RIGHT TO EQUALITY

MAY 2024

ENDING THE PRESUMPTION OF CONTACT IN FAMILY COURTS

Dr Adrienne Barnett
Dr Charlotte Proudman
Safa Haroon
Allison Quinlan

KATE KNIVETON MP, AMBASSADOR OF RIGHT TO EQUALITY

Table of Contents

Ending the Presumption of Contact in Family Courts

MAY 2024

RIGHT TO EQUALITY

Right to Equality is a non-profit organisation dedicated to making tangible change in the UK's legal system. Our core objective is to advance gender equality through the law and support the rights of women and girls. Using research, events, training, collaborations, and active involvement in social media, we defend the rights of those facing discrimination.

Our team is comprised of experts from diverse demographic backgrounds in policy advocacy, activism, legal analysis, research and more. This broad spectrum of skills and experience equips us to tackle the complex challenges concerning violence against women and girls in both societal and legal contexts.

We have launched a range of campaigns that pertain to women's issues. These campaigns include a project which aims to adopt affirmative consent into law, a campaign that aims to decriminalise abortion, a campaign that strives to address further the issue of "sex for rent" under UK law, a campaign to make 'spiking' a specific criminal offence, and a recently successful campaign to criminalise public sexual harassment.

Authors

Dr Adrienne Barnett
Dr Charlotte Proudman
Safa Haroon
Allison Quinlan

Recommended citation

Barnett, A. et al. (2024). *Ending the Presumption of Contact in Family Courts*.

Foreword

RIGHT TO EQUALITY

Every year tens of thousands of children are the subject of private law family court proceedings. In the year 2022/23, Cafcass worked with over 90,000 children. Many of these children will have experienced domestic abuse, and some will have experienced child abuse and child sexual abuse. However, the enduring pro contact culture of the family court means that most of these children will be expected to have contact with the abusive parent.

On 15th November 2023, Right to Equality launched a two-year campaign in Parliament, hosted by Jess Phillips MP and Caroline Nokes MP, to end the harmful presumption of contact in the family courts. Co-led by Director Dr Charlotte Proudman and Advisor Dr Adrienne Barnett, Right to Equality is calling for fundamental reform of the family justice system to make it safer for children and protective parents. The campaign aims to raise awareness of the issue of child contact with abusive parents and its impact on the safety and well-being of children and victim parents involved in family court cases. It strives to bring about legislative and cultural change to ensure that no more women and children lose their lives at the hands of abusive parents or suffer the trauma of unsafe contact and the secondary victimization of traumatic proceedings.

This report pays tribute to the numerous victim/survivors who are contending with a traumatising court system to keep their children safe. It explains what we know from research and the case law about the operation and impact of the statutory presumption of parental involvement and the de facto presumption of contact. It sets out our vision for a safe, trauma-informed family justice system that puts the welfare of children at its heart. We are grateful to our Ambassadors and Advisers who have generously contributed their time and efforts to raising awareness of the campaign and progressing its aims.

Dr Charlotte Proudman
Barrister
Director, Right to Equality

Dr Adrienne Barnett
Reader in Law, Brunel University London
Advisor, Right to Equality

Acknowledgements

Thank you to advisors: Ciara Bergman, Jenny Beck KC (Hons), Natalie Page, Dr Rachael Grey, Dr Jessica Taylor, and Verona Taylor-Blackford.
Thank you to ambassadors: Jess Phillips MP, Kate Kniveton MP, Apsana Begum MP, Tamar Barrett, Dr Elizabeth Dalgarno, and Leigh.
Thank you to our funders and the community who came together to support this work.

Executive Summary

The prevalence and nature of domestic abuse

The prevalence of domestic abuse in private law family court proceedings involving disputes between divorcing or separating couples over post-separation arrangements for their children is considerably higher than in the general population. Domestic abuse is a gendered crime which disproportionately affects women and causes widespread harm to the lives of victims/survivors and children, creating long-term physical, psychological and emotional effects.

The presumption of contact

The 'presumption of contact' or 'pro contact culture' of the family courts in England and Wales means that judges and professionals strongly promote and prioritise contact between children and non-resident parents following parental separation, even in cases involving domestic abuse. Numerous judgments emphasise that contact should only be terminated in exceptional circumstances when there is no alternative and urge courts not to abandon hope of achieving contact. In 2014, the Children Act 1989 was amended to include a statutory presumption of parental involvement by which "[a] court...is...to presume unless the contrary is shown, that involvement of [a] parent in the life of the child concerned will further the child's welfare" (s1(2A) Children Act 1989). It is further presumed that a parent's involvement in the child's life will not cause the child harm unless there is evidence to the contrary. Recent case law indicates that the presumption is rarely disapplied and that it reinforces the courts' pro-contact culture and the increased scrutiny of mothers.

The minimisation of domestic abuse

Studies have consistently shown that the strong pro-contact culture leads to domestic abuse being minimised, ignored, or disbelieved, with contact being prioritised instead. There is a lack of understanding by courts and professionals of coercive and controlling abuse, of the dynamics of domestic abuse, and of the impact of domestic abuse on children's and survivors' physical and mental health. Recent case law shows that some of the judiciary have gained a much deeper understanding of the nature of coercive and controlling abuse. However, the minimisation of domestic abuse continues to be a feature of family court cases, and the effect that coercive control has on victims and the strategies of abusers after parental separation are still not fully understood.

Domestic abuse is not seen as relevant to contact

All the available research indicates that many judges and professionals tend to see only recent, severe physical violence as being relevant to the issue of contact. The failure or inability of courts and professionals to see domestic abuse as 'relevant' to child arrangements, together with the drive to promote contact, lead to the rarity of fact-finding hearings in child arrangements cases. Minimising domestic abuse and viewing it as irrelevant to contact leads to inadequate or no risk assessment, and in many cases, ultimately, to unsafe contact.

Harm caused by post-separation contact in the context of domestic abuse

That domestic abuse is harmful to children is recognised by statute (Section 31(9) Children Act 1989) and by Practice Direction 12J. The Domestic Abuse Act 2021 recognises that children who live with domestic abuse are victims in their own right. Contact is a key site for the perpetration of post-separation abuse, particularly as perpetrators may use contact to continue the abuse and to undermine mothers rather than to develop a positive relationship with their child. Children are at risk of physical, sexual, and emotional abuse during contact, even when contact is supervised. At worst, domestic homicides of women and children, where there is a background of abuse, can occur during court-ordered contact.

Silencing, discrediting and pathologising mothers

The pro contact culture, reinforced by the lack of understanding of domestic abuse, provides the context for the pathologisation, intense scrutiny and stereotypical expectations of mothers, and the ability of perpetrators to convey an image of benign respectability, with negative consequences for victims' credibility in family court proceedings. In recent years, abusers have increasingly been weaponizing allegations of so-called 'parental alienation' (PA) to undermine allegations and even findings of domestic abuse and child abuse. The burden on victims of displacing the presumption of parental involvement/contact is exacerbated by interlinked systemic and attitudinal barriers to victims' credibility in family court proceedings. Victims' mental health difficulties may be used by perpetrators to undermine their credibility, and women who raise allegations of abuse may be labelled 'delusional', which can assist perpetrators to portray themselves as rational and position the victim as unstable.

Silencing children

The presumption of contact has persistently operated to silence children and deny them a valid voice in decisions about their lives. Studies have found that children overwhelmingly feel not listened to and ignored during family court proceedings. If children are able to express their views during proceedings, the strength of the pro-contact culture limits the weight given to their views. A 'selective approach' is often taken to children's views, with those views taken at face value if children want contact but likely to be disregarded if they are resistant to contact, even if they had experienced domestic abuse. The silencing of children has been exacerbated by the use of PA in the family courts. Accepting PA as the default explanation for children's resistance or reluctance to have contact negates the validity of children's views and ignores the many reasons why children may not want contact.

Litigation abuse

Perpetrators may instrumentalise proceedings by using continuous and protracted litigation as a method of control and harassment. However, research has found that perpetrators' use of proceedings as a tactic of post-separation abuse is not fully understood by courts and professionals. Litigation abuse can have devastating effects on victims of domestic abuse, whose experience of family court proceedings can be as traumatic as the abuse they were

subjected to within the relationship. The strengthening of Section 91(14) of the Children Act 1989 by Section 76 of the Domestic Abuse Act 2021 appears to have had a positive impact on the willingness of the courts to make 'barring orders' to limit litigation abuse. It remains to be seen whether the pro contact culture will inhibit some judges from making Section 91(14) orders if the perpetrator's conduct continues to be minimised.

Coerced agreements and out of court dispute resolution

The majority of final orders are made by consent, including in cases where allegations of domestic abuse were raised. The high rate of consent orders may stem from the pressure on parents from all sides, including their own lawyers, to reach agreement on child arrangements. Threats of accusations of PA and child removal have been experienced by mothers as another form of coercion to agree to contact. Mothers may also be advised or required to attend mediation even if they disclosed domestic abuse, and they may be viewed as obstructive or alienating if they fail to do so.

Assessing risk and welfare

The prevailing pro-contact culture has a significant impact on risk assessment in child arrangements proceedings. The drive to continue or restore contact can result in the risk and welfare provisions of Practice Direction 12J not being applied properly or ignored. When allegations of PA are raised in cases, even proven domestic abuse tends to be sidelined or ignored.

Orders for child arrangements

The pro-contact culture of the family courts, reinforced by the statutory presumption of parental involvement frequently results in a progression towards direct (preferably overnight) contact even in cases of domestic abuse. Orders for no contact are extremely rare. The most common orders are for some form of direct contact, which may be achieved by an incremental or 'stepped' approach. The limited availability of supervised contact services for private law cases raises concerns about a potential over-reliance on supervision by family members or friends, or even the victim herself. Even if contact takes place in supported or supervised contact centres, the questionable quality of supervision can place women and children at risk. At its most extreme, the presumption of contact can lead to mothers losing the care of their children to abusive fathers in an apparent effort to maintain or restore a relationship between the child and father. Additionally, there is evidence of the threat of children being transferred to live with their fathers if the mothers do not promote contact. Allegations of PA and PA 'experts' can play a critical role in child removal. The limited available research indicates that child removal can expose children to abuse and cause them lasting psychological harm.

Progress in other jurisdictions

The USA

Kayden's law, which was signed into federal law in 2022, incentivises states to ensure that their child custody laws adequately protect at-risk children by a number of measures, including holding evidentiary hearings to examine allegations of domestic abuse, restricting expert testimony to appropriately qualified experts with domestic abuse expertise, limiting the use of reunification camps and unsafe therapies, and providing for evidence-based ongoing judicial training on family violence. The National Council for Juvenile and Family Court Judges has adopted the RRR Model (reluctance, resistance or refusal) to describe the behaviours a child may exhibit in relation to contact with a parent, which more accurately depicts the actuality of a child's behaviour than the 'alienation' terminology.

Australia

The Family Law Amendment Act 2023, which received Royal Assent in November 2023, removed the presumption of equal shared 'parental responsibility'. It also removed the 'twin pillars' approach and replaced it with six factors to determine the best interests of the child. Courts also have to consider any history of family violence or abuse involving the child or the child's carer.

Spain

Spain is the first and only country to ban the use of PA by legislation and has explicitly described it as 'pseudoscience' (Organic Law 8/2021 on the Comprehensive Protection of Children and Adolescents Against Violence). The statute also provides that provisions for joint custody do not apply when there are 'well-founded' indications of domestic abuse.

Conclusions

The presumption of contact has consistently been identified as a significant barrier to achieving systemic cultural change in the family courts. It has persistently undermined efforts at achieving meaningful change and adversely affects every aspect of private law children proceedings. The Pathfinder Pilot Courts, which are currently being trialled by the UK government and commenced in February 2022 in North Wales and Dorset, have the potential for a positive transformation of family court proceedings. However, there is always the risk that the driving pro-contact culture could undermine or subvert the laudable aims of the Pathfinder Pilots. If this fundamental change in family court proceedings is to succeed, it is essential that the presumption of contact is fully and finally removed. It is imperative that changes are made to law and policy to ensure that the family court stops privileging men's right to contact over the safety and wellbeing of adult and child victims of domestic abuse. The recommendations set out on Page 42 of this report are aimed at facilitating the much-needed change.

A. Introduction

> **"Many relationships have domestic violence in them but only a fraction of contact cases fail. . . When we look at how bloody awful some of our cases are and the experiences of the children, it's remarkable how few cases no contact is ordered. It is remarkable given we deal with the toughest ten per cent of cases where relationships break down and there are children." Mr J, FCA, NE (Barnett, 2014)**

The family courts in England and Wales prioritise contact between children and non-resident parents following parental separation, even where that parent has perpetrated domestic abuse, despite the welfare risks this poses (Barnett, 2020a; Women's Aid, 2022; Hunter *et al*., 2020). The presumption of child contact, or 'pro-contact culture', rests on the belief that it is invariably in a child's best interests to have contact with both parents unless there are compelling reasons to prove otherwise. The 'de facto' presumption arose through the case law, with numerous judgments emphasising that:

> **"[C]ontact should be terminated only in exceptional circumstances where there are cogent reasons for doing so and when there is no alternative … The judge must grapple with all the available alternatives before abandoning hope of achieving some contact." (*Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521, per Munby J at [47])**

The de facto presumption was enshrined in statute in 2014 when the Children Act 1989 was amended to provide that "[a] court...is...to presume unless the contrary is shown, that involvement of [a] parent in the life of the child concerned will further the child's welfare" (s1(2A) Children Act 1989). Furthermore, the statutory provision presumes that a parent's involvement in the child's life will not cause the child harm unless there is evidence to the contrary. The consequence of the de facto and statutory presumptions is that unsafe contact arrangements are regularly ordered (Birchall and Choudhry, 2018; Hunter *et al*., 2020; Thiara and Harrison, 2016). This has put survivors of domestic abuse and their children at grave risk of harm as it is highly likely they will be exposed to further abuse (Women's Aid, 2022; Coy *et al*., 2012; Harding and Newnham, 2015; Harrison, 2008; Hunter *et al*., 2020; Thiara and Harrison, 2016). In extreme cases, it has led to the deaths of children by their abusive fathers (Saunders, 2004; Women's Aid, 2016).

The way in which the family courts respond to domestic abuse in child arrangement disputes has been of significant concern for many years. This issue was highlighted recently by the Ministry of Justice 'Harm Panel' report, which revealed that courts and professionals prioritise contact with non-resident parents over the welfare of children and survivor parents (Hunter *et al*., 2020). The report concluded that the statutory presumption urgently needs to be reviewed to counteract its detrimental effects.

This report discusses a range of issues that both arise from and reinforce the presumption of contact, such as a lack of understanding of domestic abuse by family court judges and professionals, the construction of the mother as 'alienating' and obstructive of relationships between fathers and children, the silencing of mothers and children, and the making of unsafe contact arrangements with little to no assessment of risk. The report goes on to provide recommendations that aim to make the family courts a safer place for survivors of abuse and their children.

B. The Prevalence and Nature of Post-Separation Abuse

A growing body of research and statistical data highlight the gendered nature of domestic abuse. During the year ending March 2023, the victim was female in 73.5% of domestic abuse-related crimes (Office for National Statistics, 2023). For domestic abuse-related sexual offences recorded by police in the year ending March 2023, 93% of victims were female (Office for National Statistics, 2023). Between the year ending March 2020 and the year ending March 2022, 67.3% of domestic homicide victims were female, and of the 249 female domestic homicide victims, the suspect was male in 241 cases (Office for National Statistics, 2023). Male perpetrators comprised over 90% of all perpetrators convicted of domestic abuse-related crimes in 2022 (Crown Prosecution Service, 2023). Evidently, domestic abuse disproportionately affects women, and men are often the perpetrators of this crime. Additionally, domestic abuse is often a hidden crime, and this means that the statistics above paint only a partial image of the realities of domestic abuse.

The prevalence of domestic abuse in private law family court proceedings involving disputes between divorcing or separating couples over post-separation arrangements for their children (known as child arrangements cases in England and Wales) is considerably higher than in the general population, with allegations or findings of domestic abuse ranging from 49% to 62%.[1] Annually, up to an estimated 32,400 child arrangement cases in England and Wales involve domestic abuse (Domestic Abuse Commissioner, 2023). The fact that a high proportion of child arrangement cases involve abuse reflects the fact that abuse often continues or increases in severity after parental separation (Katz *et al*., 2020). Indeed, post-separation contact is recognised as a key site for continued or escalated abuse (Barnett, 2020a; Coy *et al*., 2012; Harne, 2011; Holt *et al*., 2008; Morrison, 2015; Thiara and Gill, 2012). Thiara and Gill (2012, p. 15) observed that post-separation violence was a "significant issue for 78%" of the South Asian and African-Caribbean women participating in their study.

As discussed further below, domestic abuse causes widespread damage in survivors' lives, creating long-term physical, psychological and emotional effects. Children living with post-separation abuse may be one of the most distressed groups in the population, for whom contact with abusive fathers can impede their recovery (Barnett 2020a; Harrison, 2008; Holt

[1] At least 50%. See Barnett (2020a) p. 20

et al., 2008; Morrison, 2015; Thiara and Harrison, 2016). On the other hand, children who have no contact with abusive fathers show a much stronger pattern of recovery. Enforcing contact in these circumstances can impede both the mother's and the child's recovery (Katz, 2016; Katz, 2022).

C. The Statutory Presumption of Parental Involvement

> **"This is a very dangerous piece of legislation. The father of my children is a harmful, aggressive, controlling man. … This needs to be looked at carefully. It is not correct to assume, before investigation, that somebody will further a child's welfare just because they share his/her genes." (Mother, call for evidence) (Hunter *et al*., 2020, p. 87)**

In England and Wales and many other jurisdictions, the 'pro-contact' culture of the family court means that judges and professionals strongly promote ongoing relationships between children and both their parents following the breakdown of a relationship, even in cases involving domestic abuse (Barnett, 2014; Harding and Newnham, 2015; Harrison, 2008; Hester, 2011; Hunt and Macleod, 2008; Kaganas, 2013, 2018), resulting in what has been termed a de facto 'presumption of contact'. The higher courts have repeatedly emphasised that compelling reasons are needed to terminate contact.

> **"Contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child's welfare" (*Re J-M (A Child)* [2014] EWCA Civ 434 per Black LJ at [25]).**

Calls for a statutory presumption of shared parenting arose for two reasons (Kaganas, 2013). Firstly, through campaigning by fathers' rights groups, an assumption was generated that family courts were biased against fathers. However, research suggests that the pro-contact stance had been well established in the family courts for decades, and case file research demonstrated that there was no such bias (Harding and Newnham, 2015). So, even before the law was changed, most fathers who wanted contact were already awarded it (Kaganas, 2013). Secondly, the government wanted to deter parents from using the courts to decide contact disputes because litigation is expensive and, in their view, harmful to children. However, research has consistently shown that forcing children to remain in contact with an abusive parent is more harmful (Katz, 2022; Radford and Hester, 2006).

In response to the growing demands of fathers' rights groups, in 2010, the UK government established a board to review the family justice system (Family Justice Review Panel, 2011). Part of its mandate was to assess whether the Children Act 1989 should be amended to include a statutory presumption of shared parenting. The review considered the Australian experience of shared parenting legislation, focusing on Section 60CC of the Australian Family

Law Act 1975, which required courts to consider two matters as primary considerations when deciding post-separation living arrangements for children, known as the 'twin pillars' approach. Firstly, they had to consider the benefit to children of maintaining a meaningful relationship with both parents and secondly, the need to protect children from harm. A range of Australian studies revealed that the 'meaningful relationship' aspect was being given precedence over the element of protecting children from harm (Chisholm, 2009; Kaspiew *et al*., 2009; McIntosh *et al*., 2010).

Considering these studies alongside other evidence, including opposition to the proposed statutory amendment from a range of judicial and professional bodies and the House of Commons Justice Committee (2011), the review's final report recommended that a statutory presumption of parental involvement should not be implemented. The final report stated that: "The child's welfare should be the court's paramount consideration, as required by the Children Act 1989. No change should be made that might compromise this principle." (Family Justice Review Panel, 2011, para 109) However, contrary to the recommendation of the Family Justice Review, the government decided that there should be "a legislative statement of the importance of children having an ongoing relationship with both their parents after family separation, where that is safe, and in the child's best interests" (Ministry of Justice, Department for Education, 2012). The proposed legislative amendment was included in the Children and Families Bill 2013. A Child Rights Impact Assessment published by the Children's Commissioner (2013, p. 42) warned that there was "a real danger that the paramountcy principle…may be diluted by these proposals and we regard this change as potentially contrary to the best interests of children."

Nevertheless, the presumption was included in the Children Act 1989 as Section 1(2A) via the Children and Families Act 2014. It requires courts to presume that the involvement of a parent in the child's life will promote the child's welfare provided that that parent can be involved in a manner that does not put the child at risk of harm. It also presumes that a parent's involvement in the child's life *will* be safe unless there is evidence to the contrary.[2]

Two studies found that the presumption has not changed the way courts decide cases, as they continue to rely on case law to support their strong preference for contact (Harwood, 2019; Kaganas, 2018). However, both of these studies and responses to the Harm Panel inquiry suggest that the presumption is rarely disapplied and that it reinforces the courts' pro-contact culture (Barnett, 2020a; Hunter *et al*., 2020). A minority of professionals interviewed by Harwood (2019) felt that the statutory presumption has shifted outcomes in cases by moving the balance in favour of abusive parents and that it is being interpreted in practice that contact will inevitably occur.

[2] 'Involvement' is defined in section 1(2B) as "involvement of some kind, either direct or indirect, but not any particular division of a child's time."

Recent case law indicates that the presumption may be leading to more intense scrutiny of mothers who oppose or express concerns about contact and that the statutory and de facto presumptions reinforce each to raise the bar against ordering no contact. In Re *C (A Child)* [2019] EWHC 131 (Fam) Mr Justice Williams said, in relation to a relocation case: "The implementation of section 1(2A) Children Act 1989 makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent" [15]. In *Z (A Child) (No. 2)* [2023] EWFC 61 HHJ Willans said:

> "18) The curtailment of a relationship between parent and child amounts to a most significant interference in a parent's right to an ongoing relationship with that child (and vice versa). Such an interference requires a particularly high level of justification.
> 19) Section 1(2A) Children Act 1989 creates a rebuttable presumption that contact with a parent will likely be in the welfare interests of a child and will advance the welfare of that child. To reach a conclusion that a relationship should not be developed or maintained requires the Court to identify clear and compelling reasons for such a course of action. This and the preceding paragraph reinforce the need for rigorous analysis before making any order which curtails the relationship in question."[3]

The presumption gives a statutory foundation which limits the possibility for further, more nuanced development of case law and reinforces the notion that any exceptions to the norm of contact should be read narrowly (Barnett, 2020a). Mothers who responded to the Harm Panel inquiry felt that it gave the abusive parent power over the non-abusive parent and the children and a legal weapon the abuser could use at will. The statutory presumption, therefore, reinforces the courts' pro-contact culture, which, as discussed below in this report, operates as a barrier to addressing domestic abuse while maintaining the impression that the best interests of the child are being served. It is notable that while the law can enforce parental involvement on a protective parent and a resistant child, a non-resident parent cannot be compelled to spend time or be involved with their child. The presumption of contact, therefore, operates in a very one-sided, gendered way.

D. The Presumption of Contact Reinforces the Minimisation of Domestic Abuse

D.1 Domestic Abuse is Not Taken Seriously

Studies have consistently shown that the strong pro-contact culture leads to and reinforces family court judges and professionals not taking domestic abuse seriously. Mothers' accounts of domestic abuse may be ignored, side-lined, disbelieved and minimised during child arrangements proceedings, with contact being prioritised instead (Women's Aid, 2022;

[3] In this case the court made a no contact order which the father did not oppose, and a Section 91(14) order.

Coy *et al*., 2012; Hunter *et al*., 2020; Thiara and Gill, 2012). This conflicts with the focus on protecting children from harm.

In particular, there is a lack of understanding by courts and professionals of coercive and controlling abuse and of the impact of domestic abuse on children's and survivors' physical and mental health (Barnett, 2017; Women's Aid, 2022; Harwood, 2019; Hunter *et al*., 2020; Thiara and Gill, 2012). Many judges and professionals have an incident-based understanding of domestic abuse, focused on discrete incidents of physical violence akin to assaults by strangers (Barnett, 2014, 2015; Coy *et al*., 2012; Hunter and Barnett, 2013; Hunter *et al*., 2020). There is also a failure to recognise the dynamics of domestic abuse, which means that courts and professionals fail to understand that seemingly 'minor' incidents can form part of the bigger picture of dangerous controlling behaviour (Women's Aid, 2016). Even where physical violence was perpetrated, this was often minimised by judges who seemingly held a "personal calculus of threat" for determining the level of risk (Coy *et al*., 2012, p.52). Subsequent studies and the Harm Panel report indicate that there has not been a sea change in judicial and professional perceptions (Barnett, 2017; Women's Aid, 2022; Harwood, 2021; Hunter *et al*., 2020).

Many abusive fathers adopt tactics during proceedings to distract from their abusive behaviour and build a rapport with court professionals. Tactics include arguing that the abuse was mutual or shifting the blame onto the woman (Bancroft *et al*., 2012). However, courts and professionals who do not fully understand the dynamics of domestic abuse may accept these arguments that paint abused mothers as blameworthy for the abuse they have suffered or deny the abuse altogether (as discussed further below).

The lack of understanding of domestic abuse is particularly worrying for black and minoritised women, as there are already barriers in place which prevent them from raising domestic abuse, such as the effects of cultural stereotypes (Hunter *et al*., 2020). Southall Black Sisters told the Harm Panel that there is "a continuing pervasive culture of disbelief, indifference and hostility towards victims of abuse" (Hunter *et a*l., 2020, p.64). Specialist 'by and for' services supporting Black and Minoritised victims and survivors raised the need for a better understanding of issues such as the shame and social isolation survivors can face within their communities if they are found to be actively pursuing family court proceedings or the pressure they may be under to prevent them from reporting or talking about the abuse. Accordingly, victims could be under extra social and cultural pressure to reconcile and to agree to contact (Domestic Abuse Commissioner, 2023; Hunter *et al*., 2020).

Since the Harm Panel report was published, some positive case law from the High Court and Court of Appeal has emerged, which has the potential to improve understandings of domestic abuse and enhance the practices of the lower courts and professionals. In *F v M* [2021] EWFC 4, Mr Justice Hayden said, with respect to coercive and controlling abuse: "What requires to be factored into the process is the recognition of the insidious scope and

manner of this particular type of domestic abuse. … Key to assessing abuse in the context of coercive control is recognising that the significance of individual acts may only be understood properly within the context of wider behaviour. I emphasise it is the behaviour and not simply the repetition of individual acts which reveals the real objectives of the perpetrator and thus the true nature of the abuse." [109] Mr Justice Hayden thought that "[b]roader professional education on the scope and ambit of coercive and controlling behaviour" would increase awareness of coercive and controlling abuse [112]. In this case, concerns were also raised for the first time about the use of Scott Schedules, of which Mr Justice Hayden said: "what I have referred to as a particularly insidious type of abuse, may not easily be captured by the more formulaic discipline of a Scott Schedule. … An intense focus on particular and specified incidents may be a counterproductive exercise. It carries the risk of obscuring the serious nature of harm perpetrated in a pattern of behaviour." [Postscript] Mr Justice Hayden questioned whether Scott Schedules are "a useful tool" in resolving factual disputes in family court cases … [and] … whether they are a useful tool more generally in factual disputes in Family Law cases." [Postscript]

F v M was followed three months later by the landmark Court of Appeal judgment in *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448 in which the President advised that the judgment of Hayden J in *F v M* should be "essential reading for the Family judiciary" [30]. He noted that current understandings of domestic abuse are "plainly a far cry from the 1970s' concept of 'domestic violence' with its focus on actual bodily harm. It is now accepted without reservation that it is possible to be a victim of controlling or coercive behaviour or threatening behaviour without ever sustaining a physical injury. Importantly it is now also understood that specific incidents, rather than being seen as free-standing matters, may be part of a wider pattern of abuse or controlling or coercive behaviour." [27] He went on to say that "a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive" than discrete factual incidents and that "the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent." [31] The President confirmed that "the approach of regarding coercive or controlling incidents that occurred between the adults when they were together in a close relationship as being 'in the past', and therefore of little or no relevance in terms of establishing a risk of future harm" should no longer be considered acceptable. [52]

The President also expressed concerns about the use of Scott Schedules, observing that: "Abusive, coercive and controlling behaviour is likely to have a cumulative impact upon its victims which would not be identified simply by separate and isolated consideration of individual incidents." [44] In particular, the practice that has developed of limiting the number of allegations to be tried at fact-finding hearings prevents the court from viewing "the quality of the alleged perpetrator's behaviour as a whole and, importantly, removed consideration of whether there was a pattern of coercive and controlling behaviour from its assessment." [45] He concluded that "consideration of whether the evidence establishes an abusive pattern of coercive and/or controlling behaviour is likely to be the primary question

in many cases where there is an allegation of domestic abuse, irrespective of whether there are other more specific factual allegations to be determined" so that risk can properly be assessed. [51]

The President was "confident", however, that "the modern approach that we have described is already well understood and has become embedded through training and experience in the practice of the vast majority of judges and magistrates sitting in the Family Court." [53]

The subsequent case law indicates that some judges have indeed gained a deeper understanding of the nature of coercive and controlling abuse, and a report by Women's Aid (2022) published two years after the Harm Panel Report found that judicial and professional understanding of coercive control had improved. In *Re GB (Parental Alienation: Factual Findings)* [2024] EWFC 75 (B) HHJ Middleton-Roy said:

> **"Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked, physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them." [71][4]**

However, Women's Aid (2022, p. 9) found that the minimisation of domestic abuse continues to be a feature of family court cases and that the effect that coercive control has on victims and the strategies of abusers after parental separation is still not fully understood, with the pro-contact culture still a "key driving factor" in child arrangement cases (see also Barnett and Proudman, 2023).

> **"We continue to hear about the minimisation of domestic abuse and pro contact culture in the family court on our family law advice service. Although there have been some important cases that appear to be changing the attitudes of some professionals, we are still hearing about unsafe approaches to child contact being taken by some professionals within the family justice system including family judges. There is a lot of lip-service being paid to how seriously the court takes domestic abuse but this is not being felt in the lower courts where it's business as usual." (Support Service) (Women's Aid, 2022, p. 24)**

Additionally, the case of *K v K* [2022] EWCA Civ 468 suggests that the senior judiciary may still retain an incomplete understanding of the nature and effects of domestic abuse. The Court of Appeal suggested that the parties should have participated in a MIAM before going

[4] See Case Study 1 for a discussion of this case.

to court, despite mediation being inappropriate in cases involving allegations of domestic abuse. The Court of Appeal also appeared to minimise the effects on children of coercive and controlling abuse, stating that:

> **"The judge's findings concerned the father taking charge of all aspects of married life and the mother feeling disempowered as a result. We do not underestimate the impact of such a finding, but the judge's analysis did not include any description of its impact on the children or that they would have found this behaviour 'very frightening'." [87]**

There are multiple explanations for the systemic minimisation of domestic abuse, key to which is the presumption of contact. These include a lack of understanding of the nature and impacts of domestic abuse and a failure to recognise the tactics that abusive fathers may adopt to distract from the abuse they have perpetrated, which masks the risks posed by perpetrators.

D.2 Domestic abuse is not seen as 'relevant' to contact

The extent to which judges and professionals consider domestic abuse to be relevant to post-separation arrangements for children depends very much on their understanding of domestic abuse. All the available research indicates that many judges and professionals tend to see only recent, severe physical violence as being relevant to the issue of contact (Barnett, 2014, 2015, 2017; Women's Aid, 2022; Coy *et al*., 2012; Harwood, 2019; Hunter and Barnett, 2013; Hunter *et al*., 2020). Coy *et al*. (2012) found that although judges were aware that the fathers applying for contact had perpetrated domestic abuse, a recurring theme across all cases was that evidence of the abuse was ignored due to the belief that it was irrelevant to men's parenting capacity, despite the fact that domestic abuse committed against women is a direct indicator of child abuse (Barnett, 2020a; Harne, 2011; Holt *et al*., 2008). Domestic abuse might not be deemed relevant to the contact decision if the child had not been directly abused or was not regarded as being at risk of direct harm; the abuse was not regarded as being sufficiently 'serious'; the abuse was regarded as 'historic'; the abuse was regarded as a 'one-off' or 'situational. However, as the Domestic Abuse Commissioner points out, domestic abuse will always be relevant to considerations about a child's welfare and, if disputed by an alleged perpetrator, should be considered in detail by the court by way of fact-finding hearings, which assess whether a pattern of abusive behaviour exists (Domestic Abuse Commissioner, 2023).

The failure or inability of courts and professionals to see domestic abuse as 'relevant' to child arrangements, together with the drive to promote contact, lead to the rarity of fact-finding hearings in child arrangements cases. Studies of court file data found that fact-finding hearings were held in less than 10% of cases involving disputed allegations of domestic abuse (Cafcass and Women's Aid, 2017; Harding and Newnham, 2015). Most submissions to the Harm Panel from professionals and organisations did not indicate that

the incidence of fact-finding hearings had increased. Domestic abuse stakeholders participating in Cordis Bright's (2023) study reported that although fact-finding hearings should be held before referrals to contact centres are made, this does not happen consistently.

Minimising domestic abuse and viewing it as irrelevant to contact leads to inadequate or no risk assessment and, in many cases, ultimately, to unsafe contact, which has enabled the abuse of survivor mothers and children to continue (Harwood, 2021; Scottish Women's Aid, 2018). In the most extreme cases, this has enabled abusive fathers to kill their children during unsupervised contact (Saunders, 2004; Women's Aid, 2016).

E. Harm Caused by Post-Separation Contact in the Context of Domestic Abuse

E.1 Children as Victims of Domestic Abuse

The fact that domestic abuse is harmful to children is recognised by statute (Section 31(9) Children Act 1989) and by Practice Direction 12J:

> **"Domestic abuse is harmful to children, and/or puts children at risk of harm, including where they are victims of domestic abuse for example by witnessing one of their parents being violent or abusive to the other parent, or living in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with and being victims of domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents." (Paragraph 4)**

The Domestic Abuse Act 2021 recognises that children who live with domestic abuse are victims in their own right.[5]

Domestic abuse perpetrated against mothers is directly interconnected with abuse against children. Domestic abuse is a key indicator of the risk of direct sexual and physical abuse of children. Holt *et al*. (2008) found that children who were exposed to domestic abuse were 15 times more likely to be neglected or physically abused in comparison to children who were not exposed to such abuse. Children are at risk of physical, sexual, and emotional abuse during contact, even when contact is supervised (Harwood, 2021; Holt *et al*., 2008, 2015; Morrison, 2015; Stanley, 2011).

---

[5] Section 3 of the Domestic Abuse Act 2021 provides that:
(1) This section applies where behaviour of a person ("A") towards another person ("B") is domestic abuse.
(2) Any reference in this Act to a victim of domestic abuse includes a reference to a child who—
(a) sees or hears, or experiences the effects of, the abuse, and
(b) is related to A or B.

Children living with domestic abuse can experience deep-seated psychological, social, and behavioural responses that can cause a range of short and long-term issues. These responses can include displaying aggression, suffering from anxiety, post-traumatic stress disorder and depression and experiencing somatic signs of distress such as stomach aches and enuresis (see Barnett, 2020a, Holt *et al*., 2008 and Thiara and Harrison for reviews of the studies). On the other hand, children who have no contact with their abusive fathers have better prospects of recovering from the harm they have sustained (Harrison, 2008; Katz, 2022). A child's recovery has also been found to be directly interlinked with that of his or her mother (Katz, 2015, 2022; Scottish Women's Aid, 2018).

E.2 Contact as a Site of Post-Separation Abuse

A significant consequence of the presumption of contact is that survivors of domestic abuse and their children can be compelled to remain in contact with their abusers. It is well established that the end of an abusive relationship does not mean an end to the abuse. Abuse has been seen to continue after separation, and often, it increases in severity (Holt *et al*., 2008; Holt, 2017; Spearman *et al*., 2022). This means that post-separation contact is a key site for the perpetration of post-separation abuse, especially as abusers often exploit contact to continue the abuse (Brownridge, 2006; Coy *et al*., 2012; Harne, 2011; Harwood, 2021; Holt, 2017; Macdonald, 2015; McLeod, 2018; Morrison, 2015; Radford and Hester, 2006).

> **"It got worse to be honest. The first occasion he was physically violent after we separated was when he tried to take my son and said he would take him forever. He grabbed my hair and pulled me to the ground" (Coy *et al*. 2012, p. 27)**

Morrison's (2015) study of children and their mothers who experienced domestic abuse found that abusive episodes often correlated with critical events like divorce proceedings. Many mothers also described an escalation of abuse before or immediately after separation. Several women in the study endured physical attacks during handovers for child contact visits which were witnessed by their children.

Perpetrators may use contact to track down mothers and children who have fled the abuse and as a way for perpetrators to regain power and control and get back into mothers' lives (Harne, 2011; Harrison, 2008; Radford and Hester, 2006; Spearman *et al*., 2022; Stanley, 2011; Thiara and Harrison, 2016). Coy *et al*. (2012) found that women were subjected to a range of abusive behaviours, including sending upwards of 100 abusive text messages or phone calls every day, verbal abuse (which often took place outside their children's schools), breaking into women's property and stalking their victims on the street. The risks of post-separation abuse are even more complex for women from ethnic minority backgrounds, especially Asian women, where wider family members may be involved in perpetrating the abuse (Thiara and Gill, 2012).

In the most extreme cases, domestic abuse during court-ordered contact can have fatal consequences. Domestic homicides of women and children, where there is a background of abuse, frequently occur during periods of parental separation, including during court-mandated child contact (Femicide Census, 2020; Saunders, 2004; Stanley *et al*., 2019; Women's Aid, 2016). Stanley *et al*.'s (2019) study of Domestic Homicide Reviews found that, for many of the children, "their mother's death was the culmination of a long history of harm that often involved DVA" (p. 65), and that "[c]ontact arrangements, both formal and informal, surfaced as a theme in a third of DHRs" (p. 66). In three reviews, the risks posed by the perpetrators, who were still having contact with the children at the time of their mothers' deaths, were never even considered. Courts, therefore, need to be alive to the potential lethality of ordering contact between children and abusive parents and to take victims' fears seriously.

> **"If he got me on my own now [since leaving] or I don't know, it would be more extreme, it would be more definite. And I am under no illusions that he would kill me. I know he would. He nearly did it twice, so I am under no illusions there." (Morrison, 2015, p. 11)**

Not only does contact provide perpetrators with the opportunity to continue the abuse, but they may also use children as tools of abuse or co-opt them into the abuse. Children may be coerced into collecting information about women's movements and relationships and coached to repeat abusive messages (Coy *et al*., 2012; Holt *et al*., 2008). Contact could also be used by perpetrators as a site to undermine mothers using similar tactics to those used before parental separation, such as demeaning, criticising and degrading them in front of or to the children, encouraging children to participate in the abuse of their mothers, and getting children to pass on abusive messages to their mothers (Coy *et al*., 2012; Holt, 2017; Holt *et al*., 2008; Radford and Hester, 2006; Spearman *et al*., 2022; Thiara and Gill, 2012; Thiara and Harrison, 2016; Thiara and Humphreys, 2017).

In conclusion, the risks to children and protective parents from post-separation contact need to be fully recognised so that presumptions about children's best interests that prioritise the involvement of fathers in children's lives are not elevated above children's and mothers' safety and wellbeing. In particular, the way in which abusive parents use court-ordered contact to control and abuse their victims rather than to cultivate a nurturing relationship with their child needs to be understood.

F. Silencing, Discrediting and Pathologising Mothers

> **"I don't feel safe. I don't feel that I can say what I want to say. I never feel I can say what I want to say because I am still frightened of him...And he's always got some**

> **kind of story that he's made up that makes it sound very all very beautiful and I am just this paranoid, overreacting neurotic woman." (Harrison, 2008, p. 396)**

The presumption of contact and the strong pro-contact culture often lead to family courts and professionals minimising mothers' experiences of domestic abuse or believing that they are fabricated in order to sabotage the other parent's relationship with the child. There is an enduring pattern of women who raise concerns about contact being labelled as 'implacably hostile', accused of displaying 'alienating behaviours' or of being mentally ill, or having mental health conditions weaponised against them. Once a woman has been labelled in this way, she is assumed to be misconstruing her child's interests (Harrison, 2008). Additionally, these accusations work to silence and discredit mothers from raising serious concerns about domestic abuse and child abuse in family court proceedings.

F.1 Discrediting Mothers: 'Implacable Hostility' and So-Called 'Parental Alienation'

> **"My solicitor said that the system supported fathers and if I raised all the issues about him I would fall into his trap and seem like I was alienating and hostile … anything you do raise is ridiculed, you are made out to be aggressive and resentful rather than genuinely concerned for your child." (Hunter *et al*., 2020, p. 60)**

Studies over a period exceeding twenty years have consistently shown that many judges and professionals treat mothers with suspicion and disbelief when they oppose or raise concerns about contact. This means that women's concerns about their safety can be seen as acts of self-interest and has led to the perception that mothers raise false allegations of domestic abuse as a method to prevent fathers from having an active role in their children's lives (Barnett, 2014, 2017, 2020a; Birchall and Choudhry, 2018, 2021; Coy *et al*., 2012; Harding and Newnham, 2015; Harrison, 2008; Holt, 2015; Hunt and Macleod, 2008; Hunter and Barnett, 2013; Hunter *et al*., 2020; Thiara and Gill, 2012; Women's Aid, 2016).

Mothers, professionals, and organisations supporting them who responded to the Harm Panel inquiry perceived that the default position of many of the professionals and the courts in child arrangement proceedings was to treat allegations with a high level of suspicion. Allegations of child sexual abuse, in particular, were reported as rarely believed. This has led to an increasingly harsh response from courts towards mothers if they seek to limit or restrict contact between children and fathers (Birchall and Choudhry, 2018; Coy *et al*., 2012; Harrison, 2008; Thiara and Gill, 2012).

In recent years, mothers have come under increasing scrutiny through the increasing weaponisation of allegations of so-called 'parental alienation' (PA). There is no official or commonly accepted definition of PA. Cafcass (2022) describes 'alienating behaviours' as where:

> "one parent or carer expresses an ongoing pattern of negative attitudes and communication about the other parent or carer that have the potential or intention to undermine or even destroy the child's relationship with their other parent or carer. These behaviours can result from a parent's feelings of unresolved anger and a desire, conscious or not, to punish the other parent or carer."

PA has been criticised as lacking a credible evidential base (An Roinn dli Agus Cirt, 2023; Doughty *et al*., 2018, 2020; Mercer, 2021). PA is not identified as a disorder or condition in either of the major international indices – the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) and the International Classification of Diseases 11th edition (ICD-11). The European Association for Psychotherapy (2018) "considers that the terms and concepts of 'PAS' and 'PA' are unsuitable for use in any psychotherapeutic practice". Governments have been encouraged to prohibit its use by international bodies, including the United Nations (Alsalem, 2023), CEDAW (2017), the Council of Europe (GREVIO, 2022) and the European Parliament (2021).

Studies demonstrate that PA is often used by abusers to undermine reports of domestic abuse and child abuse in family court proceedings internationally, including in England and Wales (Alsalem, 2023; Barnett, 2020b; Birchall and Choudhry, 2021; Casas Vila, 2020; Dalgarno *et al*., 2024; Feresin, 2020; Lapierre *et al*., 2020; Meier, 2020; Meier and Dickson, 2017; Neilson, 2018; Rathus, 2020; Sheehy and Boyd, 2020). In England and Wales, professionals and victims told the Harm Panel that victims were perceived as being motivated by a desire to turn the child against the other parent rather than trying to protect the child from the consequences of abuse, even if they distrusted the father for good reasons (Hunter *et al*., 2020). Women responding to the Harm Panel inquiry reported that they were afraid to even raise allegations of domestic abuse for fear of being accused of PA, and victims may even be advised by their own lawyers not to disclose domestic abuse for this reason (Birchall and Choudhry, 2021; Domestic Abuse Commissioner, 2023; Hunter *et al*., 2020). PA can, therefore, operate to shift the focus onto the mother's conduct, with the father's abusive behaviour and parenting practices becoming invisible (Barnett, 2020b). Studies have found that claims of PA may be prioritised over domestic abuse, which can be attributed to the pro-contact culture of the family courts and professionals, and domestic abuse being misunderstood, minimised and marginalised so that any opposition to, or concerns about contact raised by mothers can be viewed as evidence of alienation (Barnett, 2024, forthcoming).

However, research has consistently refuted the perception that mothers obstruct contact for no good reason. Empirical case file analyses found that cases of 'implacable hostility' were very rare, present only in around four per cent of the cases reviewed and that if contact was stopped, this reflected serious concerns for child safety rather than malicious attempts to block contact (Harding and Newnham, 2015; Hunt and Macleod, 2008; Trinder *et al*., 2013). Indeed, studies have shown that in most cases, mothers promote contact even

when they sustain ongoing domestic abuse (Coy *et al*., 2012; Fortin *et al*., 2012; Harne, 2011; Holt, 2017; Morrison, 2015; Radford and Hester, 2006; Thiara and Harrison, 2016). In an Irish study conducted by Holt (2017), the majority of mothers actively ensured that contact took place, despite finding this prospect daunting. Their fear was not unfounded, as for over two-thirds of the mothers, the abuse continued through contact.

F.2 Stereotypes of Victims and Perpetrators

The burden on victims of domestic abuse of displacing the presumption of parental involvement/contact is exacerbated by the interlinked systemic and attitudinal barriers to victims' credibility in family court proceedings, which could be overcome by a better understanding of the dynamics of domestic abuse and the effects of trauma (Hunter *et al*., 2020). Courts and professionals may hold stereotypical perceptions of how a 'typical' victim should look or behave during proceedings, resulting in women not being believed if, for example, they are considered too informed or articulate (Women's Aid, 2022; Birchall and Choudhry, 2018; Hunter *et al*., 2020). Other stereotypical assumptions that undermine mothers' credibility include women with mental health difficulties being considered unreliable, not reporting the abuse to relevant bodies such as the police or social services, staying in an abusive relationship, and "appearing 'over emotional' or 'under emotional' when giving evidence at court" (Hunter *et al*., 2020 p. 49).

> **"There was this hostility towards me, because I wasn't just going to stay silent. If you look at the comments about me in the judgment I would class it as subtle misogyny. They don't like outspoken women. They don't like women who know their rights. You're too persistent. But mothers will be assertive to protect their children – it's their instinct." (Women's Aid, 2022, p. 39)**

Women from minoritised groups may be judged particularly harshly due to professionals applying cultural stereotypes (Saied-Tessier, 2023).

> **"I'm not just a woman, I'm a brown woman... when you're assertive, especially if you're Asian or Black, you get labelled as aggressive... I go into fight or flight and I can't even think straight...they don't listen, they don't understand and they sit there in judgment and they've already decided before you walk in... it's just like a play." – Hasina (Dalgarno *et al*., 2023, p. 9)**

Alternatively, mothers who are perceived to be 'too emotional' may be compared unfavourably with the "controlled and ordered presentation of their abuser", with the consequence that abusive fathers may be awarded contact simply because they were perceived as more credible than mothers (Hunter *et al*., 2020, p.52).

Differential standards may be applied to the behaviour and demeanour of mothers and fathers in family court proceedings, with mothers being expected to be calm and

accommodating, while aggressive behaviour displayed by fathers can be shown a degree of tolerance:

> **"I felt that the judge was [...] very sympathetic to my ex, who cried, shouted and slammed books in court, while I was very quiet and still. She allowed him to shout at me, despite the fact that he had a barrister, and I had no one. Her words were 'emotions run high' in respect of his behaviour in court, in her presence, she did not sanction it, she excused it." (Birchall and Choudhry, 2018, p. 29)**

A failure to recognise the strategies of abusers, including the way in which abusers can convey an image of respectability in court, means that judges and professionals may be 'charmed' and manipulated by the abusers who are on their 'best behaviour' , leading to them being "convinced by men's presentation as Dr Jekyll and [missing] the Mr Hyde of behind closed doors" (Coy *et al*., 2012, p. 58; Birchall and Choudhry, 2018). The credibility this affords to abusers can assist them in convincing professionals that the abuse did not happen or that it had been exaggerated (Hunter *et al.*, 2020).

Victims' mental health difficulties may be a significant factor in why judges and professionals do not believe them (Taylor, 2022). Victims' medical records may be "treated as evidence of the mother being 'unstable or 'disordered' in some way" (Dalgarno *et al*., 2024, p.12). Alternatively, women who raise allegations of abuse or even voice, particularly child sexual abuse, may be labelled 'delusional' (Women's Aid, 2022; Taylor, 2022).

Abusers may use the preconceptions held by legal professionals to their advantage to portray themselves as rational and position the victim as unstable:

> **"He said I experimented with anti-depressants. He pathologised everything about me being a woman – he said I was menopausal and histrionic. He used every misogynistic trope that he possibly could in his statements." (Women's Aid, 2022, p. 38)**

The research discussed above demonstrates why perpetrators use accusations of this nature to silence mothers involved in family court proceedings; it is effective in its aim of discrediting survivors of abuse.

The pro contact culture, reinforced by the lack of understanding of the dynamics and effects of domestic abuse, provides the context for the pathologisation, intense scrutiny and stereotypical expectations of mothers, and the ease with which perpetrators can convey an image of benign respectability, with negative consequences for victims' credibility in family court proceedings.

CASE STUDY 1

Re GB (Parental Alienation: Factual Findings) [2-24] EWFC 75 (B)

This case concerned the father's application for contact with the parties two children, G (a girl aged 12) and B (a boy aged 9). The parents married in 2009 and the matter first came to court in December 2020 when the mother applied for a non-molestation order against the father. The mother alleged coercive and controlling behaviour by the father towards her and the children and rape, which the father denied. The father accused the mother of parental alienation. A Deputy District Judge consolidated the Family Law Act and Children Act proceedings with the result that the final hearing in the Family Law Act proceedings was treated as a fact-finding hearing in the Children Act proceedings. That hearing came before a Recorder who made adverse findings of the mother's credibility, made no findings against the father and dismissed the mother's application for an occupation order, leaving the parties and children living together in the matrimonial home. The father was represented by counsel; the mother was a litigant in person.

In January 2022 a Local Authority Multi Agency Safeguarding Hub ('MASH') "identified 'significant concerns for the safety and wellbeing of the children and mother'." [16] A further MASH report in March 2022 increased the risk rating from 'Amber' to 'Red'.

HHJ Middleton-Roy identified the following failings of the Deputy District Judge and the Recorder:

- The DDJ acceded to the father's application for the appointment of an expert despite the fact that it did not comply with the requirements of Part 25 of the Family Procedure Rules and did not even identify the expert or their field of expertise.
- The court did not hold a First Hearing Dispute Resolution Appointment in the Children Act proceedings and there was no judicial continuity.
- The fact-finding hearing did not comply with Practice Direction 12J.
- No ground rules hearing was held and no participation directions were given to assist the mother in the fact-finding hearing; no regard was given to Family Procedure Rule 3A and Practice Direction 3AA, "requirements which ought to have been embedded in the legal landscape of cases such as this" [55].
- The Recorder only raised the issue of special measures to protect the mother from direct cross-examination by the father on the second day of the fact-finding hearing immediately before the mother was due to be cross-examined.
- The Recorder was unduly influenced by the favourable impression he formed of the father in the witness box and the unfavourable impression he formed of the mother. He entirely discounted the concerns raised about the father by a psychotherapist who had provided marriage counselling to the parents. He also did not make clear what weight, if any, he attached to the court-appointed expert's opinion of the father.
- These failings meant that the overriding objective of Family Procedure Rule 1.1 for courts to deal with cases justly, which includes ensuring that the parties are on an equal footing, was not met.

CASE STUDY 1 (cont)

Re GB (Parental Alienation: Factual Findings) [2024] EWFC 75 (B)

In the current proceedings before HHJ Middleton-Roy it was accepted that the court was bound by the findings made by the Recorder. The current fact-finding hearing was focused on behaviour that post-dated the Recorder's findings and on factual disputes that were not the subject of the earlier fact-finding hearing. The court ensured that "the safeguards necessary under FPR 3A, PD3AA and PD12J have been put into effect". [57]

The court made all but one of the findings sought by the mother which included:

- From 2020 onwards the father used coercive controlling behaviour towards the children and the mother including: using force and threatening behaviour towards the mother when the children were present and towards the children; the father was obstructive of the mother's contact and relationship with the children; the father spoke in a derogatory manner to professionals about the mother and encouraged others to provide a negative narrative of the mother to the court, Cafcass and authorities; the father consistently sent the mother intimidating messages criticising her and her parenting and continuously accused her of alienation in order to distress, confuse and frighten her; the father persistently video recorded the mother and children; the father regularly spoke in a derogatory manner to the mother in front of the children causing them upset and fear; the father would warp the mother's and children's perception of reality; the father would undermine the children in front of each other and scapegoat them.
- The father made major decisions about children's lives without the mother's consent.
- The father provided misleading information to the Court and used proceedings to emotionally torment the children and the mother.
- The father raped the mother on two occasions in 2020 when the family was on holiday.

This is the first reported judgment in which the court recognised the use of DARVO. HHJ Middleton-Roy said that: "He sought to represent himself throughout as a victim and that she was the perpetrator, seeking to reverse the role of victim and offender". [124] He "has sought consistently, systematically and falsely to manipulate the mother, the children, professionals and the Court into believing that he is the victim of domestic abuse perpetrated by the mother. His pernicious actions alone have resulted in both children rejecting him." [168]

HHJ Middleton-Roy entirely rejected the father's accusations against the mother of parental alienation. "On the contrary, looking now at the whole picture, the evidence before the Court leads to the clear conclusion that the father has sought consistently, systematically and falsely to manipulate the mother, the children, professionals and the Court into believing that he is the victim of domestic abuse perpetrated by the mother. His pernicious actions alone have resulted in both children rejecting him." [168] Furthermore, it was found that the allegations of parental alienation were used to frighten the mother, which had their desired effect as the mother was afraid to accuse him of coercive control and to disclose the abuse to professionals "because he was using the system to scare me" and she did not feel she would be believed. [100]

Finally, it is noteworthy that HHJ Middleton-Roy adopted the terminology of 'reluctance, resistance or refusal' of contact recommended by the Domestic Abuse Commissioner (2023) and concluded that "the non-resident parent (the father) has engaged in behaviours that have directly or indirectly impacted the children, leading to the children's refusal, resistance or reluctance to engage in a relationship with him". [171]

G. Silencing Children

The family court is required by section 1(3) of the Children Act 1989 to consider "the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)". This reflects the rights enshrined by Article 12 of the United Nations Convention on the Rights of the Child 1989 (UNCRC) for children who are capable of forming their own views to have the opportunity to be heard in legal proceedings that affect them.[6] However, the presumption of contact has persistently operated to silence children and deny them a valid voice in decisions about their lives. Submissions to the Harm Panel from a wide range of children, mothers, some fathers and professional groups reported that the wishes "of individual children were given limited, if any weight" during family court proceedings (Hunter *et al*., 2020, p. 77).

> **"The presumption of contact, it's not helpful at all. I mean it's putting parents' rights above children. At the end of the day unless children can look after themselves and defend themselves, it's putting them in a situation where they are at risk of harm, emotional and physical" - FJYPB (Hunter *et al*., 2020. p. 77)**

Research shows that children want to be consulted during the decision-making process for post-separation contact and staunchly express their right to be heard, although they may not want final decision-making authority (Cashmore, 2011; Cashmore *et al*., 2023; Holt, 2018; Jones, 2023; Morrison, 2009). Holt's (2018) Irish study involving 24 young adults and children found that children's relief was clear when the court respected their wishes to have a say or their desire to not have a say. In cases involving domestic abuse, children commonly do not wish to have contact with the abusive parent (Morrison, 2015; Thiara and Gill, 2012). Young people participating in Fortin *et al*.'s (2012) study overwhelmingly expressed that no contact was better than bad contact in such cases. Additionally, many children who had experienced domestic abuse and were the subject of protracted contested cases disclosed the absence of a close relationship with their non-resident parent and were happy when their wishes for limited or no contact were implemented by court professionals (Cashmore, 2011; Hunter *et al*., 2020).

However, studies have found that children are routinely silenced during proceedings, which contributes to unsafe decisions that "do not promote, or undermine, the child's welfare" (Hunter *et al*., 2020, p.72; see also Macdonald, 2017; Walker and Misca, 2019). Hargreaves *et al*. (2024) examined research from a range of countries, including England and Wales, and found that children overwhelmingly feel unheard during court proceedings (see, eg., Roe,

[6] Article 12 UNCRC states that: "Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child; and for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

2021) and "felt that their voices and views were not prioritised" (Symonds *et al*., 2022, p. 23; see also Carson *et al*., 2018; Morrison *et al*., 2020). Similar views were expressed by members of the Family Justice Young People's Board (FJYPB) who participated in sessions with the Domestic Abuse Commissioner (2023), several of whom mentioned that they did not feel they had been listened to during proceedings despite having a clear idea of what they wanted.

A child who wanted to speak with the judge and was permitted to do so said:

> **Later that day my mum phoned to tell me the judge's decision. I screamed with happiness. I am convinced that because I just told the truth, he believed me and was able to sort everything out. My life was brilliant after that day; I am very happy. … I would like to think that my story could give hope to other children. We all have a voice. We just need the opportunity to have it heard. (Cafcass, 2021, p. 18)**

If children are able to express their views during proceedings, the strength of the pro-contact culture limits the weight given to their views (Barnett, 2020a; Hunter *et al*., 2020). A consistent theme of research is that a 'selective approach' is taken to children's views in proceedings (Harrison, 2008; Holt, 2011; James-Hanman and Holt, 2021; Macdonald, 2015). Where children want contact with their non-resident parent, their views are more likely to be taken at face value and incorporated into the decision making process, but are likely to be disregarded when they oppose contact, including in cases where there is a background of domestic abuse (Caffrey, 2013; Harding and Newnham, 2015; Holt, 2018; James-Hanman and Holt, 2021; Macdonald, 2015, 2017). Macdonald (2017) found that children's opposition to contact was routinely viewed and treated as problematic and obstructive, even if the child expressed fear of their father due to experiences of violence or abuse. Even when children were allowed to express their wishes and feelings about contact, they were not routinely asked about domestic abuse or child abuse. This selective approach reinforces the perception that abuse is not relevant to contact decisions and detracts from the 'real' business of progressing contact.

Where children are reluctant to have contact with their fathers, including children who have experienced domestic abuse, considerable efforts are made by professionals to persuade them to start or increase the amount of contact they are having (Caffrey, 2013; Harding and Newnham, 2015; Hunter *et al*., 2020; Thiara and Gill, 2012; Thiara and Harrison, 2016).

> **"CAFCASS workers and social workers have seemed to regard it as their role to persuade the child to agree to contact with their father, irrespective of the father's behaviour (this includes cases where the father has been convicted of offences related to domestic abuse) and of the stated wishes of the child." (Therapist) (Hunter *et al*., 2020, p. 77)**

Professionals may also misrepresent children's expressed wishes in an effort to promote contact. A young person who was scared of his father and would "struggle to sleep for days" before contact visits described an occasion when a Cafcass officer accompanied him and his father on a contact visit:

> **"At one point she started asking me questions as he walked behind us and I knew he could hear what we were talking about. She asked,**
> **"How often would you like to see your dad?"**
> **I replied, "Never."**
> **I felt so scared saying that but knew that I had to say how I felt.**
> **"But we've had such a nice day."**
> **I looked at the floor, my chest tight.**
> **"And he's made such an effort to see you." She made me feel guilty.**
> **So eventually I gave in and said if I really had to, "I'd see him for 30 minutes."**
> **I felt an icy cold shock when the court was told that I'd said, "I liked to see my father."**
> **Such a subtle twisting of words made a huge difference." (Cafcass, 2021, pp. 39-40)**

Morrison (2015) found that children frequently discussed how they missed their mother during contact. Younger children, in particular, wanted to talk to their mothers during contact, but in several cases, fathers stopped the children from doing so. Additionally, professionals who responded to the Harm Panel observed that children living with an abusive father were ignored when they said they wanted to see their mother more frequently or to live with her (Hunter *et al*., 2020).

The silencing of children has been exacerbated by the deployment of allegations of PA in family court proceedings (Domestic Abuse Commissioner, 2023). Many submissions to the Harm Panel argued that the increasing use of the term 'parental alienation', and professionals being too ready to see signs of alienation, could silence children, rather than assessing further what the child may have witnessed or experienced (Hunter *et al*., 2020). Accepting PA as the default explanation for children's resistance or reluctance to have contact negates the validity of children's views, ignores the many reasons why children may not want contact, and can lead to decisions which undermine the child's safety (Domestic Abuse Commissioner, 2023; Fortin *et al*., 2012; Hunter *et al*., 2020).

H. Litigation Abuse

> **"A punch will hurt for a day or so, but you can't get rid of the pain and trauma of mental and emotional abuse which you have to relive in court." (Domestic Abuse Commissioner, 2023, p. 19)**

Twenty years ago, Lady Hale, writing of her experience as a judge of the Family Division of the High Court, said: "The most troubling aspect of my perception is that some women are being pursued and oppressed by controlling or vengeful men with the full support of the system" (Hale, 1999, p. 385).

Litigation abuse, also referred to as 'lawfare', describes the way in which perpetrators may use continuous and protracted litigation as a method of control and harassment. This is acknowledged to be a mechanism of domestic abuse perpetration, as proceedings within the Family Court may be instrumentalised, and children weaponised for this purpose (Hunter *et al*., 2020). Perpetrators employ a range of tactics such as making repeated applications which require the victim to attend court hearings, providing the perpetrator with further opportunities to intimidate their victims at court and to deplete their resources (Corbett & Summerfield, 2017; Gutowski and Goodman, 2023). However, due to the closed nature of private family law proceedings, the abuse of this nature is also largely concealed from the public (Choudhry, 2019).

Courts have the power to restrict litigants from repeat litigation by issuing orders under Section 91(14) of the Children Act 1989, which limits applications from being made without the court's permission ('barring orders'). However, research found that "perpetrators' use of proceedings as a tactic of post-separation abuse were not fully understood by courts and professionals, and perpetrators were rarely, if ever, identified as vexatious litigants" (Barnett, 2020a, p. 7). The Harm Panel received evidence that courts may view these repeated attempts at litigation as the father attempting to be a "good dad" trying to increase his contact with his children in accordance with the prevailing pro-contact culture (Hunter *et al*., 2020, p. 126). However, mothers reported to the Harm Panel that fathers in these circumstances lacked a genuine interest in their children and were using repeated court proceedings to continue cycles of abuse, which was borne out when these fathers failed to exercise contact when the court awarded it (Hunter *et al*., 2020).

> **"The family court has repeatedly accepted further requests for contact hearings from my ex-husband and ignored the history of abuse and the fact that he does not stick to any contact order he asks for. My Ex-Husband has continually taken me back to court applying to slight variations on the contact hours despite not sticking to the previous hours he requests." Mother (Hunter *et al*., 2020, p. 125)**

Litigation abuse can have devastating impacts on victims of domestic abuse. Many of the victims and survivors who contacted the Domestic Abuse Commissioner between May 2020 and May 2022 reported that their perpetrator had weaponised family court proceedings to continue their abuse and control against them. Survivors were forcefully engaged "in aggressive, expensive, and stressful litigation" (Domestic Abuse Commissioner, 2023, p. 26; see also Birchall and Choudhry, 2018). For many survivors, their experience of family court

proceedings was as traumatic as the abuse they were subjected to within the relationship and left them "feeling trapped and fearful for their future" (Domestic Abuse Commissioner, 2023, p. 26; see also Coy *et al*., 2015).

> **"He kept taking me back to court, which cost me nearly all of that year's wages but he was allowed to withdraw his case or alter it each time just as it came time to award me costs, so a cost order would not be made. The whole procedure made me feel he was still controlling my life and my finances." Survey respondent (Birchall and Choudhry, 2018, p. 43)**

Mothers interviewed by Dalgarno *et al*. (2024, p. 12) "felt that proceedings subjected them to secondary victimization, mirroring the abuse of perpetrators and making them feel unsafe". All of the 45 mothers participating in the study reported significant health problems which they believed were contributed to or exacerbated by the stress of family court proceedings, including suicidal thoughts, miscarriages, and heart attacks.

Section 91(14) of the Children Act 1989 was substantially amended by Section 67 of the Domestic Abuse Act 2021. Section 91A provides that courts may make a Section 91(14) order where they are satisfied that applications for orders under the Act would put the child or another individual at risk of harm. Practice Direction 12Q to the Family Procedure Rules 2010 sets out a wide range of circumstances which could warrant the making of a Section 91(14) order, including repeated and unreasonable applications, where a period of respite is needed, or "where a person's conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer" (Para 2.3). It could also include applications that are "part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim" (Para 2.4).[7]

Reported judgments issued after the implementation of Section 91A indicate that courts have taken on board the "transformative" nature of Section 67 of the Domestic Abuse Act 2021, which "provides a powerful tool with which Judges can protect both children and the parent with whom they live, from corrosive, demoralising and controlling applications which have an insidious impact on their general welfare and wellbeing and can cause real emotional harm" (*F v M (Rev1)* [2023] EWFC 5 [20] per Hayden J).[8]

The circumstances of many of the reported cases in which Section 91(14) orders were made were at the extreme end. For example, in *B v C* [2022] EWFC 189, the father against whom a Section 91(14) order was made had received 10 life sentences for offences of rape, kidnapping, attempted kidnapping and false imprisonment. Having been released on licence when he met the mother, he was subsequently convicted again and received 24 life

[7] Practice Direction 12J was subsequently amended to reflect the new statutory code for Section 91(14) orders.

[8] See also, eg, *B v C* [2022] EWFC 189; *Re A (A Child) (Supervised Contact)* [2022] 1 FLR 1019; *Re A and B (No 3) (domestic abuse - no direct contact - s91(14))* [2023] EWFC 192

sentences for similar offences, with the mother and another woman the primary victims. It remains to be seen whether the pro contact culture will inhibit some judges from making Section 91(14) orders if they perceive the perpetrator's conduct to be less abusive than the severe examples in the reported judgments.

I. Coerced Agreements and Out of Court Dispute Resolution

Studies of court file data, both prior to and after the implementation of Practice Direction 12J, found that more than three-quarters of final orders were made by consent, including in cases where allegations of domestic abuse were raised. Cases involving domestic abuse were just as likely to be resolved by consent as cases without domestic abuse allegations (Cafcass and Women's Aid, 2017; Harding and Newnham, 2015; Hunt and Macleod, 2008; Perry and Rainey, 2007). This very high rate of consent orders may stem from the pressure on parents from all sides, including their own lawyers, to reach agreement on child arrangements because of the prevailing pro-contact culture and the belief that 'conflict' through contested hearings has negative impacts on children (Barnett, 2020a; Dalgarno *et al*. (2024); Harne, 2011; Hunter *et al*., 2020; Kaganas, 2018; Smithson *et al*., 2017).

Many mothers responding to the Harm Panel's call for evidence reported being advised and even required to engage in conciliation by Cafcass at court or to attend mediation, and being criticised for not attempting mediation despite having provided information about domestic abuse (Hunter *et al*., 2020). This appears to be contrary to paragraph 9 of Practice Direction 12J.[9] If mothers resisted these attempts, this was not seen by courts and professionals as arising from justifiable fear and concern for their children but as 'gatekeeping' and 'implacable hostility' (Birchall and Choudhry, 2018; Holt, 2015; Hunter *et al*., 2020).

Women with uncertain immigration status can be most at risk of strong pressure to reconcile or agree to contact, as they might have to choose between staying in an abusive situation or risking deportation and the possible permanent loss of their children (Hunter *et al*., 2020; Thiara and Gill, 2012).

J. Assessing Risk and Welfare

The prevailing pro-contact culture has a significant impact on risk assessment in child arrangements proceedings. PD12J stipulates that once it has been established that domestic abuse has been perpetrated (whether as a result of admissions, findings of fact or

[9] Paragraph 9 of PD12J provides that: Where any information provided to the court before the FHDRA or other first hearing (whether as a result of initial safeguarding enquiries by Cafcass or CAFCASS Cymru or on form C1A or otherwise) indicates that there are issues of domestic abuse which may be relevant to the court's determination, the court must ensure that the issues are addressed at the hearing, and that the parties are not expected to engage in conciliation or other forms of dispute resolution which are not suitable and/or safe.

otherwise), the court must consider whether it would be assisted by an expert safety and risk assessment of any party or the child and if so, make directions for any such assessment to be undertaken (Para 33 PD12J). The Court of Appeal has made it clear that in almost all cases where domestic abuse has been found, an expert risk assessment is likely to be essential to understand the ongoing risk to the child (*Re P* [2015] EWCA Civ 466 [30]; *Re W* [2012] EWCA Civ 528 [19]). However, decision-making based on poor risk assessment has been repeatedly found by safeguarding reviews and domestic homicide reviews to be a prominent factor in cases where children have died or been seriously harmed and in adult domestic homicides (Child Safeguarding Practice Review Panel, 2020; Home Office, 2021).

Research has found that the drive to move cases through the system and, ideally, to continue or restore contact, meant that the risk and welfare provisions of PD12J were not applied properly or ignored (Barnett, 2017; Birchall and Choudhry, 2018, 2021; Coy *et al*., 2012; Hunter and Barnett, 2013; Hunter *et al*., 2020; Trinder *et al*., 2013).[10] Moreover, when allegations of PA are raised in cases, proven domestic abuse tends to be sidelined or ignored (Barnett, 2020b; Birchall and Choudhry, 2021).

In many cases, the risks of ordering contact have been ignored due to the belief that maintaining or restoring a father's relationship with his children is more important than protecting survivors of domestic abuse and children. Multiple respondents to the Harm Panel considered current risk assessment processes inadequate and gave examples of courts avoiding risk assessment and ordering supervised contact instead. Risk may be minimised to optimise the chances for contact by, for example, assessing the ongoing risk for the child but not for the non-abusive parent; risk to a parent not being considered to be a risk for the child; and not consulting with children in the process of risk assessment (Hunter *et al*., 2020). Underpinned by the pro-contact culture, the panel found an "overall

[10] Paragraph 36 of PD12J states that "(1) In the light of- (a) any findings of fact, (b) admissions; or (c) domestic abuse having otherwise been established, the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained. (2) In particular, the court should in every case consider any harm- (a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and (b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made. (3) The court should make an order for contact only if it is satisfied- (a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and (b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent."

Paragraph 37 of PD12J states that "In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider – (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living; (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents; (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent; (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse."

impression that the court and Cafcass strained to assess the parent who had been found to be abusive as not presenting a risk to their children, or at least not presenting enough of a risk to prevent direct (ideally unsupervised) contact" (Hunter *et al*., 2020, p. 99).

Two years on from the Harm Panel report, Women's Aid (2022) found that courts and professionals continued to minimise the risks for survivors and children. Additionally, a recent study has raised concerns about inadequate or no risk assessment.

> **"We very often hear from survivors that a proper risk assessment or fact-finding hearing hasn't taken place from the family courts. Either there hasn't been a risk assessment at all, or it's been done without an understanding of the ongoing nature of domestic abuse post-separation and ongoing risk to children. We'd want to see fact-finding as part of risk assessment, as well as ensuring the child and survivor have sufficient support as part of ordering contact in supervised and supported settings." (Domestic abuse stakeholder) (Cordis Bright, 2023, p. 16)**

K. Orders for Child Arrangements

As a consequence of the drive to promote contact between children and their fathers after parental separation, orders for no contact are extremely rare, even in cases in which findings of domestic abuse have been made. Even if contact is supervised, this does not necessarily make it safe. Additionally, mothers who resist or raise concerns about contact may find themselves classed as 'alienating' and risk losing the care of their children to the fathers.

K.1 Orders for contact

The pro-contact culture of the family courts, reinforced by the statutory presumption of parental involvement, often results in a progression towards frequent direct (preferably overnight) contact, even in cases of domestic abuse (Cafcass and Women's Aid, 2017; Harding and Newnham, 2015; Harwood, 2021; Hunter and Barnett, 2013; Hunter *et al*., 2020). Orders for no contact are extremely rare.[11] Judges and professionals participating in Harwood's (2018) study reported that only in extremely rare cases would an abusive parent leave proceedings with no contact. A solicitor emphasised that fathers may have done "horrendous things to women", but the courts still do not wish to give up on the possibility of contact (Harwood, 2018, p. 170).

The most common orders are for some form of direct contact, which may be achieved by an incremental or 'stepped' approach (Harwood, 2018; Hunter *et al*., 2020). All but one judge interviewed by Harwood stated that "most orders for contact in cases involving proven or

[11] It should be noted that there are no recent statistics or court file-based studies available on disposals in private law Children Act cases.

found domestic abuse are for a form of direct contact" (2018, p. 173). Furthermore, where courts and professionals have accepted that there should be no direct contact, there is a preference for indirect contact to "keep the door open to future direct contact" (Hunter *et al*., 2020, p. 107; see also Coy *et al*., 2012; Harding and Newnham, 2015; Harwood, 2018; Hunter and Barnett, 2013). As a barrister responding to Hunter and Barnett's (2013) survey observed: "There are two rules of thumb – a father will generally get direct contact apart from in exceptional cases – and contact cannot stay supervised." (Hunter and Barnett, 2013, p. 56).

A respondent to Cordis Bright's (2023) study identified the pro contact culture as underpinning the drive towards unsupervised contact:

> **"We see a very strong pro-contact culture within the family court. Sometimes contact is prioritised above safeguarding, and there is always a push for supervised contact to journey towards independent contact. That push can go against the harm that the child or survivor may be experiencing." (Domestic abuse stakeholder) (Cordis Bright, 2023, p. 16)**

The last word on this issue goes to the young people interviewed by Fortin *et al*. (2012) who went through parental separation as children. They overwhelmingly agreed that contact should never take place if there is an abusive parent-child relationship and that no contact is better than bad contact.

K.2 Supervision of Contact

> **"And they [contact centre staff] said to me, 'Oh, he's so lovely' and 'Oh, he's so attractive'. And I would think, hang on a minute. This is the man you know who beat me up. On two occasions he threatened or tried to rape me, has beaten up my daughter, has done lots of things." (A mother attending supervised contact centre) (Harrison, 2008, p. 398)**

Child contact centres are used as neutral settings where non-resident parents may have contact with their children. In supervised centres, the service is provided one-to-one with staff within sight and sound of the child. Statistics compiled by NACCC (undated) show that in the six-year period from 2017 to 2023, the numbers of both supervised and supported accredited contact centres have fallen significantly, most likely due to reduced funding.[12] Additionally, centres providing only supervised contact receive referrals predominantly from local authorities in public law (Cordis Bright, 2023). This means that the availability of supervised contact services for private law cases is very limited. It would be extremely

[12] In 2017 there were 205 services providing supported contact, compared to 129 as at April 2023. 24 services provided supervised contact only in 2017, compared to only nine as at April 2023. The numbers of services providing both supervised and supported contact reduced by only 11 between 2017 and 2022.

concerning if courts responded to this apparent shortage of supervised contact centres by relying on supervision by family and friends or even by the victim herself. This could be contrary to Paragraph 28 of PD12J, which provides that: "Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supervised by a parent or relative, is not appropriate."

> **"I have to supervise contact between my abuser and our children. This has a detrimental effect on my mental health and causes me to continue to be traumatised by him but I have to do it in order to keep my children safe and happy." (A mother) (Hunter *et al.*, 2020, p. 140).**

Early research revealed that child contact centres are often used by men with histories of domestic abuse (Aris *et al*., 2002). Harrison's (2008) study found that several fathers using contact centres had served custodial sentences, including for grievous bodily harm or attempted murder. Recent research by Cordis Bright (2023) reported that 89% of the contact centres surveyed had received at least one referral over the previous 12 months which involved domestic abuse but, as noted below, this may be an underestimate.

The presumption of contact and minimisation of domestic abuse also carry through to the quality of supervision at supported and supervised contact centres, which has placed women and children at risk. Recurring issues identified by research include inappropriate practices by some contact centre staff, low levels of vigilance (even at supervised contact centres), a lack of domestic abuse training, and a lack of appropriate protective measures (Barnett, 2020a; Cordis Bright, 2023; Harrison, 2008). Cordis Bright (2023) found that risk assessments were not regularly updated. Additionally, while the majority of contact centres surveyed reported that they had not experienced any safeguarding incidents due to the risk of domestic abuse in the previous 12 months, some parents reported safeguarding concerns which had not been picked up by staff. This suggests that "contact centres may have a high threshold for what is reported or logged as a safeguarding incident, and are more likely to categorise physical altercations as safeguarding incidents than other forms of abuse such as emotional abuse or coercive control." (Cordis Bright, 2023, p. 12)

CASE STUDY 2

Griffiths v Kniveton and Other [2024] EWHC 199 (Fam)

The father in this case, Andrew Griffiths, was the Conservative MP for Burton. He resigned in 2018 after it was reported in the press that he had sent up to 2,000 sexually explicit text messages to two female constituents. The mother, Kate Kniveton MP, succeeded him as Conservative MP for Burton. The parents separated in 2019, with their child remaining in the mother's care, and that year, the father made an application for a child arrangements order. In November 2020, HHJ Williscroft made serious findings of domestic abuse against the father, including numerous instances of physical and verbal abuse and rape, perpetrated on the mother. He also found that the father used coercive and controlling behaviour to force the mother to submit to his sexual demands. Nevertheless, HHJ Williscroft ordered that direct contact should continue and that the mother should contribute to the costs of the contact centre. The mother successfully appealed the latter order (see *Griffiths v Griffiths (Guidance on Contact Centre Costs)* [2022] EWHC 113 (Fam)). She also successfully appealed the order for direct contact, which reverted to indirect telephone contact. At the instant hearing, the mother sought indirect letterbox contact and a Section 91(14) order for five years, which was supported by the Guardian.

The father's case was essentially that he had taken on board the findings against him and had changed. Of the father's evidence, Mrs Justice Lieven said that she was "deeply troubled by the fact that he offered to contribute to the cost of the M's therapy, thereby in some sense making the issue in the case about her default and psychological challenges, rather than addressing his own responses by undertaking therapy." [27] "Most worryingly, he seemed unconcerned about the emotional impact on the M of his determined pursuit of contact and effectively took the approach that this was the M's problem." [30]

Mrs Justice Lieven did not think that the father posed a risk of physical harm to the child but had "little faith in the F's ability to restrain himself from telling XX his narrative of the relationship with the M and seeking to 'lobby' XX to see his point of view." [49] "Most importantly I do not consider the F has any real understanding or insight into what the M has and still is going through, and how distressing this whole process has been for her. He fought the fact finding hearing 'tooth and nail' despite the extreme distress that must have caused the M. He says that he has now changed, but I am far from convinced. … Secondly, he effectively placed the burden on the M by saying that she should have therapy in order to deal with him having contact. Thirdly, he had seemed to have given very little consideration to the impact on XX of the M having to go on supporting contact. … the F's main concern remains himself and what is best for him, rather than what is best for XX." [50]

Mrs Justice Lieven concluded that the correct order was for letterbox contact only. She made a Section 91(14) order for three years "to give the M a break from litigation and the strain that places upon her as XX's primary carer. … One cannot underestimate the toll that litigation takes, particularly where one party has been the victim of very serious abuse by the other." [60]

K.3 Child Removal

> **"My story started with my daughter disclosing abuse by her father, and finished with me losing her and being told to seek treatment for parental alienation." (Survivor of domestic abuse in court 2020-21) (Women's Aid, 2022, p. 40)**

At its most extreme, the presumption of contact can lead to mothers losing the care of their children to abusive fathers. There appears to be a concerning increase in the number of children being removed from the care of their mothers to reside with their fathers, including fathers against whom allegations or findings of domestic abuse or child abuse were made, in an apparent effort to maintain or restore a relationship between the child and father (Barnett, 2020b; Birchall and Choudhry, 2021; Candour TV, 2021; Dalgarno *et al*., 2024; Domestic Abuse Commissioner, 2023; Doughty *et al*., 2020; Grey, 2023; Hunter *et al*., 2020). Child removals can, in some cases, be implemented forcibly and can result in decreased or no contact between the child and mother. This trend appears to be happening in numerous jurisdictions (see Casas Vila, 2002; Elizabeth, 2020; Feresin, 2020; Lapierre *et al*., 2020; Mackenzie *et al*., 2020; Meier, 2020; Rathus, 2020; Sheehy and Boyd, 2020).

Additionally, there is evidence of the threat of children being transferred to live with their fathers if the mothers do not promote contact (Barnett, 2020b; Birchall and Choudhry, 2018; Dalgarno *et al*., 2024; Grey, 2023; Hunter *et al.*, 2020).

> "She [Cafcass officer] told me actually, in the garden, that if I didn't agree to contact, the judge would make a decision that I wouldn't like, and that was her threat to me on a change of residency… I was constantly accused of parental alienation, my hostilities towards father were highlighted… I used to go back and say, 'let's refer back to source, what triggered my anxiety?'… and it just infuriated Cafcass more… It makes you think irrational thoughts… You become clinical… I wasn't sleeping…" (Stephanie) (Dalgarno *et al*., 2024, p. 10)

Allegations of PA and PA 'experts' can play a critical role in child removal (Birchall and Choudhry, 2018; Hunter *et al.*, 2020). A study by Grey (2023) described how the involvement of PA experts can operate to separate a protective mother and her child. A number of survivors in the study explained how:

> **"Cafcass officers recommended a specific expert who they thought would achieve the right result. On hearing who the expert was, Bell [a victim mother] said 'people have said, "you might as well pack your kids' bags" . . . as it is a done deal'." (Grey, 2023, p. 357).**

A report by the UN Special Representative on Violence Against Women notes that PA experts recommend solutions which may not be compatible with the welfare and rights of the child, including transfers of custody and the use of dubious therapies and interventions (Alsalem, 2023). Grey's (2023, p. 358) study provides an example of a case where an expert recommended "flooding treatment" that involved "short, sharp shocks" of separation between a survivor mother and her children when the children did not want to see their father. These periods of separation between the mother and children progressively increased as the children continued to oppose contact with their father. Eventually, the expert recommended that a forced transfer of residence should occur, which was upheld by the family court: "he recommended forced removal, he said that the shock would jolt them to realise how nice dad was".

There is growing concern about the appointment of unqualified and unregulated PA 'experts', which is particularly worrying when extreme interventions such as child removal are implemented on their recommendations. There is currently no requirement in England and Wales for an expert to be regulated by an external regulatory or supervisory body.[13] Parties to proceedings may be unaware that a proposed expert is unregulated (Grey, 2023) and concerns were raised with the Harm Panel that the credentials of PA experts were not sufficiently scrutinised or challenged by the court (Hunter *et al*., 2020). Joint guidance issued by the British Psychological Society and the Family Justice Council (2023) discourages (but does not prohibit) the appointment of unregulated experts. However, the Court of Appeal made clear in the case of *Re C ('Parental Alienation'; Instruction of Expert)* [2023] EWHC 345 (Fam) that although 'the open-house nature of the term 'psychologist' is unhelpful and potentially confusing', it is 'a matter for the psychological profession and, ultimately, Parliament, whether a tighter regime should be imposed' (per McFarlane P. at [94]).

Child removal causes significant emotional impacts on mothers, who report feelings of shame, guilt, and grief (Broadhurst and Mason, 2020; Van Zyl *et al*., 2022). Child removal can have lethal mental health effects on some mothers, including suicidal thoughts and attempts to take their own life (Memarnia *et al*., 2015).

There is no longitudinal research on the outcomes for children of transfers of residence in private law children cases. A small-scale US study found that it can leave children exposed to continuing abuse and cause them lasting psychological harm (Silberg and Dallam, 2019). In two cases studied by Barnett (2020b), children who were forced to reside with their abusive fathers were traumatised and suicidal when returned to their mothers. It is extremely concerning that courts are willing to order forcible transfers of residence in the absence of research on the outcomes of this intervention.

[13] The regulatory body in England and Wales is the Health and Care Professions Council (HCPC)

L. Progress in Other Jurisdictions

Developments in other jurisdictions that aim to prioritise the safety and welfare of child and adult victims over the rights of perpetrators can offer useful insights for legal, policy and cultural change in England and Wales.

L.1 The United States of America

Kayden's Law: Assessing the Risk of Harm

Kayden's law was signed into federal law in 2022 in response to the tragic murder of Kayden Mancuso by her biological father during court-ordered unsupervised contact (The Keeping Children Safe from Family Violence Act SB 78 2022). The Act incentivises states to ensure that their child custody laws adequately protect at-risk children by requiring courts to consider evidence of past sexual or physical abuse of the child or the other parent and to hold evidentiary hearings to examine both new and past allegations of domestic abuse. It restricts expert testimony to only those with appropriate qualifications, expertise and experience in working with victims of domestic abuse or child abuse. It limits the use of reunification camps and unsafe therapies, and provides for evidence-based ongoing training to judges and court personnel on family violence. To date Kayden's Law has been enacted in Colorado, and in California as Piqui's Law, and partially enacted in Tennessee and Maryland. The requirements for judicial training in Piqui's Law involve 25 hours of training on domestic abuse and child abuse, as well as 20 hours of ongoing training every three years.

The RRR Model

The Domestic Abuse Commissioner for England and Wales (2023) recommended that the current linguistic framework used in the family court in relation to children (so-called 'parental alienation') should be reconsidered and replaced with the RRR Model adopted by the National Council of Juvenile and Family Court Judges (2022) in the USA. RRR stands for reluctance, resistance, or refusal, which are useful terms to describe the behaviours a child may exhibit in relation to contact with a parent.

Term	Definition	Example in context
Reluctance	*Unwillingness or disinclination to do something.*	A child may require reassurance from the primary carer, or reassurance that their feelings (including those of reticence) are acknowledged.
Resist	*To disagree with something. To be changed by something.*	A child may run away at handover, be insistent that they are unhappy with proposals and seek to appeal to their primary carer, adults in school settings or others.
Refusal	*To say that you will not do or accept something.*	A child stating that they will not: stay overnight, have contact, accept being collected by a non-resident parent, participate in phone/video calls.

(Domestic Abuse Commissioner, 2023, p. 64)

As discussed above, the child's voice is often misconstrued or silenced during family court proceedings. For example, the description that a child is being 'hostile' is overly broad and does not adequately encompass the spectrum of children's response (Domestic Abuse Commissioner, 2023). The RRR Model provides a framework that utilises language which more accurately depicts the actuality of a child's behaviour. The US model requires courts to assess whether a preponderance of evidence supports that a child is refusing, resisting, or showing reluctance towards a parent. If findings of reluctance, resistance or refusal are made, then the court should assess and make findings on any domestic abuse or child abuse allegations and determine whether the child's behaviour is a response, in whole or in part, to the domestic abuse or child abuse (National Council of Juvenile and Family Court Judges, 2022). If the child's resistance, refusal or reluctance towards a parent is not wholly or partly attributable to domestic abuse or child abuse, the court should consider a wide range of other reasons for the child's behaviour and not assume that that behaviour is caused by the other parents' 'alienating behaviours' (National Council of Juvenile and Family Court Judges, 2022, pp. 62-63).

L.2 Australia –Shifting away from the Presumption

In Australia, the Family Law Amendment Act 2023, which received Royal Assent in November 2023, followed a major inquiry into the family courts by the Australian Law Reform Commission in 2019. Most of its changes will be implemented in May 2024. The Act removes the presumption of equal shared 'parental responsibility' as well as the 'twin pillars' approach (see page 38 above). The 'twin pillars' approach is replaced with six factors to determine the best interests of the child, which are very similar to the welfare checklist in Section 1(3) Children Act 1989. Additionally, courts must consider "any history of family violence, abuse or neglect involving the child or a person caring for the child… and any family violence order that applies or has applied to the child or a member of the child's family" (Section 6 Family Law Amendment Act 2023). The Act also makes provision for Independent Children's Lawyers to meet with children to ensure that their views are considered when the court makes parenting arrangements. 'Harmful Procedure Orders' have been enacted to prevent a party from instituting proceedings without leave of the court if the child or another party is likely to suffer harm (broadly defined) from such proceedings.

L.3 Spain and Italy – prohibition on the deployment of PA terminology

Spain is the first and only country to ban the use of PA by legislation and has explicitly described it as 'pseudoscience' (Organic Law 8/2021 on the Comprehensive Protection of Children and Adolescents Against Violence). In custody proceedings, judges must ensure that children can exercise their right to be heard. The statute also provides that in situations where mothers and children are subjected to gender-based violence from fathers, the children should remain with their mother unless this is contrary to their best interests, and that provisions for joint custody do not apply when there are 'well-founded' indications of

domestic abuse. In Italy, two judgments of the Supreme Court, in 2019 and 2021, refuted the scientific validity of 'parental alienation syndrome' and established that the sole custody of a child cannot be based only on a diagnosis of PAS (see Ramundo, 2021).

M. **Conclusions**

Attempts by policy makers and senior judiciary in England and Wales for nearly 25 years to improve family court responses to domestic abuse in child arrangements cases have met with enduring barriers to achieving systemic cultural change. A significant barrier has consistently been identified as the pro contact culture and presumption of parental involvement, which have persistently undermined efforts at achieving meaningful change. The presumption of contact adversely affects every aspect of private law children proceedings, including understanding domestic abuse and its consequences for child and adult victims, acknowledging the relevance of domestic abuse for post-separation child arrangements, hearing the voices of survivors and children without bias or filters, assessing the risks posed by perpetrators of abuse, and making or facilitating orders that prioritise the safety and wellbeing of children and protective parents. The research discussed in this report demonstrates the risks to children of the importance ascribed to the role of fathers after parental separation, "an importance that is now almost cast in stone by the presumption of parental involvement" (Barnett, 2014, p. 33). The traumatic nature of contact proceedings and high incidence of post-separation abuse through child contact mean that survivors and children are unable to recover from the trauma they have already suffered at the hands of their abusers and the family justice system (Dalgarno *et al*., 2024; Katz, 2022).

Arguably, the extent of the pain, distress and health impacts experienced by mothers in child arrangements proceedings and by children and mothers from coercive interventions such as the forcible removal of children from their protective parent reaches the threshold of torture, cruel and inhuman treatment under Article 3 of the European Convention on Human Rights (Alsalem, 2023; Birchall and Choudhry, 2018; Domestic Abuse Commissioner, 2023). The harms experienced by mothers and children could also violate Article 31 of the Istanbul Convention.[14] Additionally, the deployment of allegations of so-called parental alienation, which are underpinned by and reinforce the pro-contact culture, constitutes the most serious challenge in recent years to achieving a family justice system that puts the safety and wellbeing of children at its heart.

[14] Article 31 states that "1 Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account. 2 Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children."

The UK government is currently trialling a very different approach to private law children proceedings. The Pathfinder Pilot Courts, which were formulated in response to recommendations of the Harm Panel, commenced in February 2022 in North Wales and Dorset. They are piloting an investigative, child-centred approach aimed at prioritising early information-gathering, front-loaded, more comprehensive risk assessment (including DASH risk assessments undertaken by local domestic abuse agencies), improved information sharing between agencies, and enhancing the voice of the child (Ministry of Justice, 2023; Ministry of Justice *et al*., 2024). While the pilots have not yet been evaluated, they have received positive feedback from parties to proceedings, court staff and the judiciary (Domestic Abuse Commissioner, 2023), and the government intends to extend them to Birmingham and Cardiff (Ministry of Justice *et al*., 2024).

However, there is always the risk that the driving pro-contact culture could undermine or subvert the laudable aims of the Pathfinder Pilots. Rather than prioritising the protection of children and victims/survivors of domestic abuse, they could become another means of engineering agreements for contact or diverting families inappropriately from the courts into alternative dispute resolution. If this fundamental change in family court proceedings is to succeed, it is essential that the presumption of contact is fully and finally removed.

N. Recommendations

The complexities of shifting away from the 'contact at all costs' approach to one which prioritises the safety and welfare of children and survivors of domestic abuse in child arrangement cases are challenging but are wholly necessary to ensure that more children and protective parents are not forced to endure a system that traumatises them and puts them at risk. Decisions about contact should be made that are commensurate with the risks involved and with a full understanding of the nature, dynamics and effects of domestic abuse and the tactics of perpetrators. It is imperative that changes are made to law and policy to ensure that the family court stops privileging men's right to contact over the safety and wellbeing of adult and child victims of domestic abuse. The recommendations that follow are aimed at facilitating the much-needed change. They should be put on a statutory footing to enhance compliance and accountability, which will be further strengthened if the government implements the recommendation of the Domestic Abuse Commissioner (2023) for Domestic Abuse Best Practice Leads.

1. The statutory presumption of parental involvement in Section 1(2A) of the Children Act 1989 should be repealed. As discussed in this report, the enactment of the statutory presumption received very little support, and the available evidence demonstrates that it has not benefitted children. Additionally, any presumptions that have arisen through the common law that interpret the welfare principle in

Section 1(1) of the Children Act 1989 as meaning that contact with the non-resident parent is almost always in the best interests of the child, should be disapplied.

2. Domestic abuse, sexual abuse and child abuse should always be considered relevant to post-separation child arrangements. The court should not refuse to hold a fact-finding hearing on the basis that the disputed allegations are not relevant to the court's determination of the application.

3. Where any information provided to the court indicates that there are issues of domestic abuse or sexual abuse or child abuse, the court should not compel the parties to engage in conciliation, mediation or other forms of dispute resolution which are not suitable and/or safe. Nor should courts or professionals compel parties to enter into consent orders unless they are satisfied that they have the parties' voluntary agreement and there are no indications of risk.

4. The deployment of so-called parental alienation, alienating behaviours and similar terminology should be prohibited in family court proceedings.

5. Family courts should be prohibited from allowing the appointment of so-called parental alienation experts. Any expert instructed in family court proceedings should be regulated, accountable and have relevant qualifications, and there should be strict statutory regulation of the term 'psychologist'. Only HCPC-regulated psychologists or psychiatrists should be permitted to make diagnoses in child arrangements cases.

6. The voice of the child should be amplified, as envisaged by the Pathfinder Pilot courts. Cafcass officers, social workers and other report writers should have sufficient time to build a relationship with the child at an early stage of proceedings to enable children to freely express their wishes and feelings. All reports relating to the wishes and feelings of the child should accurately describe the child's wishes and feelings rather than interpret them through the presumption of contact.

7. Where domestic abuse and/or child abuse is raised, the court should first determine whether the child is actually resisting, refusing or demonstrating reluctance towards a parent. The court should then make findings on any disputed allegations of abuse, and if findings are made, determine whether the child's behaviour is a response to such abuse. In cases where a child is exhibiting resistance, refusal or reluctance towards a parent, which is not wholly or partly caused by domestic abuse or child abuse, the court should consider a wide range of reasons for the child's behaviour and not assume that the child's behaviour is the product of so-called parental alienation or alienating behaviours.

8. If domestic abuse is proved, admitted or otherwise established, the court should not make an order for contact unless a domestic abuse risk assessment concludes that contact would be safe for the child and the resident parent and that the child and/or resident parent will not be subjected to further domestic abuse. The court should also take into account the factors set out in Paragraph 37 of PD12J in reaching the welfare determination.

9. If a domestic abuse risk assessment recommends that contact should be supervised, this should take place in a supervised contact centre and not by supported contact services or informally by family members or friends.

10. While the judiciary and Cafcass have improved their training provision since the publication of the Harm Panel report, it appears that there is no consistency in types and frequency of training across different agencies (Domestic Abuse Commissioner, 2023). Family court judges and professionals should have regular mandatory, accredited domestic abuse training, which should be renewed on an ongoing basis. Such training should be provided in person and not remotely or online, and it should be recognised that this will require days, rather than a limited number of hours, to complete. Training should focus in particular on the nature of coercive control, the gendered dynamics of domestic abuse, the tactics used by perpetrators to gain and maintain dominance and control over survivors and within court proceedings, and how family court proceedings can be used to perpetrate post-separation abuse (Domestic Abuse Commissioner, 2023).

List of references

Alsalem, R. (2023) *Custody, violence against women and violence against children Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem*. Geneva: UN General Assembly. Available at:

https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children (Accessed: 12 November 2023).

An Roinn Dli Agus Cirt (2023) *Parental Alienation: A Review of Understandings, Assessment and Interventions*. Dublin, Ireland: Department of Justice 2023. Available at: https://www.gov.ie/en/publication/20df3-parental-alienation-research-report-and-policy-paper/ (Accessed: 12 November 2023).

Aris, R., Harrison, C., and Humphreys., C. (2002) *Safety and Child Contact: an analysis of the role of child contact centres in the context of domestic violence and child welfare concerns*. London: Department for Constitutional Affairs. Available at: https://resourcecentre.savethechildren.net/pdf/1274.pdf/ (Accessed: 10 January 2024).

Bancroft, L., Silverman, J. and Ritchie D. (2012) *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks, CA: Sage Publications, Inc.

Barnett, A. (2014) 'Contact At All Costs? Domestic Violence and Children's Welfare', *Child and Family Law Quarterly*, 24(4), pp. 439-462.

Barnett, A. (2015) '"Like gold dust these days': Domestic Violence Fact-Finding Hearings in Child Contact Cases', *Feminist Legal Studies*, 23(1), pp. 47-78.

Barnett, A. (2017) '"Greater than the mere sum of its parts": coercive control and the question of proof', *Child and Family Law Quarterly*, 29(4), pp. 379 - 400.

Barnett, A. (2020a) *Domestic abuse and private law children cases A Literature Review*. London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/media/5ef3dd32d3bf7f7142efc034/domestic-abuse-private-law-children-cases-literature-review.pdf (Accessed: 4 December 2023).
Barnett, A. (2020b) 'A genealogy of hostility: parental alienation in England and Wales', *Journal of Social Welfare and Family Law*, 42(1), pp. 18-29.

Barnett, A. (2024, forthcoming) 'Domestic abuse, parental alienation and family court proceedings' in Burton, M., Bettinson, V., Richardson, K. and Speed, A. (eds.) Research Handbook on Domestic Violence and Abuse. Cheltenham: Edward Elgar.

Barnett, A. and Proudman, C. (2023) 'K v K – a retreat from progress in the family courts?', Family Law Week (online). Available at: https://www.familylawweek.co.uk/articles/k-v-k-a-retreat-from-progress-in-the-family-courts/ (Accessed: 10 January 2024).

Birchall, J. and Choudhry, S. (2018) *What about my right not to be abused?* Bristol: Women's Aid. Available at: https://www.womensaid.org.uk/wp-content/uploads/2018/05/Domestic-abuse-human-rights-and-the-family-courts-report.pdf (Accessed: 16 January 2024).

Birchall, J. and Choudhry, S. (2021) 'I was punished for telling the truth': how allegations of parental alienation are used to silence, sideline and disempower survivors of domestic abuse in family law proceedings'. *Journal of Gender Based Violence*, 6(1), 115-131.

British Psychological Society and the Family Justice Council (2023) *Psychologists as Expert Witnesses in the family courts in England and Wales: Standards, competencies and expectations* (London: The British Psychological Society). Available at: https://cms.bps.org.uk/sites/default/files/2023-05/Psychologists%20as%20Expert%20Witness%20in%20family%20courts%20in%20England%20and%20Wales%20-%20standards%2C%20competencies%20and%20expectations.pdf (Accessed: 7 October 2023).

Broadhurst, K. and Mason, C. (2020) 'Child removal as the gateway to further adversity: Birth mother accounts of the immediate and enduring collateral consequences of child removal', *Qualitative Social Work*, 19(1), pp. 15-37.

Brownridge, D. (2006) 'Violence against women post-separation', *Aggression and Violent Behavior* 11(5), pp. 514–530.

Cafcass (2021) *In Our Shoes Experiences of children and young people in the family justice system*. Nottingham: Shared Press. Available at: https://www.cafcass.gov.uk/children-and-young-people/family-justice-young-peoples-board/fjypb-book-our-shoes (Accessed: 21 November 2023).

Cafcass (no date) *'Alienating behaviours'*. London: Cafcass. Available at: https://www.cafcass.gov.uk/parent-carer-or-family-member/applications-child-arrangements-order/how-your-family-court-adviser-makes-their-assessment-your-childs-welfare-and-best-interests/alienating-behaviours (Accessed 24 November 2023).

Cafcass and Women's Aid (2017) *Allegations of domestic abuse in child contact cases*. London: Cafcass and Women's Aid. Available at: https://www.cafcass.gov.uk/sites/default/files/migrated/Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf (Accessed 6 January 2024).

Caffrey, L. (2013) 'Hearing the "voice of the child"? The role of child contact centres in the family justice system,' *Child and Family Law Quarterly*, 25(4), pp.357–379.

Candour TV (2021) *Family Courts Uncovered: A Survey of Family Court Users and Professionals*. Leeds: Candour TV. Available at: https://candour.tv/films/torn-apart (Accessed: 10 October 2023).

Carson, R., Dunstan, E., Dunstan, J. and Roopani, D. (2018) *Children and young people in separated families: family law system experiences and needs*. Melbourne: Australian

Institute of Family Studies. Available at: https://aifs.gov.au/research/research-reports/childrenand-young-people-separated-families-family-law-system (Accessed: 18 January 2024).

Casas Vila, G. (2020) 'Parental alienation syndrome in Spain: opposed by the Government but accepted in the Courts', *Journal of Social Welfare and Family Law*, 42(1), pp. 45-55.

Cashmore, J. (2011) 'Children's participation in family law decision-making: Theoretical approaches to understanding children's views', *Children and Youth Services Review*, 33(4), pp. 515–520.

Cashmore, J., Kong, P. and McLaine, M. (2023) 'Children's participation in care and protection decision-making matters', *Laws*, 12(3), 49, pp. 1-26.

CEDAW (2017) *Concluding observations on the seventh periodic report of Italy* (CEDAW/C/ITA/7). Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsgA84bcFRy75ulvS2cmS%2F%2BggWNcU4%2Flgn%2BZiHvEZQc5SEWgcHa%2F%2BgSomFFruJyt%2FajkB5IO3%2FHDJ86%2FVRXmK72WeXGB9aYXQX5DqYUGqKWwW (Accessed: 2 December 2023).

Child Safeguarding Practice Review Panel (2020) Annual Report 2018–2019. London: Child Safeguarding Practice Review Panel. Available at: https://assets.publishing.service.gov.uk/media/5e5e7eda86650c513869ed0b/Child_Safeguarding_Practice_Review_Panel___Annual_Report_2018_2019.pdf (Accessed: 24 February 2024).

Children's Commissioner (2013) A Child Rights Impact Assessment Of Parts 1-3 of the Children and Families Bill (HC Bill 131). London: Children's Commissioner. Available at: https://assets.childrenscommissioner.gov.uk/wpuploads/2017/07/Children_and_Families_Bill_CRIA.pdf (Accessed 12 January 2024).

Chisholm, R. (2009). *Family Courts Violence Review*. Canberra, Australia: Attorney- General's Department. Available at: https://www.ag.gov.au/families-and-marriage/publications/family-courts-violence-review (Accessed: 29 November 2023).

Choudhry, S. (2019) 'When Women's Rights are Not Human Rights – the Non- Performativity of the Human Rights of Victims of Domestic Abuse within English Family Law', 82(6), pp. 1072-1106.

Cordis Bright (2023) *Research into Safeguarding Processes in Child Contact Centres in England Final Report*. London: Ministry of Justice. Available at: https://www.cordisbright.co.uk/admin/resources/research-into-safeguarding-processes-in-child-contact-centres-in-england.pdf (Accessed: 10 January 2024).

Coy, M., Perks, K., Scott, E., and Tweedale, R (2012) *Picking up the pieces: Domestic Violence and Child Contact.* London: Rights of Women. Available at: https://www.scie-socialcareonline.org.uk/picking-up-the-pieces-domestic-violence-and-child-contact/r/a11G0000001809bIAA (Accessed 18 December 2023)

Crown Prosecution Service (2023) *Domestic Abuse prosecutions in 2022*. London: Crown Prosecution Service. Available at https://www.cps.gov.uk/foi/2023/domestic-abuse-prosecutions-2022 (Accessed: 2 April 2024).

Dalgarno, E., Ayeb-Karlsson, S., Bramwell, D., Barnett, A., and Verma, A. (2024) 'Health-related experiences of family court and domestic abuse in England: A looming public health crisis', *Journal of Family Trauma, Child Custody & Child Development*, pp. 1-28.

Domestic Abuse Commissioner (2023) *The Family Court and domestic abuse: achieving cultural change*. London: Ministry of Justice. Available at: https://domesticabusecommissioner.uk/reports/ (Accessed: 14 January 2024).

Doughty, J., Maxwell, N. and Slater, T. (2018) *Review of research and case law on parental alienation*. Cardiff: Cardiff University and Welsh Government. Available at: https://www.gov.wales/sites/default/files/publications/2018-05/review-of-research-and-case-law-on-parental-alienation.pdf. (Accessed: 23 October 2023).

Doughty, J., Maxwell, N. and Slater, T. (2020). 'Professional responses to "parental alienation": research-informed practice', *Journal of Social Welfare and Family Law*, 42(1), pp. 68-79.

Elizabeth, V. (2020) 'The affective burden of separated mothers in PA(S) inflected custody law systems: a New Zealand case study', *Journal of Social Welfare and Family Law*, 42(1), pp. 118-129.

European Association for Psychotherapy (2018) *EAP Statement on Parent Alienation Syndrome (PAS) – Parent Alienation (PA)*. Vienna: European Association for Psychotherapy. Available at: https://www.europsyche.org/quality-standards/eap-guidelines/parent-alienation-syndrome-pas-parental-alienation-pa/#:~:text=A%20Statement%20from%20the%20European,use%20in%20any%20psychotherapeutic%20practice. (Accessed: 12 November 2023).

European Parliament (2021) European Parliament resolution of 6 October 2021 on the impact of intimate partner violence and custody rights on women and children. Strasbourg: European Parliament. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0406_EN.html (Accessed 2 December 2023).

Family Justice Review Panel (2011) *Family Justice Review Final Report*. London: Ministry of Justice, Department for Education, Welsh Government. Available at: https://assets.publishing.service.gov.uk/media/5a7c4b3ae5274a1b00422c9e/family-justice-review-final-report.pdf (Accessed: 12 January 2024).

Femicide Census (2020) *Femicide Census 2020*. Femicide Census. Available at: https://www.femicidecensus.org/wp-content/uploads/2022/02/010998-2020-Femicide-Report_V2.pdf (Accessed 2 February 2024).

Feresin, M. (2020) 'Parental alienation (syndrome) in child custody cases: survivors' experiences and the logic of psychosocial and legal services in Italy', *Journal of Social Welfare and Family Law,* 42(1), pp. 56-67.

Fortin, J., Hunt, J. and Scanlan, L. (2012) *Taking a longer view of contact: The perspectives of young adults who experienced parental separation in their youth*. Brighton: Sussex Law School. (Not available online).

Ministry of Justice, HM Courts & Tribunals Service, Cafcass, The Rt Hon Alex Chalk KC MP, and Lord Bellamy KC (2024) *Children's wellbeing at the heart of family court reforms*. London: HM Government. Available at: https://www.gov.uk/government/news/childrens-wellbeing-at-the-heart-of-family-court-reforms (Accessed 4 February 2024).

GREVIO (2022) 3rd General Report on Grevio's Activities. Strasbourg: Council of Europe. Available at: https://rm.coe.int/prems-055022-gbr-2574-rapportmultiannuelgrevio-texte-web-16x24/1680a6e183 (Accessed: 2 December 2023).

Grey, R. (2023) '"Catastrophic": a qualitative exploration of survivors experiences of expert instruction in private law child arrangements proceedings', *Journal of Social Welfare and Family Law*, 45(4), pp. 344-362.

Gutowski, E.R. and Goodman, L.A. (2023) 'Coercive Control in the Courtroom: the Legal Abuse Scale (LAS)', *Journal of Family Violence*, 38, pp. 527–542.

Hale, B. (1999) 'The view from court 45', *Child and Family Law Quarterly*, 11(4), pp. 377–386.

Harding, M. and Newnham, A. (2015) *How do County Courts Share the Care of Children Between Parents?* Warwick and Reading: University of Warwick, University of Reading. Available at: https://www.nuffieldfoundation.org/sites/default/files/files/Full%20report.pdf (Accessed 14 December 2023)

Hargreaves, C., Cusworth, L., Alrouh, B., Broadhurst, K., Griffiths, L., Cowley, L. and Doebler, S. (2024) Uncovering private family law: how often do we hear the voice of the child? London: Nuffield Family Justice Observatory. Available at:

https://www.nuffieldfjo.org.uk/resource/uncovering-private-family-law-how-often-do-we-hear-the-voice-of-the-child (Accessed: 14 March 2024).

Harne, L. (2011) *Violent fathering and the risks to children: The need for change*. Bristol: Bristol University Press.

Harrison, C. (2008) 'Implacably Hostile or Appropriately Protective?: Women Managing Child Contact in the Context of Domestic Violence', *Violence Against Women*, 14(4), pp. 381-405.

Harwood, J. (2018) *Child Arrangements Orders (Contact) and Domestic Abuse – An Exploration of the Law and Practice*. University of Warwick: PhD Thesis. Available at: https://wrap.warwick.ac.uk/135023/1/WRAP_Theses_Harwood_2019.pdf (Accessed: 11 November 2023).

Harwood, J. (2019) 'We don't know what it is we don't know: how austerity has undermined the courts' access to information in child arrangements cases involving domestic abuse', *Child and Family Law Quarterly*, 31(4), 321.

Harwood, J. (2021) 'Presuming the status quo? The impact of the statutory presumption of parental involvement', *Journal of Social Welfare and Family Law*, 43(2), pp. 119-142.

Hester, M. (2011) 'The three planet model: Towards an understanding of contradictions in approaches to women and children's safety in contexts of domestic violence', *The British Journal of Social Work*, 41, pp. 837–853.

Holt, S. (2015) 'Post-separation fathering and domestic abuse: Challenges and contradictions', *Child Abuse Review*, 24(3), pp. 210-222.

Holt, S. (2017) 'Domestic Violence and the Paradox of Post-Separation Mothering', *British Journal of Social Work*, 47, pp. 2049–2067.

Holt, S. (2018) 'A voice or a choice? Children's views on participating in decisions about post-separation contact with domestically abusive fathers', *Journal of Social Welfare and Family Law*, 40(4), pp. 459-476.

Holt, S., Buckley, H. and Whelan, S. (2008) 'The impact of exposure to domestic violence on children and young people: a review of the literature', *Child Abuse and Neglect*, 32(8), pp. 797-810.

Home Office, Key Findings from Analysis of Domestic Homicide Reviews: October 2019 to September 2020. London: Home Office. Available at: https://www.gov.uk/government/publications/key-findings-from-analysis-of-domestic-

homicide-reviews/key-findings-from-analysis-of-domestic-homicide-reviews (Accessed: 12 December 2023).

House of Commons Justice Committee (2011) Sixth Report Operation of the Family Courts. London: House of Commons. Available at: https://publications.parliament.uk/pa/cm201012/cmselect/cmjust/518/51802.htm (Accessed 29 November 2023).

Hunt, J. and Macleod, A. (2008) *Outcomes of applications to court for contact orders after parental separation or divorce*. London: Ministry of Justice. Available at: https://dera.ioe.ac.uk/id/eprint/9145/1/outcomes-applications-contact-orders.pdf (Accessed: 30 November 2023).

Hunter, R. and Barnett, A. (2013). *Fact-finding hearings and the Implementation of the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm*. London: Family Justice Council. Available at: https://kar.kent.ac.uk/35678/1/FFH%20report%20January%202013.pdf (Accessed: 10 January 2024).

Hunter, R., Burton, M. and Trinder, L. (2020) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases.* London: Ministry of Justice. Available at: https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/ (Accessed: 3 December 2023)

James-Hanman, D. and Holt, S. (2021) 'Post-Separation Contact and Domestic Violence: our 7-Point Plan for Safe[r] Contact for Children', *Journal of Family Violence* 36(3), pp. 991-1001.

Jones, R. (2023) *Children and young people's experiences of participation in private proceedings in the family court. GSR report number 114/2023*. Cardiff: Welsh Government. Available at: https://www.gov.wales/sites/default/files/statistics-and-research/2023-12/childrenand-young-peoples-experiences-of-participation-in-private-proceedings-in-thefamily-courts-report.pdf (Accessed: 4 March 2024).

Kaganas, F. (2013) 'A Presumption that "Involvement" of Both Parents is Best: Deciphering Law's Messages', *Child and Family Law Quarterly*, 25(3), pp. 270-293.

Kaganas, F. (2018) 'Parental involvement: a discretionary presumption', *Legal Studies*, 38(4), pp. 549-570.

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K. and Qu, L. (2009) *Evaluation of the 2006 Family Law Reforms*. Melbourne, Australia: Australian Institute of Family Studies. Available at: https://aifs.gov.au/research/research-reports/evaluation-2006-family-law-reforms (Accessed: 29 November 2023).

Katz, E. (2015) 'Recovery-Promoters: Ways in which Children and Mothers Support One Another's Recoveries from Domestic Violence', *British Journal of Social Work*, 45, 53-69.

Katz, E. (2016) 'Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed By and Resist Regimes of Coercive Control', *Child Abuse Review*, 25(1), pp. 46-59.

Katz, E. (2022) *Coercive Control in Children's and Mothers' Lives*. Oxford: Oxford University Press.

Katz, E., Nikupeteri, A. and Laitinen, M. (2020) 'When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence' Child Abuse Review, 29(4), pp. 310-324.

Lapierre, S., Ladouceur, P., Frenette, M. and Cote, I. (2020) 'The legitimization and institutionalization of "parental alienation" in the Province of Quebec', *Journal of Social Welfare and Family Law*, 42(1) pp. 30-44.

Macdonald, G. (2015) 'Domestic violence and private family court proceedings: Promoting child welfare or promoting contact?', *Violence Against Women*, 22(7), pp. 832-852.

Macdonald, G. (2017) 'Hearing children's voices? Including children's perspectives on their experiences of domestic violence in welfare reports prepared for the English courts in private family law proceedings', *Child Abuse and Neglect*, 65, pp. 1–13.

Mackenzie, D., Herbert, R. and Robertson, N. (2020) '"It's Not OK", but "It" never happened: parental alienation accusations undermine children's safety in the New Zealand Family Court', *Journal of Social Welfare and Family Law*, 42(1), pp. 106-117.

McIntosh, J. E., Smyth, B., Kelaher, M., Wells, Y., and Long, C. (2010) *Post-separation parenting arrangements and developmental outcomes for infants and children: Collected reports. Three reports prepared for the Australian Government Attorney-General's Department*. Canberra, Australia: Attorney-General's Department. Available at: https://clallamcountybar.com/wp-content/uploads/2012/03/McIntosh-Post-separation-parenting-arrangements-and-developmental-outcomes-for-infants-and-children-Collected-Reports-2.pdf (Accessed: 29 November 2023).

McLeod, D. (2018) *Coercive Control: Impacts on Children and Young People in the Family Environment*. Totnes: Research in Practice. Available at: https://www.researchinpractice.org.uk/children/publications/2018/december/coercive-control-impacts-on-children-and-young-people-in-the-family-environment-literature-review-2018/ (Accessed: 22 November 2023).

Meier, J. (2020) 'U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?', *Journal of Social Welfare and Family Law*, 42(1) pp. 92-105.
Meier., J and Dickson, S. (2017) 'Mapping Gender: Shedding Empirical Light on Family Court's Treatment of Cases Involving Abuse and Alienation', *Law and Inequality*, 35(2), pp. 311– 334.

Memarnia, N., Nolte, L., Norris, C., and Harborne, A. (2015) '"It felt like it was night all the time': listening to the experiences of birth mothers whose children have been taken into care or adopted', *Adoption and Fostering*, 39(4), pp. 303–317.

Mercer, J. (2021) 'Parental Alienation, Science, and Pseudoscience' in Mercer, J. and Drew, M. (eds), *Challenging Parental Alienation: New Directions for Professionals and Parents* (New York: Routledge 2021).

Ministry of Justice, Department of Education (2012) *The Government Response to the Family Justice Review: A system with children and families at its heart*. Cm 8273. London: TSO. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/177097/CM-8273.pdf (Accessed 26 November 2023).

Ministry of Justice (2023) *Assessing Risk of Harm to Children and Parents in Private Law Children Cases – Annex Integrated Domestic Abuse Courts*. London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1158907/annex-integrated-domestic-abuse-courts.pdf Accessed 14 Decembver 2023).

Morrison, F. (2009) A*fter domestic abuse: children's perspectives on contact with fathers. Research Briefing*. Edinburgh: University of Edinburgh Centre for Research on Families and Relationships. Available at: https://era.ed.ac.uk/bitstream/handle/1842/2795/rb42.pdf;jsessionid=A3688DA511C5971769B0FD22FE22E483?sequence=1 (Accessed: 15 November 2023).

Morrison, F. (2015) '"All over now?" The ongoing relational consequences of domestic abuse through children's contact arrangements', *Child Abuse Review*, 24(4), pp 274–284.

Morrison, F., Tisdall, E.K.M. and Callaghan, J.E.M. (2020) 'Manipulation and domestic abuse in contested contact – threats to children's participation rights', *Family Court Review*, 58(2), pp. 403-416.

NACCC (no date). *What is the difference between supported contact and supervised contact?*. Nottingham: NACCC. Available at: https://naccc.org.uk/faq/what-is-supervised-

contact-what-is-supported-contact/#:~:text=supervised%20contact%3F%20%2D%20NACCC-,What%20is%20the%20difference%20between%20supported%20contact%20and%20supervised%20contact,a%20defined%20period%20of%20time (Accessed 10 January 2024).

National Council of Juvenile and Family Court Judges (2022) *Revised Chapter Four: Families and Children*. Reno, Nevada: National Council of Juvenile and Family Court Judges. Available at: https://www.ncjfcj.org/wp-content/uploads/2022/12/Revised-MC-Chapter-Four-Dec.-2022-FINAL.pdf.pdf (Accessed: 14 January 2024).

Neilson, L. (2018) *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* Fredericton and Vancouver, Canada: Muriel McQueen Fergusson Centre for Family Violence, FREDA Centre for Research on Violence Against Women and Children. Available at: https://www.fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf (Accessed: 15 November 2023).

Office for National Statistics (2023) *Domestic abuse victim characteristics, England and Wales: year ending March 2023*. Office for National Statistics. Available at: https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2022 (Accessed: 12 February 2024)

Perry, A. and Rainey, B. (2007) 'Supervised, Supported and Indirect Contact Orders: Research Findings' *International Journal of Law, Policy and the Family*, 21, pp. 21–47.

Radford, L. and Hester, M. (2006) *Mothering through Domestic Violence*. London: Jessica Kingsley Publishers.

Ramundo, A. (2021) 'Historic order of the Supreme Court, the lawyer A. Voltaggio: "The Pas as a Nazi theory"'. Rome: DIRE. Available at: https://www.dire.it/19-05-2021/635109-minori-rdinanza-storica-della-cassazione-la-pas-come-teoria-nazista/ (Accessed 28 April 2024).

Rathus, Z. (2020) 'A history of the use of the concept of parental alienation in the Australian family law system: contradictions, collisions and their consequences', *Journal of Social Welfare and Family Law*, 42(1), pp. 5-17.

Roe, A. (2021). *Children's experience of private law proceedings: six key messages from research. Spotlight Series.* London: Nuffield Family Justice Observatory. Available at: https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/10/Childrens-experience-of-private-law-proceedings.pdf (Accessed: 12 January 2024).

Saied-Tessier, A. (2023) *What do we know about adults in private family law proceedings?*. Nuffield Family Justice Observatory. Available at: https://

www.nuffieldfjo.org.uk/resource/whatdo-we-know-about-adults-in-privatelaw-proceedings-spotlight-series (Accessed: 14 January 2024).

Saunders, H. (2004) *Twenty-nine child homicides: Lessons still to be learnt on domestic violence and child protection.* Bristol: Women's Aid. Available at: http://familieslink.co.uk/download/jan07/twenty_nine_child_homicides.pdf (Accessed 14 December 2023).

Scottish Women's Aid (2018) *Briefing: Domestic Abuse and Child Contact*. Edinburgh: Scottish Women's Aid. Available at: https://womensaid.scot/wp-content/uploads/2018/08/SWA-Briefing-Child-Contact.pdf (Accessed: 28 November 2023).

Sheehy, E. and Boyd, S. (2020) 'Penalizing women's fear: intimate partner violence and parental alienation in Canadian child custody cases', *Journal of Social Welfare and Family Law*, 42(1), pp. 80-91.

Silberg, J. and Dallam, S. (2019) 'Abusers gaining custody in family courts: A case series of over turned decisions', *Journal of Child Custody*, 16(2), pp. 140–169.

Smithson, J., Barlow, A., Hunter, R. and Ewing, J. (2017) 'The Moral Order in Family Mediation: Negotiating Competing Values', *Conflict Resolution Quarterly*, 35, 173-196.

Spearman, K. J., Hardesty, J. L. and Campbell, J. (2022) 'Post-separation abuse: A concept analysis', *Journal of Advanced Nursing*, 79(4), pp. 1125-1246.

Stanley, N. (2011) 'Children experiencing domestic: A research review', *Journal of Interpersonal Violence*, 26(12), pp. 2372-2391.

Stanley, N., Chantler, K. and Robbins, R. (2019) 'Children and Domestic Homicide', *The British Journal of Social Work*, 49(1), pp. 59-76.

Symonds, J., Dermott, E., Staples, E. and Hitchings, E. (2022) *Separating families: Experiences of separation and support*. London: Nuffield Family Justice Observatory. Available at: https://www.nuffieldfjo.org.uk/wp-content/uploads/2022/11/nfjo_report_private_law_separating_families_20221128-1.pdf (Accessed: 2 December 2023).

Taylor, J. (2022) *Sexy But Psycho: How the Patriarchy Uses Women's Trauma Against Them*. London: Constable.

Thiara, R. and Gill, K. (2012) *Domestic violence, child contact and post-separation violence: issues for South Asian and African-Caribbean women and children: a report of findings*. London: National Society for the Prevention of Cruelty to Children. Available at:

https://www.scie-socialcareonline.org.uk/domestic-violence-child-contact-and-post-separation-violence-issues-for-south-asian-and-african-caribbean-women-and-children-a-report-of-findings/r/a11G00000017yrvIAA (Accessed: 16 December 2023).

Thiara, R. and Harrison, C. (2016). *Safe not sorry: Key issues raised in research on child contact and domestic abuse*. Bristol: Women's Aid. Available at: https://www.womensaid.org.uk/wp-content/uploads/2016/01/FINAL-Safe-not-sorry-FOR-WEB-JAN-2016.pdf (Accessed: 29 November 2023).

Thiara, K. and Humphrey, G. (2017) 'Absent presence: the ongoing impact of men's violence on the mother–child relationship', *Child and Family Social Work* 20(1), pp. 137-145.

Trinder, L., Hunt, J., Macleod, A., Pearce, J. and Woodward, H. (2013) *Enforcing contact orders: problem-solving or punishment?*. Exeter: University of Exeter. Available at: https://ore.exeter.ac.uk/repository/bitstream/handle/10871/16765/Enforcement%20report%20final%20Dec%202013.pdf?sequence=1&isAllowed=y (Accessed: 23 October 2023).

Van Zyl, A., Hunter, B. and Haddow, K. (2022) *Telling the stories of women who have experienced child removal and exploring what can be done to make things fairer*. Newcastle and Gateshead: Reform and Fulfilling Lives. Available at: https://www.researchgate.net/publication/363337224_Still_A_Mam_Telling_the_life_stories_of_woman_who_have_experienced_child_removal (Accessed: 10 January 2024).

Walker, J., and Misca, G. (2019) 'Why Listening to Children and Young People is Important in Family Justice', *Family Court Review*, 57(3) pp. 375-386.

Women's Aid (2016) *Nineteen Child Homicides: What must change so children are put first in child contact arrangements and the family courts*. Bristol: Women's Aid. Available at: https://www.womensaid.org.uk/shop/reports/nineteen-child-homicides/ (Accessed 14 December 2023).

Women's Aid. (2022) *Two years, too long: Mapping action on the harm panel's findings*. Bristol: Women's Aid. Available at: https://www.womensaid.org.uk/wp-content/uploads/2022/06/Two-Years-Too-Long-2022.pdf (Accessed: 12 December 2023).