsure but it was ok as he took them from my aunt’s so I didn’t see him. I’d drop them off at my aunt’s so he never came to my own house. I withdrew contact at some point and that is when it went to court

(Zoe)

When that last incident [an attempted strangulation] happened, when he came to the house, that’s when I said it’s not safe for me to see you anymore and the police told me to get a solicitor

(Kathy)

Another common experience was that perpetrators threatened to take the child(ren) away, again prompting women to consult solicitors or seek prohibited steps orders.

I kept trying different ways, but he told me a few times that he was going to take him away and never return him, so I stopped contact, and didn’t hear from him, then he went to a solicitor and applied for contact

(Courtney)

Some men did not stick to arrangements, often to the point of deliberately disrupting women’s ability to make plans and carry on with their routines, which in turn compromised children’s sense of stability and security (see also Harrison, 2008). Finally, many women were concerned about perpetrators’ parenting skills; children being returned without coats in winter; fed only sweets; left alone to watch television while their fathers entertained friends. In these circumstances, women decided that withdrawing contact was the only way to prioritise their child(ren)’s best interests.

He didn’t seem to be physically capable of looking after her, he brought her back and the buggy was completely saturated with wee. So I didn’t feel happy about her physical welfare either

(Helen)

Lisa stopped contact when her ex-partner returned her son late and threatened her. When she told him she would seek legal advice, his threats became more serious.

He said ‘what I can’t f**king see my son? I’m going to f**king kill you, I’m going to shoot you, I’m going to stab you up’. He’s said that in the past and I thought that was heat of the moment, but I actually took this very seriously and I called the police. They just said not to let him in

(Lisa)
Before the contact application, only a few weeks after we separated, there were a few times when he took the kids out – a couple of mornings. But they were really distressed coming back from it and I was advised by my solicitor to get someone to accompany them – a friend or family member. I offered that but he said no. That’s when the contact application came through

(Jessie)

Women’s experiences of arranging contact informally reflected a key finding from previous research: that most perpetrators used handover and the need to liaise over arrangements as a means to continue exercising control over women and children (see also Thiara, 2010).

Summary

Women’s experiences of violence included a number of known risk factors for further assault and femicide: strangulation; violence beginning or escalating during pregnancy; jealous surveillance. Conflict over child contact, axiomatically present in all cases here, is also a well-documented risk factor. Yet women consistently perceived emotional and psychological abuse, the ways in which their ex-partners used ‘coercive control’ to entrap them, as the most destructive and debilitating form of violence. As the next section of the report explores, this has significant implications for how domestic violence is understood and responded to in child contact proceedings.

Separation – so often promoted as the route to safety, particularly to safeguard children – did not end the violence and in many cases served as a trigger for its escalation (Humphreys & Thiara, 2003; Seith, 2003). Nevertheless most women were committed to facilitating access to children and sought many routes to make it possible, despite emotional and physical risks to their own safety. Where contact was withdrawn, there were three main, frequently overlapping, reasons: fear for their own safety; concern for children’s welfare; perpetrators’ failure to comply with agreements/arrangements. In the following section, we examine the initiation and process of private law proceedings in detail.
This section documents each stage of the legal proceedings themselves to explore how the family courts viewed the relevance of domestic violence in their decisions about contact. Responses from the survey of legal professionals are drawn on here alongside interviews with women. Relevant issues in the legal proceedings include: initiation of proceedings; mediation; legal representation; women’s safety at court; hearings; raising domestic violence in court; fact finding hearings; judicial knowledge of domestic violence; expert reports.

Many women were unable to identify the purpose of the different hearings in their proceedings or recall the chronology of a process that had dragged on for many years (see also Kaye et al, 2003). In cases where there had been cross-applications, women were not always clear on which applications had been made when and by whom. Some stages within the proceedings and outcomes were also impossible to ascertain – few women knew whether they had attended specific hearings (e.g. conciliation hearings) or whether or not contact orders had been made by consent. That a significant proportion of women were unable to track processes which had such a profound impact on their and their children’s lives reveals much about the opacity of family law.

At the time of interview, the length of time for which women had been involved in proceedings varied from four months to nine years18, with a median of two years (see Figure 3). However, within the longer timeframes were often several sets of proceedings, final orders having been made then the case returned to court to vary the terms, hear further applications or for specific issue orders/prohibited steps orders. Figure 3 is based on women’s responses to being asked how long proceedings had been ongoing, and illustrates the extent to which multiple sets of proceedings dominated their lives and thus also their children’s. The distress and disruption of ‘frequently re-initiated proceedings’ has been acknowledged as harmful to children’s development and their carers’ emotional well-being (Sturge & Glaser, 2000: 619).

Figure 3: Length of child contact proceedings

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18 As noted earlier, in three cases court proceedings had not been initiated.
Initiating proceedings

In line with previous research (Anderson, 1997; Aris & Harrison, 2007; Humphreys & Harrison, 2003; Cassidy & Davey, 2011) and current Ministry of Justice statistics\(^\text{19}\), almost all applications for contact were made by men (\(n=25\)). This reflects both that women are significantly more likely to be resident parents and that victim-survivors of domestic violence are disproportionately likely to be women and perpetrators men (Humphreys & Harrison, 2003). Here, as outlined in the previous section, applications were mostly in response to women withdrawing or limiting contact where their and/or their children’s safety had been jeopardised.

In six cases, contact hearings were joined to women’s applications for injunctions (see also Anderson, 1997). For instance, escalation of Helen’s ex-partner’s unreliability and threatening behaviour led to her seeking an injunction. When he challenged the grounds of the without notice non-molestation order, he also made an application for contact. Initial arrangements had been in place, but Helen had concerns about his abilities to care for the children, who in turn were terrified of him. To Helen’s astonishment, when she returned to court about the non-molestation order she was faced with an unexpected discussion of when and how often her abusive ex-partner should see the children.

Chandra hoped initially that her ex-husband’s abusive behaviour would stop, that he would change when they separated, and hence contact was informally arranged. As his abusive behaviour continued and she reiterated that there was no future in the relationship, he stopped turning up for contact. On discovering several months later that she had a new partner, he applied to the court for contact.

Sophie had enabled her ex-partner to have contact with their son for six years after they separated, but he was unreliable and refused to contribute financially. When she applied to the then Child Support Agency, he made a court application for contact (an approach also noted by Anderson, 1997).

He didn’t want to see [child] at the beginning, he didn’t ask to see her. Then he found out I was in a relationship and decided he wanted contact... He just decided I was deliberately keeping her from him, that’s what he said in his application to the court

(Chandra)

The only reason he took me to court for contact is because I went to the CSA after all them years. He replied to the CSA saying he was having regular contact with his child and he actually wasn’t. He hadn’t seen his child for months at the time he made that statement, and it was nearly a year by the time they put a court order in place. It was all only about money, he told the CSA he had his child on a regular basis which is a total lie. I appealed what he was saying so he took me to court... He is not interested in the child. Only in controlling me

(Sophie)

Responses from solicitors and barristers supported women’s perceptions that proceedings were often initiated by men as a means of sustaining, or regaining, control (see also Radford et al, 1997; Harrison 2008; Thiara, 2010). While four fifths (83%, \(n=64\)) perceived that seeking ‘a regular and meaningful relationship with their children’ was perpetrators’ primary motivation for applying for contact, almost as many (79%, \(n=61\)) reported that regaining power and control lay behind applications, and for a third of respondents (\(n=24\)) revenge was a driving factor. A further 14 (18%) suggested that perpetrators had financial motivations.

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\(^{19}\) Ministry of Justice data released to the research team following a Freedom of Information request shows that in 2011, of the parties in private law proceedings where a section 8 contact order was applied for, 77 per cent of 26,263 applicants were men (with 35 cases of gender unknown) and 79 per cent of 27,748 respondents were women.

\(^{20}\) Multiple responses possible.
In allowing multiple responses, this question highlights that there can be combinations of motivation in play, some of which are in tension with an interest in children’s well-being. This is further evident in the legal professionals’ views with respect to power and control.

Some perpetrators get the message that the relationship is over and are genuinely interested in their children. Others use it as a mechanism to keep back into the relationship, others to undermine the victims confidence and self esteem, others to make the victim feel trapped and some to ‘get at them’ further by undermining them as a parent.

(R52, barrister)

Half of respondents (50%, n=34) agreed somewhat with the statement that ‘some perpetrators of domestic violence use contact proceedings to exert power and control over the victim’ and two fifths (44%, n=30) completely agreed. Only one respondent completely disagreed.

This [seeking power and control] happens in most of my cases

(R69, solicitor)

Often, and particularly when the victim has had ‘the nerve’ to leave the abuser, the abuser utilises the proceedings as a means to control the victim and simply to see them

(R90, solicitor)

Taken together, the practice-based evidence of this group of legal professionals was that wanting a relationship with their children was for some a less significant motivation for applying for contact than punishing ex-partners or plain self-interest.

In contrast, the majority of respondents reported that women’s motivations, in the rare cases where they are the applicants, centre around ensuring their children’s safety (88%, n=60) and their own (60%, n=41). Over two fifths (44%, n=30) of responses suggested that ensuring children had contact with non-resident parents was significant, with only a small minority (12%, n=8) reporting that women seek revenge. Of the two women here who initiated court proceedings, both acted in response to the abductions of their children and approached solicitors who made emergency applications for contact and residence.

It is with these histories, leading from experiences of violence detailed in section 4, that women entered into the arena of private law proceedings. For many, the first or an early step was mediation.

Mediation

Mediation is widely recognised as inappropriate in cases involving domestic violence, since it relies on equal bargaining power between parties that is contraindicated by violence, risks exposing victim-survivors to further abuse and intimidation and runs the risk of supporting abusers’ view that they are not entirely responsible for stopping violence (Kaye et al., 2003; Radford et al 1997; Humphreys & Harrison, 2003). Nevertheless, it is currently promoted as a means to prevent disputes about children from going to court.

A significant focus of the Family Justice Review and Government’s vision for the future of the family justice system is an increased use of alternative dispute resolution (ADR) (or ‘Dispute Resolution Services’ as the Review recommends it be rebranded. (MoJ, DfE & WAG, 2011, recommendation 115)). Mediation and conciliation are forms of ADR which have been common in family proceedings for many years. As early as 2005 HMICA expressed concerns at the policy emphasis on seeking mediated agreements in the family justice system.

21 Multiple responses possible.

22 In four cases the complexity of the proceedings meant it was not clear, to participants or researchers, who made the initial application.
[The HMICA investigation] finds an inherent danger arising from the current policy emphasis on seeking mediated agreements between parents in ever larger numbers of disputed family proceedings. We conclude that ensuring the safety of both children and adults receives insufficient consideration – this was a strong and consistent message from the women survivors of domestic violence who we consulted. We consider that arrangements for assessing the risks associated with allegations of domestic violence need markedly strengthening (HMICA, 2005: iv).

In April 2011, compulsory Mediation Information Assessment Meetings were introduced with the implementation of the new Family Proceedings Rules. Practice Direction 3A23 stipulates that parties in cases where domestic violence has been alleged resulting in a police investigation or civil proceedings instigated are not expected to attend MIAMs. However, these parameters exclude the significant proportions of victim-survivors who have not reported to police or sought civil orders. Emerging research suggests that screening conducted by mediators may not be as rigorous as required, and that an average of only four minutes is spent addressing possible domestic violence (Morris, 2011).

Seven women had been asked to attend a MIAM session, although only three did so. A further nine women had been asked by the court to engage in mediation at some point in the proceedings and two had refused such requests from their ex-partners. In one case, a psychiatrist recommended mediation. In total then, over half (n=19) had faced the prospect of not only having to face violent men from whom they had escaped, but also a requirement to engage in compromise and cooperation with him.

A significant proportion of solicitors and barristers (26%, n=19) also reported that parties were required to attend mediation despite domestic violence having been raised as an issue. Half (51%, n=37) said this happened rarely and only a fifth said it never had (22%, n=16). When asked if formal mediation was appropriate in cases where there had been domestic violence, responses were fairly evenly split between sometimes (40%, n=31) and rarely (46%, n=35), with a minority (14%, n=11) saying never. For some legal professionals, the ‘seriousness’ of violence determined whether mediation was appropriate:

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With minor violence or where there is no real fear it can be appropriate
(R36, barrister)

There are various levels of domestic violence and I don’t think mediation is always ruled out
(R68, solicitor)

It depends on the nature and frequency of the domestic violence
(R78, solicitor)

The power dynamics make mediation inappropriate. I have never represented a victim of domestic violence who felt comfortable with mediation
(R43, barrister)

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Very rarely can mediation be appropriate where a relationship has damaging and controlling dynamics as a relationship involving domestic violence is almost certain to have. The mediation sessions become another forum in which to exert control and domination

(R45, barrister)

Six of the women asked to attend mediation by the court refused on the grounds that they felt unsafe being in a room with the man who had abused them, keenly aware of the risks to their physical and emotional safety.

They [the court] said the mediators would help me sit down and talk about it with him. I said I would not meet him face to face

(Fatima)

The court ordered us to go to mediation, but it didn’t work. We only went once, I didn’t like the idea because obviously I had to sit in a room with him and discuss things, in a room, in an enclosed space. I wasn’t happy, I was a bag of nerves... He kept on saying I was stopping him seeing the kids, and I said the reason why, and he said I’d done this and that. I remember I was trying to speak up and he got up and walked out and then he came back in, and then he got back up and walked out and came back in again. I said to the lady ‘it’s not going to work’

(Zoe)

Two women asked to attend MIAM sessions were advised by specialist domestic violence services that mediation was inappropriate, and in another two MIAM cases the mediator refused to go ahead because of the violence. While it is encouraging that those tasked with carrying out MIAMs are adhering to best practice and guidelines by refusing cases with histories of domestic violence, it was nonetheless evident that women face a range of pressures to engage with this process.

We had one separate mediation session first to try and understand, set the scene of our positions for the mediators. Then we had one and a half joint sessions. It was uncomfortable. I haven’t sat down in a room with him other than the courtroom for years, and I do allege domestic violence, so it was incredibly uncomfortable... It was very much focused on moving forwards, very much ‘this has happened, let’s move it forward’. His violence wasn’t ever really directly addressed, it was all put it behind you and move forward for the sake of your child... There is a push on mediation, but it only works if both parents want the relationship to be collaborative

(Bianca)

Four women attended at least one mediation session, and for the most part their experiences confirmed their concerns that attempting to negotiate with their abusive ex-partners was futile. All had previously tried multiple negotiations and bargains over the course of the relationship and in attempting to reach informal contact arrangements; they feared, often justifiably, that their ex-partners were unable or unwilling to compromise or engage honestly.
I went to the first session to talk about it, but then he refused to see [child] until it got to court. I didn’t see the point after that. I knew it was just about getting in a room with me... mediation might work for other parents, but if you’ve got someone where their main goal is to attack the other person, intimidate the person, they’re not actually interested in contact, then it doesn’t work

(Kathy)

This emphasis on mediation turns the clock back on previous policy approaches that recognise its dangers (e.g. HMICA, 2005).

CASE STUDY – DIONE

What happened...

After a four-year relationship during which her partner was physically and emotionally abusive, Dione left with her daughter. Even after their separation Dione felt intimidated and controlled by him but she agreed that her ex-partner could see their daughter on Saturdays. She was not happy with the arrangement as she and her daughter were scared of him, but felt that it was not right to stop contact between her daughter and her father.

On one occasion when Dione’s ex-partner came to collect their daughter he became aggressive, shouting and swearing at her and pinned her against the wall. Their daughter was very distressed about seeing this and Dione stopped contact. Her ex-partner instructed a solicitor, who wrote to her and asked her to attend mediation.

Dione explained the history of her ex-partner’s behaviour to the mediator but she nevertheless encouraged Dione to focus on her daughter and ‘put the violence behind her’. In the mediation session her ex-partner refused to reach agreement about contact. She felt unable to talk in front of him about her fears for herself and her daughter and perceived that he was using the opportunity to intimidate her further.

The case went to court and CAFCASS prepared a report recommending overnight staying contact. Dione’s barrister and her ex-partner’s solicitor drew up a consent order on the basis of CAFCASS’s recommendations.

In accordance with PD12J, the judge considered the consent order and all the evidence in the case, and on applying the welfare principle, refused to approve the consent order as he felt it would be unsafe. The judge ordered a further Section 7 report to be carried out by social services. He ordered contact supervised by a social worker, and an assessment of the father’s relationship with the child, to be included in the report.

What could have happened...

Dione contacted the mediator in advance of the mediation to explain her concerns regarding her violent ex-partner. The mediator immediately advised that mediation would not be appropriate due to the abuse she had experienced and completed an FM1 form to explain this.

At the first hearing, in accordance with PD12J, the judge ordered a finding of fact hearing to investigate the allegations of domestic violence and made an order for supervised contact at a contact centre.

At the finding of fact hearing, the court established that domestic violence had occurred and ordered a CAFCASS officer to conduct an investigation and prepare a Section 7 report.

The CAFCASS officer prepared a report recommending overnight staying contact. Dione’s barrister and her ex-partner’s solicitor drew up a consent order on the basis of CAFCASS’s recommendations.

In accordance with PD12J, the judge considered the consent order and all the evidence in the case, and on applying the welfare principle, refused to approve the consent order as he felt it would be unsafe. The judge ordered a further Section 7 report to be carried out by social services. He ordered contact supervised by a social worker, and an assessment of the father’s relationship with the child, to be included in the report.


Legal advice and representation: access to justice

*The supply of properly qualified family lawyers is vital to the protection of children*  
(MoJ, DfE & WAG, 2011: 36)

International human rights conventions oblige the Government to provide free or low-cost legal aid to afford women access to justice when they are at risk of or have experienced violence.\(^{24}\) At the time of interview, four fifths of women involved in court proceedings (80%, n=24) had legal representation.\(^{25}\) Almost two thirds (63%, n=19) received legal aid. One woman was supported by a solicitor based in a specialist domestic violence support service, and another received pro-bono legal representation, provided to a specialist support service by a local lawyer.

Three quarters of perpetrators (73%, n=22) had legal representation, but only two thirds of women knew how this was funded; in 14 cases he received legal aid (see Figure 4). Seven perpetrators did not have legal representation at the time women were interviewed.

There were some complexities within cases, however; five of the six non-represented women did initially have representation that they funded themselves, but at the time of interview had run out of money. One woman had begun proceedings without a solicitor, self-represented and only recently become eligible for legal aid. Two perpetrators did not initially have representation.

In over half of cases (52%, n=16) then, there had been stages where women had either had to represent themselves – and thus face the prospect of cross examining men who had been violent to them in court – or face being cross examined by their ex-partners. Of this women were palpably afraid.

*At the last hearing he said he’s fired his lawyer and he would be representing himself. It’s scaring the life out of me because it means he will be interrogating me, asking questions, intimidating me. I don’t know how it’s allowed*  
(Denise)

Figure 4: how legal representation for women and perpetrators was funded

<table>
<thead>
<tr>
<th></th>
<th>Number of people</th>
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<tbody>
<tr>
<td>Legal aid</td>
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</tr>
<tr>
<td>Privately funded</td>
<td>16</td>
</tr>
<tr>
<td>Pro bono</td>
<td>14</td>
</tr>
<tr>
<td>Specialist DV service</td>
<td>12</td>
</tr>
</tbody>
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\(^{24}\) The Beijing Platform for Action, signed by the UK Government in 1995, requires states to provide ‘free or low cost legal aid’ to women who have experienced violence under Strategic Objective D.1, Para 125 (a). General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which the UK is a State party requires States to “ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate”.

\(^{25}\) This is a larger proportion than national data, possibly reflecting that many women were recruited to the research through specialist support services and solicitors. Ministry of Justice data released to the research team following a Freedom of Information request shows that in 2011, of the parties in private law proceedings where a section 8 contact order was applied for, 86 per cent of women (respondents and applicants) were represented. Data from the same source indicates that a slightly larger proportion of male applicants and respondents (89%) had legal representation, a marginally smaller proportion than in our sample.
Solicitors and barristers shared women’s concerns about self-representation, with most identifying two dimensions of potential abuse and intimidation. Firstly, perpetrators representing themselves used cross-examination as another route to harass and undermine their ex-partners.

They are often in a position to continue their pattern of dominating and abusive behaviour in the court arena. Judges are notoriously gentle with litigants in person and often will not intervene when emotional abuse of the victim continues within a courtroom.

(R64, barrister)

They can continue their DV behaviour to intimidate the victim (looks, threats, conduct)

(R88, solicitor)

One suggested that the family court should operate on the same grounds as criminal proceedings in this respect.

It is wrong for perpetrators to be able to cross examine their victims – there should be a procedure analogous to criminal proceedings where litigants who are alleged to be perpetrators are unrepresented.

(R90, solicitor)

Secondly, fear inhibited victim-survivors who represent themselves from both disclosing full details of abuse and questioning perpetrators about their actions and motivations.

Very often they are scared to speak up and so the real issues do not surface and perpetrators are allowed to continue with their actions unchallenged.

(R78, barrister)

Where perpetrators were represented, there was a different kind of intimidation placed on women by their legal representatives; pressure to comply with proposed arrangements.

They can be pressured and intimidated into agreeing to things they would not and/or should not agree to

(R101, solicitor)

They are intimidated and often bullied (sometimes unintentionally) by the perpetrator or his representative

(R90, solicitor)

Often women’s fears and inhibitions were also compounded by lack of knowledge about the law and their own legal rights: one of the possibilities here was that they would ‘focus on the wrong issues’ (R98, barrister).

[It is] difficult to have the confidence to express allegations of violence, let alone cross-examine a perpetrator. Also schedules of allegations are – if they are good – carefully drafted legal documents. [This] cannot be done properly by litigants in persons.

(R63, barrister)
As well as the obvious risks to women’s welfare, there are multiple ways in which outcomes of cases can thus be influenced where they and/or their abusive ex-partners represent themselves.

- Victim-survivors are not enabled to give their best evidence about histories of abuse, which may be crucial to determining whether contact, and in what form, is deemed appropriate.
- The difficulties of cross-examining their perpetrators may mean they do not ask sufficiently probing questions or challenge responses, which again informs what evidence is available to the court.
- They are rarely equipped with the legal knowledge and experience to prepare documentation and negotiate family law processes e.g. requesting finding of fact hearings.
- Pressure to reach speedy resolution may mean that women accede to arrangements which are not necessarily in their own or their children’s best interests.

Unsurprisingly, and echoing recent research (Rights of Women, 2010, 2011; NFWI, 2011), women described the ability to access free or low-cost legal advice and representation through the legal aid scheme as ‘a lifeline’.

"Legal aid is so important, and I think it’s wrong that they’re looking at the value of the property....If I hadn’t had a solicitor, my husband would have probably railroaded over us in the court. It’s so important for women who don’t have any money. My family has got into huge debt to help and support me"

(Kaya)

"The solicitor made an application for legal aid, so when we had the conciliation hearing, the outcome was that there would be a Scott file [Scott Schedule] for a hearing in six months time... About a month after that I got a letter from my solicitor saying that my legal aid had been withdrawn, I wasn’t eligible for legal aid and they were no longer my solicitors. I contacted legal aid, I asked them to send me the new assessment and they went through it with me, and the solicitor had filled in my form wrong... The period when I didn’t have legal aid was very stressful"

(Steph)

Availability of funding for legal representation was only one dimension; women also talked about the importance of their solicitor understanding domestic violence and most of all, believing their accounts (see Appendix 1 for data about training accessed by survey respondents). Where women had positive experiences, they reported being more knowledgeable about stages of proceedings and bolstered by belief that their views were regarded as central to the case.

"My lawyer is very supportive, that’s all very important, invaluable"

(Suzanne)

"My solicitor is actually very good, and she does explain everything, so I do know what is going on. It takes a lot of her time"

(Courtney)

Conversely, where women sensed scepticism or doubt, even where expressed as ‘playing devil’s advocate’, confidence that their legal representative would promote their best interests was considerably weakened.
I didn’t feel my barrister believed me... She said so much of it is uncorroborated, and I said ‘some of it is corroborated, and this all went on behind closed doors’. She said ‘well this is what he’s going to say and it’s not like he ever threw bricks at you, you didn’t have black eyes’

(Jessie)

Survey responses from solicitors and barristers indicate that a minority endorsed what has been termed a ‘culture of scepticism’ (Kelly et al, 2005) about women’s accounts of violence.

There are cases where the ‘victim’ is exaggerating or making up the allegations and such cases do a great deal of harm to the process in the genuine cases

(R36, barrister)

The flip side of the coin is that some women do make up or exaggerate allegations of violence to further a restrictive agenda about contact

(R97, barrister)

There has to be consideration to the possibility that the violence has been exaggerated or even invented

(R76, solicitor)

Women’s safety at court

I remember the first hearing I was shaking, he could be quite intimidating. In court we sat at a long table. I avoided making eye contact

(Zahra)

Three quarters of women (74%, n=23) said they had concerns for their safety while attending court. Some feared that they would be in physical danger, being fully aware of their ex-partners’ capacity for violence. Many perceived that their ex-partners ‘took advantage of the fact that they were required to be present in order to be intimidating’ (Kaye et al, 2003: 7; see also Rights of Women, 2011).

He’s been violent in public. He’s verbally abused me and my family outside the court. I never know how he’s going to act, so my family come with me so I’m not alone

(Courtney)

I was absolutely frightened... He had hit me in public on numerous occasions so I knew it wouldn’t be a concern for him that it was a public place

(Ella)

Even women who felt their physical safety was assured by the presence of family, friends or legal representatives reported being afraid and intimidated.
I did feel safe because my lawyers would meet me at their offices and we would go together. But I do remember feeling very scared seeing him and being in same room as him and therefore didn’t want to say anything

(Rachel)

He scrawled some notes to me, then ripped them out of my hand. My fingers were bleeding. The security guard turned the other way. I had blood dripping from my hands in court but the judge ignored it

(Erika)

Women were particularly fearful when leaving court after hearings.

I was in the same waiting area, he was coming with all of his family, sometimes we had to stand outside the court. A couple of times my barrister went to type something, and I was just standing there alone, he was just intimidating, trying to scare me

(Nabeela)

I was worried on the route back, I would rush out of court. Once he did follow me but I jumped on the bus

(Gita)

One of my major concerns was when I was leaving... there was nothing to stop him following me, not everyone can afford a cab. I came home on a bus

(Tina)

There were lots of people around, so I knew he couldn’t attack me, and I felt safe with my barrister. But being in the open waiting room I didn’t like. He stood and stared at me for 15 minutes. My barrister told this to the judge, and the judge didn’t take it seriously

(Suzanne)

There is no way I’d ever go to court by myself. I really hated waiting, I would have to try and get a room because he’d be hanging around, it was awful. And feeling ‘is he going to follow us when we leave?’

(Helen)

Several women referred to their ex-partners ‘staring’ at them throughout hearings; a form of invasive surveillance that often amounted to harassment. In some cases, judges and court officials appeared to be oblivious to, or perhaps chose not to recognise, perpetrators’ acts of aggression.

A research review published in May 2010 highlighted that ‘simply being involved in court proceedings makes those who have been subject to domestic violence anxious that their abuser may discover their whereabouts’ (Hunt, 2010: 14). Whilst special measures have been available in the criminal courts for some time, there are no specific legislative provisions related to special measures in family proceedings.26

Special measures in criminal courts aim to provide women with protection from perpetrators during the court process and support the delivery of best evidence. There is a very striking difference between the facilities available to women who have experienced violence in the criminal and civil courts; in the latter a woman can be cross-examined by the person responsible for the violence she has experienced (see Rights of Women, 2010). In criminal cases it is routine practice for separate waiting rooms to be provided and sometimes separate exits for victims and witnesses.

The policy framework for the provision of special facilities (e.g. separate waiting areas) in civil courts is unclear. The Family Courts Charter does not define special facilities or oblige courts to provide them – it solely gives court users a right to request them. In 2005 the HMICA Inspection of Domestic Violence, Safety and Family Proceedings recommended the improved provision of information to family court users, including details of facilities for vulnerable parties before they attend court. In their response, Her Majesty’s Court Service (HMCS) agreed to publicise the availability of facilities and implement a system for the early identification of cases where special facilities might be needed, prompting a ‘trigger’ system on application whereby all courts will automatically notify the vulnerable or intimidated party, or their legal representative, of special facilities available locally (HMICA, 2005). At the same time, each court was surveyed and urged to evaluate how provision for vulnerable witnesses could be enhanced (Family Justice Council, 2007a). In January 2007, special facilities posters were re-distributed to all family courts in England and Wales (Ministry of Justice, 2009). However, a subsequent inspection found that few of those attending court were informed of available facilities (HMICA, 2008). There is still no system for the early identification of cases where special facilities might be needed.

Almost half of legal professionals (47%, n=35) reported that special facilities were not advertised for vulnerable and intimidated court users. Tellingly, over a third (37%, n=27) did not know whether they were available, with only a minority (16%, n=12) confirming that they were advertised. Perhaps unsurprisingly then, in the majority of respondents’ experience, special facilities are offered at court only sometimes (47%, n=34), rarely (39%, n=28) or never (7%, n=5).

It is therefore also predictable that few women who were interviewed had been offered special facilities. Where these had been made available, it was mostly down to women’s own persistence in lobbying court officials, or arranging to arrive early enough to secure any safe spaces.

I had to ask about the escort and find out about it myself. I didn’t always manage to get a separate waiting room. Sometimes you’d be sitting in the hall for hours. If you got there really early you might get a waiting room
(Helen)

He kicked off shouting and screaming in the courtroom, so I’ve now asked for a security guard in the court, because in the courtroom I am a seat away from him and I don’t feel comfortable unless there’s a security guard sitting between us in case anything happens
(Courtney)

Some women had experienced judges’ refusing the use of special facilities, or scornfully questioning their necessity.

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27 In the family court system, the term ‘special facilities’ rather than ‘special measures’ is used.
29 Following an initial distribution to county court managers in 2004. The text of the poster reads: ‘Special facilities are available at this court for people who feel unsafe or are intimidated by anyone connected with their work. If you or your client would like to make use of these facilities, please contact the relevant court staff’. A box is provided for each court to enter a staff contact for this purpose. The poster can be viewed online: http://www.family-justice-council.org.uk/docs/AppendixB_HMCS_special_facilities-poster%281%29.pdf
Eventually I kicked up a fuss and was offered a separate entrance... The judge turned round and said ‘this is ridiculous, there’s no need for this’, that it was over the top and not required, despite the fact that the last time I’d seen him [ex-partner] there he followed me down the corridor and threatened me

(Bianca)

Denise had been approached and verbally abused by her ex-partner at every hearing; despite a non-molestation order he was stalking her. Although she was granted staggered arrival times, she feared seeing him in person.

I asked for a screen to be put in place, but my wishes are granted by the judge on that day and the judge decided not to grant it, so I had no measures in place. They said it’s up to the judge’s discretion, and we applied for it, but when we got to court the screens weren’t there, and we asked why they weren’t there and were told the judge didn’t think it was necessary

(Denise)

Accounts of how anxious and intimidated women felt contrast sharply with those where special facilities were routinely available.

You have to ring and ask for the side room the day before, you get through to their security and request it... they always have got me a room if I’ve asked for it. I’ve had separate exits. I can’t fault them to be honest, they’ve been very good. I thought it would be a nightmare

(Jessie)

All women were asked what, if anything, would have enhanced their safety while attending hearings. While three women said nothing could have made them feel safer, that simply having to be in the same building or room as the man who had abused them was terrifying, many suggested that the provision of safe spaces and measures to avoid seeing him would have made a significant difference (see Figure 5). Clearly the feasibility of offering these facilities depends on the physical layout of each court.

Figure 5: What would have enhanced safety for women during court hearings

<table>
<thead>
<tr>
<th>Feature</th>
<th>Number of people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separate waiting areas</td>
<td>9</td>
</tr>
<tr>
<td>Screen/video link</td>
<td>8</td>
</tr>
<tr>
<td>Staggered arrival and departure times</td>
<td>7</td>
</tr>
<tr>
<td>Separate entrances and exits</td>
<td>5</td>
</tr>
<tr>
<td>More information on rights</td>
<td>4</td>
</tr>
</tbody>
</table>
It is also notable that two women said more information about their rights, as well as about the various stages of proceedings, would have made them feel safer. Equipping women with sufficient information to negotiate unfamiliar systems and processes and their associated entitlements – ‘empowerment through knowledge’ (Coy & Kelly, 2011) – is a critical means of alleviating women’s uncertainty and anxiety, and restores a sense of agency and autonomy. This is particularly important where violence had diminished women’s control over their own lives and their children’s.

Hearings and process: ‘I was in the dark’

The number of hearings that women had attended varied from one to approximately 50. In attempting to explore systematically the purpose and outcomes of each, from initial directions hearing to final hearing, what emerged most clearly was that many women did not have any information about the process and were thus unable to identify clearly the purpose of different hearings.

I’ve gone in blind. I sent emails to my solicitor asking what’s going to happen, what is the hearing for, what has he applied for, why has he applied for it, what’s our next move, he’s never answered. So I go in blind

(Denise)

I had no clue what was happening next, no one said, ‘right now, you’re going to talk to the CAFCASS officer, now this will happen, now that will happen, this is what you can do, this is what you can’t do. If the procedure was laid down so that women could read it through first or there was someone there to explain it, that would help enormously, but there wasn’t

(Tina)

Many women had invested huge amounts of time and emotional energy in studying the law, using DIY handbooks30, keeping notes during hearings and preparing paperwork for cases in order to feel equipped and able to navigate proceedings. See Benazir’s case study for how legal representatives can enhance women’s sense of safety by explaining legal processes and ensuring special facilities are available.

I didn’t really understand what was going on. I didn’t really know what was going to be going on at each hearing

(Rachel)

I didn’t know anything. I was just told, ‘right, you need to come back on the first available date after such and such, when this report is back and that report is back, and then I was given a date for another hearing. It wasn’t until I got to the court and the solicitor said ‘we’ll try for this and we’ll try for that’, that I knew what would be happening on that day

(Mel)

Raising domestic violence in court: speaking and being heard

Conciliation or first directions hearings presented the first possibility for most women to raise their ex-partner’s violence. Seven women identified having attended at least one conciliation hearing, where the aim is to reach agreement about contact orders with the assistance of a CAFCASS officer and the judge. None were satisfied that this enabled a full exploration of the issues at stake, and for the complexities of domestic violence to be comprehensively aired. In a small number of cases, documentation relating to injunctions was presented with initial papers, so judges were aware that men applying for contact had been sanctioned for domestic violence. However, a common theme across all cases was the sidelining of such evidence on the basis that it was not relevant to men’s parenting capacity.

Kiran found that her statements and the police reports documenting her ex-husband’s violence were dismissed by the court, and in Leonie’s case an injunction against her ex-partner which prohibited him from being near their son was deemed an entirely separate issue to his contact application.

CASE STUDY – BENAZIR

What happened...

Benazir married her husband in 2003 and they had a son and daughter together. Regularly her husband would trip or slap her and pull her hair. During one incident she received a very serious injury which continues to cause her pain. The children were often present to witness his violence. He also smacked the children excessively, hurting them and causing them to be scared of him.

The police and social services became involved after one serious incident and for a while contact between Benazir’s ex-husband and the children was supervised by the social worker. Her ex-husband was not happy with this and applied to the court for a contact order.

Benazir had a solicitor funded by legal aid. Despite this she found the legal process very formal and difficult to understand. When she attended court hearings she was often taken by surprise by what happened and felt that her solicitor did not explain anything properly to her. She felt that the judge and her barrister were not listening to and taking her concerns about her ex-husband’s behaviour seriously enough and did not understand the role of CAFCASS.

At court Benazir was terrified of seeing her ex-husband. The waiting area was very small and he would stare at her and call her names. On one occasion he followed her out of the court building and verbally abused her. She was very frightened that he would follow her to her new home.

What could have happened...

Benazir explained the history of domestic violence, the police and social services involvement, to her solicitor who took her concerns and fears seriously. Benazir explained how frightened she was of seeing her ex-husband so her solicitor made sure she always arrived early to court and had a private room for them to sit in. Her solicitor carefully explained the court proceedings to her and asked her at each stage whether she understood and was happy with what was happening.

Benazir’s solicitor requested a finding of fact hearing to decide on the allegations of domestic violence. In accordance with PD12J, the judge ordered the hearing and ordered the social worker who knew the family to carry out a Section 37 investigation due to the allegations of direct physical abuse on the children.

Benazir’s solicitor told the judge that her ex-husband had followed her from the court and abused her. The judge reprimanded him about his behaviour and ordered that CCTV footage of the incident be recovered and the incident added to Benazir’s Schedule of allegations.

As required by PD12J, the judge considered what steps could be taken to ensure Benazir’s safety at court. He ordered staggered arrival and departure times and requested that the court manager arrange screens for Benazir to give evidence behind at the finding of fact hearing. The court made an order for indirect contact between the father and his children, pending the outcome of the Section 37 Report.
My solicitor raised all the points, how the forced marriage happened and all the abuse, and I reported him to the police as well. But the court did not really give too much importance to this; they said this is just a child custody issue.

(Kiran)

It was swept under the carpet. Every time my solicitor brought it up, the judge would roll her eyes and dismiss it. In the beginning it was raised at almost every hearing, because I was saying ‘why is he here, when there’s an order that he’s not to be within 5km of me?’ [The answer] was that he’s here because he has parental responsibility and it’s a separate matter. But it’s not a separate matter, my child’s name was included in that order.

(Leonie)

Several women reported that they had no opportunity at all to raise the violence. Erika, whose experiences of ongoing harassment were detailed in section 4, described repeatedly trying to raise in court her ex-partner’s history of abusive behaviour towards her and the children, but found her voice silenced.

(Erika)

I have tried to communicate that I feel his motives are selfish and controlling. A lot of what I said was dismissed. They tend to think we’re as bad as each other. He’s presenting himself as a poor father just trying to see his child; I’m presenting myself as a mother trying to protect her child.

(Kathy)

Being unable to speak directly in court prevented women from interjecting where their concerns were unheard.

When you are in court you are not actually allowed to say anything.

(Helen)

I was given absolutely no opportunity to express my feelings to the judge. I was led in as if we were two naughty children meeting the head master.

(Tina)

Here the extent to which solicitors and barristers were willing to raise histories of violence in court was crucial; several women were frustrated that their legal representatives had extensive files of evidence that included police reports and/or medical documentation that they did not present before the court.

My solicitor did not say enough, did not present all the evidence I had. My child drew some pictures in school about his feelings about his dad; a teacher had noticed his behaviour had changed. None of this was read out in court.

(Zahra)

“[His violence] is viewed as nothing to do with contact at all. I’ve never been able to raise that, I’ve never been allowed to speak about it. The court don’t want to know about his conduct, his behaviour, when I’ve been there it’s all about his rights to see the children, have contact, and when I said I’d got concerns about him emotionally abusing them, they wouldn’t hear of it... All they wanted to know is when he could see them.

(Erika)
My barrister brushed my concerns to one side and didn’t even mention them in court...he negated all the violence issues I raised with him. His overriding concern was to set some kind of contact order down. I don’t think for a barrister specialising in family law he had very good knowledge of domestic violence

(Tina)

In some cases, perpetrators (some through solicitors) sought to discredit women’s accounts of violence by making allegations about their mental health and/or mothering capacities.

They thought I was just exaggerating, ‘ooh, she’s being hysterical’. That was part of the process in the court, to assassinate my character, assassinate anything I’m saying and dismiss its value and that would make me less credible

(Leonie)

There’s been defamation of my character. He has tried to depict me as an unfit mother

(Annette)

The court confirmed he had done these but not everything, some things they couldn’t decide. I was hurt they didn’t believe all of it, as I was telling the truth, but happy, glad and relieved when I found out they believed me on most of it

(Chandra)

I told the court about the violence, they saw medical reports and believed me – different judges at different hearings, but I felt they all believed me

(Gita)

Finding of Fact hearings: investigating domestic violence

Since the decision in the case of Re LVMH in 2000 where allegations of domestic violence are raised in child contact proceedings and they consider that these allegations will affect the outcome of the case, judges are required to direct that a finding of fact hearing takes place to establish whether violence has occurred (see section 2). This has subsequently been reiterated in Practice Direction 12J, which also requires judges to make enquiries about domestic violence at the earliest opportunity and instruct CAFCASS to undertake an initial screening assessment (see also section 2).

Legal professionals reported that finding of fact hearings were the most common mechanism to investigate allegations of domestic violence, but some commented that they were becoming rarer and spoke of ‘a trend against’ or ‘shift away’ from this process. Over half of respondents (36%, n=41) had worked on a case where a finding of fact hearing should have been ordered because of domestic violence, but was not. Of the women interviewed, 27 had reached the point where the finding of fact hearing should have taken place, yet in only just over a third of cases (37%, n=10) had this hearing happened.

Not all women were clear about the outcome, being unable to distinguish between various hearings where their evidence had been tested. Most, however, specifically remembered finding of fact hearings because of the opportunity to present full details of their ex-partner’s violence. Here outcomes were hugely important: judges ruling in women’s favour served as validation of their experiences and built confidence that final decisions about contact would reflect the harms of living with violence, even where not all specific claims were upheld (see case study Evelyn).
In the fact finding hearing the judge understood my view more but in the hearings before that I don’t think he took my views and concerns seriously at all... The judge found in favour of most of my allegations, but didn’t find some of them relevant. He found that my ex-partner had sought to control and undermine me throughout the marriage  
(Steph)

Right up until the fact finding hearing there was a blanket denial. In the months up until that hearing I had all these nasty letters from his solicitor refuting my story... Then he admitted it all of my allegations except one, he said he never kicked me. But on the actual day in court he admitted he had spat at me, pulled my hair, he used to slap me, hit me, that he was verbally abusive to me in the presence and the hearing of the children, and that on one occasion he tried to strangle me. He agreed that he had inappropriately physically chastised the children  
(Jessie)

CASE STUDY – EVELYN

What happened...
Evelyn left her husband after a short marriage when her son was still a baby. Her husband had been physically and sexually violent towards her. After their separation he continued to abuse her, sending abusive text messages and making threats to kill her and take her son away. He followed them in the street and hit her on a number of occasions. Social services were involved because of his behaviour.

Evelyn obtained a non-molestation order from the court and her husband applied for a contact and residence order. At the first hearing, the judge expressed concerns about her husband’s aggressive behaviour in court. At the second hearing, before a different judge, her solicitor explained again the history of her husband’s violence. However, his solicitor argued that this was not relevant to the issue of child contact. The judge decided not to order a finding of fact hearing and said that the focus should be on the child not the parents’ relationship. He also ordered supervised contact at a contact centre.

The social worker, who had met Evelyn previously, prepared a report for the court. The report raised concerns about the father’s abusive behaviour and ability to care for his young son. However, at the final hearing the judge was satisfied that contact was progressing well at the contact centre and made an order for unsupervised visiting contact. Evelyn was terrified this would mean that she and her son would not be safe.

What could have happened...
At the second hearing the same judge heard the case in accordance with PD12J. The judge dismissed the father’s solicitor’s argument that domestic violence was not relevant to the issue of child contact and ordered a finding of fact hearing. The court reiterated that domestic violence did not simply affect the adults involved but was known to have a potentially detrimental effect on children. The judge made an order for indirect contact, and explained that she was not satisfied that the mother or the child’s safety could be guaranteed if there was direct contact.

At the finding of fact hearing Evelyn’s solicitor assisted her in presenting clear evidence of her husband’s violence and the court found that almost all the allegations she made were proven. The judge ordered the Social worker who had previously worked with the family to carry out a Section 7 report. The judge noted that the father had not taken up the indirect contact and advised him to do this.

The social worker set out the concerns she had about the father’s abusive behaviour and ability to care for his son and made a recommendation that there should be an order for interim contact. The judge considered this report along with the findings of domestic violence. She considered the father’s motivations for applying for contact and failure to engage with indirect contact. She made a final order for indirect contact and ordered the father to complete a DVPP before the court would consider any direct contact.
For some women, finding of fact hearings not only confirmed that their ex-partners had falsely denied their violence, but also that they had made malicious claims about their behaviour.

He made allegations that I was abusive to him. All I remember is them saying I was telling the truth, that’s what stands out, that everything he was saying was untrue

(Zoe)

Equally, not having such an opportunity was experienced as a further silencing, and meant that decisions about abusive men’s contact with children were made without consideration of the violence that women and children had endured, and thus the range of impacts and legacies that they continued to live with.

The CAFCASS officer persuaded me not to ask for a finding of fact hearing, she talked me out of it doing it. She said it would be emotionally damaging and it wouldn’t affect contact with the children as they were already having contact with their father so all it would do is be an emotionally draining horrible experience for me but wouldn’t benefit me in any way. But I really strongly resent that... I really wish I hadn’t listened to her

(Helen)

In one case, a report by a psychiatrist that there was no basis to Rachel’s allegations of violence was used as justification by the judge not to hold a fact finding hearing.

In a small number of cases, judges ruled that finding of fact hearings were unnecessary since there was sufficient evidence of violence. This affirmation of women’s testimony was tempered by concern that domestic violence, while accepted as having been perpetrated, was not regarded as relevant to decisions about contact.

There was no fact finding hearing needed, as they said I didn’t need it... it was never addressed, they said we know about allegations of domestic violence but put them on one side

(Hasina)

We haven’t ever had an actual finding of fact hearing where everything’s come out. I tried to submit a statement which pulled together all of the emails, all of the lies, and they just dismissed all of it, the judge at the last hearing said it’s far too much information, to go through all of this we’d need either a three or five day hearing, and it didn’t impact on contact even if what you’re saying is the truth

(Bianca)

This chimed with responses from legal professionals, where the most common reasons from their caseloads for finding of fact hearings not being listed were that: the violence was not deemed serious enough (n=7); not relevant to the contact application (n=7); or not recent enough to be relevant to his current parenting abilities (n=6) (see Figure 6).

The judge felt it would not materially affect her decision if the allegation was proved

(R44, barrister)

The judge simply took the view that it was not necessary and knowing what the facts were would not assist the case

(R71, solicitor)
Finally, misperceptions that equate domestic violence with physical incidents, and notions of victims as weak and passive, also played out in whether or not finding of fact hearings were held (in Annette’s case, emotional and psychological abuse was not defined by the judge as violence, thus negating the need for a hearing) and whether women’s experiences were believed.

I thought a lot about what I was saying at the time so not to be caught unaware. That went against me, because I wasn’t a weak small-voiced person, they used it against me. They said you don’t seem like somebody who could be how I was describing I was in the relationship

(Beverley)

Beverley’s experience mirrors research on criminal justice responses to rape: notions of women who have been victimised (e.g. vulnerable, passive, fragile) are influential in determining their credibility (Kelly et al, 2005; Brown et al, 2010). This raises wider questions about how the family courts, and judges within them, understand domestic violence.

Judicial knowledge and awareness of domestic violence

To what extent judges and magistrates recognise domestic violence as a pattern of coercive control (Stark, 2007) constituted by micro-managing the household and inculcating a constant state of anxiety and fear, was crucial to outcomes of finding of fact hearings, and more broadly to decisions about contact with children. As detailed in section 4, women very clearly framed their experiences of violence in terms of emotional and psychological manipulation and intimidation. Nevertheless, judges appeared to draw on a far narrower understanding in which domestic violence constituted physical assaults.

A lot of men might not be beating up women, but they’re very controlling. Courts don’t understand emotional abuse... Unless you’re walking in with a black eye, trying to explain to the judge doesn’t work. They’re only concerned with physical violence – ‘has he hit her, no, then you need to promote contact’

(Kathy)
Because the way I have been experiencing things it is all subtle, I don’t have any evidence.

(Nabeela)

The abuse isn’t as direct as ‘I’m going to kill you, or I’m going to hit you’, it’s coming in different ways... The judge said I don’t like the word violence, it’s clearly not violence; if you’re making allegations, refer to it as domestic abuse. He didn’t like the term violence because it suggested he was hitting me.

(Bianca)

Section 120 of the Children and Adoption Act 2006 requires the court to consider the impact on children of seeing or hearing the ill treatment of another, whilst in the 2011 case of Yemshaw v Hounslow London Borough Council, the Supreme Court held that domestic violence is not limited to physical contact, but includes threatening or intimidating behaviour which ‘may give rise to the risk of harm’. It is clear from women’s accounts that even these shifts in definition did not always influence judicial decisions about possible harms. Two thirds of women (69%, n=20) did not think that judges took concerns about their ex-partners’ violence, and the impact on children, seriously. For instance, the judge in Kaya’s case said that:

“[V]erbal and psychological abuse didn’t harm a child. But why would my child be having nightmares and bedwetting, panic attacks, if he was not harmed?”

(Kaya)

Legal professionals confirmed that few judges acknowledge women’s emotional safety in relation to decisions about contact.

I have rarely encountered judges who consider the emotional safety of victims.

(R43, barrister)

Little thought is given to the emotional impact.

(R71, solicitor)

Even where physical violence was present, this was also minimised, with some judges appearing to rely on an implicit threshold, a personal calculus of threat, for deciding both dangerousness and relevance of violence to contact.

The judge said ‘sometimes men get in a rage and sometimes you have to give them time to climb down from their trees’. How bad does the violence have to get? Strangulation is pretty scary stuff.

(Beverley)

On one occasion a judge stated ‘it was only a bit of pushing and shoving’ implying that it was minimal in the context of child contact.

(R86, solicitor)

If there is not a high level of violence then the court will not make findings as not relevant to contact.

(R12, barrister)

Some judges are less inclined to take DV seriously unless it is extremely serious violence, and will take the attitude that parents ought to put the past behind them and work together in the child’s interests
(R56, barrister)

In Kathy’s case, the judge refused to hear any mention of domestic violence after the finding of fact hearing, suggesting that she was ‘just going over old ground’. For Natalie, a cavalier rejection of her account of violence was profoundly distressing and made her extremely anxious that her children would be at risk of further harm.

The district judge didn’t want to know. He said what I said did not stack up, that there was no evidence. I felt so small. I wept for three and a half hours after the hearing... It was [like] speaking to people who are deaf. Even when he saw the letter from social services about the abuse he ignored it
(Natalie)

Having the same judge would have helped us. One of the difficulties we’ve had is that we’ve never seen the same judge; it’s always been different judges. That caused us problems
(Bianca)

It was quite difficult as it was never the same judge every single time we were in court. So that’s 25 different judges we have had
(Leonie)

Yet where the same judge did oversee different hearings, they were enabled to recognise patterns and manage the case more appropriately (Kaye et al, 2003).

Practice direction 12J (PD12J) requires judges to consider a range of issues where allegations of domestic violence are made. These include the likely impact of the allegations on the outcome of proceedings, the effect of the violence on the child and the parent with care and the motivation and likely behaviour of the parent seeking contact (see section 2). The survey of legal professionals asked whether, in their experience, judges complied with this guidance. Three quarters (74%, n=57 of the 77 that completed this question) reported that judges ‘partially’ comply, with only eight (10%) ticking ‘fully’. Women’s accounts also indicated that opportunities to consider histories of violence through finding of fact hearings were often missed, a point echoed by solicitors and barristers. Only one respondent reported that judges always investigate allegations of domestic violence at the earliest opportunity; a third (33%, n=25) suggested this occurs ‘mostly’, half (49%, n=37) ‘sometimes’ and nine (12%) rarely. Application of practice direction 12J was thus considered to ‘vary extremely’ between courts and individual judges.

A critical issue linked to this that emerged from women’s experiences was the fragmentation of their cases because in the plethora of hearings cases were almost never overseen by the same judge.

For the last few hearings I have had the same judge, he has got all this evidence and now I think he understands, he shows signs that he understands he was a controlling person
(Nabeela)
The picture that emerges here from both women’s experiences of family courts and legal professionals’ practice-based evidence is of inconsistency and patchy implementation of even the limited measures that are in place to address women and children’s safety. Awareness of domestic violence and willingness to accept its relevance to decisions about children’s welfare varied by individual judge, despite practice guidance, and having multiple judges involved exacerbated the likelihood that outcomes were affected by personal vagaries. Similar patterns emerged with respect to expert reports.

**Expert reports**

The Government’s response to the Family Justice Review suggests limiting the use of expert reports in family law proceedings in order to reduce time delays and costs (MoJ & DfE, 2012). However, where domestic violence is a concern, expert assessments play a vital role in ensuring outcomes that are safe for adults and children in proceedings. There is a very real danger here that efforts to cut costs and time will undermine the focus on ensuring safe outcomes.

In all bar one case here, reports were ordered by the court to inform judicial decision-making. However, women often identified these by the agency that compiled them (e.g. CAFCASS), rather than the title of the report which may be more indicative of its purpose (e.g. Section 7, see glossary). Studies on child contact have noted that psychologists and psychiatrists are the most common experts appointed by courts to undertake assessments (Humphreys & Harrison, 2003; Saunders & Barron, 2003). In only four cases in this sample was this evident; while women reported that such reports were likely to blame them for violence (e.g. ‘provoking’ their ex-partners), on the whole reports by CAFCASS, social services and specialist domestic violence perpetrator programmes were more significant to case outcomes. Here we present findings under the heading of these agencies, encompassing women and children’s experiences of liaison with workers as well as reflections on the reports’ conclusions. Responses from legal professionals are also drawn on, where illustrative of the key issues.

**CAFCASS**

The Children and Family Court Advisory and Support Service (CAFCASS) is an independent body whose role is to advise family courts on the best interests of children (see glossary).

In cases where domestic violence has been alleged Practice Direction 12J requires judges to instruct CAFCASS to undertake an initial screening assessment. Subsequently, depending on the seriousness of concerns about the risk of harm to the children, the court can order CAFCASS to undertake either a Section 7 report or social services to undertake a Section 37 report.

How CAFCASS officers conduct their assessments can be significant for women and children’s safety (Thiara, 2010; Thiara & Gill, 2012). Women’s experiences of CAFCASS were mixed. Some women felt that officers had ‘seen through’ their ex-partners’ lies and manipulation and understood their concerns about the potential impacts on children of having contact with abusive fathers (see case study Colette).
CASE STUDY – COLLETTE

What happened...
Colette lived with her partner for seven years and they had two children. Her partner became abusive during her first pregnancy and frequently flew into a rage and threw things at her. He also forbade her from bringing anyone to their home causing strain on her relationship with her family and friends and isolating her from their support. Social services became involved when the children’s school noticed changes in their behaviour because of what was happening at home.

After her partner attempted to rape her, Colette called the police for help; she attended her local county court and obtained a non-molestation order and prohibited steps order to stop him removing the children from her care. Her partner breached the non-molestation order on many occasions by coming to her home. He then made an application to the court for a contact order.

The judge ordered a CAFCASS report. It took many weeks for a CAFCASS officer to be appointed. The CAFCASS officer began by interviewing Colette’s partner and spoke to members of his family. He then met with Colette and the children but spent only about 30 minutes with them and turned down her offer that he speak to members of her family and the children’s school.

Despite concerns expressed by social services and the children’s school about how distressed the children had been seeing their father’s abuse of their mother, the CAFCASS officer recommended that the court make an order for unsupervised contact, starting with visiting contact and moving to overnight staying contact.

What could have happened...
In accordance with PD12J, the judge at the first directions hearing ordered a finding of fact hearing and appointed a CAFCASS officer to carry out a Section 7 report. At the finding of fact hearing, the judge found that Colette’s partner had been violent towards her and made an interim order for indirect contact.

The CAFCASS officer carried out a full investigation into the children’s welfare and sought evidence from the children’s school, the police and social services, in accordance with CAFCASS Child Protection policy. He considered the findings of domestic and sexual violence against Colette’s partner and the impact of this on the children. The CAFCASS officer spent one hour observing the father with the children and then spoke to each child individually for 45 minutes. He also spent one hour with each parent, discussing the issues. He did not involve members of either party’s family in his investigation.

The CAFCASS officer made a report which recommended supervised contact because of concerns about the father’s behaviour. The court made an order for contact supervised at a contact centre and ordered CAFCASS to observe three of the contact sessions and prepare a further report.

A review hearing has been listed for six months’ time.
amount of time with them and the children; it is common for each party to be seen only once (Thiara & Gill, 2012). This led to women reporting that recommendations minimised or ignored their ex-partners’ violence. Tina had been referred to a Multi-Agency Risk Assessment Conference (MARAC) as she was considered at high risk of further assault, but found that CAFCASS nonetheless queried whether or not there was a history of violence and recommended that she and her ex-partner attended a joint parenting programme.

The first officer who had never even spoken to me wrote in her report that we should go on a Parenting Information Programme together, which was upheld by her colleague who actually interviewed me and was fully informed of all the violence...The CAFCASS officer used words such as alleged, his overriding stance was that my child must be convinced of his sincere belief that she should see his father

(Tina)

Women also found themselves labelled obstructive and hostile, often based on inaccuracies about their views in relation to contact. This is a common research finding in relation to child contact (see Harrison, 2008) that we explore in more depth in the following section.

The officer assigned to Helen’s case similarly produced a report which minimised her ex-partner’s violence.

[The report] just had a little paragraph saying it would be nice if he had anger management, and it said his behaviour was emotionally damaging to the children because he wasn’t able to be nice and because he slagged me off to her in front of the children and that was all it said. She spent very little time with me

(Helen)

Bianca’s experience illustrates a concern expressed by many women that CAFCASS officers, like some judges, separated men’s violence from their fathering.

At the initial hearing the CAFCASS officer said to me two quotes that have stuck with me forever. She said ‘it doesn’t matter what he’s done in the past, he wants to be a good dad now’ and also ‘it doesn’t matter what he does to you, it’s what he does to her that’s important’

(Bianca)

Legal professionals’ views and experiences of CAFCASS echoed women’s concerns. A minority were very positive about CAFCASS, suggesting that they ‘highlight issues well’ and are ‘alive to these issues’. However, the reliance on individuals’ knowledge, skills
and experiences was summed up by one professional: ‘some officers are excellent but there are some who are extremely poor’ (R16, solicitor). There was common acknowledgement that the organisation is underfunded and under-resourced for the caseloads they are expected to take on, leading to delays in meeting report deadlines and ‘an alarming trend for CAFCASS officers to cut and paste reports’ (R71, solicitor).

Others perceived that CAFCASS officers focus on ensuring contact takes place, with inadequate attention to the harms and risks of violence (also noted by Thiara & Gill, 2012).

It largely appears that the overriding issue for CAFCASS is to ensure that the child has a relationship with non-resident parent. This can appear to outweigh the considerations of DV – something of a ‘pull yourself together’ attitude can prevail (R10, barrister).

In my experience, CAFCASS officers are often focused on the child and are under pressure. They do not always take into account the effect that danger to a parent can have… there needs to be clearer guidance or CAFCASS officers need to be more familiar with the guidance (R82, solicitor).

Two thirds (66%, n=42) thought there was sufficient guidance for CAFCASS officers to ensure that risk and safety are appropriately taken into account.

There appears to be a wide variation in the extent to which CAFCASS officers follow the DV toolkit32 and are aware of DV issues generally. There are increasing numbers of Family Support Workers reporting in contact cases on specific issues and they do not seem to have much training (R43, barrister).

It is of concern that the CAFCASS Domestic Violence Toolkit introduced in 2005 following the HMICA inspection is no longer in use, having been replaced by a Child Protection Policy which does not deal at length with the impact of domestic violence on children or how to address safety and risk in their recommendations about future contact.

Social services

In 17 cases, social services were involved in undertaking assessments and preparing Section 7, Section 37 or Section 47 reports for court. As with CAFCASS, variation in their approaches to domestic violence and child contact was evident. Some women felt believed and reassured.

The social worker did a good report which said there should be no contact. There was also another section 7 report by social services which said abuse was likely to have occurred and that there should be no contact between my son and his father but there could be supervised contact with the baby (Natalie).

Others despaired over the dismissal of their experiences and trivialisation of the impacts of living with violence on their children.

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32 As noted earlier, the CAFCASS toolkit has been discontinued in favour of a section on domestic violence in their Child Protection Policy.
The section 7 report did not at all reflect the situation. It actually said that the children had not suffered any harm even though all the children had separately said that they have experienced violence and witnessed violence against me.

(Jessie)

He’s a typical abuser; he turns the charm on and off

(Bianca)

Several women noted that focusing only on the child, rather than how women’s safety and welfare affects children, combined with abusive men’s presentation as charming and on ‘their best behaviour’, led to social workers failing to recognise women’s concerns (see also Thiara, 2010; Thiara & Gill, 2012). This again calls into question the extent to which domestic violence is understood as a pattern of control and manipulation; social workers appeared to be convinced by men’s presentation as Dr Jekyll and miss the Mr Hyde of behind closed doors (Enander, 2009; see section 4).

He has been impressing them by looking after my child. But what he is doing to me [ongoing harassment], they said we have nothing to do with you. If father has a good relationship with his child, we will recommend for father to have contact with the child. But what he is doing to me is not the best interests of my child. He makes me upset, my son picks up those feelings from me.

(Nabeela)

Because we are going to court he is playing the dutiful father

(Michelle)

Despite injunctions against her ex-partner and his criminal convictions for abusing Leonie and her daughter, she perceived a report by social services to be misleading.

It is almost as if my daughter’s father was mister prodigal who could do no wrong... They had him down as the father who had tried his best and done his best and I’d made his life difficult

(Leonie)

As previous studies have concluded, ‘when plausible men contested evidence of violence, even proven histories were disregarded’ (Harrison, 2008: 395).

Kiran’s solicitor requested that social services investigate her ex-partner’s history of violence as part of their assessment, but was informed that they did not have the time or resources. It is difficult to see how their assessment of how safe the child would be having contact with his father could have been comprehensive without evaluating available documentation of his abuse.

Finally, in several cases social services and CAFCASS recommended intervention measures such as anger management, couples counselling and parenting programmes, none of which are internationally recognised good practice for domestic violence perpetrators (Respect, 2010; Gondolf, 2011). Few appeared to know about, or refer to, specialist domestic violence perpetrator programmes.33

33 CAFCASS are now funding specialist domestic violence perpetrator programmes through spot purchasing, and this may therefore change.
Specialist risk assessments and perpetrator programmes

While only three women identified that specialist risk assessments had been ordered to assist the court in making decisions about the suitability of contact, more were aware that men had been referred to a domestic violence perpetrator programme (DVPP).

Women’s perspectives on DVPPs were complex. Risk assessments were reported to be more accurate and cognisant of strategies used by abusive men to terrorise women and children while disguising their behaviour from others.

“The best report so far I’ve had is a DVPP risk assessment. It really understood the issues and the impact on the children”

(Jessie)

“They disappointed me later on... I was told that he only got one chance on the courses, and if you get kicked off then that’s it, you don’t get on another one. And he did get kicked off the course because he abused the girl he was with and I was specifically told that any violence once he’d started on this course, that’s your lot, you’re off, game over. So when I found out he’d been kicked off the course I thought that’s it, the case is over because without completing the course and then having another report done at the end of it, he couldn’t see her. So as far as I was concerned that was it. But we go back to court the next time, and they are going to have him back on another course... that really upset me... he stopped going after a few weeks, he left that one, just walked away. So no second report was ever done, as there was nothing to report on”

(Mel)

That cases could not be resolved until men had completed lengthy programmes was also a source of frustration.

“He is on the domestic violence course. He got suspended so that is why [the case] is taking longer. They have taken him back on the course”

(Zoe)

“However, women were less confident about programme impacts. Some were disappointed that their ex-partners were allowed back on programmes after breaching conditions of attendance, perceiving that multiple chances were given even when men did not appear committed to behavioural change.”

(He is on the domestic violence course. He got suspended so that is why [the case] is taking longer. They have taken him back on the course)
A key finding from women’s experiences of expert reports is the lack of knowledge of domestic violence, with only specialist organisations displaying appropriate awareness of how to assess risk and harm.

Summary

Women’s journeys through private law proceedings reveal that many were uninformed about the purpose of different hearings, and all too frequently their accounts of violence were disbelieved or deemed not relevant to child contact. Proceedings were ongoing over many years, meaning that women and children’s everyday routines were subject to intervention and variation by different court orders. Some practices that have been progressively entrenched in private law proceedings, such as mediation, compounded perpetrators’ ability to continue manipulation and intimidation. This perhaps reflects in no small part that domestic violence is mostly understood by courts only as physical abuse, with the coercive and controlling dimensions rarely recognised. Absence of special facilities in family court proceedings had serious implications for women’s safety and well-being and acted as a barrier to their equal participation in proceedings.

At the same time, a number of promising practices also emerged. For example, where women did feel believed by legal representatives, judges and agencies such as CAFCASS and Social Services, they were more confident that impacts of violence on children would be factored into contact decisions. Risk assessments conducted by specialist domestic violence perpetrator programmes consistently identified harms and risks more accurately, reinforcing that this should be standard practice (Newman, 2010). Finding of fact hearings offered a vital opportunity to present evidence of violence before the court. Judicial continuity, recommended by the Family Justice Review (MoJ, DfE & WAG, 2011) and endorsed by the Government response (MoJ & DfE, 2012), supports the capacity of judges to take violence into account, increases speed and efficiency and, most of all, enhances case management and thus the experience and outcomes for victim-survivors and their children.

Overall, however, findings here support previous research that decisions about child contact are routinely separated from men’s violence (Eriksson & Hester, 2001; Kaye et al, 2003; Harrison, 2008; Thiara & Gill, 2012), and therefore formally establishing whether the violence had occurred was often unimportant. Solicitors, barristers and victim-survivors had all witnessed this trend in play in the courtroom. The next section presents findings on orders made in relation to contact, both interim and final, drawing together themes from this section to their culmination in judicial decision-making.
There should be no automatic assumption that contact to a previously or currently violent partner is in the child’s interest; if anything, the assumption should be in the opposite direction.

(Sturge & Glaser, 2000: 623)

The proceedings are still ongoing after five years of my child saying they don’t want to see him. There is no outcome yet. I am still afraid there will be contact.

(Hasina)

This section concludes the journey through legal proceedings, presenting data on the contact orders made by the court and women, children’s and legal professionals’ perspectives on them.

Interim and final contact orders

In 25 of the 31 cases involving court proceedings (81%), an order for contact had been made. In the remaining six cases an order was pending or proceedings were at a very early stage. In just over half (56%, n=14), the order was interim (see glossary). In all bar one case where an interim order was made, proceedings had been ongoing for over a year. However, in three cases proceedings had been ongoing for much longer time periods with only interim orders: in two for five years and one for nine. In half of cases, then, no final decision had been made about child contact orders despite lengthy proceedings. There were no instances where a ‘no contact’ order was made.

Four out of the 14 interim orders were made ‘by consent’ (see glossary). Final orders were more complex: of the four where women specified how the order had been made, two were by consent and two were not. Figure 7 shows the breakdown of type of contact and order. Unsupervised contact was the most frequent overall, featuring in 13 cases (52%), followed by indirect contact (36%, n=9).

Figure 7: Type of contact orders made by the court

<table>
<thead>
<tr>
<th>Type of Contact</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsupervised contact (staying overnight)</td>
<td>6</td>
</tr>
<tr>
<td>Indirect contact</td>
<td>3</td>
</tr>
<tr>
<td>Unsupervised contact (not staying overnight)</td>
<td>4</td>
</tr>
<tr>
<td>Supervised contact</td>
<td>2</td>
</tr>
<tr>
<td>Shared residence</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type of Order</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim orders</td>
<td>6</td>
</tr>
<tr>
<td>Final orders</td>
<td>5</td>
</tr>
</tbody>
</table>

Section 6 – Case outcomes: contact orders
Within the sample, it was more common for indirect contact to be ordered as part of a final order (n=6) than an interim order (n=3)\textsuperscript{34}, suggesting that direct contact was in these cases not viewed as safe by the court. However, a slightly larger number of final orders (n=6) than interim (n=4) involved unsupervised contact (staying overnight). Below we draw on women’s accounts of judicial decision-making to explore their perceptions of bases on which orders were made.

In the three cases where proceedings had not been initiated, contact had been arranged through solicitors’ correspondence. One woman was unaware that she could have applied to court to formalise arrangements, but as her child was happy to see his father, she gradually built up the time they spent together, with handover in a public place for her safety. In the other two cases, children were reluctant to see their fathers and both mothers anticipated that the case would proceed to court in the near future.

Women’s perspectives on contact and court orders

Women’s views on contact were mixed (see also Harrison, 2008; Thiara, 2010). Contrary to popular and some academic discourses that women in child contact proceedings are obstructive or implacably hostile, most were keen for their children to see their father and maintain or develop a meaningful relationship with him. However, many saw the need for limits on how and when contact happened, given the years of abuse that their children had lived with, and the distress, anxiety and anger that children displayed and mothers managed daily.

In the few cases where women were opposed to contact, this was rooted in visceral fear about the impact on children and their emotional well-being. Chandra had fled out of London to protect herself and the children. While the court ordered only indirect contact, her ex-partner used this to write letters demeaning her to the children, demonstrating to her that he was not able to be a positive parent.

I wouldn’t stop him seeing the children, if he was a good father, but if she has to see him, I feel she is going to relapse. I don’t want all the memories to come back, now she is flourishing. A few years ago she couldn’t talk, was very scared if anyone raised their voice, all because of what she’d been through… I’m not happy with even indirect contact but I have to comply with that

(Chandra)

The damage to women’s relationships with their children where they were required to send children to contact, acting as enforcers for the court, was a powerful theme in some interviews.

I had never said you’re never going to see your children, I was allowing some contact, but I was trying to safeguard the children… I am always thinking ‘am I going to keep my children safe?’

(Steph)

I’m not opposed to her seeing him; I just want her to be safe

(Beverley)

If I am forced to make my daughter go to contact with her father, it will have a detrimental effect on her and relationship with me. It will be me that has to make her do things that will upset her. No one considers the impact on the parent with care

(Hasina)

\textsuperscript{34} One order for indirect contact was made against a woman, as her ex-partner had gained residence of the children after successfully discrediting her mothering abilities and questioning her mental health.
I kept saying I didn’t want to make them go but they said I had to abide by the contact order. I was not empowered as a mother  
(Jessie)

Some women were also concerned that their ex-partners were seeking to have children in their care for lengths of time that they had never before experienced e.g. have babies and infants overnight (see also Harrison, 2008). Rosie, for example, reported that not only did her ex-partner not have the facilities to care for an infant, but had also previously struggled to cope with the demands of a small child.

He wants the whole weekend but it’s ridiculous. He has never looked after her for that long. I don’t feel it’s safe; he has no bed, changing mat, chair for her... When I used to come home after he had looked after [before we separated] he yelled that she had been a nightmare all day  
(Rosie)

[My daughter] was forced to stay overnight with him when she was two. I couldn’t believe that  
(Helen)

Despite fears for their children’s emotional health and well-being underpinning their reservations and resistance to contact, several women were nevertheless described as obstructive and unreasonable in expert reports by Social Services and/or CAFCASS.

When Hasina’s daughter refused to go to contact visits, her family support worker encouraged her to take her home. She was later surprised and confused that the family support worker’s report said that the ‘mother was obstructing contact’. Christine Harrison (2008) suggests that what is read by professionals as implacable hostility is actually appropriate protectiveness, a point made eloquently by Sophie.

They need to ask questions, why is this woman not allowing him to see the child? There is a history of abuse here – alarm bells should be ringing. There are many times when I have sent him and been worried sick  
(Sophie)

It is notable that Gita, who reported being well supported by her legal representatives throughout proceedings, and felt believed by judges, was possibly the most satisfied with the outcome of the case: an order for indirect contact on the grounds that any other arrangement would not be in the children’s best interests. Her children were explicit that they did not want to see their father, that they were scared of him. The final order therefore reflected their views as much as Gita’s fears.

The report said I would do anything to prevent him from seeing his daughter. The language used by CAFCASS undermined my very real concerns  
(Tina)

The finding of fact hearing found in my favour. At the final hearing, an order for only indirect contact was made... I knew he wouldn’t write to the children. He has not written in eight or nine months  
(Gita)
As noted in the previous section, some expert reports did acknowledge women and children’s experiences of violence and recommended no or indirect contact because of the risk of further harm. However, understanding of how perpetrators can disguise their manipulation before professionals was present in only a minority of cases.

Some women were perplexed that even where their ex-partners’ violence, and often abuse of children, was proved at fact finding hearings, this did not appear to have been factored into decisions about contact. This view was echoed by legal professionals.

After the finding of fact hearing I was so shocked that they would even consider letting him see [my son]. It seems what happened to me has happened and it is separate from the contact decisions... they are more concerned with fathers than children

(Danielle)

Judges/magistrates do not always consider appropriately the extent to which such allegations of violence would be relevant when making an order for contact

(R82, solicitor)

Even where allegations are proved, courts often fail to make the link between the fact of domestic violence and its impact on the child’s primary carer, especially if asking her to deal with the perpetrator of violence

(R10, barrister)

Another source of concern was the degree to which children’s desires to see (or not see) their fathers were reflected in contact orders. Not all children had been interviewed by CAFCASS or social services about their wishes and feelings, as some were too young, and here women were advocating for their children’s voices to be heard too. Knowledge of children’s views, below, is drawn from interviews with women.

**Children’s views**

The importance of hearing children’s voices and taking their wishes and feelings into account is enshrined in the UN Convention on the Rights of the Child and the paramountcy principle of the Children Act 1989, and it has been reiterated in the recent Family Justice Review (MoJ & DfE, 2011). Children’s fear of abusive adults and/or cognisance of the fear felt by their resident parents are expressly defined as relevant to judicial decisions about contact (Sturge & Glaser, 2000). Yet research on contact and domestic violence consistently finds a ‘selective approach’: that if children want contact their views are taken into account, but if they do not, their voices are often discounted (Mullender et al 2002; Buckley et al, 2007; Eriksson 2009; Holt 2011; Thiara & Gill, 2012). Several women here, echoing previous studies, described children explicitly stating that they did not want to see their fathers and expressing this in words and behaviour.

She would not go, she would not get dressed... she would not budge... She says no one listens to her, she has repeated that she doesn’t want to see him consistently and no one listens to her. They [professionals] have commented that there is no budging this child, but still the proceedings go on

(Hasina)

My son is terrified of him... he doesn’t want to see his father at all. He says he makes him feel bad about himself

(Celeste)
She doesn’t want to go to him, she is not happy. I could see she is not happy, she was different completely. She said she did not want to stay in his home. So I can’t say she is happy and safe
(Fatima)

However, some children did want to see their fathers, requiring women to juggle their own concerns, judicial decisions and children’s wishes. Ella feared that her ex-partner continued to manipulate their son through unsupervised contact (including staying overnight), and continued to feel unsafe if she went to handover unaccompanied. While she initially had reservations about her son’s desire to spend time with his father, she accepted the importance of his view and accommodated it by encouraging an open dialogue with him. This required considerable emotional labour on her part.

He wanted to have contact with his dad because we had lived with his dad and his family for such a long time. They were, and still are, a big part of his life...We all know what is happening, where and when, and that is really positive... I still have concerns because I am not there and don’t know what is happening in that house and if my son has bruises or anything I start to panic. But I keep things open with him so he can tell me if he has any concerns
(Ella)

The combination of fears for their children and children’s reluctance and/or refusal to see their fathers led to many women viewing supervised contact as the safest option, although as the outcome data shows, this was rarely granted. Here decisions often appeared to be shaped by how perpetrators managed to disguise their controlling behaviour, presenting Dr Jekyll to relevant professionals (Enander, 2009).

For instance, Nabeela’s ex-partner was initially only awarded contact supervised by a family member and then social services. This was then changed to unsupervised contact following a Section 7 report prepared by social workers who failed to acknowledge his behaviour outside of observed sessions or her son’s resistance to seeing his father.

More commonly, however, women felt that perpetrators used manipulation and bribery to win their children’s affection: feeding them excessive sweets and junk food during contact; spoiling them with gifts and expensive leisure activities (Thiara, 2010); and using techniques to alienate children from their mothers (Morris, 2009). For many, supervised contact was the only way in which abusive ex-partners’ behaviours could be monitored.

Supervision of contact: risking women and children’s safety

I had asked for supervised contact because of his state of mind and the fact that he had abducted them, but I never got that
(Erika)

35 Contact supervised through contact centres did not emerge as a key finding, possibly reflecting the paucity of contact centres in London. For studies exploring women and children’s experiences of contact centres, which identify similar overall themes to our research, see Aris et al (2002), Humphreys & Harrison (2003), Harrison (2008).
Contact arrangements were changed, all down to social services... they said there were successful contact reports in the last six to seven months. He was on his best behaviour in front of professionals; he was doing everything for his son and this impressed people... He was only behaving good in front of the professionals... They [social services] said he should have him unsupervised. She was pressured by the father too much, that she made this decision. The judge was also shocked, saying 'how can you make these recommendations?...' She was querying to the social services ‘why are you making these recommendations for three nights when the child is throwing himself on the floor, the child is making himself sick, he’s vomiting, he’s refusing, so why are you making these recommendations?’

(Nabeela)

Her ex-partner’s ongoing attempts to alienate their son from her mother (Morris, 2009) went unrecognised, and Nabeela feared that the final hearing (due to be held imminently at the time of interview) would see social services’ recommendations implemented.

Perhaps unsurprisingly, given the minimisation of violence detailed in the previous section, expert reports from both social services and CAFCASS appeared to carry more weight than women’s testimonies and children’s views and behaviour.

He asked for shared custody and direct contact... I wanted indirect contact and explained very clearly why. I felt railroaded... The judge simply looked at what the CAFCASS officer had written, and the CAFCASS report I’ve now seen but hadn’t seen at the time, from a woman who had never met or spoken to me, and that’s how that first order [for unsupervised contact] was made. It didn’t take my wishes or feelings or concerns into account at all

(Tina)

In Zoe’s case, contact had switched over several years between supervised and unsupervised, including in a contact centre. Although her ex-partner continued to be abusive to her, and the children did not want the time they spent with him to be extended, at the time of interview he saw the children unsupervised and his legal representatives were pushing for longer periods of contact.

They [the court] saw it as he wasn’t harming the children, there was no risk to the children, so contact should still be in place. We’ve tried all different sort of drop offs, his dad’s done drop offs, contact was at his dad’s house and I would drop them off there and his dad would collect them. That worked for a little while and then that didn’t work. Then we tried a shopping centre where it was open, that didn’t work because he was abusive again, violent... I am cautious as I don’t know if anything is going to pop up; there is no one watching him

(Zoe)

I still want it to be supervised because he’s still saying things to him like ‘your mother is not your family’, ‘your mother is a cow’, which is emotionally damaging my son... I don’t trust this man... He wants to pick him up on Friday from the school and bring him back on Monday to the school, so three nights, every weekend, and half of the holidays and two phone contacts a week and an hour after school one day in the week. That’s what he asked for... My son did not want the overnight contact that the court made... he doesn’t like going there

(Nabeela)
One worrying finding was that women felt that such was the inevitability that contact would be ordered, the only way to safeguard their children’s physical and emotional well-being was to supervise contact themselves despite risks to their own safety.

Celebrste, who had moved to a refuge to escape her ex-partner, perceived that she had no option but to supervise contact with her son, rather than risk him being alone with his father (see case study A).

“I supervised his contact. We would meet for a couple of hours in the park. We started off in the zoo with her dad and I supervised that...we worked up to spending whole days together
(Leonie)

“I agreed to supervised contact in a public place and I supervised the contact, but I didn’t want to say I have to be there because your father will hurt you or take you
(Celeste)

CASE STUDY – ALISON

What happened...
During their 12-year relationship, Alison’s husband was frequently physically abusive towards her, punching and kicking her often in front of their young son. On one occasion he attempted to strangle her. Her husband was also very controlling and emotionally abusive, restricting her contact with friends and family.

After their separation Alison’s husband continued his abuse. He came to her home banging on the door and made constant phone calls. As a result of his behaviour the police supported Alison by fitting an alarm.

Alison wanted to be reasonable and make arrangements for her son to see his father but she was scared about his abusive behaviour and his ability to look after him. She decided that the only way to ensure that her son was safe was to supervise the contact herself and made arrangements for them to go out together on regular outings to the park or the local library.

Alison’s husband sometimes became angry and abusive during contact. He did not like the fact that she was in control of the contact arrangements. On one occasion he grabbed her by the hair and threw her to the ground. Alison called the police. Her son was crying and said he was scared of his father.

What could have happened...
After separating from her husband, Alison went to see a family law solicitor. After hearing Alison’s account of the violence she had experienced the solicitor applied for a non-molestation order and occupation order on an emergency basis to protect Alison.

At a without notice hearing, the next day, the court made a non-molestation order and occupation order. Alison felt a little safer but still had serious concerns about her safety and that of her son.

Alison’s solicitor advised her that in light of the non-molestation order and her fears for her son she should write a letter to her husband proposing supervised contact at a contact centre.

Her husband refused supervised contact and made an application to court for direct contact and shared residence. Alison’s solicitor filed a C1A, setting out the domestic violence, along with her Acknowledgement of Service form.

At the first hearing of Alison’s husband’s contact application, following PD12J the judge made an order for interim indirect contact, appointed a CAFCASS officer to undertake an assessment and ordered a finding of fact hearing about the domestic violence.
The rights of fathers to see their children were perceived by most women and some legal professionals to ‘trump’ children’s wishes and feelings, as well as women’s concerns about their safety (see also Thiara, 2010). Specific examples included men being given more time and opportunities than women to file statements and respond to court papers, and comments from judges in support of a presumption of contact for abusive fathers.

Erika’s children had attended therapy to address the legacies of their father’s abusive and controlling behaviour, and she was anxious that he was still emotionally abusing them during contact. This was dismissed in court since the priority appeared to be securing him time with the children, with specific arrangements stipulated for his convenience. For Erika, this perpetuated the abusive household gender regime (Morris, 2009) that her ex-partner had sustained for so long; she felt the court, like her ex-partner, held traditional views about gender roles that privileged his preferences.

The courts appear to be so pro contact that it doesn’t matter what the cost is in terms of a) the child’s welfare and b) the woman’s welfare... No one’s asking the question at what cost?... Because he’s her dad he has free rein to abuse me and make my life as difficult as possible all in the name of fatherhood, and the courts just see it, he’s her dad, he’s got a right to contact

(Erika)

Similarly Annette reported that timings of contact were organised around her ex-partner’s schedule, which meant that she lost time with their daughter.

I feel strongly that until the ‘presumption’ of contact is tackled and unpicked by the courts and professionals it is always going to be hard to persuade courts that domestic violence is a significant issue that can and should militate against contact

(R43, barrister)

We had a recommendation from CAFCASS and the contact centre saying that he was a risk to our daughter. But the judge decided he wanted someone else involved. He said the agencies ‘had it in for dad’... everyone is now concerned with dad seeing his daughter, not about the impact on her. The court bends over backwards [for him] and ignores too much to make sure contact happens

(Beverley)

I wanted him to have contact from eight o’clock on a Friday night, as my daughter goes to school all week, so where is my time with her? The court gave him from 6.30, so I don’t have any quality time with my daughter

(Annette)
Conditions and directions attached to contact orders are sometimes made by the court to support or regulate contact. In only eight cases here could women identify such conditions made by the court: in six, perpetrators were referred to a specialist domestic violence perpetrator programme; in two, to anger management or parenting support groups. As noted earlier, the latter two are inappropriate responses to domestic violence. In one case, an additional condition stipulated that the perpetrator was required to stay a set distance from his ex-partner during handover. Overall, though, in three quarters of child contact orders (74%, n=23), no activities were restricted or conditions attached that addressed women’s safety.

**Summary**

Despite histories of violence, despite children refusing contact or expressing terror and distress, despite in some cases injunctions being in place and criminal convictions for domestic violence related offences, despite women’s fears for their children’s emotional well-being, findings here support multiple previous studies (e.g. Saunders & Barron, 2003; Harrison, 2008; Thiara, 2010): unsupervised contact was found to be routinely ordered to abusive fathers.

For many women, a combination of poor/inadequate expert reports and judicial decision-making often failed to acknowledge their concerns about legacies of violence and children’s emotional wellbeing or factor them into child contact orders. Children’s views were also rarely reflected in orders and arrangements ordered by the court. As with women’s accounts of the journey through legal proceedings where emotional safety was rarely considered by judges, the emotional demands placed on women to manage children’s resistance to seeing abusive fathers were seldom recognised.

The next and final section of data analysis presents findings on the aftermath of child contact proceedings, including compliance with court orders, post-order violence and financial and wider impacts.
Section 7
The aftermath of child contact proceedings

I have been milked emotionally and financially
(Jessie)

This section explores the extent to which involvement in child contact proceedings had an impact on women’s lives, focusing particularly on the financial toll. Women’s accounts here began with the immediate aftermath – to what extent perpetrators complied with court orders – and moved onto rebuilding their lives (the process of picking up the pieces after domestic violence and child contact proceedings). We close with women’s own reflective conclusions about how perpetrators used private law proceedings as a tool to continue harassing them and exerting control over their, and their children’s, lives.

Compliance with contact orders
The extent to which perpetrators complied with court-ordered contact revealed much about their possible motivations for making contact applications in the first place. As noted in the previous section, some did not attend domestic violence perpetrator programmes despite being ordered to do so before decisions could be reached about contact. Others were unreliable about keeping to the arrangements set out in the contact order.

He hasn’t seen them for two weeks. He’s allowed to see them once a week. He hasn’t seen them because he chooses not to
(Erika)

He is always not bringing [my son] back or not bringing him back on time or not picking him up or not turning up for contact or saying ‘I have to work this weekend’ even though there is a court order in place. He uses that as a form of control
(Sophie)

In almost half of cases where courts had made orders for indirect contact (n=5), men had subsequently failed to send letters/emails/presents or make telephone calls regularly or at all. That when offered an opportunity to maintain a relationship with their children, they chose not to do so, suggests that this may not have been their primary goal of pursuing contact through the courts.

I agreed with [indirect contact]. He can send cards or presents via the solicitor and the solicitor will send them on to me... he hasn’t sent anything for two years. Then a few months ago, there was an order made, which I agreed to, that he could send cards and presents six times a year. That was six months ago now, and he’s sent nothing... When he went to court recently, the judge actually said to him ‘you were allowed to send cards and presents six times a year, have you sent anything?’ He said ‘what’s the point of me sending presents if I can’t see him?’
(Courtney)
This man articulated a sense of entitlement to a relationship with his child, and a particular form of that relationship, that did not acknowledge how his abusive actions might necessitate that he built trust with her before spending time together in person.

He is supposed to send cards and letters but he hasn’t done that. He is supposed to send one a month, but I get three or four a year. But they don’t take that seriously – they [the court] don’t monitor if he actually does it.

(Beverley)

A final theme of non-compliance with contact orders was perpetrators’ failure to contribute financially for their children: offering smaller amounts of money than that specified by the Child Support Agency or the court; keeping clothes and shoes at their residences, requiring women to replace them; requesting (and being granted) that women paid for taxis to deliver and collect children for contact. This was one of the ways in which child contact disputes, and subsequent proceedings, affected women’s income.

Financial impact of proceedings

How am I supposed to concentrate on work when I don’t know if my child is going to be taken off me?

(Bianca)

The impact on women’s income and employment opportunities was striking and multi-faceted. Some specifically mentioned the difficulty of finding money for transport and/or childcare to attend hearings (see also Thiara, 2010). Almost all women involved in proceedings (28, n=90%) identified some degree of impoverishment and for several this involved huge sums of money spent on legal fees, paid for by selling all their assets, eating away at savings and building up seemingly insurmountable debt. This often compounded the financial abuse that women had been subject to by their ex-partners (see section 4).

The most common theme with respect to the financial impacts of involvement in proceedings though, was that women were unable to work because of the constant requirements to attend hearings and preparation for court. Some had given up jobs, while others had been prevented from finding work and subsisted on welfare benefits. Paid employment represented a much anticipated and wanted route to the economic independence that most women had been denied by their ex-partner.

It goes on for such a long period... I haven’t been able to hold down a full-time job, I haven’t even been able to commit to any part-time work because you just don’t know what is coming round the corner when you are in court. You jump at the court date you can get so if that means turning your life upside down to do it, you do it. You find you’re never actually able to commit to anything, and the financial side of things goes through the roof... I’ve racked up huge amounts of debt through going through proceedings... If you are seen as being unable to provide, you are not a fit enough parent. The second you stop financially providing for your child or for their upkeep, the court frowns upon that hugely. They don’t take into account that court proceedings can be demanding on your time and emotions and you can’t actually live a normal life while you’re going through court... I hope that one day soon these court proceedings will be over and I can go and get a full-time job to provide for [my daughter]

(Leonie)

I had to give up work because of the proceedings and childcare. I am now receiving benefits. You can’t keep a job when all this is going on

(Natalie)
The spectre of having to pay legal expenses meant that for some women, paid employment was simply not a viable option.

I want to work but as the court case has been going on for so long, and if I don’t work basically my court fees are paid for. I want work, I’ve always worked, but it’s not worth me going to work full time if I’ve got to pay for court fees and it’s still dragging on three years later.

(Courtney)

I’m not working, but it [the court proceedings] stops me from going and getting a job. If I was working I would have to pay for a solicitor on top of feeding and clothing my children.

(Lisa)

Rosie, however, wanted to reduce her hours at work to spend more time with her children, but was unable to do so because she needed to maintain a certain level of income to pay legal bills.

Women who were not eligible for legal aid accrued significant debt as a result of responding to child contact applications. This was debt that they knew would be a burden for years, constraining their opportunities for employment, holidays and where they could live, and limiting what it was possible to do with and for their children.

I had £2,000 in savings and then I had to get a loan as it cost me £10,000 in total. I am still paying off the loan today.

(Ella)

I paid out £35,000 in court and solicitors fees. I eventually qualified for legal aid after losing my job [because of the disruption of the court case], but all my savings were gone.

(Annette)

I think I have spent about £45,000, which doesn’t include the last hearing…. The cost of the final hearing will be between £6,000 and £7,000… No one has actually told me from the outset that this is going to be very expensive and traumatic… I feel bullied, financially and emotionally.

(Jessie)

I had representation at the first two contact hearings and not the latest four… I can’t afford the legal bills. I’m paying the legal bills on my credit card, and I’ve been advised that just to get through to the next hearing will cost about £8,000 and that’s going on credit cards because I’ve got no way to pay it… I have spent £40,000 on legal bills. I had to sell my flat, I now don’t have anything, it’s all gone; the money has gone. But I feel so vehemently that this can’t continue because of the harm that it’s doing to me and [my daughter] that I have to do something. I’m prepared to put myself into serious financial debt to save her.

(Bianca)

Chandra, working 16 hours a week, was paying almost a third of her income towards legal fees. This left her with little money for everyday essentials, and without family support she would have been unable to pay bills. While her employers wanted her to work more hours, increasing them would also raise her liability for
legal expenses. Like many of the women, support from her family was crucial to keep her and the children financially afloat.

“My parents help me financially and so I was always able to manage my finances, without them I would have been in a lot more difficult situation, I wouldn’t be able to afford the basic needs for my child – clothes and food. Benefits don’t cover it... It’s so hard to get a job and then to maintain it, it’s financially not viable to work more than 16 hours a week... Those women who don’t have family who can support them, how are they supposed to bring up a child, work, pay bills, rent and legal fees?”

(Chandra)

Beverley’s job was jeopardised by hearings being repeatedly listed, often with only a few days notice, when she was expected to be on a rota. Yet she found the judge more sympathetic to her abusive ex-partner’s circumstances than her attempts to balance the multiple demands of work, childcare and court.

“My employers have been very understanding but it’s been difficult. At one hearing, the judge said to my ex ‘we don’t have to take up too much of your time’. I was livid. I am a single mum. He is unemployed”

(Beverley)

Similarly Lisa commented that judges repeatedly listed hearings in the morning, requiring her to be at court to meet with her legal representative at the same time she was supposed to be taking children to school, meaning that she often arrived at court late and particularly anxious.

Erika and Zoe both had to use all their annual leave entitlement to attend court, and pay all their legal fees while their unemployed ex-partners claimed legal aid.

“It has affected my work, I’ve had to have days out of work, but obviously you’ve got to pay court fees and travel to court, and then I’ve got to arrange for someone to make sure the children are picked up from school... Paying that contribution, it could have gone toward my children, he got away without paying anything, he doesn’t pay nothing towards court fees. I’m the victim, and I have to pay. It doesn’t seem right”

(Zoe)

“I had to use all my leave for the hearings: half for the hearings, the rest of it seeing solicitors and getting advice. It cost me a fortune to defend myself, and the strain it put me under... I had to pay for everything, had to pay thousands... He never did a day’s work, never supported the children. I was terrified of losing my job. So he still manages to make my life intolerable”

(Erika)

For many women, however, the deleterious financial impact paled in comparison to the wider disruption to their (and their children’s) lives and the emotional labour required to manage the demands of child contact proceedings.
It’s cost quite a lot of money as I’ve used a solicitor who is private after the (specialist domestic violence service) lost their funding for their solicitor... But the impact on me psychologically, I feel like I’ve been treated like a criminal and this is a jail sentence that I’m carrying out. Being dragged to court all the time and being harassed by him all the time has made it very difficult for me to build a life for myself or have any sort of normal career, or do anything normal. The whole thing, the financial thing, the stress, having my children under stress, having social workers, CAFCASS people, the police, invade your life all the time

(Helen)

Picking up the pieces: rebuilding lives

When asked about impacts of proceedings beyond the financial, the most common words that women used spoke powerfully of being emotionally and psychologically ground down: stress; depression; sleeplessness; eating problems; anxiety; panic; therapy and counselling. A word cloud\(^{36}\) diagram created from women’s responses to this question vividly illustrates this; font size indicates how frequently each word was used (see Figure 8).

Figure 8: Women’s descriptions of the impact of proceedings

\(^{36}\) Created from interview transcripts and notes using www.wordle.net
Several aspects of involvement in child contact proceedings emerged as causal or contributory. Many women referred to the length of time that their own and their children’s lives were held in limbo while proceedings were ongoing.

The fact that it has dragged on so much, we can’t move on with our lives, we’re stuck in a box
(Danielle)

You have to go backwards and forwards, it ended up dragging on for two years and it didn’t need to take two years
(Mel)

Almost half of women (45%, n=14) had experienced violence from ex-partners after contact orders were made by the court, mostly in the form of threats and harassment. Even the conclusion of the case did not free them from coercion and control. Yet it was the proceedings themselves, the recurrent attendances at court alongside the men who abused them, surveillance by courts and statutory agencies and fear of case outcomes that might jeopardise their children’s safety which had more negative impacts on their physical and mental health.

I’m on anti-depressants at the moment, I feel very angry, I can’t sleep, I feel like I’m under pressure, I feel like I’m being judged
(Lisa)

It has had a major impact on me. I didn’t eat for a long time, I’ve had panic attacks... I feel like I have lost a bit of my life
(Zoe)

It has been extraordinarily stressful. I have had low-level viruses. It has been more stressful than my father dying or him leaving, I can’t cope with the sheer unfairness of it
(Tina)

Several women talked about how the stress of proceedings made the already demanding role of single mother even more difficult, especially hiding their worries from children. Many had sought therapeutic support and described family and friends as invaluable.

I can’t say I am strong or healthy psychologically. I used to go to therapy, counselling, and I am trying to go again... I have to stay strong for my daughter but I am shaking
(Fatima)

The whole stress of going to court, making arrangements for the children, having to remember everything about the history of my marriage – it was stressful. I had sleepless nights. I was putting a brave face on for the children but feeling numb, trying to make it normal for them
(Zahra)

Tellingly, some women likened involvement in proceedings to living with domestic violence: the uncertainty, loss of autonomy, denial of their reality and fears that children would be harmed.
It’s been like going through the abuse again, it really has. So that abuse that I suffered in my marriage, that walking around on eggshells, it’s been the same thing in the legal system. It’s very scary, you think, by court order are my children going to face abuse?

(Steph)

Many were also cognisant that abusive men used child contact proceedings to have a say in decisions that affected their lives and their children’s. As Suzanne commented, she ‘left home to be safe and psychologically free from him’, yet found being summoned to court hearings meant that she remained bound to him as and when he chose.

Private law proceedings as an instrument of harassment

I know he didn’t really care about the child, he was using him as a pawn to get to me, but by hurting me he was hurting the child

(Sophie)

Previous research has highlighted that some abusive men use ‘the formal court process to slowly insinuate themselves back into women and children’s lives’ (Thiara, 2010: 167). That women’s accounts often referred to multiple sets of applications and orders was indicative that in many cases perpetrators had ‘frequently initiated proceedings’ (Sturge & Glaser, 2000: 619). Aware that further physical violence could lead to arrest or injunctions, abusive men found contact applications to be a mechanism through which to reassert control: requiring women to face them in court and adjust their everyday routines to accommodate contact arrangements that could in turn be varied by the court with each new application.

There has been a final order about contact but he regularly goes to court and makes applications and they seem to go through if someone is on the desk... He is using the courts to harass me because he is known to the police so they will arrest him. So he makes all these applications to the court, every month there is an application against me...There are these moments where I start doing something else and then he’ll come along again

(Helen)

He seems to be able to keep making more and more applications. The child has said from the beginning that she doesn’t want to see her dad, but we have had to go back to court over and over again

(Hasina)

Some legal professionals saw similar patterns in their caseloads.

They [perpetrators] take unreasonable stances on contact, make extra applications to increase the number of hearings and face-to-face encounters, but don’t actually properly apply themselves to such contact as they may get

(R113, solicitor)

This gave many perpetrators a route, albeit remote, to sustain an abusive household gender regime (Morris, 2009), particularly where contact orders enabled them to decide arrangements for children’s education, holidays and in some cases, even whether children could attend after-school clubs and see friends when these clashed with requirements to see their father.
While several women spoke of being ‘dragged’ back to court repeatedly, in only one case had the perpetrator been classified by the court as a vexatious litigant because of his repeated applications to the court. This suggests that family courts are failing to recognise how abusive men use multiple applications as a tool to harass and control their ex-partners, and to maintain instability in the lives of their children. Given what we know about the effects of disruption in children’s lives wrought by living with domestic violence, family court judges surely need to question whether it is in children’s best interests for this insecurity to continue for years after their mothers have endeavoured to create safety.

Summary

One finding that raises questions about the motivations of abusive men who make contact applications is the lack of compliance with contact orders. Many perpetrators did not take up the opportunities granted to spend time with children, or in the case of indirect contact, to send children written affirmations of their love and concern for them.

The financial toll of involvement in child contact proceedings was clear, with many women unable to sustain paid work and increasing economic inequality between women and men. Recent cuts to welfare benefits are anticipated to cause greater income loss to single mothers than other households (Fawcett Society, 2011). Women in London are particularly disadvantaged: in the capital the gender pay gap for women in work is 50 per cent higher than the national average (Fawcett Society, 2012). In this context, child contact proceedings can be framed not only as a continuation of abuse and control, but also as a contribution to wider structural inequalities. Yet while women identified such impoverishment as undermining their attempts to rebuild a sense of autonomy, for many this was dwarfed by the wider stresses, inconveniences and anxieties of fearing for their children’s safety and negotiating their ex-partner’s court-sanctioned intrusion into their lives.

The next and final section draws together key findings and makes recommendations for changes to policy and practice in private law proceedings to ensure that women and children are able to achieve physical and emotional safety in the aftermath of living with a violent partner/father.

37 The courts have the power to stop ‘vexatious’ applications for Section 8 orders by making a Section 91 (14) Order (see glossary), but this is rarely used.
We are told to leave because of his violence and the effect it has on the children and then he still gets contact
(Rachel)

It is, in my view, high time that the Family Justice System abandoned any reliance on the proposition that a man can have a history of violence to the mother of his children but, nonetheless, be a good father
(Lord Justice Wall, 2006: 9)

This research identifies continuing and significant failures in how the family justice system, specifically child contact proceedings, responds to women and children’s experiences of domestic violence.

We make here a set of recommendations for changes to policy and practice, each linked to key findings based on the experiences of women and legal professionals engaged in private law proceedings, which if incorporated into such a framework would improve the experiences of, and outcomes for, women and children in child contact proceedings.

**Recommendation**
- There must be a robust and statutory framework in place within the family justice system which ensures the early identification and effective response to women and children’s experiences of domestic violence, setting out the respective roles and responsibilities of all key professionals in the system.

**Domestic violence and family courts: enhancing knowledge and understanding**

Women’s experiences of their ex-partners’ violence reflected the well documented pattern of ‘coercive control’ (Stark, 2007), which women described as destructive and debilitating. However, judges and statutory agencies often failed to recognise this; most equated domestic violence only with physical aggression and even here underplayed risk and dangerousness. In almost all cases, children witnessed violence against their mothers and in many cases were also subject to physical and emotional abuse from their fathers.

The Family Justice Review recommended, and the Government response agreed, that judges should be enabled and encouraged to specialise in family matters and receive enhanced training. Extending this training to all professionals in the family justice process and including within it specialist training on domestic violence is a vital step to ensuring coherent and consistent responses to victim-survivors of violence and their children.

**Recommendation**
- Judges, solicitors, barristers, CAFCASS officers and mediators must receive compulsory, specialist training on domestic violence and its impacts on women and children’s lives.

**The journey through legal proceedings: addressing safety step by step**

Women found proceedings distressing and disruptive; the median length of time for cases to be resolved was two years. In most cases women only stopped contact after serious incidents of further violence or because the father was unreliable in keeping to arrangements. Almost all applications for contact orders were made by perpetrators. Moreover, solicitors and barristers supported women’s perception that child contact proceedings were used by perpetrators to continue to exert power and control (see also Thiara, 2010; Thiara & Gill, 2012). Both the landmark case of Re LVMH and
Practice Direction 12J require judges to explore the motivations of the applicant fathers who are proven to have been violent.

In addition, expert reports are a significant source of information to inform judicial decision-making. Women’s experiences reveal that reports completed by specialist domestic violence organisations were the most attuned to the dynamics of domestic violence, risk of further harm to children and abusive fathers’ possible motivations for seeking contact through the courts.

**Recommendation**

- Courts must seek risk assessments from specialist domestic violence organisations before making a decision about contact. Such risk assessments should follow the principles and guidance set out in Expert Domestic Violence Risk Assessments in the Family Courts (see Newman, 2010).

Despite an acknowledgement that mediation is not appropriate in cases involving domestic violence, a quarter (26%) of solicitors and barristers reported that it was still taking place in some cases. Over half of women had been asked to engage in mediation at some point in the proceedings. Yet the dangers of agreement-seeking (HMICA, 2005) appear not to have been adequately considered by the Family Justice Review or the Government in proposed changes to the family justice system including the introduction of a single family court and changes to the court estate. This offers an opportunity to ensure that provision is made for increased protection within court buildings. In criminal proceedings, vulnerable and intimidated witnesses are entitled to special measures to ensure their safety. A recent European Union directive on the protection of victims of crime also includes the right not to have contact with perpetrators as a minimum standard (European Commission, 2011).

**Recommendation**

- Special facilities that mirror those available in criminal proceedings must be introduced in civil proceedings to prevent victim-survivors of domestic violence from having to face perpetrators in court.

Over half of women had represented themselves at some point in the course of proceedings and/or faced the prospect of being cross examined by perpetrators. Both women and legal professionals expressed concern that this constituted another route for harassment and intimidation and inhibited women from disclosing details of his violence and their concerns for children’s welfare. This not only places women and their child(ren) at increased risk of harm but also seriously undermines women’s equal access to justice.

Women who had received legal aid described this as crucial to be able to present their case to the court. Yet with the implementation of the Legal Aid Sentencing and Punishment of Offenders Act 2012 in April 2013, it is likely that women’s access to legal aid for family law cases will become more restricted.
Recommendations

- Mirroring regulations which exist in the criminal justice system, the family justice system must protect victim-survivors from direct cross-examination by their perpetrators and contact with them inside court buildings. In any reorganisation of the court estate following the Family Justice Review this could, for example, include the provision of separate waiting areas.

- The Government must monitor the impact of the Legal Aid Sentencing and Punishment of Offenders Act 2012 on the representation of parties in private Children Act proceedings, including disaggregating data by gender and applicant/respondent status.

Finding of fact hearings took place in only a third (37%) of women’s cases and a similar proportion (36%) of legal professionals reported working on cases where they believed a hearing should have taken place but did not. This raises serious questions about how courts investigate risks to victim-survivors and their children. Only one in ten legal professionals reported that judges comply fully with Practice Direction 12J in addressing allegations of domestic violence in child contact proceedings. However, a Freedom of Information request to the Ministry of Justice revealed that data on whether finding of fact hearings had been held is not centrally collected. This calls into question how judicial compliance with the implementation of PD12J is monitored. In addition, it appears there is currently no system for collating data on how many child contact applications involve allegations of domestic violence.

Recommendations

- The Ministry of Justice must collect and record data on:
  - the presence and extent of domestic violence (rather than allegations of harm) in private family law proceedings;
  - whether or not finding of fact hearings are held where there are allegations of domestic violence;
  - reasons for not holding finding of fact hearings where there are allegations of domestic violence.

- Cases involving allegations of domestic violence must be flagged on family court databases, in a similar way to the way in which the Crown Prosecution Service flag violence against women in criminal prosecutions.

- In cases where PD12J has not been followed, there must be a method of reviewing judicial decisions and holding judges accountable for non-compliance. This should include a process of complaint by which women can question a judicial decision and have the option of having another judge review the file, without the expense and time constraints of appealing the matter.

Women reported that having the same judge meant a deeper understanding of their experiences of violence and how it affected their children’s safety.

Recommendation

- Following the recommendation of the Family Justice Review (MoJ, DfE & WAG, 2011), there must be judicial continuity in the family justice system.

Women had mixed experiences of CAFCASS and social services involvement in child contact proceedings, with many reporting that reports failed to reflect their concerns and accounts of violence. There needs to be significant improvements in the awareness and understanding of all professionals tasked with influencing judicial decision-making in child contact proceedings. It is of concern that CAFCASS no longer use their Domestic Violence Toolkit (developed in 2005 in response to the HMICA Inspection), as there is potential here for the ability to effectively identify and assess risk in domestic violence cases to be considerably diminished.

Recommendations

- CAFCASS must review the decision to revoke their Domestic Violence Toolkit.

- There must be an effective complaints process and a clear and transparent process for requesting a change of CAFCASS officer if it can be shown that they are not behaving in a fair and appropriate manner in accordance with their service standards.

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38 Youth Justice and Criminal Evidence Act 1999 ss 34 to 39
Case outcomes: contact orders
In our sample, there were no instances of orders for ‘no contact’, reflecting a presumption in favour of contact between fathers and children. Even where allegations of domestic violence were proven at a finding of fact hearing women and legal professionals reported that insufficient weight was attached to the impact of that violence in decision-making. In three quarters (74%) of cases, women reported there were no restrictions or conditions attached to their contact order which addressed their safety concerns. Over two thirds (69%) of women did not think that judges took their concerns about safety seriously. Legal professionals also reported that judges frequently minimised the impact of violence and failed to acknowledge women and children’s emotional safety in decision-making.

In 2007, the Family Justice Council responded to research on child homicides and concluded that there needs to be ‘a move away from “contact is always the appropriate way forward” to “contact that is safe and positive for the child is always the appropriate way forward”’ (FJC, 2007b: 3). In this context, the Government’s current proposal to introduce a legislative principle or presumption for the involvement of both parents in children’s lives is of concern. If the Children Act 1989 is amended to introduce this, there is real potential for the principle of children’s welfare as paramount to be diluted. Risks and harms of this proposed amendment are amplified for children whose fathers have been abusive.

Recommendation
- The Government must take into account the recommendations of the Family Justice Review and the wealth of evidence on child contact proceedings and domestic violence, and reconsider proposals to introduce a legislative principle or presumption that both parents should be involved in children’s lives.

Women viewed supervised contact as the safest outcome of child contact proceedings but this was rarely granted. Despite histories of violence and ongoing abuse and harassment, most women wanted their children to see their fathers. Their concerns about children’s physical and emotional safety during contact led some women to enter into informal arrangements which put their own safety at risk – for example, supervising contact themselves in order to facilitate a relationship between their children and their fathers. This highlights a need for enhanced availability of specialist contact centres to ensure contact can take place without jeopardising women and children’s safety.

Recommendation
- The number and geographical availability of specialist supervised contact centres/provision must be increased to address ongoing risks to women and children and ensure safe contact.

Child contact proceedings: contributing to women’s poverty
Almost all women (90%) identified some degree of impoverishment as a direct result of the proceedings, as a result of being unable to work, legal fees and/or the costs of travel and childcare for attending hearings. Women who were not eligible for legal aid accrued significant costs (between £10,000 and £45,000) using savings, family support and credit to fund legal representation. Some women reported having to give up paid employment because of the proceedings. Legal aid is thus a vital tool in women’s ability to access justice and ensure their own and their children’s safety in child contact proceedings.

Recommendations
- The Government must urgently review the decision to restrict legal aid in family law cases, given the impact that this will have on the eligibility of women affected by violence.
- Any reorganisation of the family justice system following the Family Justice Review must include consideration of the needs of women and children in the timetabling and location of hearings to minimise the impact of proceedings on women’s ability to work and provide for their children.
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HMICA (2005) Domestic Violence, Safety and Family Proceedings: Thematic review of the handling of domestic violence issues by the Children and Family Court Advisory and Support Service (CAFCASS) and the administration of family courts in Her Majesty’s Courts Service (HMCS) London: HMCS


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Alternative dispute resolution (ADR) The collective name given to methods of dealing with disputes without going to court e.g. mediation and conciliation. Both these procedures involve the use of a neutral third party to encourage and facilitate agreement between parties but not impose a solution to the dispute.

Applicant The person making an application to court.

Barrister A legal professional who represents people and organisations e.g. local authorities, at court. Barristers provide legal advice at court and advocate in court proceedings. Usually, barristers are instructed by solicitors and only get involved at the court hearing stage.

C1A If there are allegations of harm arising in Children Act proceedings a C1A form should be completed to describe any harm the child has suffered including allegations of domestic violence.

C100 An application to court for contact with a child is made on a Form C100.40

Case law Although each case is different, decisions made in other cases can establish principles on which the court approach their decision on contact or the procedure they are required to follow.

Children Act 1989 (CA 89) The primary legislation setting out the law relating to disputes about children, including the court’s powers, what orders can be made and what the court must consider in making their decision.

Children and Families Court Advisory and Support Service (CAFCASS) The role of CAFCASS is to support the interests of children involved in family court proceedings and advise courts on what it considers to be the children’s best interests. For more details see www.cafcass.gov.uk

CAFCASS Officer During any court proceedings involving children, the court can order a CAFCASS officer be appointed to provide either a written or an oral welfare report (see Section 7 Welfare Report). The CAFCASS officer will normally interview the child and the parents before reporting back to the court.

Conciliation hearing It is a requirement of the FPR 2012 that the first hearing in a contact dispute at court is a conciliation hearing or First Hearing Resolution Appointment which is a type of court based ADR. At this hearing a judge or magistrates, accompanied by a CAFCASS officer, will discuss with the parents the nature of the dispute and whether it could be resolved by mediation or other alternative means.

Consent order An agreement reached between parties to a court application which is ratified by the court.

Contact The legal term used to describe continuing relationships between children and the parent they no longer live.

Contact activity An activity designed to establish, maintain or improve contact between a parent and a child by addressing underlying problems e.g. a requirement for a perpetrator to attend a domestic violence programme before having direct contact with their child.

Contact order A court order requiring the person who the child lives with to allow the child to visit or stay overnight with the person who the order is made in favour of, or for the child and that person otherwise to have contact with each other.

County Court A court which hears civil law disputes including child contact cases. The case will usually be heard by a judge sitting alone and who is likely to be experienced at dealing with contact cases.

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40 A C100 can be downloaded from http://www.justice.gov.uk/forms/hmcts
**Defined contact order** A court order which specifies how and when contact is to take place. A defined contact order can be put in place to regulate contact and set out when contact will happen, for example on alternate weekends and half the holidays.

**Direction** A court order that requires someone to do something by a specified time, for example file a witness statement.

**Directions hearing** A hearing at which the court will give directions for the filing of evidence and preparation for trial.

**Domestic Violence Perpetrator Programme** The aim of a perpetrator programme is to help men take responsibility for their violent and abusive behaviour and to support change in behaviour and attitudes.

**Family Proceedings Court** Part of the Magistrates’ Court which can hear Children Act cases. Either two or three Magistrates will hear the case or sometimes a Judge.

**Family Procedure Rules (Amended) 2012** The rules which set out the detail of the court procedure in child contact disputes.

**Final hearing** A hearing at which the court should consider all the evidence and make a final decision on what type of contact should be ordered.

**Finding of fact hearing** A hearing at which the judge should decide whether allegations of domestic violence made by one party (or both parties) to child contact proceedings are proved or not proved.

**Her Majesty’s Inspectorate of Court Administration (HMICA)** An independent statutory body created to inspect and report on the system that supports the carrying on the County Court, Magistrates’ Court and the Crown Court and the services provided by these courts. Following a Government review in 2010, HMICA is no longer in existence.

**Indirect contact** Contact that does not involve any meeting between the child and the non-resident parent including exchanging letters, calls, emails or text messages. Indirect contact is usually arranged or ordered when it is not possible for a parent and a child to have direct contact because of safety concerns.

**Interim contact** The court has the power to make an interim order prior to making a final order which will remain in place from the first hearing or (whenever it is made) until the court makes its final decision, ends or varies the interim contact order.

**Judge** Professional lawyers who manage the case and the court timetable ensuring that all relevant evidence is presented at court and make decisions on all matters in dispute.

**Legal aid** State funding for legal advice and representation. To be eligible for legal aid a party must pass a financial test and will have to show that they need legal aid. For more information see www.communitylegaladvice.gov.uk. In April 2013 legal aid will be removed for all family law proceedings except those in which parties can evidence that they have experienced domestic violence.

**Magistrates** Trained volunteers, not legal professionals or judges, who hear cases in the Magistrates and Family Proceedings Courts in groups of two or three.

**Mediation** A voluntary process which aims to help parents negotiate an agreement on child contact with the help of a trained mediator. The mediator facilitates the process rather than advising the parties. Any decision reached in mediation is not automatically legally binding.

**Mediation Information and Assessment Meeting (MIAM)** A meeting to explore whether a dispute about a child is capable of being resolved by mediation or another form of ADR.

**Multi Agency Risk Assessment Conference (MARAC)** A meeting where information is shared on the highest risk cases of domestic violence between criminal justice, health, child protection, housing practitioners, Independent Domestic Violence Advocates (IDVAs) as well as other specialists from the statutory and voluntary sectors. A safety plan for each victim-survivor is then created.

**Non-resident parent** The parent who the child does not live with on a day to day basis or the parent with the smallest number of nights with the child.
**Non-molestation order** An order which can protect a woman and any relevant child from violence or harassment. It can forbid an abuser from harassing, pesterling, being violent, coming within a certain distance or disposing of someone else’s belongings. See Rights of Women’s ‘A guide to domestic violence injunctions’ for more information.

**Occupation order** An order which can forbid an abuser from occupying the family home even if he owns it or require the abuser to allow someone back into the home. See Rights of Women’s ‘A guide to domestic violence injunctions’.

**Parenting Information Programme (PIP)** A court ordered contact activity designed to give parents who are separating information about the possible impact on their children. It is also designed to help reduce the conflict that the children may see or hear.

**Party** The applicant or respondent in a court case.

**Practice Direction 12J (PD12J)** Legal guidelines for judges on the legal process to be followed in child contact and residence proceedings when there are allegations that the child or a party to the proceedings has experienced domestic violence.

**Prohibited steps order** A court order preventing any person from taking certain action with regard to a child without the permission of the court. See Rights of Women's Guide ‘When parents separate’ for more information.

**Residence order** A court order setting out the arrangements as to with whom a child should live. See Rights of Women’s ‘Guide to residence orders’ for more information.

**Respondent** The person against whom an application to court is made.

**Section 8 Order** Under Section 8 of CA 1989 the court can make 4 different types of orders in respect of children: Contact order, Residence order, Prohibited Steps Order or Specific Issue Order.

**Scott Schedule** A concise summary of the allegations of domestic violence, the evidence to support the allegation and whether it is admitted by the perpetrator, for use at court.

**Section 7 report** A report ordered by the court and prepared by CAFCASS or social services to explore a child’s circumstances and make recommendations about arrangements for contact or residence.

**Section 37 report** Where there has been disclosure that a child has suffered or is at risk of suffering significant harm, the court has the power to direct the social services department of a local authority to undertake an investigation of the child’s circumstances and the allegations of harm and prepare a report.

**Section 47** A report prepared by a local authority which suspects that a child has experienced or is at risk of experiencing serious harm, setting out the child’s circumstances and a detailed assessment of the child’s needs.

**Section 91 (14) order** An order prohibiting a party from making further applications for Section 8 orders or variations to existing orders without first seeking permission of the court.

**Special measures** Provisions available to help vulnerable or intimidated witnesses give evidence at court. In criminal proceedings, victims of domestic violence are viewed as vulnerable witnesses and there is a requirement for courts to have facilities for special measures including screens, separate waiting rooms and evidence via video link. Currently there is no requirement to provide special measures in civil (including family) proceedings where there are allegations of domestic violence.

**Supervised contact** Contact between a parent and a child which is monitored by a third party and is usually provided at a specialist contact centre or by a CAFCASS officer or social services.

**Supported contact** Contact between a parent and a child which usually takes place in a contact centre, overseen but not closely monitored by a third party. Contact centres are often in church halls or community centres and the sessions are staffed by volunteers and/or paid employees.

**Undertakings** A solemn promise to the court to refrain from undertaking certain behaviour. Undertakings are often given further to negotiations outside of the court room to avoid a full hearing, when an application for a non-molestation and/or occupation order has been made.

**Welfare report** (see Section 7 Welfare Report).

**Welfare checklist** (see section 2).

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113 legal professionals completed the survey. The vast majority were female (88%, n=97). 110 indicated their ethnicity, with three quarters (74%, n=81) White British (see Figure 9).

**Figure 9: Ethnicity of legal professionals who completed the online survey**

- White British: 81
- Any other white: 6
- White European: 4
- White Irish: 2
- Asian Indian: 4
- Other: 3
- Asian Pakistani: 2
- Black African: 2
- Black British: 2
- Mixed: 2
- Asian Bangladeshi: 1
- Black Caribbean: 1
Appendix 1

All 33 London boroughs were included in terms of practice location; 56 (62% of the 90 that answered this question) worked on a pan-London basis.

Length of practice ranged from six months to 45 years, with the largest single category five years (35%, n=39), a fifth (20%, n=22) having five – 10 years experience and almost a third (30%, n=31) in practice between 11-20 years (see Figure 10).

Figure 10: Legal professionals’ length of practice experience

Most had some form of professional or panel membership; almost half of the Family Law Bar Association (48%, n=54). A minority were members of the Law Society’s family law panel (11%, n=12) or Resolution accredited specialists (12%, n=14).

Almost half had attended training on domestic violence (49%, n=42). For two thirds, (63%, n=25), training had focussed on the law relating to child contact and domestic violence, and for two fifths (40%, n=16) on a wider discussion of law and dynamics of domestic violence. Of those that specified who delivered the training (n=29), mostly in house (n=9); few had accessed specialised providers (see Figure 11).

Figure 11: Domestic violence training providers accessed by legal professionals
A research report by Rights of Women and CWASU

For many years Rights of Women has been providing women with legal advice and information on child contact disputes. Our legal advisers hear daily accounts of women’s experiences of the law and the family justice system. This research, conducted in partnership with CWASU, enabled us to explore in more detail the experiences of women in London who had been or are currently going through child contact proceedings as well as the experiences of solicitors and barristers working in the family courts. This report analyses those experiences and identifies key issues in family law and policy and the family justice system which create barriers to safety and justice for women and children who have experienced and continue to be at risk of experiencing domestic violence.

This report makes clear and concrete recommendations which would increase women’s access to safety and justice in the family justice system.

Picking up the pieces is a vital resource for law and policy makers, statutory and voluntary organisations and all those working with women affected by violence. It is an essential tool for those seeking to influence change in the family justice system.