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of Justice

Domestic abuse and private law children cases

A literature review

Adrienne Barnett

Brunel University London

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1. Summary

This research was commissioned in support of the Ministry of Justice's (MoJ) panel of family justice experts to provide a detailed review of the existing literature on the risks to children and parents involved in private law children cases of domestic abuse and other serious offences. It also aimed to review the literature on how these risks are managed by the family courts in England and Wales. The scope of this literature review, the specific topics for consideration and the methodology were formulated in consultation with the academic members of the panel of experts. Considering the available literature, the topics this review sought to address were:

- children's and parents' experiences of domestic abuse, including the parenting practices of domestically abusive parents and experiences of mothering in the context of domestic abuse before and after parental separation
- parents' and children's experiences of contact with perpetrators of domestic abuse, including the risks and outcomes for, and children's views on, post-separation contact with domestically abusive parents
- the response of courts and professionals to allegations of domestic abuse and to children's participation in court decision-making
- the experiences and views of victim/survivors of domestic abuse and of children of family court proceedings
- the operation of Practice Direction 12J (PD12J) by courts and professionals (which sets out what the family court is required to do in any case relating to arrangements for children where domestic abuse is alleged or admitted)
- the enforcement of contact orders

This literature review was undertaken between 22 July and 31 August 2019. A rapid evidence assessment approach was adopted because of the limited timeframe of the review. Academic databases and electronic data sources were searched for existing literature reviews and for studies conducted in England and Wales from 1996 to August 2019, although studies undertaken in other common law jurisdictions were included where

there were gaps or insufficient data in the England and Wales research. The searches produced a total of 87 publications for review. These include:

- literature reviews
- large-scale quantitative studies based on surveys, court records and other records
- qualitative studies using interviews, focus groups, case studies and observation
- retrospective studies
- longitudinal research

Summaries of the methodologies of all these studies are set out in Appendix A. Quality assurance was met by searching only for peer-reviewed literature and practice-based research undertaken by or with academic researchers for nationally and internationally recognised organisations.

The main findings from the literature reviewed are summarised below.

1.1 Children's and parents' experiences of domestic abuse before and after parental separation

Numerous statistics and research studies across a broad range of methodologies and populations reveal that domestic abuse can start, continue and increase in severity on and after parental separation (Section 4.3). Findings and estimates from predominantly quantitative studies based in England and Wales indicate that the prevalence of domestic abuse in private law children cases is considerably higher than in the general population, with allegations or findings of domestic abuse in samples of child arrangements/contact cases ranging from 49% to 62% (see Table 4.1).

That domestic abuse is harmful to children is recognised by statute (Section 31(9) Children Act 1989) and by PD12J (Para.4). The literature reviewed shows that children are directly involved and affected by domestic abuse in a variety of interlinked and co-existing ways (Section 4.4). Many studies found a high incidence of physical, sexual and emotional abuse, and a greater risk of child homicide, in the context of domestic abuse. A wide range of studies revealed the physical, psychological, behavioural, developmental and emotional problems, disorders and traumas sustained by children experiencing domestic abuse,

which can carry through to mental and physical health difficulties in adult life (Section 4.4). Qualitative studies found that living with coercive control can have the same cumulative impact on children as it does on adult victim/survivors, which may contribute to emotional and behavioural problems in children. While some children may have more intrinsic resilience to the impact of domestic abuse than others, a supportive relationship with a caring adult, particularly the non-abusive parent, has been found to be the key protective factor for children.

No studies were identified that explored the parenting practices of domestically abusive mothers. The limited number of studies that specifically investigated the parenting practices of domestically abusive fathers found that their parenting practices can be directly harmful to children, including physical and emotional abuse and neglect (Section 5.1).

No studies were identified which explored victim/survivors' experiences of fathering in the context of domestic abuse. A wide range of research is available which investigated victim/survivors' experiences of mothering in the context of domestic abuse (Section 5.2). Continuing abuse can contribute to physical and mental health problems in women, can affect their relationships with their children and can impact negatively on their parenting capacities. The effects of coercively controlling abuse, including loss of self-esteem and confidence, can be particularly debilitating and can take years to overcome. A range of qualitative studies found that perpetrators can intentionally try to undermine, distort and disrupt the mother-child relationship through tactics such as demeaning, criticising and insulting women in front of children, encouraging children to participate in the abuse of their mothers and preventing mothers from spending time with children.

The literature reviewed found that ongoing abuse after parental separation can leave victim/survivors in a continued state of fear and can substantially impede women's recovery and ability to regain their confidence and parenting capacities and support their children's recovery (Section 5.2.2).

1.2 Parents' and children's experiences of contact with perpetrators of domestic abuse

Child contact was highlighted by numerous studies as the key site for the perpetration of continued, potentially more serious, abuse, including homicide, of mothers (Section 6.2). Children can be exposed to the physical, psychological and sexual abuse and coercive control of their mother during contact. Additionally, contact could be used by perpetrators as a site to undermine mothers including criticising, denigrating and degrading them in front of or to the children, getting children to pass on abusive or threatening messages to their mothers, and manipulating children to provide information about their mothers (Sections 6.2 and 6.3).

A wide range of predominantly qualitative studies found that children's continued involvement with a parent who perpetrates domestic abuse carries the risks of maintaining controlling, dominant or bullying relationships, and of children being physically, sexually and emotionally abused, neglected and abducted, children witnessing the abuse of their mothers, being co-opted into the abuse of their mothers, and at worst, children being killed (Section 6.3). Qualitative and quantitative studies found that the effects on, and outcomes for children are poorest when post-separation contact is the site for continuing domestic abuse. Children can, however, recover from the impact of domestic abuse when they are in a safer environment, but ongoing contact with the abusive parent can create difficulties for children's ability to recover and sustain recovery (Katz, 2016).

Qualitative and quantitative studies revealed that children have widely varied, conflicted, mixed and ambivalent feelings and views about their fathers and contact (Section 6.4). The studies reviewed reveal that the priority for nearly all children, even those who do want a relationship with their fathers, is safety, for themselves, their mothers and the rest of their families.

1.3 The response of courts and professionals to allegations of domestic abuse and to children's participation in court decision-making

In England and Wales and in many other jurisdictions the family courts strongly promote ongoing relationships between children and both their parents following separation, even in circumstances of domestic abuse (Section 7.1). Numerous qualitative and quantitative studies have identified how a strong presumption of contact has led to domestic abuse being marginalised, misunderstood, and downgraded within private law children proceedings, which may conflict with a focus on protecting children from harm (Section 7.2).

Qualitative and quantitative studies revealed a widespread view among courts and professionals that mothers who opposed or sought to restrict contact or even raised concerns about it were 'implacably hostile' or, more recently, 'alienating', which has led to an increasing perception among courts and professionals that mothers raise false allegations of domestic abuse (Section 7.2). However, empirical case file analyses found that cases of 'implacable hostility' were very rare, and qualitative studies found that the majority of mothers, including those who had experienced domestic abuse, were supportive of post-separation contact (Section 7.2).

A consistent theme that emerged from the research literature was that a 'selective approach' was taken to children's views in court proceedings. Children's views were taken seriously and were even determinative if they wanted contact with non-resident fathers, but their views were also more likely to be disregarded and discounted, and treated as problematic, when they were opposed to contact – even if children had experienced domestic abuse (Section 7.3).

1.4 The experiences and views of victim/survivors and of children of family court proceedings

Qualitative studies revealed that women experienced the promotion of contact by the family courts and professionals as highly problematic in the context of domestic abuse (Section 7.4). Mothers felt that domestic abuse was not taken seriously and minimised by

courts and professionals, and that the dynamics and impact of domestic abuse were not understood. Women participating in a number of studies were dismayed to find themselves labelled unreasonable, over-anxious, and obstructive of contact by professionals if they raised concerns about contact with violent fathers. The disbelief expressed by courts and professionals, including their own lawyers, when women raised concerns about domestic abuse, left them vulnerable and unsupported. However, where women did feel listened to and believed by judges and professionals, they felt supported rather than undermined, and more confident that the impact of abuse on themselves and the children would be factored into contact decisions. Qualitative and quantitative studies report mothers experiencing considerable pressure from courts and professionals, including their own lawyers, to agree contact arrangements or attend mediation, in some cases without any assessment of child welfare concerns or without obtaining children's views.

The research found that many victim/survivors experienced further abusive experiences in the family courts because of the inconsistent and minimal provision of 'special measures' to avoid them coming into contact with perpetrators (Section 8.2).¹ Although special measures have been available for vulnerable and intimidated witnesses in criminal proceedings since 2000, there are no equivalent legislative provisions for special measures in family proceedings. In response to concerns raised by the judiciary (Corbett and Summerfield, 2017), both PD12J and the Family Procedure Rules 2010 were amended to give the judiciary greater powers to direct the provision of special measures. The limited evidence of the effectiveness of these new provisions indicates that special measures in the family courts are still not satisfactory or on a par with those available in the criminal courts (Section 8.2). Additionally, victim/survivors of domestic abuse can be subjected to direct cross-examination by alleged perpetrators of abuse due to the absence of effective measures to prevent this (Corbett and Summerfield, 2017). Qualitative studies revealed that victim/survivors of domestic abuse found the experience of being cross-examined by their alleged abuser traumatising, degrading and a continuation of the abuse (Section 9.3).

¹ Special measures include separate waiting rooms for victims and witnesses; separate entrances and exits; giving evidence through video link from a room outside the courtroom or behind a screen positioned around the witness box.

Numerous research studies undertaken in England and Wales and in other jurisdictions have revealed how perpetrators of domestic abuse may use continuous and protracted litigation as part of an ongoing pattern of control and harassment, which many women found as bad as, or worse than the abuse itself (see Section 11). Courts can restrict the ability of litigants to continue litigation by making orders under Section 91(14) CA 1989 to prohibit applications being made without the permission of the court. No empirical research was found on the operation of Section 91(14). However, qualitative studies pointed to the fact 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 (Section 11).

A limited number of qualitative studies found that children and young people want information, communication and consultation, believe strongly in their right to be heard and for their views to be taken seriously, but may not want sole decision-making authority to decide post-separation arrangements (Section 7.5). Cashmore's (2011) Australian study found that children exposed to violence, abuse or high levels of parental conflict felt strongly about having a greater say in contact arrangements.

1.5 The operation of Practice Direction 12J

The Court of Appeal in the landmark case of *Re L, V, M, H (Contact: Domestic Violence)* [2001] Fam 260 laid down guidelines for courts and professionals in contact cases where allegations of domestic violence are made. Subsequent research found that these guidelines were largely ignored and inconsistently applied because courts and professionals continued to prioritise contact over children's and resident parents' safety (Section 9.1). Consequently, a Practice Direction embodying the *Re L* guidelines was issued by the President of the Family Division in May 2008, which was subsequently incorporated into the Family Procedure Rules 2010 as PD12J. PD12J establishes the framework to be followed by courts and professionals in child arrangements cases where allegations of domestic abuse are raised. Following concerns arising from empirical studies into its operation and implementation (Section 9.1), PD12J was revised in April 2014 and again in October 2017.

No empirical research evidence on the operation of PD12J since its amendment in 2017 was found. However, evidence from qualitative and quantitative research on or conducted under earlier versions of PD12J is likely to remain relevant and provide substantial evidence of consistent findings on common themes over a sustained period of time.

The pre- and post-2014 research found a marked lack of consistency in the application of PD12J between different courts and different judges in the same court, and cases rarely being overseen by the same judge (Section 9.14). Where the same judge did oversee different hearings, they were able to recognise patterns of abuse which had a positive impact on case management and outcomes.

Qualitative studies undertaken both before and after the 2014 revisions to PD12J found that judges and professionals had gained a greater theoretical understanding of domestic abuse and its power and control dynamics. A few trial judges took very seriously the coercive and controlling aspects of perpetrators' behaviours. However, these broad theoretical insights did not necessarily translate into practice. Only recent, severe physical violence was generally considered relevant to contact, with coercive and controlling behaviours minimised (Section 9.3).

The available quantitative research indicates that fact-finding hearings are held in less than 10% of cases involving allegations of domestic abuse (see Table 9.1). Pre- and post-PD12J 2014 studies found that fact-finding hearings were usually restricted to allegations involving incidents of recent, very severe physical violence (Sections 9.4 and 9.5).

Where fact-finding hearings were held, mothers could face systemic and attitudinal barriers to proving the abuse (Section 9.8). Pre- and post-PD12J studies found that the ability of victims to prove the abuse they sustained may be impeded by the suspicion and disbelief with which women's allegations of abuse are met, particularly if there is no external evidence to corroborate the mother's account (Section 9.8). This may be compounded by stereotypic images of 'typical' victims and victim behaviour. Despite these barriers to proving abuse, where fact-finding hearings were held, the most likely outcomes found by case file analyses or reported in qualitative studies were for some or all of the disputed allegations to be found proved.

The studies also indicate that risk was inconsistently and inadequately assessed, and the welfare factors stipulated by PD12J were inconsistently applied, as contact appeared to be prioritised over safety (Sections 9.9 and 9.11). Specialist domestic abuse practitioners, who have the most astute risk assessment practices, were rarely appointed to assess risk. There was found to be considerable reluctance to hold fathers to account for their abuse or to require evidence that they had acknowledged its impact on their families and had sought to make amends.

Statistics and qualitative and quantitative research studies revealed that some form of direct contact between children and perpetrators of domestic abuse was ordered in the great majority of all private law cases (Section 9.12). Orders for no contact were consistently found to represent less than 1% of total contact orders (see Table 9.2). Qualitative studies found that only recent, extremely serious physical violence could lead to no contact being ordered. Quantitative case file analyses and qualitative studies found that the most common outcomes of cases involving allegations of domestic abuse were orders for direct, unsupervised contact which could be achieved by an incremental or 'stepped' approach towards the end goal of unsupervised, preferably staying, contact (Section 9.12).

Where contact was ordered to be supervised or supported, problems with contact centres included low levels of vigilance even at supervised contact centres and no or minimal screening for domestic abuse, all of which placed women and children at risk (Section 9.13). Caffrey's (2017) quantitative and qualitative study found that in most cases involving concerns about domestic abuse, contact was facilitated at supported contact centres, with little to no monitoring of contact, and volunteers were often unaware of concerns about domestic abuse.

1.6 The enforcement of contact orders

Trinder *et al.*'s (2013) qualitative and quantitative study of contact enforcement undertaken in 2012 found that, while the courts generally adopted the most appropriate approach, this was not the case for the risk/safety cases, which most commonly involved allegations or findings of domestic abuse. It was found that in 44% of the risk cases, safeguarding was managed marginally or inadequately by, for example, referring the parties to mediation,

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making orders for unsupervised contact, or failing to refer or enforce attendance at a Domestic Abuse Perpetrator Programme.

2. Introduction

On 21 May 2019 the MoJ announced a public call for evidence steered by a panel of experts from across family justice, to gather evidence on how the family courts protect children and parents in private law children cases concerning domestic abuse and other serious offences. To assist the inquiry, the MoJ commissioned a review of the available literature on the risks to children and parents involved in private law children cases of domestic abuse, and how these risks are managed by the family courts. The scope of this literature review, the specific topics for consideration and the methodology were formulated in consultation with the academic members of the panel of experts. This report is longer and more detailed than a typical MoJ research report and, in the interests of openness and transparency, it has not been shortened. The methodology is discussed in Section 3 of this literature review.

The topics discussed in this review are encompassed by three broad themes:

- children's and parents' experiences of domestic abuse before and after parental separation
- children's and parents' experiences of family court proceedings and decision-making in the context of domestic abuse
- how the family courts respond to and manage domestic abuse in private law children cases, including how the courts apply PD12J, enforce contact orders and manage abusive litigation

PD12J sets out what the court is required to do in any case where domestic abuse is alleged or admitted. It applies to any application relating to children where there are allegations or other reasons to believe that a party or child has experienced domestic abuse perpetrated by another party or that there is a risk of such abuse.

This literature review focuses on applications to the family courts for child arrangements orders under the Children Act 1989 (CA 1989) arising out of disputes between parents. The term 'child arrangements order' replaced the previous statutory language of 'residence' and 'contact'. 'Child arrangements orders' are defined as orders 'regulating

arrangements relating to...with whom [and when] a child is to live, spend time or otherwise have contact...with any person' (Section 8 CA 1989).

The literature reviewed in this report includes a total of 87 publications consisting of socio-legal empirical and other research studies published in reports, books and academic journal articles. These include:

- literature reviews
- large-scale quantitative studies based on surveys, court records and other records
- qualitative studies using interviews, focus groups, case studies and observation
- retrospective studies
- longitudinal research

The composite data and the main findings from this research are presented for each topic. Summaries of the methodologies of these studies are set out alphabetically by author name in Appendix A.

3. Methodology

This literature review was undertaken between 22 July and 31 August 2019. The topics to be reviewed were developed with the academic members of the MoJ's panel of experts who also provided an initial list of suggested literature. A rapid evidence assessment approach was then adopted because of the limited timeframe of the review. The academic databases and electronic data sources Scopus, Google Scholar, LexisNexis, Westlaw and Family Law Week were searched using search terms arising directly from the topics for review. In light of the timescale for this review and the wide range of topics included, searches focused firstly on existing literature reviews. Further searches of the databases and electronic sources were conducted for individual studies where there were gaps or insufficient data in the literature reviews, and for more recent material and published commentary. The literature review was supplemented by database and internet searches for contextual information, information on the law and legal developments, and statistics.

The searches focused on studies conducted in England and Wales (although the existing literature reviews included studies from multiple jurisdictions) but were broadened to include studies undertaken in other common law jurisdictions, namely, Scotland, the USA, Canada, Australia and Ireland. These searches occurred where there were gaps or insufficient data in the England and Wales research or where these were highlighted by the existing literature reviews. The time frame for the searches was from 1996 (when the first study on domestic abuse and child contact was published in the UK) to August 2019, although a few key earlier studies were included and up-to-date references were included for articles that were 'in press' at the time of this review. The searches produced a total of 87 publications for review. These consisted of seven literature reviews and 83 empirical studies (with a few studies reported in more than one publication). Summaries of the methodologies of all these studies are set out in Appendix A, including the methods used, sample sizes and time periods. All the empirical studies reviewed were conducted in England and Wales unless otherwise stated in this literature review and in Appendix A.

3.1 Quality assurance

Quality assurance was met by searching only for peer-reviewed literature and practice-based research undertaken by or with academic researchers for nationally and internationally recognised organisations. The literature identified and reviewed comprised 44 peer reviewed academic journal articles or books and 39 reports.² All these publications specified details of the methods used, and many studies employed mixed methodologies which increased the reliability of the data (see Appendix A).³ All reports identified and reviewed were by academic researchers for reputable organisations including UK government departments such as the MoJ, the Welsh Government, the Lord Chancellor's Department, the Home Office and the Department for Children, Schools and Families.⁴ All the reports specified sufficient information about the methods employed to enable the author of this literature review to evaluate and confirm the reliability and rigour of the methodologies used (see Appendix A). Additionally, some reports were funded by institutions such as the Nuffield Foundation, the NSPCC, the Family Justice Council, the EU, the Australian Attorney-General's Department and the US National Institute of Justice, and would have had to meet the rigorous methodological requirements of the funding bodies.

3.2 Limitations

The principal limitation of a rapid evidence assessment review is that it cannot guarantee a complete and comprehensive set of the literature on each topic. However, it enables a structured, rigorous and reliable search and review of the literature to be undertaken in a streamlined manner (see Crawford, Boyd, Jain, Khorsan and Jonas, 2015).

² Six studies were reported in both reports and journal articles.

³ It should be noted that two of the literature reviews did not contain details of the methodologies used but they reviewed a large number of studies, most of which were also reviewed in other literature reviews (McLeod, 2018; Thiara and Harrison, 2016).

⁴ Some of the departments listed here have since been renamed. One publication reported on a Parliamentary Hearing at which oral evidence was given (All-Party Parliamentary Group on Domestic Violence, 2016).

No empirical research evidence on the operation of PD12J since its amendment in 2017 was found.⁵ However, evidence from qualitative and quantitative research on or conducted under earlier versions of PD12J is likely to remain relevant and provide substantial evidence of consistent findings on common themes over a sustained period of time. The most extensive revisions to PD12J were those made in April 2014 and studies of the perceptions of judges and professionals conducted between 2010 and 2018 (see Section 9) do not provide evidence of substantial recent changes in practice.

In addition, no empirical research studies undertaken in England and Wales focusing on parental alienation and domestic abuse were found, although studies of the experiences of abused women in family courts frequently mentioned this issue (see Section 7.2). There has been a comprehensive review and analysis of reported judgments on this topic (Barnett, 2020) but, to date, the volume of reported cases has not enabled the kind of large-scale studies that have been undertaken in other jurisdictions.

Finally, it should be noted that since the expert panel's terms of reference included other serious offences creating a risk of harm to children and adult victims as well as domestic abuse, one of the topics included in the literature search was fathers' contact with children conceived from rape. No studies undertaken in England and Wales were found on this issue. A limited number of US studies were found which focused on situations where birth fathers who are rapists prevent women from having abortions and claim other decision-making rights over children. These studies are not relevant to the context in England and Wales because, in the US, all birth parents have automatic parental rights. This is not the case in England and Wales. The absence of relevant literature meant that this topic is not covered in the literature review.

⁵ PD12J establishes the framework to be followed by courts and professionals in child arrangements cases where allegations of domestic abuse are raised. It was last revised in 2017. The revised version is termed PD12J 2017.

4. The forms and prevalence of domestic abuse

4.1 Introduction

The research reviewed reports that domestic abuse is highly prevalent in the general population. It is even higher in families with children and is disproportionately high in private law children proceedings in the Family Courts. To understand the impact on and consequences for children and parents who experience domestic abuse, this chapter will discuss the nature of domestic abuse and its prevalence before and after parental separation.

4.2 What is domestic abuse?

Until relatively recently, the term ‘domestic violence’ was used to describe what is now called ‘domestic abuse’ and was generally considered to encompass acts of physical violence perpetrated by adults in intimate relationships. In recent years domestic abuse has come to be understood as also encompassing psychological, emotional and economic abuse, and even more recently, coercive and controlling abuse, although these other forms of abuse had been recognised by those working with victim/survivors in the US since the 1970s and 1980s (Stark, 2007). The Duluth Power and Control Wheel visually represents the multifaceted forms of abuse (see Appendix B). In 2012, a cross-government definition of domestic abuse that included coercive and controlling behaviour was adopted, and in 2014 PD12J was amended to reflect the cross-government definition. In 2016 an offence of coercive and controlling behaviour was introduced in England and Wales by the Serious Crimes Act 2015.

PD12J describes ‘coercive behaviour’ as “an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim” (para 3).

‘Controlling behaviour’ is described as “an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour” (para 3).

Coercive control has been recognised to combine four broad strategies, some or all of which may be used by individual perpetrators – physical violence, intimidation, isolation and control – that in combination form “a sustained pattern of behaviours” (Coy, Perks, Scott, and Tweedale, 2012, p22). Physical violence may be, but is not always, used by perpetrators of coercive control to reinforce other techniques of domination, so that the abuser does not need to resort to physical violence frequently. Although some abusers may inflict severe violence, others may use frequent, low-level violence, the cumulative effects of which are particularly devastating for victims (McLeod, 2018; Myhill, 2017; Stark, 2007). Abusers intimidate victims by threats, surveillance, and degradation (Home Office, 2015; Stark, 2007; Women’s Aid, 2016). Intimidation by surveillance includes stalking, listening in on phone calls, reading the victim's mail or text messages, monitoring social media platforms, and interrogating friends. Many perpetrators use ‘jealous surveillance’ involving monitoring victims’ movements and frequent accusations of unfaithfulness (Coy *et al.*, 2012). Abusers may degrade, humiliate and shame victims by, for example, ordering them around, putting them down, enforcing rules and activities which humiliate or dehumanise the victim, or forbidding them from speaking (Home Office, 2015; McLeod, 2018; Stark, 2007). Coercively controlling abusers can also make victims ‘question their own reality’ by thinking they are ‘going mad’ (known as ‘gaslighting’):

[I]t wasn't so much the physical, it was the mental abuse that was the worse. He manipulated my mind all the time and he'd twist everything and he did things that made me feel like I was going mad ... I'd think well I'm sure I did that, no you haven't. But I had done it. But he'd ... make me think that way... so he could control me. (Fam 37) (Thiara and Humphreys, 2017, p140)

Isolation is used “to prevent disclosure, instil dependence, express exclusive possession, monopolize their skills and resources, and keep them from getting help or support”, by, for example, preventing women from working, denying them access to transport and/or

means of communication, forbidding calls or visits to family and friends, and preventing them from calling the police or accessing medical or other support (Stark, 2007, p262).

At the centre of the abuser's strategy is control, “an array of tactics that directly install women's subordination to an abusive partner”, by micromanaging their life and preventing resistance or escape (Stark, 2007, p271). Control involves regulating the minutiae of everyday life including how women dress and do housework, what they watch on television, and depriving them of, or limiting their access to, food, sleep, money and other resources. This can leave victims in a constant state of anxiety for their and/or their children’s safety if they fail to maintain impossibly high and constantly shifting expectations, which has been described as ‘walking on eggshells’ (Coy *et al.*, 2012).

The combination of these strategies is experienced by victims as entrapment which gives rise to an 'abusive gendered household regime', whereby abuse is embedded in the fabric of women's everyday lives and parenting practices (Morris, 2009). Coercive and controlling strategies of abuse have an ongoing, cumulative effect, so it is unrealistic to envisage ‘normal’ family life between incidents of physical violence, and victims have little or no space for autonomous action or decision-making (Hunter, 2006; Stark, 2007).

Both women and men can perpetrate domestic abuse, and both can be victim/survivors. However, substantial research and statistical evidence demonstrates the higher prevalence, persistence, severity and impact of violence inflicted by men against female intimate partners (Hester, 2013; Holt, Buckley and Whelan, 2008; Myhill, 2017; Office for National Statistics (ONS), 2018; Stanley, 2011). While official statistics underestimate the scale of domestic abuse against both women and men (ONS, 2018), some relative patterns emerge. In the year ending March 2018, 92% of defendants in domestic abuse-related prosecutions were men 83% of victims were female (ONS, 2018). Around 95% of calls to domestic abuse helplines in the year ending March 2018 were made by women (ONS, 2018).

Population surveys, such as the Crime Survey for England and Wales (CSEW), reporting high levels of male victimisation tend to use variations of the Conflict Tactics Scale which measure behaviours, not the impact or intent of those behaviours, and do not measure coercive control (Myhill, 2017). “Research suggests that when coercive and controlling

behaviour is taken into account, the differences between the experiences of male and female victims become more apparent” (ONS, 2018, p8). The CSEW also enables primary perpetrators to be counted as victims, if victims ‘fight back’ or retaliate. There are also gendered qualitative differences in the extent, severity and impact of domestic abuse. Women are more likely to experience higher levels of fear and mental health or emotional problems, to sustain repeat victimisation, and to be subject to coercive and controlling behaviour; they are much more likely to be the victims of sexual assaults and to be seriously hurt or killed than male victims of domestic abuse (Hester, 2013; Holt *et al.*, 2008; Myhill, 2017; ONS, 2018; Radford and Hester, 2006; Stanley, 2011).

Most domestic homicide victims are women (Holt *et al.*, 2008; ONS, 2018). On average, two women are killed each week by their current or former partner in England and Wales, a figure that has changed relatively little in recent years (House of Commons Home Affairs Committee, 2018). Coercive control is one of the strongest indicators of female homicides (McLeod, 2018; Smith, 2018). Women are at greater risk of intimate partner homicide on or after separation, which is one of the key factors leading to the killing of women in intimate relationships (Brownridge, 2006; Harne, 2011; Thiara and Harrison, 2016).

4.3 The prevalence of domestic abuse

“Domestic abuse is one of the most common, and most dangerous, crimes in the country ... In the year ending March 2017, nearly 2 million people in England and Wales were victims of domestic abuse” (House of Commons Home Affairs Committee, 2018, p6). The World Health Organisation estimates that 25% of women in Europe experience physical or sexual violence in the context of an intimate relationship (Callaghan and Alexander, 2015). There is limited data available on the prevalence of coercive control. SafeLives, which collects the largest dataset in the UK on cases of domestic abuse, shows that 82% of domestic abuse victims reported ‘jealous and controlling behaviours’ from the perpetrator (McLeod, 2018).

It is commonly thought that once partners have separated, the abuse ends. Numerous statistics and research studies across a broad range of methodologies and populations,⁶ however, reveal that domestic abuse can start, continue and increase in severity on and after separation (Brownridge, 2006; Buchanan, Hunt, Bretherton and Bream, 2001; Harne, 2011; Holt *et al.*, 2008; Morrison, 2015; Thiara and Harrison, 2016; Women’s Aid, 2016). A recent study showed that over 90% of women survivors of domestic abuse experienced post-separation abuse (All-Party Parliamentary Group on Domestic Violence (APPG on DV), 2016). Coercive and controlling behaviour by the perpetrator during the relationship is the main predictive factor for post-separation domestic abuse (Brownridge, 2006; Harne, 2011; Macleod, 2018; Morrison, 2015).

The findings and estimates of studies reviewed indicate that the prevalence of allegations of domestic abuse in private law children cases is considerably higher than in the general population, with findings and estimates ranging from 49% to 62%. In the vast majority of cases, the alleged or proven perpetrator was the father (Cafcass and Women’s Aid, 2017; Harding and Newnham, 2015). Table 4.1 sets out the quantitative findings from UK case file analyses and the estimates from qualitative studies as to the prevalence of allegations or findings (depending on the data available) of domestic abuse in samples of child arrangements/contact cases.

Table 4.1 The incidence of domestic abuse in samples of child arrangements/contact cases⁷

Source	Incidence
Hunt, Macleod and Thomas (1999)	51%
Buchanan <i>et al.</i> (2001)	50%
HMICA (2005) (Cafcass cases)	>70%
Aris and Harrison (2007)	63%
Perry and Rainey (2007)	50%
Hunt and Macleod (2008)	50%
Cassidy and Davey (2011)	53%
Harding and Newnham (2015)	49%
Cafcass and Women’s Aid (2017)	62%

⁶ These include national household surveys, crime surveys, questionnaires and mixed method research with children and young people.

⁷ See Appendix A for information on sample sizes and methodologies of these studies.

4.4 Children's experiences of domestic abuse

A large body of clinical and research findings and literature, discussed below, has been available since the early 1970s on the experiences and profound effects on children of living with domestic abuse. However, it is only in the last 20 years that courts, professionals and policy-makers have gained some awareness of these experiences and effects (Barnett, 2014). That domestic abuse is harmful to children is now recognised by statute and by PD12J. Section 31(9) CA 1989 states that: “‘harm’ means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another”. This provision was inserted in s31(9) CA 1989 by s120 of the Adoption and Children Act 2002 and came into force on 31 January 2005. It represented a compromise, during the UK government’s ‘Making Contact Work’ consultation initiated in 2000, between those seeking stronger safety measures against domestic abuse and those opposing such measures and seeking stronger contact enforcement measures (Lord Chancellor’s Advisory Board on Family Law: Children Act Sub-Committee, 2002; DCA, DfES and DTI, 2004).

Paragraph 4 of PD12J states:

Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent, or live 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 domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents.

The literature on children’s experiences of domestic abuse is based on a vast range of sources including psycho-social research, studies of child protection and health records, research with practitioners and professionals, clinical studies, retrospective and longitudinal studies, and accounts from parents and children. The discussion that follows draws on the largest literature reviews on children’s experiences of domestic abuse published since 2008, which reviewed UK as well as international literature, namely,

Callaghan and Alexander (2015), Harne (2011), Holt *et al.* (2008), McLeod (2018), Stanley (2011) and Smith (2018), as well as original empirical research studies. Unless otherwise stated, these studies were conducted in England and Wales.

This literature shows that children are directly involved and affected by domestic abuse in a variety of interlinked and co-existing ways, so that, rather than being described as ‘witnesses’ or ‘exposed to’ domestic abuse, they should best be described as ‘experiencing’ domestic abuse and as victims in their own right (Callaghan, Alexander, Sixsmith and Fellin, 2018; McLeod, 2018; Smith, 2018; Stanley, 2011).

Holden, a US psychologist, developed a taxonomy of 10 discrete categories of children’s exposure to physical or verbal domestic abuse, although he notes that “it is likely that children experience multiple categories of exposure” (2003, p154). These categories range from pre-natal exposure, to intervening, being assaulted or participating in assaults on their mothers, to witnessing or overhearing assaults, to observing or experiencing the immediate consequences of assaults or their aftermath, or to hearing about the assaults.

Many studies found a high incidence of child abuse, including physical and sexual abuse, in the context of domestic abuse, and suggest that domestic abuse and child abuse cannot be considered discrete categories (Callaghan *et al.*, 2018; Radford and Hester, 2006; Radford *et al.*, 2011; Harne, 2011; Holt *et al.*, 2008; Stanley, 2011). Children who experience domestic abuse are at greater risk of direct physical assault and injuries from perpetrators of domestic abuse and are at greater risk of child homicide (Callaghan *et al.*, 2018; Coy *et al.*, 2012; Coy, Scott, Tweedale and Perks, 2015; Harne, 2011; Holt *et al.*, 2008; McLeod, 2018; Mullender, 2004; Rose and Barnes, 2008). An overview of child homicide serious case reviews in England identified high levels of domestic abuse in two-thirds of the cases studied (Brandon *et al.*, 2009; see also Rose and Barnes, 2008).

Children may also be harmed if they get caught up in the violence or try to intervene to stop it (Mullender, 2004; Radford and Hester, 2006; Smith, 2018; Stanley, 2011). Children could be harmed as a strategy of the perpetrator’s abuse of the mother to cause her distress or to control her behaviour (Harne, 2011; Holt *et al.*, 2008; Radford and Hester, 2006). Emotional abuse of children can include deliberately harming pets, destroying

children's possessions, belittling them and calling them names, frightening or threatening them, or ignoring them (Harne, 2011).

The considerable research reviewed by Harne (2011) and Smith (2018) demonstrated that children are invariably witnesses to or are otherwise aware of domestic abuse in their homes, and that this is at least if not more harmful than being directly physically abused. Children interviewed by Callaghan *et al.* (2018) were aware of both the physical violence and patterns of control and abuse in their homes, and of the impact of this control and abuse on their mothers, themselves and their siblings:

Oliver: I think it was because my mum wanted to go out with her friends, and he didn't want her to go out and all that ... and started like throwing stuff and saying 'You're not going out ... and you need to help' and I dunno, 'help clean and make the food'. (ibid, p1560)

Studies have found that between 75% and 95% of children living in abusive households witness or overhear abusive incidents directly (Hughes, 1992, a US study; McLeod, 2018; Morrison, 2009; Radford and Hester, 2006; Stanley, 2011). Even if children are not present, they will be aware of the aftermath of the violence "and the distorted inter-partner relationships, communications and behaviours" (Sturge and Glaser, 2000, p619; see also Holt *et al.*, 2008; Mullender, 2004). Callaghan and Alexander (2015) found that children have a sophisticated understanding of control dynamics and subtle controlling behaviours.

Children may be drawn into the abuse of their mothers by coercive and controlling perpetrators by being encouraged to hit or insult their mothers or monitor their mothers' movements (Callaghan *et al.*, 2018; Coy *et al.*, 2012; Harne, 2011; McLeod, 2018; Morris, 2009; Mullender, 2004; Radford and Hester, 2006; Thiara and Gill, 2012). Children may also observe the constant belittling and humiliation of their mothers:

*He was just hitting her with his hands and shouting and swearing at her – saying that she's horrible, she's wicked and that she's not a very good mummy. Just saying all horrible things to her and really hurting her making her cry and Mum couldn't do anything. I called the police. (Mullender *et al.*, 2002, p 183 in Harne, 2011 p27)*

Some studies have found that children living with domestic abuse, particularly coercive and controlling behaviours, may experience a constant state of fear (Callaghan *et al.*, 2018; McLeod, 2018; Radford and Hester, 2006). Children's fears can be 'deep-seated and persistent' even when they are no longer living in an abusive household (Sturge and Glaser, 2000, p620). UK and Irish research highlighted "the extent to which the anticipation of violence infuses their lives with the tension resulting from unpredictability", which children described as like 'walking on eggshells' (Stanley, 2011, p30).

A vast range of studies are available on the physical, psychological, behavioural, developmental and emotional problems, disorders and traumas sustained by children experiencing domestic abuse, who "may be the most distressed in the population" (Harrison, 2008, p386). Holt *et al.* (2008), for example, identified over 1,000 articles in their literature review on this topic. Since it was not practical or possible to review all such studies, the discussion that follows draws on literature reviews of these studies. The ways abuse is likely to impact children can vary according to their age. Research studies reviewed by Harne (2011), Holt *et al.* (2008), McLeod (2018) and Stanley (2011) found that infants may indicate distress through poor sleeping and eating habits, delayed language and toilet-training, failure to thrive, excessive screaming and irritability or being unnaturally quiet. Fear and anxiety are the most common impacts in pre-school children which can be exhibited through aggressive behaviour, temper tantrums, sleep disturbance, bed wetting, nightmares, anxiety, clinginess, speech delay, poor eating habits, post-traumatic stress symptoms. School-age children may have difficulties in concentration, attention deficit hyperactivity disorder (ADHD), stomach aches and headaches, and problems with attainment. They may be at risk of bullying and aggressive behaviour or of being bullied. Adolescents may be angry and aggressive, have low self-esteem, self-harm, and have depression and suicidal feelings. Experiencing domestic abuse has also been associated with delinquency in adolescents, including turning to alcohol or drugs, and truancy or dropping out of school.

The research literature reveals that the impact of domestic abuse can carry through to adult life, and has been linked with mental health difficulties including depression, low self-esteem, physical health problems such as obesity, eating disorders, anti-social, criminal and violent behaviour, alcohol and substance misuse, and interpersonal difficulties in their

own intimate relationships and friendships (Callaghan *et al.*, 2018; Holt, *et al.*, 2008; Radford and Hester, 2006; Smith, 2018; Stanley, 2011).

Some clinicians and researchers maintain that children who are exposed to domestic abuse are more likely to be victims or perpetrators of domestic abuse as adults, which has been termed the intergenerational transmission of violence (see Wagner, Jones, Tsaroucha and Cumbers, 2019, for references to and a critical discussion of these studies). However, subsequent studies have highlighted that this theorisation is unhelpful to children as there is no consensus on this issue, it offers a partial, simplistic explanation for domestic abuse, and can have detrimental effects on service provision for children and adults (Busby, Holman and Walker, 2008; Wagner *et al.*, 2019).

It is only recently that research has been undertaken into the experiences and impact on children of living with coercive control. The atmosphere of threats, intimidation and control in the home that is woven into family interactions is difficult for children to escape and can mean that children's lives are dominated by fear and the anticipation of violence (Harne, 2011; Stanley, 2011). Children whose fathers coercively control their mothers may be exposed to the constant abuse of their mothers and suffer from control of their time and movement within the home, economic and physical deprivation and social isolation, thereby experiencing entrapment themselves (Dunstan, Bellamy and Evans, 2012, an Australian study; Holt *et al.*, 2008; Katz, 2016; Smith, 2018). Children interviewed by Katz (2016) were affected by the limited parental attention and restricted opportunities for fun and affection that fathers imposed. They also experienced isolation by being prevented from attending parties and extra-curricular activities and from seeing their grandparents and wider family and friends. Living with coercive control can have the same cumulative impact on children as it does on adult victim/survivors, which may contribute to emotional and behavioural problems in children as much as, or even more than, physical violence perpetrated against their mothers (Callaghan *et al.*, 2018; Katz, 2016; McLeod, 2018). Children participating in Callaghan *et al.*'s (2018) research described how they learnt to constrain their own behaviour by constantly having to 'think ahead' of what they said and did, as a way of coping with domestic abuse on a daily basis.

Domestic abuse and private law children cases

A literature review

While some children may have more intrinsic resilience to the impact of domestic abuse than others, a supportive relationship with a caring adult, particularly the non-abusive parent, has been found to be the key protective factor for children, so supporting resident parents who are victim/survivors of domestic abuse can be critical for children's own survival (Radford and Hester, 2006; Stanley, 2011).

5. Parenting in the context of domestic abuse

In this section, the literature on the parenting practices of domestic abuse perpetrators will be discussed, as well as studies on the experiences of parents who are victim/survivors of domestic abuse. Research has found a strong link between the presence of coercive controlling abuse and problems in parenting, leading to reduced parenting capacity for both victim and perpetrator parents (Dunstan *et al.*, 2012; Holt *et al.* 2008).

5.1 What are the parenting practices of domestically abusive parents?

Domestic violence involves a very serious and significant failure in parenting – failure to protect the child’s carer and failure to protect the child emotionally (and in some cases physically – which meets any definition of child abuse). (Sturge and Glaser, 2000, p 624)

No studies were identified that explored the parenting practices of domestically abusive mothers. A limited number of studies specifically investigated the parenting practices of domestically abusive fathers. Two are US studies (Bancroft *et al.*, 2012; Holden and Ritchie, 1991), one is an Irish study (Holt, 2013) and two are UK studies (Harne, 2011; Radford, Sayer and AMICA, 1999). There were no significant differences in the findings of these studies other than the greater degree of childcare by fathers found by Harne (2011) than was found by the other studies. This literature revealed the following findings:

- Perpetrators’ parenting styles could be unpredictable and alternate on a day-to-day basis.
- Many perpetrators adopted a narrow, authoritarian parenting style, being inflexible, rigid and very controlling, demanding obedience, and issuing orders to children.
- Abusive fathers were generally uninvolved in child or home care and were less involved than non-abusive fathers. Harne (2011), however, found that some

abusive fathers undertook a greater amount of childcare than was found in the other studies.

- Direct parenting by violent fathers was a context in which children were at risk of lethal harm, particularly if fathers were looking after the children on their own.
- Abusive fathers neglected very young children's basic physical and emotional welfare needs by depriving them of sleep, movement, speech or play, or deliberately encouraging inappropriate behaviour.
- Abusive fathers demonstrated a sense of entitlement to have their own needs met by children and expected children to be caring towards them and cater to their needs without reciprocating, reflecting a view that children were 'emotional property'.
- Violent fathers were more likely to be angry and irritated by children and to over-punish them, had unreasonable expectations of how very young children should behave, and were resentful of children's attention from their mothers.
- Abusive fathers who did not have close relationships with their children tended to blame the mothers or the children themselves rather than acknowledge that their own abusive behaviour may prevent the children from showing affection to them, an aspect of a general refusal to consider that children may be affected by the abuse.
- Some perpetrators indulged in cruel and emotionally abusive behaviour towards children including insulting and humiliating them, destroying school work, school reports and toys, harming pets, confining children to the house, not allowing them to speak to their mothers and not allowing friends to telephone or come to the house.

Holt (2015) found that while some of the fathers had insight into how their behaviour had impacted on their children, they did not necessarily demonstrate a willingness or perceived need to alter that behaviour. For example, one father who was in prison at the time of interview for holding his ex-partner hostage at knife point in front of their children, portrayed himself as the 'good' parent.

The first and largest England and Wales study to involve interviews with fathers who were perpetrators of domestic abuse was carried out by Harne (2011), who looked at violent

fathers' views of themselves as fathers and their parenting practices. All the fathers had a history of ongoing domestic abuse and were attending Domestic Abuse Perpetrator Programmes (DAPPs). Although most of the fathers were not the children's main carers before parental separation, their level of involvement was greater than that indicated by earlier research. Some fathers cared for children, including very young children, when mothers were working full or part time.

The fathers participating in the study tended to partly deny or minimise their violence by claims of 'mutual violence' or not having committed 'real' violence.

I have hit her. I don't punch her – I'm not the violent type. I've pushed her and raised my voice and tried to strangle her on one occasion. ... I threw objects and smashed phones and pictures – I've smashed cups – I've smashed the baby's cup – I've even smashed remote controls, would you believe. (Matt) (ibid, p132)

Claims of 'mutual violence' were frequently contradicted by fathers' own descriptions of children witnessing or being caught up in violence that had seriously injured mothers. Additionally, the fathers tended to justify their violence and its impact on children by explaining that they had 'short fuses' that were 'provoked' by their partners' and children's actions in not doing what the fathers wanted. Some fathers justified violence towards very young children by arguing that the children provoked such behaviour by annoying them or failing to meet their expectations of how children should behave.

Nine fathers admitted that they had used severe physical violence against children. 'Jim', for example, had been convicted for assault on his disabled child because he had "hit him 'too hard' when he refused to go to bed" (ibid, p141). Fifteen fathers also admitted to intimidating and threatening children by breaking or throwing objects, shouting and swearing at them, threatening to hurt mothers, threatening pets, threatening to put children in care, forcing children to eat and breaking their possessions. A few fathers admitted that they were deliberately cruel to their children with the intention of frightening and controlling them. 'Phil', for example, said:

Just being in the same room was enough in the end – it was mental abuse. They were terrified of me – all I had to do was look ... I was quite cruel to be honest with you – at mealtimes I used to sit there and make them eat things they really didn't

like and they used to cry. I wanted to make them too perfect. I wanted to make them what I was like. (ibid, p141)

Fathers' views on contact revealed a sense of legal ownership of children – “No one is going to come between me and my children, because they are mine’ (Rob)” (ibid, p141). ‘Pete’ stressed that it was a father’s right to choose *not* to see the children: “The father may decide he doesn’t want to see his children. That is one thing. I think it’s the child’s right to see their father. I also think it’s the father’s right to see the child” (ibid, p144). Some fathers felt that a father’s love for the children cancelled out any violence and abuse they might have been responsible for, and justified contact with the children. Other fathers described children’s reluctance to have contact with them as being caused by mothers’ undue influence, rather than recognising it as the consequence of their own behaviour. Very few of the fathers acknowledged that their violence towards mothers could have an impact on the children or was relevant to their constructions of themselves as fathers, although most eventually admitted that their children were aware of it.

The mothers interviewed reported physical abuse, intimidation and “cruel, often gratuitous humiliation and extreme control of very young children” when fathers were looking after them on their own (ibid, p140). Mothers also described children being directly intimidated and emotionally abused when they were present in the home.

They were all nervous wrecks basically, very introverted, very nervous, not doing well at school. He would shout at them for nothing – they were very frightened to get up and go to the toilet in the night – there was bedwetting but it got to the point when he started to hit them – that was about six months before I left, he punched my youngest daughter – she was eight and he punched her because she wouldn’t go to sleep. (Margaret) (ibid, pp141–142)

Harne (2011, p142) concluded that “far from them making them more caring or nurturing, the fathers’ accounts indicated that their increased involvement in looking after children, provided them with further opportunities to harm very young children in their care”.

5.2 Experiences of mothering in the context of domestic abuse

No studies were identified which explored victim/survivors' experiences of fathering in the context of domestic abuse. A wide range of research is available which investigated victim/survivors' experiences of mothering in the context of domestic abuse. This research found that a central aspect of domestic abuse is an attack on mothering and the mother-child relationship, and that abuse can impair women's ability to look after children (Callaghan and Alexander, 2015; Coy *et al.*, 2012, 2015; Holt *et al.*, 2008; Katz, 2016; McLeod, 2018; Morris, 2009; Radford and Hester, 2006; Stanley, 2011; Thiara and Gill, 2012). Continuing abuse affects women's relationships with their children and can impact negatively on their parenting capacities and on the quality of the attachment between mother and child (Holt *et al.*, 2008).

5.2.1 Mothering before parental separation

Some studies have found that abuse can start or escalate during pregnancy, and that this, in itself, is an attack on both the mother and the child (Callaghan and Alexander, 2015; Coy *et al.*, 2015; Radford and Hester, 2006; Thiara and Gill, 2012).

Physical violence can injure women to the extent that they are unable to care for children for short or longer periods. However, the psychological, mental and emotional effects of domestic abuse can be far more disabling in their impact on women's ability to parent their children. Domestic abuse contributes to a number of health problems including depression, anxiety, suicidal behaviour, self-harm, PTSD and drug and alcohol misuse (House of Common Home Affairs Committee, 2018; Stanley, 2011). The effects of coercively controlling abuse can be particularly debilitating and can take years to overcome (Radford and Hester, 2006; Smith, 2018). Nevala's (2017) study of the prevalence and consequences of coercive control across the then 28 member states of the EU involving interviews with 42,000 women (not limited to mothers) found that "coercive controlling violence is associated with more severe impact to victims compared with physical intimate partner violence without coercive control" (ibid, p1813). The encompassing, insidious nature of coercive control was experienced by the mothers interviewed by Coy *et al.* (2012) as more frightening and debilitating than the physical violence. Women subjected to coercive control may experience disempowerment and

degradation and loss of self-esteem and confidence in their ability to make their own choices and decisions (Katz, 2016). Setting impossible standards for household tasks and childcare could contribute to mothers' loss of confidence in their competence (Radford and Hester, 2006).

These experiences and effects are illustrated by a mother interviewed by Thiara and Gill (2012):

I just didn't want to go out, I didn't want to see people. I was so stressed, emotionally I was neither here or there. I was losing loads of weight and was told that I was anorexic which was a shock to my system. It got to the stage where I wasn't enjoying life. I didn't want to eat, I couldn't sleep. My health was just getting worse and worse. (SA11) (ibid, p38)

These effects on victim/survivors of domestic abuse can have material impacts on their parenting. Stanley's (2011) review of the literature found that "the psychological functioning of mothers was key in that those women who were found to be depressed or traumatised by their experience of domestic violence reported less effective parenting. ... [the studies] suggest that the parenting of mothers experiencing domestic violence is not inevitably undermined, but that it is more likely to be so in the presence of maternal depression and other forms of adversity" (ibid, p46). Additionally, women can suffer from stress, sleep disruption, exhaustion and feeling emotionally drained which, on their own or together with other problems such as depression and isolation, can affect their basic parenting of their children as well as their emotional availability for them (McLeod, 2018; Radford and Hester, 2006; Stanley, 2011; Thiara and Gill, 2012).

One of the primary targets of perpetrators is the mother-child relationship. The literature reveals how perpetrators can intentionally try to undermine, distort and disrupt this relationship and turn children against their mothers to achieve power and control within the family by emotionally pulling children into alliances with them that isolate the mother within the family (Coy *et al.*, 2012; Katz, 2016; McLeod, 2018; Radford and Hester, 2006; Stanley, 2011; Sturge and Glaser, 2000; Thiara and Gill, 2012; Thiara and Humphreys, 2017). These studies report that tactics such as demeaning, belittling, criticising and insulting women in front of children, encouraging children to participate in the abuse of

their mothers, and treating children to expensive gifts and days out can negatively affect women's ability to develop authority and control over their children (Holt *et al.*, 2008): "My little boy is supposed to be looking up to a woman who is being shot down the whole time. My little boy said I am a weak woman the other day'." (Coy *et al.*, 2012, p26).

A mother interviewed by Radford and Hester (2006) described how her son was encouraged by his father to physically assault her:

He made them kick and punch me and they did because they were so frightened of him. [Son] kicked me, he punched me in the face. But, when he had done it his father told him he hadn't done it hard enough, and he was to go and put his shoes on and do it harder. ('Hilary') (ibid, p43)

Women living with domestic abuse in extended family households were treated with a lack of respect. A Turkish mother explained how she had to do all the housework and cooking for the family and then cook and eat her own food in a garage separately from the rest of the family, including her husband and son (Radford and Hester, 2006).

Women can internalise the undermining and humiliation and suffer from low self-esteem, lack of confidence, and feelings of failure as parents (Stanley, 2011; Thiara and Humphreys, 2017). Many of the mothers participating in Radford and Hester's (2006) six research studies had lost confidence in their parenting, were emotionally drained and distant, and felt that they had little to give their children. What had the greatest impact on their confidence in their parenting was "the father's deliberate undermining of the mother's relationship with the children ... especially where women had no help and support outside the relationship to boost parenting" (ibid, p28).

Abusers may also prevent mothers from spending time with or being attentive to children (Katz, 2016; Radford and Hester, 2006; Thiara and Humphreys, 2017). "Lots of times when Mum was giving me attention he'd tell her to go over to him so she'd have to leave me to play by myself' (Shannon, aged 10)" (Katz, 2016, p52).

South Asian women interviewed by Thiara and Gill (2012) reported being allowed little, if any, time with their children, with the collusion of the extended families:

Even I was not allowed to pick up my own daughter. When my in laws were at home I was never allowed to hold her, I was forced to work all day in the kitchen, only when her nappy needed changing they called me. After her nappy was changed my mother in law took her from me and I was sent to the kitchen.
(SA16) (ibid, p33)

Buchanan (2014) explored mothers' experiences of parenting infants in the context of domestic abuse. The constant abuse meant that "pressures on the mother/infant relationship are ongoing, not confined to outbursts of violence" (ibid, p44). 'Sally' explained how her partner denigrated her parenting: "'He's told me that I'm the worst mother, that I'm destroying Zack and that I smother him'." (ibid, p42). Fourteen women experienced exhaustion as a result of trying to cope alone, caused by their partners' lack of support, undermining, attempts at isolation, and expectations of perfect housekeeping and childcare. Several women feared that their partners would physically harm their babies and spoke of the efforts they made to protect them in the face of unpredictable outbursts. Although they looked after their infants' physical needs, the women had little time to get to know and enjoy their infants because of the constant need to appease their partners. This could impact on mothers' ability to form relationships with their infants which could be exacerbated by isolation. Similarly, a mother interviewed by Radford and Hester (2006) explained how the father of her baby "'made me give up breast feeding after four weeks ... He was jealous because I was breast feeding her and she was taking all my attention' ('Susan')" (ibid, p31).

Finding ways to protect children from witnessing and experiencing the abuse was difficult for mothers, particularly "if forced witnessing is a fundamental part of the abuser's controlling behaviour" (Radford and Hester, 2006, p43). However, although challenging, mothers may attempt to protect children from experiencing the abuse in a number of ways such as trying to manage the perpetrator's behaviour by monitoring his moods, behaving in ways that may not upset him, ensuring that children are well-behaved to avoid aggravating the abuser and by ensuring that children are in another room or away from the home (Holt *et al.*, 2008; Lapierre, 2010; McLeod, 2018).

Thiara and Humphreys (2017) highlighted an important aspect of the impact of domestic abuse on mothers – the 'absent presence' of the perpetrator after parental separation,

which meant that women's loss of confidence and parenting skills, and the undermined relationships with their children, were "all closely linked and form part of a continuum for women in the pre- and post-separation periods" (ibid, p141). In this way, the perpetrator remained present in the lives of women and children following separation. The way in which the negative impact on mothers' and children's relationships of these undermining strategies can carry through to the post-separation period was articulated by a mother interviewed by Thiara and Humphreys (2017):

Oh he was very jealous about it, very, very jealous ... he was always there trying to come between us ... if he wanted a meal, he had to come first. So it was hard, really hard to juggle ... It really did affect her ... she obviously realised that I'd got no respect. So she learnt not to respect me. And when we got out of the relationship she had no respect for me at all. (Fam 21) (ibid, p141)

South Asian women in the UK could be isolated and prevented from undertaking normal parenting activities, which left them with little confidence or skills after parental separation:

We used to live in a council flat on the top floor of a tower block. I couldn't leave the house or take the kids out. My son was four years old and I had never taken him out. I knew nothing about looking after kids. He prevented me from taking him to play groups. ... I knew nothing when I came to the refuge. I didn't even know how to cross the road with them. ... I was not confident. (Fam 31) (ibid, p141)

The literature reviewed highlighted that the relationship with the non-abusive parent is the most protective source of support for children living with domestic abuse, so supporting the non-abusive parent in their parenting role before and after parental separation is often the most effective way to protect mothers and children (McLeod, 2018).

5.2.2 Mothering after parental separation

The most important factor for enabling mothers to rebuild their lives, recover their physical, mental and emotional health, confidence and parenting capacities, and support their children's recovery after separating from an abusive partner is freedom from further abuse (Harrison, 2008; Holt *et al.*, 2008). Ongoing abuse can substantially impede that recovery (Davies, Ford-Gilboe and Hammerton, 2009, a Canadian study).

Numerous studies reveal the typical forms of post-separation abuse, which may continue for many years, and are represented by the Duluth Post-Separation Wheel (see Appendix C). These include:

- physical violence and sexual assaults (often witnessed by children)
- threats of violence
- verbal abuse
- damaging or destroying property
- harassment by stalking, excessive telephone calls, emails, text messages
- breaking into women's homes
- making malicious allegations to the police, social services, and women's employers
- threats to abduct children and actual abduction
- economic abuse

(Cafcass and Women's Aid, 2017; Coy *et al.*, 2012; Harne, 2011; Harrison, 2008; ONS, 2018; Women's Aid, 2016). All the women interviewed by Coy *et al.* (2012) had experienced post-separation abuse, most commonly harassment, but also physical and sexual assaults and threats that could be ongoing over many years.

He's been harassing, he's been stalking, it's been a nightmare. Earlier this year he started trying to do the same behaviour to my daughter. I've had five or six years of it. About three years ago I asked the police for help and they said they couldn't, because it's not threatening. He's very aware of the law, so it's not threatening but it's really nasty. Initially he was stalking and following and endlessly phoning and turning up and being obstructive, blocking my way, stopping very short of being physical but getting as close to it as possible... He has sent the police and social services to my home so many times. He's not allowed to come to my house so it's a sort of harassment by proxy. (Erika) (ibid, p28)

Continued fear of the abuser and vulnerability was a pervasive factor revealed by much of the literature, which depleted women's emotional resources and left them exhausted and with reduced energy for their children, and affected women's ability to regain their

parenting capacities (Coy *et al.*, 2015; Holt, 2017; Thiara and Gill, 2012; Thiara and Humphreys, 2017).

I have to keep positive for my daughter's sake. I can't let her see or even let her even think that I'm like scared or worried about anything because it has had a big impact on her as well. And she needs to feel safe and secure and she does now because she's away from all what was happening before. Somebody asked me the other day are you like over the fear of like him coming to find you or whatever. I says no, the fear is still there. And I think it will be for a very long time. (AC6) (Thiara and Gill, 2012 p144)

Fear of children being abducted by fathers was commonly reported in the research literature (Aris and Harrison, 2007; Coy *et al.*, 2012; Harrison, 2008; Thiara and Gill, 2012; Thiara and Harrison, 2016). Threats of abduction were a significant issue for high numbers of black, Asian and minority ethnic (BAME) women as it was more likely that the perpetrator would have family and social links in other countries (Thiara and Gill, 2012; Thiara and Harrison, 2016).

Women could blame themselves and be blamed by their children for exposing the children to abuse while in the relationship, 'breaking up' the family and having to move home, resisting reunification with fathers and making them have contact with their fathers (Coy *et al.*, 2012; Holt, 2017, an Irish study; Thiara and Gill, 2012):

She can't go to school because she's too ill. She's got a temperature. She's been sick. She looks pale. She looks drained. She looks flushed. She doesn't want to have a bath. She doesn't want to get dressed. She doesn't like me brushing her hair. She hates me then. She goes 'why did you take me. I didn't want to go. I told you I didn't want to go'. (SA13) (Thiara and Gill, 2012, p72)

Children may also be angry, aggressive and defiant when they return from contact, which can be very difficult for women to manage:

When she comes back from overnight stays she's really different, she's not like how I know her. She's defiant, she can become aggressive, she ignores, and

she's rude. She's quite angry and it takes hours, for her to like calm down really and get readjusted and settled. (SA4) (ibid, p71)

Thiara and Gill (2012) explored the experiences of South Asian and African-Caribbean women of child contact in the context of domestic abuse. All of the 71 women interviewed had experienced post-separation abuse for many years, except those living in refuges, whose ex-partners did not know where they were living, or those whose ex-partners were serving prison sentences. Some African-Caribbean women endured extreme levels of post-separation violence for months or years, witnessed by children.

For South Asian women who participated in the study, the violence could be perpetrated by extended family members and even people outside the family. A barrister reported that:

... it is not just confined to him and his family, others are prepared to harass and abuse, sometimes anonymously. So it's more concentrated in that way, more are prepared to assist in the rightful, as they see it, return of the children to their rightful home and to the father's family. And because of issues of shame and honour which they all share, you'll find willing participants from the community in punishing the mother, either by being violent and aggressive and intimidating and harassing of her or in terms of threats of abduction of the children. (B4) (ibid, p138)

For South Asian children, leaving their homes can mean poverty and a loss of status. Because of this, some children whose mothers participated in Thiara and Gill's (2012) research held their mothers responsible for their situations, which was exploited by fathers buying them expensive gifts to show them what they were missing.

Thiara and Humphreys (2017) explored the ways past trauma, loss of self-esteem and the undermining of the mother-child relationship continued to create a shadow across the present relationship, exacerbated by the continued presence of the abuser through child contact arrangements and ongoing harassment. They used the concept of 'absent presence' as a framework through which to understand problems in the mother-child relationship after parental separation, which showed how the perpetrator of domestic abuse, either through the legacy of abuse or through continued contact and abuse, remained present. Coping with poverty and needing to rebuild their lives, and needing to

re-establish authority over children where this had been eroded by the abuser, was a challenge for women which impacted on their children and their mothering. “I was a wreck coming out. An absolute wreck and sometimes I can understand why people go back because they know what to expect. I came out, I lost my house, my job, I had a huge debt because of him and I thought, “God what can I do?”” (Fam 37)” (ibid, p141).

Similarly, Holt’s (2017) Irish study explored the combined effects of past and continuing abuse on women’s parenting and their relationships with their children. Long-term exposure to domestic abuse followed by subsequent ongoing abuse had repercussions for women’s abilities to parent and for the resulting mother–child relationship, leading to what Holt (2017) identified as “the paradox of post-separation mothering” – a sense of being ‘caught between a rock and a hard place’ (ibid, p2059). For a significant number of mothers, the fear of what might happen became a reality so that their post-separation lives mirrored their pre-separation lives in all but co-habitation, with negative ramifications for their confidence in their parenting:

I don’t know am I doing the right thing or not. The whole time I am questioning myself—was I right to leave him, were they better off then? Are they better off now? Would they be better off without him? I come up with different answers every-time and I wonder will I ever know or by then will it be too late. Sometimes I think I am the crappiest mother alive. (Claire, mother) (ibid, p2060)

Mothers in the Holt study reported experiencing a sense of failure, for the relationship ending and for failing to achieve emotional and economic independence. Low self-esteem and damaged confidence in their mothering abilities left them questioning their own judgements, decisions and parenting capacities. Some women suffered from depression and relied on psychiatric support to survive, and others used alcohol as a coping strategy. Women also described fear-induced sleeplessness and physical and mental sickness:

When I feel low, I retreat back in, I close up. He always seems to put me back in a bad place. And then you wonder what was so wrong with you that you start blaming yourself. So you’re kind of back in that vicious cycle. (Claire, mother) (ibid, p2058)

Holt (2017) concluded that child welfare practitioners need to recognise the ‘shadow’ that abusive men continue to cast over the mother-child relationship by focusing on the reality rather than the rhetoric of post-separation fathering, and that “ongoing abuse by the father, even in his absence, may continue to challenge her parenting capacity and the mother–child relationship” (ibid, p2062).

6. Parents' and children's experiences of contact with perpetrators of domestic abuse

6.1 Introduction

No research studies were identified on fathers' experiences of children's post-separation contact with domestically abusive mothers. A range of research studies are available on the experiences, effects and consequences for mothers and children of post-separation contact with domestically abusive fathers. This is not entirely surprising, because extensive research reveals that the standard pattern in the vast majority of private law children cases (approximately 90%), is of mothers as resident parents and fathers as applicants for spending time with/contact orders, which is generally reflective of post-separation living arrangements (Aris and Harrison, 2007; Coy *et al.*, 2012; Harding and Newnham, 2015; Harwood, 2019; Hunt and Macleod, 2008; Macdonald, 2017; Perry and Rainey, 2007; Trinder, Hunt, Macleod, Pearce and Woodward, 2013). Similarly, this research indicated that in most cases, the father was the alleged or proven perpetrator of domestic abuse.

6.2 Mothers' experiences of children's post-separation contact with domestically abusive fathers

The studies reviewed here reveal that the majority of women are supportive of contact between children and fathers after parental separation, even those who experienced violence and abuse during parental relationships, and make great efforts to ensure that it happens (Coy *et al.*, 2012; Fortin, Hunt and Scanlan, 2012; Harne, 2011; Holt, 2017; Morrison, 2015; Radford and Hester, 2006; Thiara and Gill, 2012). Most women try to negotiate and arrange contact informally between children and fathers in the post-separation period (Coy *et al.*, 2012; Morrison, 2015; Thiara and Gill, 2012). However, it was found that for many women, this eventually compromised their safety and led to a continuation, resumption or escalation of abuse, which led to contact arrangements

breaking down (Coy *et al.*, 2012; Thiara and Gill, 2012). The vast majority of mothers in Holt's (2017) Irish study, initially at least, saw a clear value in continuing father-child contact and were actively involved in making that happen, but had to manage preserving their own and their children's safety. The participating mothers experienced the emotional and physical work they expended in encouraging and facilitating relationships between children and abusive fathers as particularly distressing and daunting. For over two-thirds of the mothers this resulted in the abuse continuing:

I thought that by leaving him and doing the 'right thing' that I could make good the bad things that had happened that me kids saw. But it's like groundhog day gone wrong 'cos I can't change nothing . . . I can't stop the movie and change the script to make it all go away 'cos it's still the same. I thought leaving would make a difference but it hasn't. The only difference is we don't live together. (Marian, mother) (ibid, p2061)

Child contact has been highlighted by numerous studies as the key site for the perpetration of continued, potentially more serious, abuse (Brownridge, 2006; Harne, 2011; Harrison, 2008; Holt, 2017; Macdonald, 2015; McLeod, 2018; Morrison, 2015; ONS, 2018; Radford and Hester, 2006; Radford *et al.*, 1999). At its worst, child contact can be the site for fathers' homicide of mothers (Women's Aid, 2016). Violence was found to be most likely to occur when mothers met fathers face-to-face for contact 'handovers' or if supervising contact between fathers and very young children (McLeod, 2018). Ninety-four percent of the women in Radford and Hester's (2006) contact study and 92% in their AMICA study were abused as a result of contact arrangements, either because fathers used the contact to track down where mothers and children were living, or because mothers were supervising the contact and/or taking children to and from contact visits. Almost all the women interviewed by Coy *et al.* (2012) were so afraid for their safety that they relied on family and friends when arranging handovers:

He was collecting my child from a friend's house, every time he picked up the friend refused to do it anymore, because of his behaviour . . . I felt totally unsafe, personally unsafe. I didn't feel very safe for my child either, because he was really erratic and he didn't know what he'd do. (Helen) (ibid, p29)

South Asian and African-Caribbean women interviewed by Thiara and Gill (2012) reported experiencing a lot of pressure from fathers and family members to agree to informal contact and avoid going to court so as not to bring shame on the family or dishonour black or South Asian men, which resulted in compromising women's safety. In only three cases was informal contact considered to be working well at the time of interview, with many women sustaining physical violence and abuse. For South Asian women, post-separation contact can be particularly risky as "it may re-connect them with members of the extended family who may have been implicated in abuse previously" (Stanley, 2011, p21).

Child contact can also be used by fathers to track down mothers and children who have fled the abuse, by following them home after contact visits or extracting information from children about their whereabouts (Harne, 2011; Harrison, 2008; Radford and Hester, 2006; Stanley, 2011; Thiara and Harrison, 2016):

He'd sort of take the kids around. Kay was four and he'd like go to the areas he'd thought the refuges were in until he'd get to the street where Kay would know and she'd point out the place where it was, twice ... and both times, I mean what he would do like is get me on the street and take me home ... I must have gone back to the refuge four or five times. ('Alyson') (Radford and Hester, 2006, p92)

Mothers also experienced contact as a way for fathers to regain power and control and get back into their lives:

Some perpetrators get the message that the relationship is over and are genuinely interested in their children. Others use it as a mechanism to keep back into the relationship, others to undermine the victim's confidence and self-esteem, others to make the victim feel trapped and some to 'get at' them further by undermining them as a parent. (barrister) (Coy et al., 2012, p34)

Additionally, contact could also be used by perpetrators as a site to undermine mothers using similar tactics to those used before parental separation, as discussed in Section 5. These include criticising and degrading them in front of or to the children, encouraging children to act in abusive ways to their mothers, getting children to pass on abusive messages to their mothers, and using contact to 'buy' children with expensive gifts (Coy et

al., 2012; Holt, 2017; Holt *et al.*, 2008; Radford and Hester, 2006; Thiara and Gill, 2012; Thiara and Harrison, 2016; Thiara and Humphreys, 2017).

Mothers could also be left to deal with the negative effects on and distress of children as a result of contact with their fathers, and the disruption caused by fathers' inconsistent and unreliable contact (Coy *et al.*, 2012; McLeod, 2018; Thiara and Gill, 2012; Thiara and Harrison, 2016). Perpetrators could use contact to control women by regularly changing contact arrangements or failing to attend contact when arranged or ordered. This created uncertainty for the family who were always waiting for changes in contact and were unsure when the perpetrator might just 'turn up' (McLeod, 2018).

6.3 The experiences, risks and outcomes for children of post-separation contact with abusive parents

The research reviewed reveals that children's continued involvement with a parent who perpetrates domestic abuse carries the risks of physically, sexually and emotionally abusing and neglecting children, maintaining controlling, dominant or bullying relationships with children, abducting children, harming children who are 'caught up in the cross-fire', witnessing the abuse of their mothers, being co-opted into the abuse of their mothers, and at worst, children being killed (Callaghan *et al.*, 2018; Harne, 2011; Holt, 2015; Holt *et al.*, 2008; Morrison, 2015; Mullender, 2004; Radford and Hester, 2006; Saunders, 2004; Stanley, 2011; Sturge and Glaser, 2000; Thiara and Gill, 2012; Women's Aid, 2016). The risk of child homicide during contact with abusive fathers has been highlighted by studies of serious case reviews (Brandon *et al.*, 2009; Saunders, 2004; Women's Aid, 2016). In such cases, child killings have been identified as acts of revenge or extreme examples of fathers asserting power and control (Harne, 2011). A mother interviewed by Thiara and Gill (2012) reported that:

I said to my son 'dad was saying that you wet the bed. You don't wet the bed do you'. And he said 'no'. And then afterwards he goes 'actually mum I do'. He said 'well what I do is I try not to sleep because I'm so scared that I'm going to wet the bed and they tease me calling me [names] ... and it was horrendous. I mean by the time we got home I was in floods of tears, just the stuff he was coming out with. Earlier his dad actually came at me and pushed me while he was shouting at

me and stuff and [son] said 'that's nothing mum. He shouts at me even worse'. And then with that [son] started to disclose that his dad had beaten him and that [new partner] and his dad argue like that all the time. (AC7) (ibid, p71)

Children can experience high levels of neglectful care of their basic needs during contact, such as not having their nappies changed, being fed only sweets or being left alone to watch television for long periods (Coy *et al.*, 2012; Harrison, 2008; Thiara and Gill, 2012; Thiara and Harrison, 2016).

Accounts from mothers interviewed by Harne (2011) indicated that regular ongoing contact with their children did not help to improve violent fathers' parenting but provided a context where children continued to experience prolonged abuse. Mothers described babies being returned in unchanged nappies and in soiled clothes covered in excrement, and children being sat in front of the television for hours. 'Tina' described the effect of continuing emotional abuse on her seven-year-old daughter:

Coming back from contact they are very quiet – they don't speak. It was after a few days they started saying he's told them mummy will go to prison if they don't go – Since they've known they are going for staying contact, Jane [the older child] has asked me what should they do when they wake up – should they stay in the bedroom? I say she should ask him and she says, 'I'm too frightened, I'm too scared to ask him.' He's not hitting them – he's a control freak – he doesn't have to say anything – he only has to look and it's the tone of his voice – he knows they are terrified of him – Jane is now crying all the time and abusing herself, she rubs herself and is very sore and won't sleep. I stay up till 11 or 12 'clock reading to her because she won't sleep. (Tina) (ibid, pp146–147)

Accounts by the fathers interviewed by Harne (2011) revealed that for younger children, contact started out limited and often informally supervised, for example, by grandparents. Where contact had progressed to being unsupervised, including overnight, this created serious risks for the children. 'Tom', for example, described how he had intimidated his children because they were constantly badgering him for attention and he found himself "losing patience" and "the same patterns of abuse coming back" when the children woke

up too early and made demands on him, even though overnight contact had just started (ibid, p146).

Contact can also lead to abusers tracking down women and children, leading to the mother and child repeatedly moving home. This means disruption to children's education as well as repeatedly leaving behind friends, family, pets and possessions (Harne, 2011; Morrison, 2016; Mullender, 2004; Stanley, 2011). Two of the children interviewed by Radford *et al.* (2011) had moved home eight times and school seven times to try to escape from their violent father. The children they interviewed spoke of wanting to have a 'normal' childhood, free from fear.

Children can be exposed to the physical, psychological and sexual abuse and coercive control of their mother during contact, even when contact takes place at supervised or supported contact centres, or when grandparents informally supervise contact (Harne, 2011; Holt, 2015; Holt *et al.*, 2008; Morrison, 2015; Radford and Hester, 2006; Stanley, 2011). For South Asian and African-Caribbean women, such abuse could be perpetrated by or in the company of wider family members (Thiara and Gill, 2012). An African-Caribbean mother reported that:

The arrangement was for me to drop them off at his dad's house and even then an act of violence broke out then when I dropped them off where he tried to snatch the phone out of my hand and then bent my fingers back. So I called the police and reported the incident to the police. (AC8) (ibid, p141)

A common form of emotional abuse that children can experience as a result of contact with domestically abusive fathers is the use of children to denigrate and undermine their mothers by interrogating children about their mothers' lives, making negative comments about their mothers, insulting and denigrating mothers when children are present, asking children to relay abusive or subtly threatening messages, manipulating or bribing children to provide information about and 'spy' on mothers (Coy *et al.*, 2012; Harne, 2011; McLeod, 2018; Radford and Hester, 2006; Stanley, 2011; Thiara and Gill, 2012; Thiara and Harrison, 2016). Some fathers interviewed by Harne (2011) described threatening mothers through children and/or deliberately insulting mothers in front of the children during contact visits to get back at them. A mother interviewed by Morrison (2015) reported that:

He's said a lot of nasty things to Lisa [daughter]. Like I'd drop her off and he said, 'You know your mum's not coming back for you. Your mum's away with all these different men.' And I wasn't, I was coming back here [the refuge] and he said all these nasty things to her and she asked him to phone me, and he wouldn't let her phone me. (Jane) (ibid, p280)

This occurred on the first overnight contact visit since the parents' separation, and the child had to spend the night not knowing whether her mother would return.

South Asian women living in the UK interviewed by Thiara and Gill (2012) reported that fathers would use informal contact to 'buy' children to 'get them on their side' by showering them with gifts, or to use children to 'quiz' and insult women:

He goes when your mum takes you to school, where does she go? She goes to work. No then she goes to see all her boyfriends. I said why are you talking to them like this for, issues between me and you are between me and you, don't bring the kids into it. And he started shouting. (SA2) (ibid, p83)

Indirect contact could also be used to undermine mothers by, for example, demeaning mothers in letters, emails or text messages, or it could be used to check up on women's movements and activities (Coy *et al.*, 2012; Sturge and Glaser, 2000; Thiara and Gill, 2012). Men's continuing manipulation of children during contact was seen by the women interviewed by Thiara and Gill (2012) as difficult to monitor, particularly if a final hearing had taken place. Few women had the strength to take the case back to court, choosing instead to put up with the abuse.

Children may experience confusion, distress and feeling let down if their fathers are inconsistent, unreliable or fail to turn up for contact (Holt, 2015; Thiara and Gill, 2012; Thiara and Harrison, 2016). Some studies highlighted how fathers could strenuously pursue contact through the courts but then fail to attend or stick to the arrangements, with mothers being left to manage the effects on children (Coy *et al.*, 2012; Thiara and Harrison, 2016). "He hasn't seen them for two weeks. He's allowed to see them once a week. He hasn't seen them because he chooses not to' (Erika)" (Coy *et al.*, 2012, p70). A few fathers interviewed by Harne (2011) who were applying to court for contact, or were seeking more contact, indicated that they had not really thought about what they would do

with their children during contact. African-Caribbean women interviewed by Thiara and Gill (2012) tended to deal with contact issues themselves and follow informal routes. In these circumstances, men rarely stuck to the agreed arrangements, came and went as they pleased, expected women to accommodate their visits and often did not turn up at all, leaving women to deal with the children's disappointment. Consequently, men's relationships with their children were generally described as 'on and off'.

Morrison (2015) found that the ongoing domestic abuse had negative impacts on the parents' relationships, with a total absence of parental communication. Some women had to change their telephone numbers to minimise harassment and some fathers refused to share their telephone numbers with women. Children became go-betweens or messengers between parents about contact arrangements, but this could extend to threats from fathers to mothers. So, "far from being 'all over now', the relational consequences of domestic abuse continue through contact and leave children vulnerable to continued parental conflict and exposure to abuse" and having to navigate the dynamics of their parents' relationships (ibid, p283).

Studies by Cafcass and Women's Aid (2017), Harne (2011), Harrison (2008), Holt (2018), Radford and Hester (2006), Stanley (2011) and Thiara and Harrison (2016) reveal that the effects on, and outcomes for children are poorest when post-separation contact is the site for continuing domestic abuse. Children may display aggression, withdrawal, inappropriate sexual behaviour, PTSD symptoms, suicidal behaviour, delayed speech, incontinence, nightmares, and physical symptoms such as hair loss and skin disorders.

I would say that most of the children I'm seeing have got some signs and symptoms of post trauma, whether it's developed into a disorder or not. While they're recovering and while they're very much in their symptoms, I just think contact makes it worse. I can't see how contact with an unsafe father would make that better in any way at all or would alleviate any of the symptoms of post trauma that I'm seeing at all. It makes them worse. (DV4) (Thiara and Gill, 2012, p73)

Sturge and Glaser (2000) explained that the overall risk of continued contact between children and violent parents "is that of failing to meet and actually undermining the child's developmental needs or even causing emotional abuse and damage – directly through the

contact or as a consequence of the contact” (ibid, p617). Research by Callaghan *et al.* (2018) and Coy *et al.* (2012) indicates that children’s memories of domestic abuse and the fear they experience can last long past separation.

Children can, however, recover from the impact of domestic abuse when they are in a safer environment, but ongoing contact with the abusive parent can create difficulties for children’s ability to recover and sustain recovery (Katz, 2016). Humphreys’ (2006) review of the literature found that children who are not continually subjected to post-separation abuse as a result of child contact show a much stronger pattern of recovery.

6.4 Children’s views on post-separation contact with a domestically abusive parent

Twelve UK studies and an Irish study were identified which explored and/or reviewed the literature on children’s views on post-separation contact with fathers who were perpetrators of domestic abuse (though none were identified exploring their views on contact with domestically abusive mothers) (Aris and Harrison, 2007; Cafcass and Women’s Aid, 2017; Callaghan *et al.*, 2018; Fortin *et al.*, 2012; Harne, 2011; Holt, 2015 (an Irish study); Morrison, 2009, 2016; Radford *et al.*, 2011; Stanley, 2011; Thiara and Gill, 2012; Thiara and Harrison, 2016; Trinder *et al.*, 2013). Some of this research revealed that children have widely varied, conflicted, mixed and ambivalent feelings and views about their fathers and contact (Aris and Harrison, 2007; Harne, 2011; Morrison, 2009, 2016; Radford *et al.*, 2011; Stanley, 2011; Thiara and Gill, 2012; Thiara and Harrison, 2016; Trinder *et al.*, 2013). These feelings ranged from being happy to see their fathers and missing them when they did not see them, feeling okay about contact, having hugely mixed feelings, and experiencing fear and dread. Some children had conflicting feelings of loving and wanting to see their fathers provided they stopped being abusive (Radford *et al.*, 2011). Even children who wanted ongoing contact found it a strain when fathers put pressure on them to find out information about their mothers (Harne, 2011).

Some studies reported negative views about contact from children who were afraid of their fathers, had no affectionate bonds with them, experienced poor quality contact, or their fathers getting ‘fed up’ with them after a short time during weekend contact (Harne, 2011; Morrison, 2009; Thiara and Gill, 2012). Over half the children who participated in Thiara

and Gill's (2012) research still feared their father's anger and described still feeling scared; they were strongly opposed to contact. Research by Cafcass and Women's Aid (2017) found that some of the children interviewed had strong views about contact, with older children less likely to want to have contact with a parent who had been physically violent towards them or another member of the family.

The strongest emotion that children interviewed by Morrison (2009) reported was fear, which dominated their feelings about their fathers. One child described the conditions that would be necessary for him to feel safe enough to have contact with his father: "where there are CCTV cameras or guards. Something where someone could see what was happening, like going swimming there's a lifeguard to see what's happening' (boy, 9)" (ibid, p2). These children reported feeling anxious before contact with their fathers, being unable to sleep the night before contact and having 'a sore belly' or 'sore head'. All of the children interviewed were concerned that contact would be an occasion for further abuse of their mothers or themselves, and that their fathers would be angry with them for living with their mothers or reporting the abuse to agencies, which caused them to feel anxious and guilty: "Cos I kind of don't actually look forward to the visits and stuff cos ... I'm scared I'm going to slip up and say something that I ain't meant to say' (girl, 13)" (ibid, p2). Even those children interviewed by Morrison (2009) who were happy not to be seeing their fathers all expressed some sadness and loss about their fathers. However, these feelings of loss seemed to be concerned with an ideal conception of what a father 'should' or 'could' be like, rather than their own lived experiences of their fathers.

Domestic abuse was a core concern for many children interviewed by Morrison (2016) for her more recent study and explained why some children did not want contact with their fathers, which they found distressing. This distress was compounded, for some, by contact being court ordered, which they experienced as forced rather than wanted. Others wanted contact if, for example, their father was not 'in one of his moods'.

The research studies reviewed reveal that the priority for nearly all children, even those who do want a relationship with their fathers, is safety, for themselves, their mothers and the rest of their families (Harne, 2011; Morrison, 2009; Radford *et al.*, 2011; Thiara and Harrison, 2016). Children interviewed by Thiara and Gill (2012) who reported that their fathers' behaviour had genuinely changed felt very positive about seeing them.

The quality of contact with fathers who were perpetrators of domestic abuse was also very important for children. If children perceived a lack of commitment or genuine interest in them by their fathers, including being inconsistent and unreliable, spending little time with them during contact, or failing to engage with them actively, children found contact to be an unrewarding experience (Fortin *et al.*, 2012; Harne, 2011; Holt, 2015): “‘Sometimes he makes up an excuse and then he doesn’t see us. ... so we’re just hanging around for ages waiting.’ (Cathy, 9)” (Holt, 2015, p216). The quality of the father-child relationship was a determining dynamic affecting the contact experience for most if not all of the children and young people interviewed by Holt (*ibid*). In her later study, Holt (2018) found a similar theme, with children reporting that mere father-presence was not enough:

*He doesn’t really make a lot of effort when we go over ... like quite often he has no plan whatsoever, no clue what he wants to do. He says he’s working on his phone and he’s just constantly texting, or he’s looking at his phone, and his phone is glued to his face. The other two [younger brother and sister] get bored and kick off and then he gets angry. Same every time, you can predict what’s going to happen. (Emily) (*ibid*, pp466–467)⁸*

Callaghan *et al.* (2018) undertook the first UK study to explore children’s views and perceptions of contact with fathers who perpetrated coercive and controlling abuse. This study found that the children and young people participating in the research were very aware of fathers’ attempts to exercise control, and described some post-separation contact as constituting deliberate attempts to disrupt, control and manipulate. ‘Alison’ revealed the impact of abusive control on her own and her family’s lives:

*Yeah, he spent 3 years, and then we went to this court thing and then, he got this thing to say that he can see us kids, but ((.)), he’s been messing my mum about, first he goes like “yeah it’ll be on a Thursday after school for a couple of hours,” so we could still go to our Nan’s for Sunday dinner, so now we hardly see my Nan, and then, like he’s changed it to wanting the whole of Sunday ((.)) ‘cause he was busy on a Saturday. Mum’s like “No,” but she had to do ‘cause he, he went to court again. (Alison) (*ibid*, p1562)*

⁸ Both studies by Holt (2015, 2018) were conducted in Ireland.

'Jess' demonstrated an understanding of her father's attempts to obtain information about her mother and how she resisted this:

I think the last year or so it's made me think, 'I'm not going to answer my phone if you're going to ask about mum. I'm not going to answer my phone if you're going to ask me questions. I will answer my phone if you say hi Jess how's your day? And I will answer my phone if you're going to give me money'. (ibid, p1569)

Fortin *et al.* (2012) explored the views of young adults on the contact they had as children with their non-resident parents after their parents had separated. The factors which made it more likely for respondents to rate their experience of contact with the non-resident parent positively, many of which were linked, included:

- the parents involved their children in the decision-making and arrangements for contact
- there was little or no post-separation conflict between the parents
- there was no domestic violence or serious concerns about the care the non-resident parent could provide
- the child enjoyed a good pre-separation relationship with the non-resident parent
- the non-resident parent made an effort to make contact an enjoyable, child-focused experience, made time for the child, and demonstrated their commitment to the child
- the resident parent encouraged the relationship between the child and the non-resident parent
- the parents were flexible over the contact arrangements and prepared to accommodate the child's needs as he/she grew older

The researchers found that the conditions for continuous and positive involvement of the non-resident parent with the child were laid down before the parents' separation. Interviewees who had enjoyed a very close pre-separation child-parent relationship were more likely to report a positive experience of contact. Contact was less likely to be positively rated where there was domestic violence or serious concerns about the non-resident parent's care of the child. For a few respondents, concerns about violence, excessive drinking or bizarre behaviour meant that they did not feel safe with the non-resident parent. The contact experiences of respondents who identified domestic

violence, their own abuse or serious welfare concerns were typically quite poor and in almost all cases they chose to end or suspend contact themselves.

It was extremely rare for respondents to report that the resident parent had prevented contact or tried to undermine the relationship between the child and the non-resident parent. It was even more rare for respondents to say that resident parents had done so for no good reasons. A strong and consistent theme was the extent to which resident parents had encouraged the relationship between children and non-resident parents, in some cases even when they had themselves sustained domestic abuse and even when the children themselves opposed the contact. Sixty-two percent of respondents attributed responsibility for contact not happening at all or not being regularly maintained to the non-resident parent, mainly because of that parent's lack of commitment to the child. There was overwhelming agreement that there were circumstances, such as an abusive parent-child relationship, where contact should never take place, that children should not be forced to continue with contact arrangements against their will, and that no contact was better than bad contact.

7. Parents' and children's experiences of the Family Courts

7.1 An overview of the research on the family justice system's response to domestic abuse in private law children proceedings

Section 1(1) of the CA 1989 states that when a court determines any question relating to the upbringing of a child, “the child’s welfare shall be the court’s paramount consideration” (the ‘welfare principle’). In England and Wales and in many other jurisdictions the ‘pro-contact’ culture of the family courts means that they strongly promote ongoing relationships between children and both their parents following separation (Bailey-Harris, Barron and Pearce, 1999; Harding and Newnham, 2015; Kaganas, 2018), even in circumstances of domestic abuse (Barnett, 2014; Harrison, 2008; Hester, 2011; Hunt and Macleod, 2008). Since the late 1970s family policy and legal decision-making and professional practice in family proceedings has been shaped by the strong assumption that children need contact with non-resident fathers for their emotional, psychological and developmental health (Hunter, Barnett and Kaganas, 2018; Kaganas and Day Sclater, 2004; Kaganas, 2018), leading to what has been described as a de facto ‘presumption of contact’ (Bailey-Harris *et al.*, 1999; Hunt and Macleod, 2008).⁹ Behind this assumption, however, lies a contingent, contradictory and ambiguous body of research, clinical findings and theoretical literature that reveals no firm conclusions on how children’s welfare on parental separation can best be served (see Barnett, 2014 for a review of this literature). It is in this context that case law developed which interpreted the welfare principle almost solely in terms of the child’s ‘need’ to maintain contact with non-resident parents (Kaganas, 2018). The higher courts have repeatedly emphasised that ‘cogent’ or ‘compelling’ reasons are required to refuse contact, that courts should not ‘give up’ on

⁹ There are differences between a legal presumption such as the statutory presumption of parental involvement in Section 1(2A) of the Children Act 1989 (see below, p 49), which courts are obliged to apply, ‘de facto’ presumptions, which arise out of an assumed consensus (as explained by Thorpe LJ in *Re L, V, H, H (Contact: Domestic Violence)* [2000] 2 FLR 334), and a perception (a belief or opinion based on how things seem).

trying to ensure that contact happens, and that “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]).¹⁰ The higher courts have also emphasised that courts should take a medium- to long-term view and not accord too much weight to what appear likely to be short term and transient problems, although Perry and Rainey (2007) suggest that this disregards the interests of the child in the ‘here and now’ and could cause serious current harm to children. The general approach of the courts is summed up by Wood J in *Re B (a 14 year old boy)* [2017] EWFC B28 (Fam), drawing on the judgment of Munby LJ in *Re C (A Child)* [2011] EWCA Civ 521:

26. What the judge in Re: C did was to reduce the fundamentals to the following bullet points:

(i) Contact between parent and a child is a fundamental element of family life and is almost always in the interests of the child;

(ii) Contact between parent and child is only to be terminated in exceptional circumstances where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it would be detrimental to the child’s welfare;

(iii) The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact...

(iv) The court should take a medium term and long term view and not accord excessive weight to what appear to be likely to be short term or transient problems; ...

(vi) ... [T]he welfare of the child is paramount. The child’s interests must have precedence over any other consideration.

¹⁰ See also *Re S (Contact: Promoting Relationship with Absent Parent)* [2004] EWCA Civ 18; *Re M (Children)* [2009] EWCA Civ 1216; *Re T (A Child: Suspension of Contact: Section 91(14) CA 1989)* [2015] EWCA Civ 71.

Because of the overriding importance attributed to contact, mothers who oppose or seek to restrict contact have been seen as ‘implacably hostile’, that is, selfish, manipulative, irrational or unreasonable or, more recently, as potentially ‘alienating’ their children against their fathers (see further below, pp57–59).

Courts and professionals operate not only with the assumption that contact is ‘good’ for children, but also with a perception, which appears to be developing into a presumption, that conflict and contested court hearings are ‘bad’ for children because they polarise parents and encourage acrimony and conflict (Hunt and Macleod, 2008; Kaganas, 2011; May and Smart, 2007). This has been associated with a strong imperative by judges and legal and child welfare professionals to encourage agreement for contact (Bailey-Harris, Davis, Barron and Pearce, 1998; Hunter and Barnett, 2013). Parents are therefore encouraged by judges, lawyers and officers of the Children and Family Court Advisory and Support Service (Cafcass) to reach agreement for child arrangements/contact out of the court arena, leading to the promotion of mediation and other forms of dispute resolution (Barlow, Hunter, Smithson and Ewing, 2017; Buchanan *et al.*, 2001; Hunt and Macleod, 2008; Hunter and Barnett, 2013; Wasoff, 2005).¹¹

Numerous socio-legal studies have identified how a strong presumption of contact has led to domestic abuse being marginalised within private law children proceedings, which may conflict with a focus on protecting children from harm (Anderson, 1997; Barnett, 2000, 2014; Birchall and Choudhry, 2018; Coy *et al.*, 2012; Harrison, 2008; Harding and Newnham, 2015; Hester, Pearson and Radford, 1997; Hester and Radford, 1996; Kaganas and Piper, 1999; Morrison, 2015; Perry and Rainey, 2007; Radford and Hester, 2006; Trinder *et al.*, 2013). While gendered violence was increasingly recognised from the late 1960s as a significant social problem (Hague and Wilson, 1996), male violence towards women was seen as entirely separate from children’s welfare (Eriksson and Hester, 2001). The connection between the welfare of children on parental separation, and the perpetration of domestic abuse by parents was almost totally absent. The UK government has pursued strategies to end violence against women and girls by focusing on criminal prosecutions, and local authorities take the protection of children from

¹¹ Cafcass represents children in family court cases in England. Its duty is to safeguard and promote the welfare of children going through the family justice system. The equivalent service in Wales is Cafcass Cymru.

exposure to domestic abuse to be a central part of their child protection role (Hunter *et al*, 2018). However, domestic abuse policies in England and Wales rarely address the area of private family law. Hester (2011) observed that the “differences in cultures, laws, policies and practices” between professionals working in criminal justice, child protection and family law proceedings are so striking that they could be said to occupy three different planets (ibid, p850). On the child protection planet, local authorities can pressurise victims (usually mothers) to cut all ties with abusers with the threat of removing children into care if the victim ‘fails to protect’ them. Paradoxically, victims in private law cases can be pressured to agree to contact between children and perpetrators of domestic abuse (Hester, 2011; Radford *et al.*, 2011).

A pioneering study by Hester and Radford (1996) revealed that the perceived importance for children of maintaining contact with non-resident fathers led courts and professionals to minimise domestic abuse and to focus on persuading mothers to agree to contact rather than on fathers’ behaviour, with the result that very few of the contact arrangements agreed or ordered were ultimately safe. Subsequent research supported these findings (Barnett, 2000; Hester *et al.*, 1997; Kaganas and Piper, 1999). This research led to strenuous attempts by policy-makers and the Court of Appeal to bring about a fundamental change in the way judges and professionals respond to domestic abuse in child contact cases to secure the safety and wellbeing of children and non-abusive parents, which are discussed in further detail in Section 8. However, research studies have repeatedly identified the continued dominance of the ‘contact at all costs’ approach at the expense of safeguarding and welfare (Barnett, 2014; Birchall and Choudhry, 2018; Coy *et al.*, 2012; Harding and Newnham, 2015; Harrison, 2008; Morrison, 2015).

In March 2010, the UK government appointed a board to carry out a review of the family justice system (Family Justice Review Panel, 2011). Part of its remit was to consider whether the Children Act 1989 should be amended to include a statutory presumption of shared parenting following representations from fathers’ rights groups for such an amendment (ibid; see also Kaganas, 2013, 2018). The review considered evidence of the Australian experience of shared parenting legislation. Section 60CC of the Australian Family Law Act 1975, which was introduced with other amendments in 2006, required the courts to regard two matters as ‘primary considerations’ when determining arrangements

for children (known as the ‘twin pillars’ approach): the benefit to children of having a meaningful relationship with both parents and the need to protect children from harm. Australian studies by Chisholm (2009), Kaspiew *et al.* (2009) and McIntosh, Smyth, Kelaher, Wells and Long (2010), which were considered by the panel, found that the ‘meaningful relationship’ element was being measured in quantitative terms and was being prioritised over the protection of children from harm element leading to risks for children. Taking these studies and other evidence into consideration, including the existing approach of the courts discussed above, the final report of the Family Justice Review recommended against a statutory presumption of parental involvement, stating that “the core principle of the paramountcy of the welfare of the child is sufficient and that to insert any additional statements brings with it unnecessary risk for little gain” (Family Justice Review Panel, 2011, p141 para 4.40). Nevertheless, the UK 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 Children and Families Act 2014 introduced a statutory presumption in Section 1(2A) of the Children Act 1989 that requires courts to presume that involvement of a parent in the child’s life will further the child’s welfare so long as that parent can be involved in a way that does not put the child at risk of suffering harm. It is presumed that a parent’s involvement will not put the child at risk of harm unless there is evidence to the contrary. Kaganas’ (2018) analysis of reported child arrangements cases 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. However, there was anecdotal evidence and indications from the case law that lower courts were using it in cases of abuse, and that it could be adding to pressure on mothers to agree to contact which is damaging to children. Similarly, the majority of judges and professionals interviewed by Harwood (2019) did not consider that the statutory presumption had any impact on outcomes on the basis that a pro-contact presumption already exists in practice. However, a minority of interviewees felt that the statutory presumption has changed outcomes by shifting the balance in favour of domestically abusive parents and that it is being misinterpreted in practice as an inevitability that contact will take place.

These themes are further explored in the research literature, including the way courts and professionals respond to allegations of domestic abuse in private law children cases, and the experiences and views of parents and children affected by these responses.

7.2 The response of courts and professionals to allegations of domestic abuse

Studies undertaken over the past 12 years reveal that judges, lawyers and child welfare professionals all operate on the presumption that there should be contact unless there are overwhelming reasons to the contrary, and that courts ‘bend over backwards’ to try to achieve this, even in circumstances of proven domestic abuse (All-Party Parliamentary Group on Domestic Violence, 2016; Barnett, 2014; Birchall and Choudhry, 2018; Coy *et al.*, 2012, 2015; Holt, 2017; Hunt and Macleod, 2008; Macdonald, 2015; Perry and Rainey, 2007; Thiara and Harrison, 2016). Thiara and Gill (2012) found that Cafcass officers and family lawyers equated positive outcomes in child contact cases with ensuring that some form of contact took place:

There isn't actually a case which says a presumption of contact, but our advice always is prefixed with that, that it is in the best interests of the child for him or her to have regular contact with the father for their emotional security, their identity, all of that. And there has to be exceptional grounds for them not to have contact.
(S3) (Thiara and Gill, 2012, p105)

The research studies referred to above found that domestic abuse may be misunderstood, and therefore minimised, marginalised and downgraded by professionals because of their strong pro-contact stance.

Because contact is seen as undeniably beneficial for children, this has led to a widespread view among courts and professionals that women who oppose or seek to restrict contact or even raise concerns about it, are ‘implacably hostile’ – irrational, unreasonable, petty, obstructive or malicious (Barnett, 2014, 2015, 2017; Harding and Newnham, 2015; Harrison, 2008; Holt, 2015; Hunt and Macleod, 2008; Hunter and Barnett, 2013; Thiara and Gill, 2012; Thiara and Harrison, 2016; Women’s Aid, 2016). Hunt and Macleod (2008) found that resident parents who were suspected of not being sufficiently committed to

contact could be subject to criticism by professionals and a 'robust' response from courts, even where their concerns might be well-founded. However, Hunt and Macleod (2008) found that implacable hostility was rare, present only in around 4% of the cases reviewed. Similarly, Trinder *et al.* (2013) and Harding and Newnham (2015) found that in many case files, there were clear and convincing reasons why contact had been stopped, which represented serious concerns for child safety rather than malicious attempts to block contact. Research has consistently found that most mothers, including those who have experienced domestic abuse, try to promote contact as long as this is safe (Coy *et al.*, 2012; Fortin *et al.*, 2012; Holt, 2017; Hunt and Macleod, 2008; Morrison, 2015; Radford and Hester, 2006; Thiara and Harrison, 2016; Women's Aid, 2016).

Studies have found that the view of mothers as implacably hostile, and a general distrust of women involved in private family law children's cases, has led to a common perception among courts and professionals (although to a lesser extent Cafcass officers) that mothers raise false allegations of domestic abuse for ulterior motives, principally to delay proceedings and/or to disrupt the father's relationship with the child (Barnett, 2015, 2017; Coy *et al.*, 2012; Harrison, 2008; Harwood, 2019; Hunter and Barnett, 2013; Thiara and Harrison, 2016). Harrison (2008) and Thiara and Gill (2012) found that practitioners sometimes assumed maternal influence to disregard children's wishes and feelings.

Hunter and Barnett (2013) noted that whenever objective efforts are made at quantifying 'false allegations' of domestic abuse, the proportion of unfounded allegations turns out to be very small. Allen and Brinig (2011) found not only that 'false' allegations in divorce proceedings (including in applications for protective injunctions) constituted only a very small proportion of domestic violence claims, but that the ratio of men to women making false claims was 4:1. Some professionals interviewed by Harwood (2019) commented that the prevalence of false allegations is hard to gauge because they are so rarely tested.

In addition to 'implacable hostility', in recent years, mothers have increasingly been accused of parental alienation, that is, of deliberately or unintentionally causing the unwarranted rejection by the child of their father (Barnett, (2020); Doughty, Maxwell and Slater, 2018). This is a complex issue which has given rise to a differing range of views, although there is some consensus that the concept of parental alienation should not apply to children who resist contact due to experiencing domestic abuse (Cafcass, 2018;

Doughty *et al.*, 2018). Its historical origins have been considered problematic in obscuring the complexity of parent-child relationships (Sheehy and Lapierre, 2020). There is no commonly accepted definition of parental alienation (Cafcass, 2018; Doughty *et al.*, 2018) as well as an absence of robust scientific and empirical studies on how it is or should be identified, understood, assessed and treated, the majority being US studies with methodological limitations (Doughty *et al.*, 2018, 2020). Empirical research undertaken in the US (Meier, 2020; Meier and Dickson, 2017) and Canada (Neilson, 2018) found that claims of parental alienation were used to negate allegations of domestic and sexual abuse. Little empirical research is available on parental alienation in family court proceedings in England and Wales. Barnett's (2020) review of the published and reported judgments from January 2000 to May 2019 found that a large proportion of cases involved indications or findings of domestic abuse (ranging from over 50% to 80% at various time periods), which in some cases 'disappeared' once the focus was on parental alienation. Birchall and Choudhry (2018) found that allegations of domestic abuse could even be used against women as 'evidence' of parental alienation.

While courts and professionals expect mothers to facilitate, encourage and 'go the extra mile' to ensure that contact works, fathers can be commended simply for applying for contact (Barnett, 2020; Eriksson and Hester, 2001; Kaganas and Day Sclater, 2004). Studies reviewed found that professionals rarely evaluated the parenting or motives of domestically abusive fathers, and that perpetrators of domestic abuse could be treated with more sympathy, latitude and understanding than victims of abuse, with a general reluctance to see fathers, including perpetrators of abuse, in a negative light (All-Party Parliamentary Group on Domestic Violence, 2016; Barnett, 2014; Harrison, 2008; Thiara and Gill, 2012; Women's Aid, 2016). The House of Commons Home Affairs Committee (2018) heard evidence that "survivors are slipping between the cracks between the two court system – where a perpetrator of domestic abuse is seen as a violent criminal in the criminal courts, but a 'good enough' parent in the family courts" (2018, p36).

A key theme arising from Thiara and Gill's (2012) interviews with professionals was the view of South Asian women homogenously lacking the ability to be challenging and assertive – however, where women did question professionals, they tended to be viewed negatively by them. Cafcass practitioners reported having to undergo huge learning curves

in relation to violence in South Asian families, particularly in relation to believing what they were told by women and recognising the barriers to women accessing help and leaving abusive households. A Cafcass officer observed:

I had to do quite a jump to recognise and to believe some of the stories that were told, particularly within the Asian community about everyone beating this woman up or the way that she's treated in the family. I'm like, that can't be so because why didn't you do this, and it was a process that I had to manage personally. (C-G2) (ibid, p88)

7.3 The response of courts and professionals to children's participation in court proceedings and decision-making

Article 12 of the United Nations Convention on the Rights of the Child 1989 enshrines the rights of children to have their perspectives included and taken into account in legal proceedings that affect them. This is given expression in private law children proceedings by the 'welfare checklist' in Section 1(3) of the CA 1989, which requires courts to consider, as the first item in the list, "the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)". Eriksson and Nasman (2008), Holt (2018) and Macdonald (2017) found that hearing children's voices is not just their right, but also has inherent value and benefits for children. Involving children in legal and assessment processes can promote their self-esteem and a sense of empowerment or control by valuing them as experts in their own lives, and can enhance their capacity to cope with adversity. In the context of domestic abuse, listening to and responding to children's accounts of violence validates those experiences and decisions are better informed, thereby promoting children's safety and welfare (Eriksson and Nasman, 2008; Holt, 2018; Macdonald, 2017).

Some researchers have concluded that the tensions between recognising children's participation rights and the desire to protect children from the burden of responsibility for decision-making need not conflict, and that affording children participation rights also increases protection (Holt, 2018; Macdonald, 2017). Holt (2018) found that participation, for children, is not about self-determination but about listening to and respecting children's views and feelings.

A pervasive theme emerging from the research literature is that a 'selective approach' is taken to children's views, based on whether those views accord with the prevailing pro-contact culture – that children's views are taken seriously and may even be determinative if they want contact with their non-resident parent (although less so if the non-resident parent is the mother), but are more likely to be disregarded and discounted when they are opposed to contact (predominantly with fathers) (Caffrey, 2013; Coy *et al.*, 2012; Harding and Newnham, 2015; Harrison, 2008; Holt, 2018; Macdonald, 2017; Thiara and Gill, 2012). Some studies found that courts and professionals may not pick up on children's non-verbal cues and that children's fears and concerns about contact with abusive fathers were ignored, not taken seriously or were explained away as manifesting the resident parent's concerns, which invalidated those experiences and had serious implications for risk and safety (Caffrey, 2013; Harding and Newnham, 2015; Holt, 2018). Where children voiced reluctance or opposition to contact, studies have found that considerable efforts were made to persuade children to have contact, or to increase the amount of contact they were having (Caffrey, 2013; Harding and Newnham, 2015; Harrison, 2008; Thiara and Gill, 2012; Thiara and Harrison, 2016).

There are various ways children's views can be sought and represented in child arrangements/contact cases. These include being party to proceedings and represented by a guardian (usually appointed by Cafcass),¹² being separately represented, being interviewed by the judge, giving direct evidence or, most commonly, through a welfare report prepared by Cafcass (a Section 7 report).¹³

The extent to which children are consulted and listened to, the weight attached to their views, and the extent to which these views are determinative, have been explored in a number of studies (Harding and Newnham, 2015; Holt, 2018; Macdonald, 2017; Radford *et al.*, 2011; Trinder *et al.*, 2013). Some studies raised concerns that children were frequently excluded from participating in proceedings and therefore had no direct opportunity for their wishes and feelings to be taken into account in the decision-making process, with professionals being reluctant to talk directly with children and young people (Holt, 2018;

¹² Rule 16(4) of the Family Procedure Rules 2010 enables Cafcass to appoint a guardian to represent children who have been made parties to family proceedings.

¹³ Section 7 of the CA 1989 empowers the court to ask a Cafcass officer or a social worker to report on specified matters relating to the welfare of a child involved in private law children proceedings.

Radford *et al.*, 2011). Holt (2018) examined research by James, James and McNamee (2004) which found, from a review of 481 contact court files in the UK, that “interviewing each child seemed unnecessary because the professional already ‘knew’ what was best for the child based on universal assumptions of children’s best interests” (Holt, 2018, p462). Trinder *et al.* (2013) found that the extent to which children were involved varied substantially, with all children in the family being directly consulted in 36% of cases. Very similar findings were made by Harding and Newnham (2015), where the court was made aware of children’s wishes and feelings in 39% of parent cases, predominantly through Section 7 reports. Separate representation was rare (*ibid*).

Macdonald (2017) reviewed literature which suggested that adults ‘gate-keep’ children’s voices when deciding whether children have sufficient age and maturity to be consulted and whether their views should be taken into account in assessing their best interests. The research literature indicates that the older the child, the more likely it is that their views may be determinative (Harding and Newnham, 2015; Trinder *et al.*, 2013). However, some researchers have found that very young children are capable of understanding, participating and expressing a view if provided with age-appropriate environments and tools to meet their communication needs (Holt, 2018; Macdonald, 2017).

Macdonald’s (2017) analysis of Section 7 reports provides insight into the extent to which children’s perspectives were obtained and assessed by Cafcass practitioners. The majority of children interviewed were asked about their wishes and feelings about residence and/or contact, and consideration was given to most children’s views to some extent. Older children’s voices, particularly those who expressed strong views, were more influential in recommendations than those of younger children. The ways children’s views were presented in reports, the weight attached to their views, and the extent to which they influenced recommendations were strongly affected by whether or not the child wanted to have contact.

Children’s voiced preferences for contact were represented as straightforward, were positively influential in recommendations, and were never challenged on the basis that contact might be harmful to the child’s welfare. However, 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. “Across the reports

sample there was a strong sense of needing to *adjust* how these children viewed their father, in order to promote contact” (ibid, p7). Children’s accounts of abuse (as witnesses or direct victims) were brief, factual and with no exploration of or response to the children’s disclosures, which were minimised and disregarded in report recommendations, even in the most extreme and serious cases of domestic abuse. The predominant emphasis across the whole sample was on preserving or promoting the relationship between children and their fathers, despite children’s accounts of violence and abuse.

7.4 The views and experiences of victim/survivors of abuse of the family court process

The courts appear to be so pro contact that it doesn’t matter what the cost is in terms of a) the child’s welfare and b) the woman’s welfare ... No one’s asking the question at what cost? ... Because he’s her dad he has free rein to abuse me and make my life as difficult as possible all in the name of fatherhood, and the courts just see it, he’s her dad, he’s got a right to contact. (Bianca) (Coy et al., 2012, p68)

The research literature reviewed revealed that women experienced the ‘contact at all costs’ approach of family courts and professionals as highly problematic in the context of domestic abuse, which placed them under considerable pressure to concede to contact (Birchall and Choudhry, 2018; Coy et al., 2012; Thiara and Gill, 2012; Thiara and Harrison, 2016). Mothers felt that domestic abuse was not taken seriously and minimised by the courts and professionals involved in the child contact process, and that the dynamics and impact of domestic abuse were not understood, which left them feeling vulnerable and fearful of outcomes (Birchall and Choudhry, 2018; Coy et al., 2012; Thiara and Gill, 2012; Thiara and Harrison, 2016). Evidence from criminal proceedings and the existence of non-molestation orders could be deemed irrelevant to the contact application and women experienced their inability to raise the abuse confusing and frustrating (Coy et al., 2015).

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

they wouldn't hear of it ... All they wanted to know is when he could see them
(Erika) (ibid, p58)

The way applications in the civil courts for non-molestation orders were managed could have a detrimental effect on family court proceedings. A mother interviewed by Coy *et al.* (2015) who had applied for a non-molestation order was persuaded by the judge to agree to a cross-injunction being made against her as the only way to secure an injunction against her ex-partner to prevent him from approaching her: “I wasn't represented so I didn't understand the consequences, but now a few months down the line, the perception of CAFCASS is that we're as bad as each other' (Bianca)” (ibid, p65).

The research revealed mixed views by mothers of Cafcass practitioners. Some women interviewed by Coy *et al.* (2012) felt that Cafcass officers had understood their concerns about the potential impact on their children of having contact with abusive fathers. Women interviewed by Thiara and Gill (2012) reported that where Cafcass staff had insight into domestic abuse, were prepared to listen and were positive and respectful to women, this made a great difference to their experiences and they felt supported rather than undermined. However, some studies found that Cafcass reports failed to reflect women's accounts and concerns of abuse, minimising the abuse or not even mentioning it in their reports, and focusing instead on promoting contact (Birchall and Choudhry, 2018; Coy *et al.*, 2012; Her Majesty's Inspectorate of Court Administration (HMICA), 2005; Thiara and Gill, 2012).

A common theme of the research studies was the disbelief expressed by courts and professionals, including their own lawyers, when women raised concerns about domestic abuse, and the negative impact this disbelief had on them. This reluctance to validate women's experiences weakened their confidence that they and their children would be protected, and left them feeling degraded and belittled (APPG on DV, 2016; Birchall and Choudhry, 2018; Coy *et al.*, 2012, 2015; Harrison, 2008; Radford and Hester, 2006; Thiara and Gill, 2012; Thiara and Harrison, 2016):

I didn't feel my barrister believed me ... She said so much of it is uncorroborated, and I said 'some of it is corroborated, and this all went on behind closed doors'.

She said 'well this is what he's going to say and it's not like he ever threw bricks at you, you didn't have black eyes'. (Jessie) (Coy et al., 2012, p41)

Women interviewed by Birchall and Choudhry (2018) felt that they bore an unfair burden to prove that they were not fabricating allegations of abuse: "I felt I was treated like another spiteful woman getting revenge on an ex-husband by denying access to the children.' (Survey respondent)" (ibid, p24; see also Harrison, 2008). As a result of this disbelief and dismissal of women's concerns, women reported to Birchall and Choudhry (2018) that even raising domestic abuse as a safety factor in relation to child contact was perceived as attempts to obstruct contact for no good reason which further disqualified them and their children's experiences of abuse (see also Harrison, 2008; Thiara and Harrison, 2016). Women participating in a number of studies were dismayed to find themselves labelled unreasonable and obstructive of contact by Cafcass officers, social workers and other professionals if they raised concerns about contact (Birchall and Choudhry, 2018; Coy et al., 2012; Harrison, 2008; Thiara and Gill, 2012). This left many women "with an overwhelming feeling of powerlessness to protect their children" and a constant fear that their former partners would take them back to court (Birchall and Choudhry, 2018, p46). An African-Caribbean woman interviewed by Thiara and Gill (2012) felt that women could be "almost ... treated like a criminal for raising these concerns or trying to safeguard your child' (AC7)" (ibid, p51). Women participating in Harrison's (2008) and Birchall and Choudhry's (2018) research reported being made to feel neurotic, over-anxious and overreacting if they raised concerns about contact with violent fathers, which they experienced as marginalising the children's perspectives.

[The Cafcass report said] I was too over-protective as a mum and too anxious. The advice was for both parents to get on for the sake of the children and put the past behind us. I was described as being dramatic about our past relationship. The Cafcass officer also thought it was fine that guns were stored at my ex's house. (survey respondent) (Birchall and Choudhry, 2018, p37)

Another commonly expressed feeling among women in Birchall and Choudhry's (2018) sample was that the treatment they received from legal professionals and judges was humiliating and degrading:

I put my life on the line. The things that I told them – the truth, the honest truth, was so humiliating, things that I would never want to admit, I mean some of them, I can't even bring myself to say, that I admitted that he'd done, or that went on in our household. The treatment I got was so humiliating, degrading, and shocking. They delved into every single little aspect of my life and then said that I'd lied about it. But the things that I'd come out with – you couldn't make them up. (Focus group participant) (ibid, p47)

Some South Asian and African-Caribbean women interviewed by Thiara and Gill (2012) viewed judges as disconnected from their experiences and worlds and a few African-Caribbean women found them to be judgemental. The majority of their interviewees felt re-victimised by many professionals and ““very belittled, very diminished, not really listened to’ (SA26)” (ibid, p122).

However, where women did feel believed by legal representatives, judges, Cafcass officers and social workers, and where judges were insightful about domestic abuse, they felt more confident that the impact of abuse on themselves and the children would be factored into contact decisions, particularly where there was judicial continuity (Coy *et al.*, 2012; Thiara and Gill, 2012). Being well-supported by solicitors who understood the debilitating impact of domestic abuse increased women’s knowledge of and confidence in the legal process (Coy *et al.*, 2015).

Other issues that emerged from research studies by Coy *et al.* (2012, 2015) and Birchall and Choudhry (2018) were women’s frustration at the sympathy expressed by judges for violent fathers, and professionals being taken in and manipulated by perpetrators of abuse, who were charming and on their ‘best behaviour’. This led to social workers, in particular, being “convinced by men’s presentation as Dr Jekyll and [missing] the Mr Hyde of behind closed doors” (Coy *et al.*, 2012, p58; see also Birchall and Choudhry, 2018).

Many participants in Birchall and Choudhry’s (2018) research perceived that there was differential treatment between mothers and fathers by courts and professionals, with mothers being expected to be calm and accommodating while aggressive behaviour by fathers was tolerated in court:

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. (Survey respondent) (ibid, p29)

Women also reported being advised by their legal representatives not to raise allegations of domestic abuse on the basis that this would count against them and to 'pull themselves together' and 'move on' from the abuse:

Most concerning was my legal rep's attitude towards raising the subject of domestic abuse. Often telling me not to mention it so as not to get on the wrong side of the judge. Lots of times telling me to put the DV experiences behind me as this (the court case) was about sorting out arrangements for our child, not discussing the marriage break up. (survey respondent) (Birchall and Choudhry, 2018, p24; see also Coy et al., 2012)

Studies report mothers experiencing considerable pressure from courts, Cafcass officers, fathers and their own lawyers to agree contact arrangements or attend mediation, in some cases without any assessment of child welfare concerns or without obtaining children's views (Barlow et al., 2017; Harne, 2011; Hunter et al., 2018; Kaganas, 2018). If mothers resisted these attempts, this was not seen as arising from justifiable fear and concern for their children but as 'gatekeeping' and 'implacable hostility' by courts and professionals (Birchall and Choudhry, 2018; Holt, 2015). South Asian and African-Caribbean women interviewed by Thiara and Gill (2012) spoke about being pressurised by Cafcass to give men a chance even where men were repeatedly unreliable and had been given prison sentences, and generally felt that they were treated more harshly than fathers:

I have tried everything even agreed to contact yet Cafcass say to me that I must give him a chance. I went to court and was told that I was lying ... that I need to prove the abuse by medical evidence ... Cafcass and the solicitor put me under pressure to agree to contact, that I should give him a chance. Why? How many times? ... He never sticks to contact. If he did anything wrong, no problem. If I did anything wrong they would throw a mountain at my head. (SA9) (ibid, p93)

The studies discussed in this section support evidence from witnesses heard by the House of Commons Home Affairs Committee (2018) which described family court proceedings for victims of domestic abuse as traumatising and harrowing.

It is unacceptable that navigating the justice system can be as distressing for some victims as the abusive behaviour which they are seeking to escape, and that children may be placed in danger because of a lack of coherence between different parts of the justice system. (ibid, p38)

7.5 Children's views on their own participation in family court decision-making

Two studies were identified that focused specifically on children's views on their own participation in family court decision-making – Holt's (2018) Irish study and Cashmore's (2011) Australian study. Two further (UK) studies considered this issue as part of broader remits (Morrison, 2009; Radford *et al.*, 2011). These four studies showed that children and young people want information, communication and consultation, and believe strongly in their right to be heard but may not want sole decision-making authority to decide post-separation contact arrangements.¹⁴ Participation, for children, does not necessarily mean having a choice about contact, but being heard and having their views taken seriously, although many children do want to be involved in the decision-making process (Holt, 2018; Morrison, 2009; Radford *et al.*, 2011). Children interviewed by Morrison (2009) felt that their opinions were important and taking account of those opinions could make them safer, as it was their lives about which decisions were being made. Her respondents felt that 'forcing' a child to have unwanted contact with their father would have a detrimental effect on them.

Cashmore (2011) interviewed 47 children and young people aged between six and 18 years who were involved in contested court cases as well as those in non-contested cases. Her Australian study found an equal desire by children in both groups for a greater say in contact arrangements, although children involved in contested cases, particularly those children exposed to violence, abuse or high levels of parental conflict, felt more

¹⁴ There were no appreciable differences in this respect between the UK, Irish and Australian studies.

strongly about this. Children's reasons for wanting to have a say in contact arrangements included "the belief that this would ensure more informed decisions, better outcomes and happier children ... having some control over the process or the decision ... and their need for recognition and respect" (ibid, p517). However, having a say did not mean that children were happier with the residence or contact arrangements. The overriding concern for most of the children participating in this study was the quality of their relationships with their parents rather than the arrangements themselves. Most of the children interviewed (70%) indicated that being asked directly about what they wanted to happen in relation to residence and contact arrangements put them in "a difficult position", either because they worried that their parents would be hurt or upset, or, for children exposed to serious violence or abuse, their fear of the repercussions for themselves or the non-abusive parent (ibid, p518). Nevertheless, this latter group of children still wanted more say over the court's decision and more control over the way their views were sought and presented. Even though many of these children were separately represented or family report writers (the Australian equivalent of Cafcass officers) were involved, they wanted to be able to talk directly to the judge as they did not trust the interpretation of their views by others. Most of the children in protracted contested cases involving allegations of violence and abuse did not have a close relationship with their non-resident parent, had little contact with them, and were happy when their desire for less or no contact had been accepted by courts and professionals.

Holt's (2018) Irish study addressed children's views on participating in family court decisions about post-separation contact with domestically abusive fathers. No studies were identified which explore children's views on this issue specifically in relation to contact with domestically abusive mothers. The 24 children and young people participating in this study, who were aged between four and 24 years, had varied views on the extent to which they wanted to be involved in decisions about contact. A small number of children expressed concern about being asked to participate in the decision-making process, particularly if this involved talking to the judge. However, some children welcomed the opportunity to choose and were very clear that they would take this option if offered:

(I'd tell the Judge) that I want to stay with my mum and that my dad should give us money and he should have to see us like every Saturday and show up; we can go

if we want to or (not go) if we don't want to. I just want a choice ... I think I should be let (have) a choice. (Rachel, 11) (ibid, p469)

Children's self-esteem, sense of empowerment and relief was evident when their desire to have a choice, or their preference not to have a choice, was respected by the court. Additionally, children experienced positive benefits when they were listened to and decisions were taken on their behalf that reflected their viewpoints, without the burden of decision-making power:

Them [Contact Centre] making the decision that it wasn't safe for me to see my Dad made it easier for me ... I knew that they weren't just 'listening' to me, that they had actually heard me and that made me feel very safe. I'm not sure I could have made that decision myself ... I don't think I should have to. (Sara, 11) (ibid, p470)

The majority of the children and young people interviewed did not expect or want their views to be determinative, but believed that they should be given appropriate weight:

I don't really believe in fathers, like I think they're a bit useless, but that's just because of our experience, but maybe some of them could be, you know, ok, and they should be investigated properly, and have proper detailed statements from children whether or not they want to see them, instead of assuming it was good for ya and you'd miss out otherwise. They thought we were missing out, but how can you miss something (relationship with father) if you never rightly had it? I've never had it so I can't miss it. It's not rocket science ... if anyone had really bothered to listen, they could have figured it out pretty quickly, but their starting point was all wrong. (Eva, 16) (ibid, p47)

A major criticism concerned the small number of cases where children's views were factored into assessments, but the children perceived that the judge ignored or rejected the recommendations of the reports: "We didn't want to spend time with him [father] at all. The guy [psychological assessor] did (listen) but the Judge didn't (listen).' Todd (7)" (ibid, p468). Children and young people experienced being taken seriously and listened to very positively: "They [contact centre staff] were great. They really listened to me. [Staff] asked

me if I wanted to see my Dad and when I said that I didn't, they said that that was ok. I thought they would try to make me, but they didn't.' Eoin (13)" (ibid, p468).

With respect to younger children, Holt (2018) advocated against imposing standards of age and maturity; the issue, she argued, was not whether children were competent to participate, but "whether the methods used to elicit their views were appropriate and ... whether those methods were 'competently' administered" (ibid, p471). Assessors, therefore, need the skills to elicit the views of young children and the ability to hear what they are saying.

The children and young people interviewed by Holt (2018) revealed "a silenced majority of children ... who felt that no one cared what they thought or listened to them on the rare occasions they were asked for their opinion"; children who challenged the "presumption that contact is either in the child's best interests and/or something they actually want" (ibid, p467). Holt (2018) concluded that trying to protect children from involvement in the court process "is somewhat akin to closing the stable door after the horse has bolted and adds further insult to the injury of their invisibility within the domestic abuse domain" (ibid, p470).

What is needed, Holt (2018) suggested, is a more appropriate balance between protection and participation. This requires practices that value and prioritise the right of children to be heard and participate in decisions being made about them tailored to the unique needs, wishes and experiences of individual children, rather than interpreting children's views based on assumptions about their best interests.

8. Special measures and abusive cross-examination

8.1 Introduction

In recent years there has been considerable progress made in the criminal courts to protect vulnerable and intimidated witnesses, including victim/survivors of domestic abuse, from experiencing further abuse through the court process. In particular, 'special measures' are available to minimise the risks and distress of coming into contact with alleged perpetrators of abuse, as well as the ordeal of vulnerable witnesses being cross-examined directly by alleged perpetrators (Crown Prosecution Service, 2019). However, the family courts lag far behind the criminal courts, with no equivalent legislative protection, and little and inconsistent protection in practice. This section will review:

- the literature on the special measures available to victim/survivors of domestic abuse in the family jurisdiction
- the measures currently in place regarding direct cross-examination of alleged victims by alleged perpetrators of abuse
- the effectiveness of these measures

8.2 Special measures

Special measures have been available for vulnerable and intimidated witnesses in criminal proceedings since 2000 under Part III of the Youth Justice and Criminal Evidence Act 1999. Victim/survivors of domestic abuse are treated as vulnerable or intimidated witnesses and can access the full range of special measures. These measures include:

- separate waiting rooms for victims and witnesses
- separate entrances and exits and/or staggered times for arrival and departure from court
- giving evidence through video link from a room outside the courtroom or behind a screen positioned around the witness box

There are no equivalent legislative provisions for special measures in family proceedings. In practice, special measures (or special facilities as they were previously termed in the family courts) were found to be available on an ad hoc, inconsistent basis in family courts, and few court users were aware of them. This meant that victim/survivors were brought into direct contact with perpetrators who had committed serious offences against them and enabled perpetrators of abuse to use hearings in the family court to continue abuse and harassment (HMICA, 2005; Thiara and Harrison, 2016). Birchall and Choudhry (2018) found cases where perpetrators of domestic abuse were on bail for violent offences against mothers but were allowed into the family courts to pursue contact with their children.

Two studies reported on the experiences of victim/survivors of the (lack of) special measures in the family courts (All-Party Parliamentary Group on Domestic Violence, 2016; Coy *et al.*, 2012, 2015). Almost half of the legal professionals surveyed by Coy *et al.* (2012) reported that special measures were not advertised for vulnerable and intimidated court users. Three quarters of victim/survivors interviewed said they had concerns for their safety while attending court because of the lack of facilities such as separate waiting rooms and entrances/exits. Two women interviewed by Coy *et al.* (2015) had been granted non-molestation orders against their ex-partners but found that these did not prevent them having to face their ex-partners at court: “I remember the first hearing I was shaking, he could be quite intimidating. In court we sat at a long table. I avoided making eye contact’ (Zahra)” (ibid, p61).

If abusive fathers brought family members who had been involved in the abuse to court, this could be particularly intimidating for women:

I was in the same waiting area, he was coming with all of his family, sometimes we had to stand outside the court. A couple of times my barrister went to type something, and I was just standing there alone, he was just intimidating, trying to scare me (Nabeela) (ibid, p61)

Women were particularly fearful about being followed by abusive ex-partners when leaving court after hearings, which was exacerbated by having to wait in communal areas

(Coy *et al.*, 2015). Some women interviewed by Coy *et al.* (2015) had experienced judges refusing the use of special measures or questioning their necessity.

Where special measures such as separating waiting areas and exits and the provision of an escort were routinely available, this significantly enhanced women's sense of safety and security:

You have to ring and ask for the side room the day before, you get through to their security and request it ... they always have got me a room if I've asked for it. I've had separate exits. I can't fault them to be honest, they've been very good. I thought it would be a nightmare. (Jessie) (ibid, p63)

A Women's Aid survey of victim/survivors carried out in 2015 found that 55% of women respondents who had been to the family courts had no access to any special measures (All-Party Parliamentary Group on Domestic Violence, 2016). Thirty-nine percent had been verbally or physically abused by their former partner in the family court, and requests to wait in a separate room from perpetrators were sometimes refused. The APPG on DV (ibid) heard that it was not uncommon for women to be followed, stalked and harassed after leaving court.

Suggestions to improve their experiences of safety at court made by all the women interviewed by Coy *et al.* (2015) included the provision of safe spaces and measures to avoid seeing the alleged perpetrator, giving evidence by video link, and more information about their rights and the various stages of the court process.

In response to these concerns, the MoJ undertook research to facilitate the recommendation of the President's Children and Vulnerable Witnesses Working Group for additional protection for vulnerable witnesses (Corbett and Summerfield, 2017). Interviews with 21 members of the family judiciary explored the provision of screens, video links and court security facilities. Although all judicial interviewees were aware of the possibility of using screens and video links to enable vulnerable witnesses to give evidence, for some "this was a hypothetical measure as the facilities were not available within their court" (ibid, p 24). When they were available, screens were often of such poor quality that they were not fit for purpose. Where video link facilities existed, they were often unavailable for private family law cases, only usable and designed for people away from court to give

evidence, or provided inconsistently. However, some judges in the larger courts, or in courts which had been recently refurbished, spoke positively about their experiences of these special measures. While some judges considered that these special measures should be available to anyone who felt they needed them, others felt they could be used tactically by a party to proceedings and viewed them as ‘preferential treatment’ which could disadvantage the alleged perpetrator.

All judicial interviewees saw separate entrances and exits as a positive measure, and separate waiting areas as essential. While these measures were considered to be well managed in some courts, in others such provision was lacking. Judges spoke about parties assaulting the other party immediately after a hearing, and of litigants in person (LIPs) intimidating other witnesses and experts in the public areas of the court. Judges also spoke about harassment and threats to themselves from LIPs and physical assaults on security guards by alleged perpetrators of abuse. There was a general consensus that there were not enough ushers or security guards in court, particularly at district judge level.

Workshop participants noted that there was no directory of special measures available in every court and recommended that such a directory could help to ensure that vulnerable witnesses received more protection in the family court. Other recommendations included routine vulnerability assessments in all private law family cases, more consistent and good quality screens and video links, and the increased provision of separate entrances and exits and waiting areas for vulnerable witnesses and alleged perpetrators.

In response to the concerns raised by the research and literature reviewed above, and on the recommendation of Mr Justice Cobb (2016), PD12J was amended to include a new Paragraph 10, which came into effect in October 2017. Paragraph 10 provides that if the court is advised that there is a need for special arrangements to protect a party or child, the court must ensure, so far as practicable, that appropriate arrangements are made for the hearing and for all subsequent hearings in the case, including the waiting arrangements at court and arrangements for entering and leaving the court building.

At the end of 2017, the Family Procedure Rules 2010 were amended (Part 3A and Practice Direction 3AA) to introduce new measures, called ‘participation directions’, which require courts to consider whether those involved in family proceedings are vulnerable and

if so, whether this is likely to diminish their participation in proceedings or the quality of their evidence, including from actual or perceived intimidation. The courts then have the option of ordering appropriate measures to address this, such as a screen, video link or a direction for parties to enter and leave court separately.

Evidence of the effectiveness of these new provisions is limited. Birchall and Choudhry's (2018) research (some of which was conducted before the new measures came into effect) showed clear inconsistencies and failures in the provision of special measures for survivors of domestic abuse. More recently, the Joint Committee on the Domestic Abuse Bill (2019) heard evidence that despite the recent changes, special measures facilities in the family courts were not satisfactory or on a par with those available in the criminal courts (evidence from Resolution and Stay Safe East). Women's Aid reported to the Joint Committee (*ibid*) that 61% of survivors of domestic abuse had no access to any special measures in the family courts and only 7% had staggered entrance and exit times from perpetrators. Rights of Women pointed out that the draft Domestic Abuse Bill 2019 extends the availability of special measures in criminal proceedings to any complainant where the offence amounts to domestic abuse but not to the family courts, where they are most needed. The Joint Committee (*ibid*) recommended that provision for special measures in the family courts should be put on a statutory basis and that a single, consistent approach should be taken across all criminal and civil, including family, jurisdictions.

8.3 Abusive cross-examination

Legal aid reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013 removed most private family law cases from the scope of legal aid and substantially increased the proportion of LIPs in the family court. This means that one party may be represented through legal aid and the other party litigating in person, or both parties could be LIPs. Currently in private law children proceedings, LIPs are able to directly cross-examine other parties in the case, including victim/survivors of domestic abuse. This is barred in criminal courts under the Youth Justice and Criminal Evidence Act 1999, where an advocate is provided for the purposes of cross-examination

of the alleged victim of a sexual offence. There is currently no such legislation in the family court.

Over half of the women interviewed by Coy *et al.* (2015) reported that there had been stages where they either had to represent themselves (and therefore face the prospect of cross-examining their ex-partners) or face being cross-examined by them. Studies conducted in 2015 and 2017 found that 24% to 25% of victim/survivors of domestic abuse had been cross-examined by the alleged perpetrator during family court proceedings (Birchall and Choudhry, 2018; Cobb, 2016). Research revealed that victim/survivors of domestic abuse found the experience of being cross-examined by their alleged abuser hugely difficult and distressing, leaving them feeling traumatised and degraded (Birchall and Choudhry, 2018; Coy *et al.*, 2012, 2015). Women have experienced such cross-examination as a continuation of the abuse, and perpetrators representing themselves may use cross-examination as another opportunity to perpetuate the abuse (Coy *et al.*, 2012, 2015; Trinder *et al.*, 2014; Women's Aid, 2016). The All-Party Parliamentary Group on Domestic Violence heard evidence that this can amount to coercive control being "played out in the court arena" (2016, p14).

It was horrible, I mean it was the worst thing I've ever had to do in my life, I mean the cross-examination was just disgusting, and you know, the judge twice stepped in and stopped him. The questions were about my sex life and previous boyfriends and who was going in my house, it was ridiculous. (interview participant) (Birchall and Choudhry, 2018, p27)

Victim/survivors of domestic abuse representing themselves may also face the prospect of having to cross-examine their abuser, which is not only distressing but may mean they are unable to advocate properly for the safety of themselves or their children (All-Party Parliamentary Group on Domestic Violence, 2016; Coy *et al.*, 2012, 2015).

Concerns have been raised about these practices by senior members of the family judiciary since 2010, including two Presidents of the Family Division (Sir Nicholas Wall P and Sir James Munby P). The issue came to public attention with the publication of Women's Aid's (2016) *Nineteen Child Homicides* report, which called for an end to survivors of domestic abuse being cross-examined by, or having to cross-examine, their

abusers in the family court. In 2016, Sir James Munby P said, in an article in The Telegraph:

I have expressed particular concern about the fact that alleged perpetrators are able to cross-examine their alleged victims, something that, as family judges have been pointing out for many years, would not be permitted in a criminal court. Reform is required as a matter of priority. I would welcome a bar ... I am disappointed by how slow the response to these issues has been and welcome the continuing efforts by Women's Aid to bring these important matters to wider public attention. (Women's Aid, 2017, p14)

Section 31G(6) of the Matrimonial and Family Proceedings Act 1984 (introduced by the Crime and Courts Act 2013) allows judges to question a witness on behalf of an unrepresented party in family court proceedings, but this relies on the judge's willingness to do so (see below). A limited ban on direct cross-examination of victim/survivors by alleged perpetrators of abuse in family courts was introduced in the Prisons and Courts Bill (2017), which had cross-party support, but the bill was abandoned due to the 2017 General Election.

In his review of PD12J, Mr Justice Cobb (2016) proposed a revision which prohibited judges or magistrates from allowing unrepresented alleged abusers to directly cross-examine alleged victims or requiring alleged victims to directly cross-examine alleged abusers. However, this recommendation was not ultimately included in the revised PD12J 2017, which limited the previous Paragraph 28 by advising that "the judge should be prepared where necessary and appropriate to conduct the questioning of the witnesses on behalf of the parties". Additionally, Practice Direction 3AA to the Family Procedure Rules 2010, which came into effect on 30 November 2017, simply requires courts to consider making directions about the way a vulnerable witness may be cross-examined.

The way judges manage such cross-examination was explored in research carried out by the MoJ in 2015 (Corbett and Summerfield, 2017). This study was designed to explore how family court judges manage cases involving vulnerable and intimidated witnesses and to consider what, if any, further provisions could be considered to support them in doing so. The study found that most vulnerable witnesses were intimidated witnesses who

alleged domestic abuse, and that cross-examination of vulnerable witnesses was generally carried out through direct questioning by the alleged abuser or the judge relaying questions. All judicial interviewees had some experience of these cases. A typical case with which judges may be presented was described by one judge:

The case that I was dealing with was a fact-find hearing within the context of private family law proceedings. The parties were young but the respondent mother wasn't under 17 ... but she'd made very serious allegations about abuse that she'd experienced at the hands of the father ... She made allegations that she had been ... raped by him and that he had controlled her, he had punched her in the face, there were about 12 or 13 various allegations but the rape allegation was the most significant. She presented to me as very distressed by the proceedings, very naive and very young in her attitude and experience, and I was concerned because she had the benefit of representation but the father did not, and I was presented with a situation where he would be potentially cross-examining her about the allegations that she had made. (J11) (ibid, p15)

Judicial interviewees were aware of a variety of techniques to manage these cases. These included facilitating the direct cross-examination of a vulnerable witness by an alleged perpetrator of abuse, or judges relaying questions to the vulnerable witness on behalf of the LIP. Some judges preferred to allow direct cross-examination of the vulnerable witness by the LIP wherever possible, perceiving this to be the 'right' of the LIP to cross-examine if they so wish, but also because of a reluctance to do so themselves. Other judges took the opposite view, and some were reluctant to allow direct cross-examine by alleged perpetrators of abuse because of negative previous experiences:

So, as far as questioning is concerned, the witness herself was very distressed ... he wasn't prepared to ask a single question so he would ask multiple questions as part of one question ... He then refused to wait for the witness to finish their answer to any part of the question before he would then start another question ... I also had to give him continual warnings in relation to approaching the witness and preventing the witness from answering. (J9) (ibid, p16)

Corbett and Summerfield (2017) found that concerns about judicial questioning of vulnerable witnesses on behalf of LIPs mainly centred on the importance of retaining, or appearing to retain, judicial impartiality. Requesting the questions in advance from the alleged perpetrator was seen as a useful judicial tool, but identifying the issues in a case and formulating questions in advance were viewed as difficult even for experienced senior barristers and were therefore felt to present substantial challenges for LIPs.

The use of Cafcass officers and guardians to cross-examine on behalf of alleged perpetrators was generally considered inappropriate because this could harm their independence as well as their working relationship with both parties. Magistrates' legal advisers were deemed more suitable to conduct cross-examination but many have never practised as lawyers and would therefore have no experience of cross-examination. Judges spoke positively of their experiences with 'professional' McKenzie Friends, who were usually representatives from organisations that lobby for fathers' rights. In some cases, judges extended rights of lay audience to allow the McKenzie Friend to cross-examine a vulnerable witness. In the rare cases where this happened, it was generally felt that parties to proceedings were satisfied with this approach. Only one judge had had a negative experience with a professional McKenzie Friend, who was confrontational and lacking professionalism. Judges and the Society of Professional McKenzie Friends recommended that there should be regulation for McKenzie Friends and a way to sanction negative behaviour.

Both the judicial interviewees and workshop participants expressed concerns about 'deliberate' LIPs, namely, perpetrators of abuse who avoid getting legal representation so that they can cross-examine their victim, which was seen as another form of abuse and control, and it was agreed that this should not be allowed.

Judicial interviewees and workshop participants considered that the best future solution would be legislating for legal aid for paid advocacy for cross-examination purposes. Some judges felt that this was necessary for all cases with LIPs and vulnerable witnesses, while others felt that judicial discretion to determine whether legal aid should be granted for a paid advocate was more appropriate. Suggested criteria for exercising judicial discretion included the alleged victim's level of distress, the behaviour of the LIP, and the severity of the alleged abuse. Other future solutions included routine vulnerability assessments in all

private law cases, and compulsory case management hearings to consider the use of special measures and how to proceed with cross-examination. A more radical solution was abandoning the adversarial system altogether and aiming for an inquisitorial approach.

Clause 5 of the draft Domestic Abuse Bill of 2019 prohibits a perpetrator of domestic abuse from cross-examining a victim, where the perpetrator has been charged or convicted of domestic abuse offences although various organisations do not feel this protection goes far enough as it does not cover alleged domestic abuse (Joint Committee on the Domestic Abuse Bill, 2019).

9. The operation of Practice Direction 12J

9.1 The background and development of Practice Direction 12J

In England and Wales, domestic abuse was virtually ignored in legal and family law professional practice relating to post-separation child contact until the landmark case of *Re L, V, M, H (Contact: Domestic Violence)* [2001] Fam 260 (Re L) (Children Act Sub-Committee of the Lord Chancellor's Advisory Board on Family Law (CASC) (2000). Drawing on a report by expert psychologists, Drs Sturge and Glaser (2000), the Court of Appeal acknowledged that domestic violence involves a 'significant failure in parenting' and laid down guidelines for courts and professionals in contact cases where allegations of domestic violence are made (known as the 'Re L guidelines'). Similar guidelines were simultaneously published by the Children Act Sub-Committee of the Lord Chancellor's Advisory Board on Family Law (2000). These include the requirement to hold a fact-finding hearing on disputed allegations of domestic violence and to ensure that the risk of harm is minimised and the safety of the child and resident parent is secured before, during and after contact. Subsequent research found that the Re L guidelines were largely ignored and inconsistently applied because courts and professionals continued to prioritise contact over children's and resident parents' safety (Aris and Harrison, 2007; HMICA, 2005; Hunt and Macleod, 2008; Perry and Rainey, 2007).

Following the publication by Women's Aid of a report about 29 children who were killed in England and Wales between 1994 and 2004 as a result of contact arrangements (Saunders, 2004), the Family Justice Council (FJC) issued a report which called for a "cultural change ... with a move away from 'contact is always the appropriate way forward' to 'contact that is safe and positive for the child is always the appropriate way forward'" (Craig, 2007, p 27). On the recommendation of the FJC, a Practice Direction embodying the Re L and CASC guidelines was issued by the President of the Family Division in May 2008 which was subsequently incorporated into the Family Procedure Rules 2010 as

PD12J. PD12J now establishes the framework to be followed by courts and professionals in child arrangements cases where allegations of domestic abuse are raised.

The history of PD12J since its introduction bears a striking resemblance to the history leading up to it. Research undertaken by Hunter and Barnett (2013) concluded that PD12J was not being implemented as intended, and that the ‘cultural shift’ called for by the FJC remained incomplete, with many courts and professionals remaining of the view that contact should be promoted above all else and holding narrow, legalistic views of what constitutes domestic abuse and its relevance to contact. In April 2014, PD12J was revised to bring its provisions and terminology in line with other amendments to child arrangements proceedings and to implement some of the recommendations of Hunter and Barnett (*ibid*) to improve protection for children and victim parents and make the process more user-friendly for LIPs. In 2016, serious concerns about the treatment and experiences of victims of domestic abuse in family courts were raised by Women’s Aid’s ‘Child First’ campaign, underpinned by its *Nineteen Child Homicides* report (Women’s Aid, 2016) and by the All-Party Parliamentary Group on Domestic Violence (2016), and the issue was debated by the House of Commons in September 2016. At the request of the President of the Family Division, Mr Justice Cobb reviewed PD12J 2014 and produced a report with proposed revisions (Cobb, 2016). The final, revised (and current) version of PD12J (PD12J 2017), which reinforces the mandatory nature of the Practice Direction, came into effect on 2 October 2017, having been somewhat watered down from Mr Justice Cobb’s original draft. In particular, Mr Justice Cobb’s original amendments provided that the statutory presumption of parental involvement contained in s 1(2A) CA 1989 should not apply “[w]here the involvement of a parent in a child’s life would put the child or other parent at risk of suffering harm arising from domestic violence or abuse” (Cobb, 2016, p 12). This was omitted from the final draft, which only requires courts to “consider carefully whether the statutory presumption applies” when domestic abuse is alleged or admitted (paragraph 7).

Although no empirical research on the operation of PD12J 2017 was available when the literature included here was reviewed, some research has been undertaken since the 2014 amendments to PD12J (All-Party Parliamentary Group on Domestic Violence, 2016; Barnett, 2017, 2020; Birchall and Choudhry, 2018; Cafcass and Women’s Aid, 2017;

Harwood, 2019; Women's Aid, 2016). One recent small-scale qualitative study found a remarkable similarity in perceptions and reported practices of judges and professionals to those found by the pre-2014 research (Harwood, 2019). A few other post-2014 studies report on limited aspects of PD12J. This small body of research is likely to remain relevant, since the most extensive revisions to PD12J were those made in April 2014, and there is no evidence to suggest any recent substantial changes to the practices and perceptions of judges and professionals.

9.2 How is the court made aware of domestic abuse?

The court may be made aware of any safeguarding concerns by the parties to proceedings and/or by Cafcass. In child arrangements cases, Cafcass are required to undertake initial safeguarding checks with police and local authorities, and to speak separately with the parties, to identify any prior criminal or social services actions or concerns relating to domestic or child abuse. The results of safeguarding checks should be available to the court at the first hearing, termed the First Hearing Dispute Resolution Appointment (FHDRA). If the results of these checks are not available at the FHDRA "and no other reliable safeguarding information is available, the court must adjourn the FHDRA until the results of safeguarding checks are available" and should not generally make any interim child arrangements order in the absence of safeguarding information (PD12J, para.12).

The evidence from the pre-2017 research was mixed on whether safeguarding checks were usually available at the FHDRA and on whether courts conducted the FHDRA without them (Barnett, 2014; Harding and Newnham, 2015; Hunter and Barnett, 2013). The majority of respondents to Hunter and Barnett's (2013) survey said that the results of Cafcass safeguarding checks were available at the FHDRA 'very often' (38.5%) or 'quite often' (23.4%), although there were regional differences in these responses. There are indications of some improvement in this area, as research by Harding and Newnham (2015) found that some kind of safeguarding inquiry had taken place in 89% of all cases, and Cafcass and Women's Aid (2017) found that the appropriate safeguarding inquiry was undertaken in the majority of cases.

Cafcass and Women's Aid (ibid) also found that information about domestic abuse was raised in some cases by the safeguarding checks but not by either party. There may be

several reasons for this. Lawyers responding to Hunter and Barnett's (2013) survey were asked whether they would ever advise a client *not* to raise the issue of domestic abuse. The majority (59%) said they would never do so, while 37% said they might occasionally do so. The reasons why those who might occasionally advise a client not to raise domestic abuse are summarised by one solicitor:

Given my knowledge of how judges in my local court seem so anxious not to deal with DV allegations, if the violence was a long time ago, or could be said by a judge to be an understandable reaction in a stressful situation, I will explain the possible disadvantages of pursuing the allegations, as sometimes this can do the client's credibility damage. (S465, SE) (ibid, p34)

The increased number of LIPs since restrictions on legal aid were implemented by LASPO in 2013 may also have had an impact on the court's awareness of safeguarding concerns. Judges interviewed by Harwood (2019) reported that in cases involving LIPs, essential information can fail to be raised at all when parents alleging domestic abuse do so without legal representation.

9.3 Deciding whether the abuse alleged is relevant to child arrangements/contact

Paragraph 5 of PD12J 2017 provides that, where domestic abuse is raised in proceedings, the court must "consider the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order and, if so, in what terms". Paragraph 14 of PD12J 2017 requires the court to ascertain at the earliest opportunity "whether domestic abuse is raised as an issue which is likely to be relevant to any decision of the court relating to the welfare of the child *and specifically whether the child and/or parent would be at risk of harm* in the making of any child arrangements order".¹⁵

Hunter and Barnett (2013) found a spectrum of views on whether domestic abuse is 'relevant' to contact or residence. At one end of the spectrum, the existence of domestic

¹⁵ The words in italics were added to this paragraph by the 2017 amendments to PD12J.

abuse should *always* be considered relevant and reflected in the court's ultimate orders on residence or contact. At the other end, the value of ongoing contact between a child and his or her non-resident parent was considered to be of such overriding importance that past domestic abuse should have very little effect on the court's ultimate orders.

The extent to which judges and professionals consider domestic abuse to be relevant to child arrangements/contact depends very much on their understanding of domestic abuse. The available research suggests that judges and legal professionals tend to adopt a narrow approach to what is considered 'relevant' domestic abuse. Hunter and Barnett (2013) found a marked difference between 'legalistic', incident-based understandings of domestic abuse, focused on discrete incidents of physical violence, akin to assaults by strangers (largely held by family lawyers and the judiciary), and social science understandings, which recognise its power and control dynamics (more likely to be held by Cafcass officers) (Barnett, 2014, 2015; Coy *et al.*, 2012; Hunter and Barnett, 2013). Women interviewed by Coy *et al.* (2015) reported that judges understood domestic abuse as constituting physical assaults only and failed to recognise patterns of coercive control, with only physical violence seen as a barrier to contact, although even physical violence could be minimised by courts when assessing its relevance to contact. A mother interviewed by Coy *et al.* (2012) observed:

A lot of men might not be beating up women, but they're very controlling. Courts don't understand emotional abuse ... Unless you're walking in with a black eye, trying to explain to the judge doesn't work. They're only concerned with physical violence – 'has he hit her, no, then you need to promote contact' (Kathy) (ibid, p51)

Nevertheless, Barnett's (2014, 2015) small-scale qualitative study and her analysis of the post-2014 case law (2017) found that judges and professionals had gained a greater theoretical understanding of domestic abuse beyond the physical incident model. Most of the professionals interviewed recognised that domestic abuse is not limited to incidents of physical violence, and could include emotional abuse, financial control and denigration of the mother.¹⁶ Half of all professionals interviewed (but only two barristers) expressed a

¹⁶ Similar findings were made by Thiara and Gill, 2012.

theoretical understanding of the power and control dynamics of domestic abuse, although more Cafcass officers than family lawyers understood these dynamics: “‘And we need to be aware that that control doesn’t need to be the physical. The emotional, the mental control can be just as effective, but just as corrosive to the victim’ (Mr J, FCA, NE)” (Barnett, 2014, p444). Similarly, Harwood (2019) found that the understanding that domestic abuse is not confined to physical acts of violence is beginning to permeate professional practice.

Many participants in Barnett’s (2014) research thought that their local judges had a good understanding of what constitutes domestic abuse and ‘take it seriously’. Barnett’s (2015) analysis of the case law found keen insights by some judges of the power and control dynamics of domestic abuse. Professional approval of judicial understanding of domestic abuse was, however, far from unanimous. Mr J, a Cafcass officer, described the attitude of the judiciary in the county court of a north-east town as “‘like stepping back five years’ and ‘the wild west’” (ibid, p59).

However, the broad theoretical insights of judges and professionals into the nature and effects of domestic abuse do not necessarily translate into practice. Half of Barnett’s (2014) interview participants still considered anything less than severe physical violence not to be serious, important or ‘real’ violence. Some professionals expressed concern that courts, too, tended to focus on incidents of physical violence and did not take seriously other forms of domestic abuse (ibid).¹⁷ Barnett’s (2017) review of the relevant reported cases from December 2013 to October 2016 found that trial judges made findings on the coercive and controlling aspects of the perpetrators’ behaviours, and their orders largely reflected how seriously they took these findings, although in some cases physical violence was the determining factor. However, these insights were not always shared by the Court of Appeal, which allowed a number of appeals by downgrading and minimising anything other than severe, recent physical violence.

Harwood (2019) found that there is a significant distance to travel before a wholesale shift takes place to recognise the harm caused by non-physical abuse and its relevance to contact. All judicial officers reported that non-physical abuse is recognised and taken

¹⁷ Similar findings were made by Coy *et al.* (2012).

seriously by the courts, which was corroborated by most of the non-judicial practitioners. However, over half of the non-judicial interviewees also said that this theoretical understanding does not mean that non-physical abuse is taken seriously in practice.

Within the context of this disjuncture between theoretical and ‘in practice’ perceptions of domestic abuse, all the available pre-2014 research demonstrated that most judges and professionals tended to see only recent, severe physical violence as being relevant to the issue of contact (Barnett, 2014, 2015, 2017; Coy *et al.*, 2012; Hunter and Barnett, 2013).

Domestic abuse was considered irrelevant where:

- it was viewed as ‘trivial’, ‘petty’ or even ‘mid bracket’
- it was considered ‘old’ or ‘historic’
- there was limited or no supporting evidence
- the violence occurred at the point of separation
- the children had not witnessed it
- the parties had resumed their relationship after the domestic abuse ‘incidents’
- contact had been allowed after ‘incidents’ of domestic abuse

(Barnett, 2014; Coy *et al.*, 2012; Hunter and Barnett, 2013). However, Cafcass and Women’s Aid (2017) pointed out that “contact taking place before proceedings and [by] consent may not always equate to an ‘agreement’ about contact and may instead be indicative of a context of coercion or fear” (ibid, p3).

Additionally, ‘historic’ abuse needs to be understood in the context of patterns of coercive and controlling behaviour in which it has a continuing terrorising effect (Coy *et al.*, 2012; Hunter and Barnett, 2013). A solicitor interviewed by Barnett (2014) gave an example of a case in which the father attempted to strangle the mother two years prior to the relationship breakdown, and the mother provided an account of a history of:

sort of intimidating and controlling behaviour ... He was doing things like filming her at handovers ... stuff that rings alarm bells ... and the judge said that he felt that the violence that the mother had alleged was historical and even if found as proven would not affect the progression of contact. (Ms L, solicitor, SW) (ibid, p445)

There was also an assumption that domestic abuse was not relevant unless it would result in no direct contact (Hunter and Barnett, 2013). However, the literature suggests a scale of different contact arrangements depending on the type and level of ongoing risk (Newman, 2010).

Harwood's (2019) more recent research almost replicates the earlier studies, with interviewees reporting that 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'

A solicitor who was highly critical of judicial practice expressed the following concern:

[I]f it's directed towards the child then that's where you are talking about proper safeguards in place, and potentially supervised contact and everything being very slowly, slowly. If it is just towards mum, it comes back to this 'does it really impact upon a child, does it really impact upon a child? We don't really care. Child should get to see dad'. Not saying that's right but ... (solicitor) (ibid).

The research studies therefore reveal a bifurcated approach: while more judges and professionals are developing their understanding of domestic abuse, the ambit of when and how it is viewed as relevant to contact has grown increasingly narrow (Barnett, 2014).

9.4 The prevalence of fact-finding hearings

No systematic review of court files has been undertaken since PD12J was implemented with the specific aim to determine how often fact-finding hearings are held. However, all the available research strongly indicates that, while allegations of domestic abuse are made in over 50% of private law children cases, fact-finding hearings are held in less than 10% of such cases, a percentage that reflects the pre-PD12J prevalence of fact-finding hearings (see Table 9.1 for a list of these studies). Of the 34 women interviewed by Coy et

al. (2015), fact-finding hearings were held in 10 of the 27 cases which had raised allegations of domestic abuse and which should have been tried at a fact-finding hearing (similarly, 29% of respondents to Birchall and Choudhry’s (2018) online survey had had a fact-finding hearing). Coy *et al.* (2015) considered that the larger proportion of such hearings in their sample than were found in other studies may have reflected the fact that most participants had been in contact with a specialist organisation offering women legal advice. This was also true of Birchall and Choudhry’s respondents.

Table 9.1 sets out the quantitative findings of case file analyses and estimates of qualitative studies on the prevalence of fact-finding hearings.

Table 9.1 The prevalence of fact-finding hearings in samples of cases where domestic abuse is alleged¹⁸

Source	Prevalence
Perry and Rainey (2007)	‘tiny minority’
Hunt and Macleod (2008)	8% of 154 cases involving allegations of DA
Hunter and Barnett (2013)	0–25% of cases involving DA allegations; largest group (42%) said less than 10%
Trinder <i>et al.</i> (2013)	3 held at enforcement stage and 3 at index stage of a total of 215 cases
Barnett (2015)	Reported to be ‘a rarity’
Harding and Newnham (2015)	8 out of 86 cases involving DA allegations
Cafcass and Women’s Aid (2017)	5 out of 62 cases involving DA allegations
Harwood (2019)	Reported to be ‘rare’

9.5 The decision to hold a fact-finding hearing

Paragraph 16 of PD12J 2017 provides that courts “should determine as soon as possible whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic abuse”. Guidelines for determining whether a fact-finding hearing is necessary include whether it would provide a factual basis for a welfare report, an accurate assessment of risk, any final welfare-based orders, or the need for a domestic abuse-related activity such as a Domestic Abuse Perpetrator Programme. Paragraph 17 contains a list of factors that may avoid the need for a fact-finding hearing including

¹⁸ The methodologies of these studies are summarised in Appendix A.

whether any admissions or the evidence on which legal aid was granted provide a sufficient factual basis; “whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court”; and whether a separate fact-finding hearing would be necessary and proportionate.¹⁹

Hunt and Macleod’s (2008) pre-PD12J research found that Cafcass officers and solicitors largely attributed the rarity of fact-finding hearings to the courts’ reluctance to hold them – on the basis that there were few cases in which findings would be relevant to contact, a preference for settlement rather than adjudication, concerns about increasing the conflict between parents, and pressure on court time. They found that: “The only group not implicated in this ‘nobody wants finding of fact hearing’ scenarios were Cafcass officers” who were concerned and frustrated at asking for hearings which were either not listed or did not take place (ibid, p33).

The post-2008 but pre-2014 research revealed remarkably similar findings to Hunt and Macleod’s (2008) study (Barnett, 2014, 2015; Coy *et al.*, 2012; Hunter and Barnett, 2013). These studies suggested that fact-finding hearings were usually restricted to allegations involving incidents of recent, very severe physical violence.

There was a tendency to avoid fact-finding hearings if at all possible, but little evidence to suggest that allegations of abuse were dealt with at the final, welfare hearing. Rather, the approach of the courts was to ‘weed out’ and ignore allegations of domestic abuse altogether if a separate fact-finding hearing was considered unnecessary. The reasons given by judges, family lawyers and (to a lesser extent) Cafcass officers in the studies listed above as to why fact-finding hearings were not, or should not, be held included:

- the violence was not deemed relevant to the contact decision
- the violence was not considered serious enough
- the violence was considered ‘historic’ or not recent enough
- a fact-finding hearing would not affect the outcome of the case, since contact would (and for some respondents should) be ordered in any event
- fact-finding hearings cause unnecessary delay and are costly for parties without legal aid

¹⁹ These guidelines and factors were added to PD12J 2014 and retained in PD12J 2017.

- fact-finding hearings promote acrimony between the parties and damage their ongoing relationship.

These reasons were summed up by a barrister responding to Hunter and Barnett's (2013) survey:

Too many very minor and historic allegations are brought up which have no relevance to future arrangements, thus wasting Court time and causing delay in contact between the applicant and the children which is not in their best interests.
(B261, NW) (ibid, p27)

No respondents participating in the pre-2014 research suggested that fact-finding hearings could be avoided if the alleged perpetrator admitted the abuse from the outset.

Some respondents to Hunter and Barnett's (2013) survey and to Barnett's (2015) interviews (including most Cafcass officers, some solicitors but fewer barristers and judicial officers) saw some value to fact-finding hearings and put forward arguments as to why they should be held (more often), namely:

- fact-finding hearings are necessary to provide a factual basis on which the case can proceed and to ensure the child's and the resident parent's safety
- fact-finding hearings are necessary to narrow the issues and move the parties and the case on
- issues will continue to resurface 'like a bad smell' and impede resolution of the case if they remain unresolved

The pre-2014 research indicated that Cafcass officers were concerned about the 'nobody wants fact-finding hearings' approach of courts and family lawyers, and the difficulty they experienced in getting courts to agree to their recommendations for fact-finding hearings (Hunt and Macleod, 2008; Hunter and Barnett, 2013).

The low proportion of cases in which fact-finding hearings were held, together with the comments of respondents to Hunter and Barnett's (2013) and Barnett's (2014, 2015) research suggest that the scope of PD12J may have been excessively restricted, with allegations not considered sufficiently recent or serious being 'swept under the carpet'.

The pressures on court time and judicial resources have only intensified since 2014. Additionally, Practice Direction 12B (PD12B) (the Child Arrangements Programme) places a new procedural duty on judges to manage cases tightly and conclude them quickly. These pressures may account for the continued rarity of fact-finding hearings found by Cafcass and Women's Aid (2017) and Harwood (2019) (see Table 9.1). However, reasons given by Harwood's (2019) interviewees for the low incidence of fact-finding hearings almost mirror those of the earlier research, including the allegations being regarded as 'historic' and insufficiently serious (and therefore irrelevant), cost and delay, and the lack of evidence beyond the parties' own testimonies.

If the wife has made allegations which are historic, they've been together for a number of years but she's raising them now, I think well, even if I made that finding on that historic ... it's got nothing, then I wouldn't order it [a fact-finding]. So more recent stuff is of relevance. (district judge) (ibid)

When fact-finding hearings do take place, the majority of Harwood's interviewees who commented on the issue reported that they do so most often as standalone hearings (ibid). However, 10 interviewees reported that combined fact-finding and final hearings were more common, which they saw as problematic because there would be no established factual matrix on which Cafcass officers could produce a robust report for the final hearing.

9.6 The making of consent orders

Paragraph 6 of PD12J 2017 requires the court to carefully scrutinise any proposed child arrangements/contact order. Additionally, courts "must not make a child arrangements order by consent ... unless the parties are present in court, all initial safeguarding checks have been obtained by the court, and [a Cafcass officer] has spoken to the parties separately, except where it is satisfied that there is no risk of harm to the child *and/or the other parent* in so doing".²⁰

Studies of court file data, both prior to and after the implementation of PD12J, found that the vast majority of interim and final orders, including in cases where allegations of

²⁰ The words in italics were included when PD12J was revised in 2017.

domestic abuse were raised, were made by consent (Cafcass and Women's Aid, 2017; Harding and Newnham, 2015; Hunt and Macleod, 2008; Perry and Rainey, 2007). Perry and Rainey (2007) found that there was little difference between the rates at which cases were resolved by consent according to whether or not domestic abuse had been alleged. Of the cases in Cafcass and Women's Aid's (2017) sample where domestic abuse was alleged and information was available, the order at the first hearing was made by consent in 89% of the cases. Of the 108 cases that went to final hearing, 86% of final orders were made by consent. The pre-PD12J research found low levels of satisfaction with agreed outcomes and difficulties putting the contact arrangements into practice (Buchanan *et al.*, (2001; Perry and Rainey, 2007).

The very high rate of consent orders may stem from the pressure on parents from all sides to reach agreement on child arrangements/contact. Research undertaken prior to the implementation of PD12J revealed the extent to which family lawyers, judges and Cafcass officers pressurised mothers to agree to unsafe contact arrangements rather than be viewed as hostile or unreasonable by courts (Buchanan *et al.*, 2001; Hunt and Macleod, 2008; Perry and Rainey, 2007). Hunt and Macleod (2008) found that these cases involved "resident parents being encouraged, persuaded, pushed or forced into shifting their position ... sometimes in very inauspicious circumstances" (ibid, p114).

Research undertaken before 2014, and since PD12J was implemented, strongly suggests that family lawyers did not substantially change their practices. Family lawyers appeared to use the same strategies they employed in cases without allegations of domestic abuse, such as persuading mothers to be 'sensible' and 'reasonable', but also more explicit coercion (Barnett, 2014, 2016): "I usually ask them directly because normally we have instructions and then you go through what the court expects and often you can turn them round in ten or fifteen minutes. That they will lose, on the facts." (Ms F, barrister, SE)" (Barnett, 2014, p446). Most family lawyers interviewed by Barnett (2016) indicated that even if domestic abuse was proved, they would advise their client to agree to direct contact other than in very extreme circumstances. Additionally, there is compelling evidence that cases involving domestic abuse are inappropriately accepted into and 'settled' in mediation (Barlow *et al.*, 2017).

From this research, it is clear why judicial scrutiny of proposed consent orders is an important component of PD12J. However, the pre-2014 research indicated that such scrutiny was not fully implemented. Two-thirds of respondents to Hunter and Barnett's (2013) survey reported that courts adequately scrutinised proposed consent orders often (24%) or always (43%). Judges and magistrates were more likely to report satisfactory levels of judicial scrutiny than Cafcass officers and family lawyers. Pressure of work was identified by both judges and barristers as a reason why proposed consent orders might not be scrutinised so carefully. Just over half of the respondents to Barnett's (2014) interviews reported that the extent to which judges scrutinised proposed consent orders depended entirely on the particular judge and/or the size of the court lists. Whereas some judges did ask for information (or for more information) about domestic abuse, others were happy to 'rubber-stamp' the order. Five Cafcass officers expressed concern about courts approving consent orders when they were not present in court:

I've run into court in the end because they were just about, they said: 'it's been agreed'. I said: 'there's issues of horrendous domestic violence here that haven't been looked at and I'm recommending full welfare reports' ... I said: 'I'm here for the child's voice, so if I'm saying in my experience that there were safeguarding issues, we don't know why this agreement has been reached'. (Ms N, FCA, SW) (ibid, p449)

9.7 Interim contact pending a fact-finding hearing and/or a final welfare determination

Where disputed allegations of domestic abuse are undetermined, Paragraph 25 of PD12J 2017 prescribes that the court should not make an interim child arrangements/contact order unless it is satisfied that it is in the interests of the child to do so and the order would not expose the child or the non-abusive parent to an 'unmanageable' risk of harm. This paragraph represents a substantial change from PD12J 2014, which only required courts to consider the safety of the child when determining interim child arrangements/contact.

Prior to the implementation of PD12J, research by Perry and Rainey (2007) found that interim contact orders were made in 71% of cases, most of which were for unsupervised,

direct contact. The prior contact and residence arrangements had a greater impact on the likely interim order than did the allegations of domestic abuse.

Hunter and Barnett (2013) found that the most commonly reported interim orders pending a fact-finding hearing were orders for supervised contact (64% quite or very often), indirect contact (58% quite or very often) or supported contact (47% quite or very often). Less than a quarter of respondents said that orders for no contact were made 'quite often' or 'very often'. More recent case file research by Cafcass and Women's Aid (2017) found that where domestic abuse was alleged, the court was most likely to make no order about contact at the first hearing (42% of cases). However, this did not necessarily mean that no contact would take place. Unsupervised contact was ordered in 23% of cases, but in the majority of cases this was the status quo at the time of the application to court. Interim supervised contact orders were made at the first hearing in 14% of cases, interim supported contact in 7% and indirect contact in 6% of cases. These findings suggest that unsupervised contact is still the largest category of interim orders when orders are made.

9.8 The conduct and outcomes of fact-finding hearings

Separate fact-finding hearings have their origins in child protection proceedings, where they were introduced to assist in determining factual disputes over clear, distinct issues such as physical or sexual abuse, at an early stage of the proceedings. From their inception, therefore, fact-finding hearings are underpinned by a legalistic, incident-based approach to allegations of abuse (Barnett, 2015).

The practice developed in child arrangements/contact cases of requiring the use of 'Scott Schedules' for fact-finding hearings. These are itemised tables setting out the dates and brief descriptions of the specific allegations the alleged victim seeks to prove, together with the alleged perpetrator's response. These schedules can have the effect of compelling victims to articulate the abuse they have sustained in a disaggregated and de-contextualised way (Hunter *et al.*, 2018). Additionally, the pre-2014 research found that many judges, in an effort to contain the scope of fact-finding hearings, would limit the number of 'incidents' that could be included in the schedule, and anecdotal evidence suggests that this practice continues (Barnett, 2015; Hunter and Barnett, 2013). Some judges may even have a standard limit to the number and type of allegations that would or

should be tested (ibid). A barrister responding to Hunter and Barnett's (2013) survey expressed concern about the way this practice could minimise the extent of the abuse: "It is difficult for those raising allegations to show the significance of them, if they are cut to 4 or 5 examples and then if found are regarded as the only incidents by those preparing s7 reports' (B143, Midlands)" (ibid, p41). Some participants in Barnett's (2015) interviews also expressed concern about cases being 'carved up' by the perpetrator making limited admissions of domestic abuse, which they described as 'watered down compromises'. This research suggests that findings could be made on a limited number of discrete incidents of physical violence, which meant that the full extent of the risk posed to the victim/survivor and child was minimised or invisible.

The 2014 revisions to PD12J attempted to counter the incident focus of fact-finding by specifically directing the court to consider "what evidence is required in order to determine the existence of a pattern of coercive, controlling or threatening behaviour, violence or abuse" (para.19). However, at a late stage of the drafting, an amendment was added to require the court to also consider whether "the key facts in dispute can be contained in a ... Scott Schedule" (para.19). It appears that courts may be struggling with these provisions, which have been retained in PD12J 2017. Judges interviewed by Harwood (2019) reported that LIPs commonly present 'generalised' allegations, particularly in cases involving allegations of non-physical abuse, which they felt did not fit with the current incident-based model.

A further issue for alleged victims of domestic abuse with respect to fact-finding hearings is that they have the burden of proving the abuse (on the balance of probabilities). If the judge cannot decide which party is telling the truth, and there is no 'independent' evidence to assist, they can simply decide that the victim has not proved her case, as any doubts are resolved in favour of the respondent to the allegations (Barnett, 2017). A number of participants, in the pre- and post-2014 research, were concerned about the ability of courts to determine whether domestic abuse occurred where the only evidence was the testimony of the parties, with no 'real' or 'independent' evidence, resulting in the contest being seen as 'one person's word against another' (Barnett, 2015, 2017; Harwood, 2019). Stakeholder groups and researchers have highlighted the enormous difficulties for women in providing evidence of the abuse they have sustained, particularly coercive and

controlling abuse, as most victim/survivors of domestic abuse do not report the abuse to the police or seek protection orders (Coy *et al.*, 2012; Rights of Women, 2011). A range of research studies found that allegations of domestic abuse might be disbelieved or not be taken seriously by courts and professionals if there was no external evidence to corroborate the mother's account (Aris and Harrison, 2007; Barnett, 2015, 2017; Harrison, 2008; Macdonald, 2015). Harwood's (2019) research reveals that this is a persistent problem. Two-thirds of her interviewees identified the lack of external evidence beyond the parties' own testimonies as a barrier to proving domestic abuse: "I wouldn't want to be a judge because there was ... she had no medical evidence; she had no police evidence. It was her word against his. So, in that case, I think if there is any doubt a judge is going to have to say it didn't happen.' (solicitor)" (ibid).

The ability of victims to prove the abuse they have sustained may be further impeded by the suspicion and disbelief with which women's allegations of abuse are met (see Section 8), and the inability of courts and professionals to understand the effects of abuse on women, whose coping strategies can include "dissociating themselves from the violence, 'forgetting' about abuse, retaining vague and sketchy memories of violent incidents, [and] minimising the seriousness of the violence" (Hunter, 2006, p742). This can be seen in the perception that mothers who are 'credible' in their testimony should be able to provide a coherent narrative (Barnett, 2017; Hunter *et al.*, 2018). This may be compounded by stereotypic images of 'typical' victims and victim behaviour. A barrister interviewed by Barnett (2017) gave an example of a case where the judge found that the mother had been fabricating the allegations because "she was a solicitor and very well dressed and came across very well' (Ms A3, barrister, London)" (ibid, p390). Similar findings were made by Coy *et al.* (2012) and Birchall and Choudhry (2018):

All professional witnesses supported me but despite overwhelming evidence, the judge said I didn't fit the profile of domestic violence victims as I wasn't scared enough. Also I was too educated and knowledgeable to allow DV to happen to me.
(survey respondent) (Birchall and Choudhry, 2018, p26)

Despite these barriers to the ability of victim/survivors to prove abuse, where fact-finding hearings are held, the most likely outcomes found by case file analyses or reported in qualitative studies are for some or all of the disputed allegations to be found proved. Of the

12 fact-finding hearings that were held in Hunt and Macleod's (2008) case file sample, all the allegations were upheld in five cases and partly upheld in four cases. The allegations were only rejected in one case. Similarly, of the six fact-finding hearings in Trinder *et al.*'s (2013) case file sample, all the allegations were found proved in four of the cases. In one case the hearing was pending and in the last no information was available. The majority (85%) of respondents to Hunter and Barnett's (2013) survey considered that some of the contested allegations of domestic abuse would quite often or very often be found proven. Occasionally, none or all of the allegations would be found proven, and 38% considered that all of the allegations would quite often be found proven.

9.9 The assessment of future risk if domestic abuse is proven or admitted

PD12J stipulates that once it has been established that domestic abuse has been perpetrated (whether as a result of admissions, findings of fact or otherwise), the court must consider whether to order any expert assessment of any party or the child (including a safety and risk assessment (para.33 PD12J 2017)).

Pre-2014 research studies found that the risk and welfare assessment provisions of PD12J were not applied properly or at all (Trinder *et al.*, 2013). Where domestic abuse was found to have occurred, there was then considerable pressure to move the case on, ideally to continue or restore contact, as quickly as possible (Hunter and Barnett, 2013; Trinder *et al.*, 2013). Judges might dispense with expert risk assessments and make their own (minimising) assessment of the effect of the abuse and the degree of ongoing risk posed by the perpetrator (Hunter *et al.*, 2018). As a barrister interviewed by Barnett (2014) said:

And equally if they are admitting it then, you know, even if it's just on the morning of the fact-finding hearing then sometimes judges will be much more gung ho and sort of say: 'well, you know, fine, he's admitted it, let's look at a way of resolving this without an expert assessment'. (Ms T, barrister, NW) (ibid, p451)

The key indicator of risk for most respondents to Barnett's (2014) interviews, and reportedly for courts, was whether the perpetrator accepted the findings made against him.

Perpetrators who remained in denial after findings were made were generally seen as 'high risk'. Although some interviewees indicated that acceptance of findings was uncommon, in practice this non-acceptance was rarely seen as a bar to direct contact unless findings were made of very serious physical violence.

Barnett's (2017) analysis of the reported case law suggested that the appellate courts focused almost solely on the risk of physical violence (in some cases only to the child) by continuing to disaggregate individual incidents of violence from patterns of coercive control. However, according to Respect:

Domestic violence risk assessments should not restrict their focus to predicting the likelihood of discrete incidents of physical violence or abuse. Assessments need to take into account the full range of behaviours which fit within current definitions of domestic abuse (e.g. physical, psychological, emotional abuse) to identify whether these form a pattern of abuse and domination. (Newman, 2010, p1)

In other words, while fact-finding has a tendency to de-contextualise incidents of violence from the fabric of the relationship, risk assessment needs to re-contextualise those incidents to gain a full understanding of the risks to the child and to the other parent of the perpetrator's behaviour (Hunter and Barnett, 2013; Hunter *et al.*, 2018).

Risk assessment may be undertaken by Cafcass officers in less complex cases but, in more complex cases, this should be undertaken by an expert. The research literature indicates that specialist domestic abuse practitioners, who have the most astute risk assessment practices, and are most aware of coercive and controlling strategies, were rarely appointed to undertake this exercise (Coy *et al.*, 2012; Hunter and Barnett, 2013). Respondents to Hunter and Barnett's (2013) survey reported that in more complex cases, child or adult psychiatrists or psychologists were most likely to be instructed to assess risk, while referral to a specialist domestic abuse practitioner was far less likely.

The views of women and family lawyers participating in Coy *et al.*'s (2012) research on Cafcass risk assessments were mixed. While some women and family lawyers reported positive experiences, others felt that Cafcass officers focused on promoting contact, with inadequate attention to the risks of future abuse. Similar variability was reported about risk

assessments undertaken by social services, who could be taken in by abusive men's presentation as charming and 'on their best behaviour'.

Due to concerns expressed by Women's Aid (2016) about inadequate risk assessment from unqualified sources, Mr Justice Cobb's (2016) proposed revisions to PD12J included a requirement that in all cases where domestic abuse was established, the court should obtain a safety and risk assessment conducted by a specialist domestic abuse practitioner working for an appropriately accredited agency. This proposal was not adopted in the final version of PD12J 2017.

9.10 Interventions to reduce risk

Paragraph 33 of PD12J provides that after the nature and extent of any domestic abuse is determined, the court must consider "whether any party should seek advice, treatment or other intervention as a precondition to any child arrangements order being made".

Additionally, or as an alternative, Paragraph 34 provides that the court may request attendance at a Domestic Abuse Perpetrator Programme (DAPP) commissioned and approved by Cafcass.

Research before and after 2014 found that referrals to DAPPs were rare (Cafcass and Women's Aid, 2017; Coy *et al.*, 2012; Hunter and Barnett, 2013). To some extent this was attributable to widespread problems with the availability of DAPP provision in many areas. However, Hunter and Barnett (2013) found that courts were disinclined to order fathers to undertake DAPPs because they took 'too long' to commence and to complete, a view shared by some family lawyers (Barnett, 2014).²¹ This view appears to adopt the perpetrator's perspective on DAPPs – that they are a hurdle for them to jump before contact can be fully restored, and that the hurdle is too high. Some respondents to Hunter and Barnett's (2013) survey also felt that the eligibility requirements of DAPPs were problematic.²² This view reflects an unrealistic expectation that DAPPs should 'cure' perpetrators and fails to acknowledge that it is the perpetrator's refusal to acknowledge and address his abuse, and not the DAPP, that impedes contact. Courts tended to prefer

²¹ A typical DAPP requires approximately 32 weeks' regular attendance.

²² DAPPs usually require perpetrators to accept the court's findings of fact or acknowledge concerns about their behaviour.

anger management programmes because they are quicker and more available, despite their acknowledged inability to address the risk of future domestic abuse (Hunter and Barnett, 2013). Other inappropriate interventions included Parenting Information Programmes and couples counselling (Coy *et al.*, 2012; Hunter and Barnett, 2013).

To address the misconceptions about DAPPs, PD12J was amended in 2014 to include an acknowledgement “that acceptance on a DAPP is subject to a suitability assessment by the service provider, and that completion of a DAPP will take time in order to achieve the aim of risk-reduction for the long-term benefit of the child and the parent with whom the child is living”.

9.11 Determining the welfare decision

Finally, a determination should be made of what arrangements will best serve the child’s welfare. In making this determination, the court must take into account:

- the abuse found to have occurred
- any risk assessment
- any harm the child and the resident parent have suffered or are at risk of suffering
- the need to ensure that future arrangements will be in the best interests of the child and will not expose the child to an *unmanageable* risk of harm, nor expose the resident parent to further domestic abuse²³

The court should then only make an order for contact if it is satisfied that the physical and emotional safety of the child and the resident parent can be secured before, during and after contact, and that the resident parent will not be subjected to further domestic abuse (para.36). The court should also consider a range of factors derived from the original Sturge and Glaser (2000) report including the motivation of the abusive parent in seeking contact, their likely behaviour during contact, and the effect of the domestic abuse on the child and on his/her relationship with the parents (para 37).

The pre-2014 research found an inconsistent application of these factors by Cafcass officers and the lower courts (Barnett, 2014; Coy *et al.*, 2012; Hunter and Barnett, 2013).

²³ The word in italics was inserted into Paragraph 36 by the 2017 amendments to PD12J.

More recent case law indicated a continued failure to refer to or apply these factors, despite the Court of Appeal repeatedly emphasising the importance of applying these provisions to ensure correct decision-making (Barnett, 2017). There was found to be considerable reluctance even by the appellate courts to hold fathers to account for their abuse or to require evidence that they had acknowledged its impact on their families and had sought to make amends. Participants in Barnett's (2014) interviews were ambivalent on the issue of how courts approached the father's motivation for seeking contact. Some interviewees felt that courts fail to question the father's motivation, and that it could be very difficult to persuade courts that a father seeking contact "is motivated by anything other than a desire to see the children" (ibid, p450). Participants in her study reported judges readily accepting expressions of contrition at face value and expressing sympathy for abusive fathers.

But obviously they're coming from the stance that it's best for the child to see the parent. So, if someone's expressing genuine concern to see their child, um, then they might err on the side of believing that. [Interviewer: how do courts decide that somebody has a genuine desire to see their child?] They say they do in their statement. (Ms B, solicitor, London) (ibid, p450)

Some women interviewed by Coy *et al.* (2015) found that even where their ex-partner's abuse was proved at fact-finding hearings, this was not factored into decisions about contact, including in one case where Cafcass and a specialist domestic abuse assessor had recommended no contact.

Non-judicial interviewees participating in Harwood's (2019) post-2014 study had mixed perspectives on whether the courts' pro-contact approach undermines welfare and safety concerns in practice. The barristers tended to provide positive accounts of judicial practice. Cafcass practitioners tended to discuss the courts' approach in neutral terms. The domestic abuse organisations were critical of what they saw as the courts' over-promotion of contact to the detriment of safety. The solicitors tended to share a more specific concern about what they saw as the courts' narrow construction of 'relevant' domestic abuse.

9.12 What orders are made in cases involving domestic abuse?

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, p461)

Statistics and research studies undertaken both prior to and after the implementation of PD12J revealed that some form of direct contact between children and perpetrators of domestic abuse was ordered in the vast majority of cases. Orders for no contact, even where domestic abuse had been established, were extremely rare, and were consistently found to represent less than 1% of total contact orders. A barrister interviewed by Harwood (2019) observed:

I can probably count on the fingers of one hand in thirty-five years when there's no [contact]. [C]ases [where there has been no contact] have been, you know, where people have actually been in prison for assaults on the child, you know. It's that serious. (Barrister) (ibid)

Table 9.2 sets out the quantitative findings of case file analyses as well as estimates from qualitative studies on the incidence of orders for no contact in child arrangements/contact proceedings. The table indicates those figures or estimates that relate to no contact orders in all cases, or those that relate to no contact orders where domestic abuse has been alleged and/or established.

Table 9.2 The incidence in samples of orders for no contact²⁴

Source	Incidence
Perry and Rainey (2007)	Less than 1% of all contact orders
Hunt and Macleod (2008)	1.3% of all contact orders
Ministry of Justice (2012)	Less than 0.3% of all contact orders
Coy <i>et al.</i> (2012)	No instances cited of 'no contact' orders in DA cases
Hunter and Barnett (2013)	'Very rare' (in DA cases)
Barnett (2015)	'hardly ever'; 'very rarely' (in DA cases)
Harding and Newnham (2015)	5 out of 86 DA cases (although main reason was father disengaged from proceedings)
Cafcass and Women's Aid (2017)	2% in cases involving DA allegations
Harwood (2019)	'extremely rare' (in DA cases)

PD12J states that: "Where the court does not consider that direct contact is appropriate, it must consider whether it is safe and beneficial for the child to make an order for indirect contact" (para 39). Indirect contact could take the form of telephone calls, cards, letters, presents or, in more recent years, emails and text messages. The research literature indicates that where courts and Cafcass officers consider that no direct contact should take place between children and perpetrators of domestic abuse, the preference is for indirect contact, to 'keep the door open' to future direct contact (Coy *et al.*, 2012; Harding and Newnham, 2015; Hunter and Barnett, 2013; Perry and Rainey, 2007). Harding and Newnham (2015) considered that, from the cases analysed in their study, this hope appeared somewhat unrealistic. Perry and Rainey's (2007) follow-up interviews found that putting indirect contact into practice was problematic and unsuccessful, giving rise to disagreement and animosity between parents.

The pre- and post-PD12J case file research indicated that orders for indirect contact only were very rare, ranging from 4% to 5% of cases (Cafcass and Women's Aid, 2017; Harding and Newnham, 2015; Hunt and Macleod, 2008; Perry and Rainey, 2007). By contrast, in qualitative studies undertaken after PD12J was issued, judges, professionals and mothers in receipt of orders for indirect contact gave much higher estimates (Coy *et al.*, 2012; Hunter and Barnett, 2013). A reason suggested for this difference was that these

²⁴ The methodologies of these studies are summarised in Appendix A.

estimates included cases where orders for indirect contact were made together with orders for direct contact.

The factors most commonly cited by the majority of family lawyers interviewed by Barnett (2014) that would militate against the court ordering direct contact were the severity of the violence and/or how recently it has occurred, so that only recent, extremely serious physical violence would lead to no contact being ordered.

I had one case in xxx FPC at xxx where the ... domestic violence was really at the most serious end I've ever seen. A broken jaw, two convictions for ABH, she was hospitalised whilst pregnant, in front of the children, you know, everything under the sun, and it was, um, obviously proved ... but I completely expect dad not to get any direct contact ... He denies all of them so his risk is obviously high ... I think that's the sort of case where ... it becomes a no direct contact case. (Ms E, barrister, London) (ibid, p452)

A similar view was expressed more recently by a district judge interviewed by Harwood (2019), which indicates little change in the practices and perceptions of courts and professionals:

You know, usually contact should still take place. You know, even children whose fathers have been murderers, they may well still have the right to know their father, it seems to me. And I think that's the way the law is going. What it is about is managing the contact safely ... so it's about making it safe but, generally, I'm not sure that even if there is some quite serious abuse, I am not sure that it prevents contact taking place. (district judge) (ibid)

The very low refusal rate of applications for contact may also be a consequence of the prevalence of agreements for contact, which may be attributable in part to the advice given to mothers by their legal representatives, and to Cafcass officers reserving their recommendations for no direct contact to cases involving very severe physical abuse (Barnett, 2014). Harding and Newnham's (2015) case file analysis revealed that in nearly all of the (very few) cases where no contact was ordered, the determining factor was the father's disengagement from the proceedings rather than the abuse he had perpetrated.

The pre- and post-PD12J research revealed that the most common orders made in cases where domestic abuse was alleged or established were orders for some form of direct contact. Case file analyses undertaken prior to the implementation of PD 12J found that cases involving allegations of domestic abuse ended in orders for direct, unsupervised contact in 57% of cases (Perry and Rainey, 2007) and 54% of cases (Hunt and Macleod, 2008). Harding and Newnham's (2015) case file analysis, undertaken after PD12J was implemented, found that even in cases with serious domestic abuse or child welfare concerns, the most common outcome was regular staying (overnight) contact (43% of cases). The most recent study involving case file analysis found that in cases where domestic abuse was alleged, the most common outcome was still direct, unsupervised contact (39% of cases) (Cafcass and Women's Aid, 2017). Orders for supervised or supported contact were made far less frequently.²⁵

Qualitative studies undertaken after the implementation of PD12J which sought the views of victim/survivors of domestic abuse also found that the most commonly reported orders were for direct, unsupervised contact (Birchall and Choudhry, 2018; Coy *et al.*, 2012, 2015). By contrast, research involving surveys of, and interviews with, judges and professionals found that the most commonly reported orders made when domestic abuse had been established were for supervised or supported contact (Barnett, 2014; Harwood, 2019; Hunter and Barnett, 2013). These differences between the views of victim/survivors and those of judges and professionals may be more apparent than real, because the court's objective in ordering supervised or supported contact is to progress incrementally towards unsupervised, preferably staying, contact. As one 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.' (B114, London)" (ibid, p56). Similar comments were made by family lawyers interviewed by Barnett (2014). Harding and Newnham (2015) and Harwood (2019) also reported this incremental approach to contact, with supervised contact being seen very much as a temporary measure and courts aiming to progress contact from more restrictive to less restrictive forms, building up to the end goal of unsupervised (preferably staying) contact.

²⁵ Supervised and supported contact is explained and discussed further in Section 9.13.

While this incremental approach was previously overseen by a series of review hearings, since these were discouraged by the Child Arrangements Programme (PD12B) implemented in April 2014, Harwood's (2019) interviewees reported that reviews tend to be avoided unless the court deems them absolutely necessary. Some interviewees reported that reviews have been replaced with 'staggered' orders for contact, with the court making orders which stipulate how contact should progress in the future at pre-set intervals. The expectation is then that parents will bring the case back to court if deemed necessary. Three interviewees expressed concern about the risks involved in leaving the monitoring of contact to parents.

What you are seeing with court orders now, there are certain set phrases like "a stepping ... stepped approach towards the long-term". ... [O]f course it's much easier in the short-term to manage risk and make assessments and think how you are going to manage it but it's the unknown in the long-term, so there's often this big step ... So, it's not always, I would say, appropriately managing the risk. Certainly in the long-term. ... But I think people find solutions in the short-term, but the pressure is to have a final order and make recommendations. (Cafcass practitioner) (ibid)

9.13 Safeguarding children and non-abusive parents when orders for direct contact are made

Paragraph 38 of PD12J 2017 provides that if the court decides to order direct contact between children and perpetrators of domestic abuse, the court should consider "whether or not contact should be supervised, and if so, where and by whom" and whether to impose any conditions on the contact parent.

Supervised and supported contact centres play an important role in the exercise provided for in Paragraph 38. Contact can take place at the contact centres or they could be used for collection and return of children ('handovers'). Contact could also be supervised by third parties such as family members or friends, who may also assist with handovers.

Supervised contact centres are staffed by paid workers who closely monitor contact, with one worker allocated to each family, who reports back to the referrer (Caffrey, 2017).

Supported contact centres, which are not usually appropriate for cases involving domestic abuse, are run by volunteers and multiple families have contact together in large rooms, with no close monitoring of conversation or behaviour and no reports to referrers (ibid). Most referrers to contact centres are solicitors or Cafcass officers.

Two research studies of supervised and supported contact were undertaken prior to the implementation of PD12J (Harrison, 2008; Perry and Rainey, 2007). Harrison's (2008) study found that despite serious and persistent pre- and post-separation violence, 75% of mothers participating in her study were attending supported contact centres offering low levels of vigilance. There was little direct supervision at the centres, including those that purported to offer supervised contact. Very few centres had separate entrances and exits, relying instead on staggered arrival and departure times, which still left some women and children followed by perpetrators after contact. Observation of contact found concerning incidents including fathers directing verbal abuse at mothers and sometimes children, asking children to pass notes to women, and men waiting outside the centres for women and children. Most contact centres did not screen for domestic abuse or undertake safety or risk assessments. The researchers concluded that child contact centres "constituted a significant site for and form of post separation violence" and impeded women's and children's recovery from abuse (ibid, p401).

Perry and Rainey's (2007) follow-up interviews with parents who had accessed some form of supervised contact found low levels of satisfaction and problems putting the contact into practice. None of the cases involving supervised or supported contact reported any general improvements in the contact situation, with a general decline in the frequency of contact. There were also problems with relying on family or friends to provide supervision.

The post-PD12J research undertaken before the 2017 amendments similarly raised issues about the quality of supervision at supported and supervised contact centres which placed women and children at risk, and inappropriate practices by some contact centre staff.

Some courts ordered supervision by family members rather than the use of child contact centres, caused partly but not entirely by the limited availability of supervised contact centres (Birchall and Choudhry, 2018; Caffrey, 2017; Coy *et al.*, 2012; Harwood, 2019; Hunter and Barnett, 2013).

All the research literature revealed the lack of resourcing for supervised contact centres, and Harwood's (2019) interviewees raised concerns about lengthy waiting lists, long travelling distances, restrictive opening times and parents being unable to afford to fund supervised contact. Concerns were also raised by interviewees about inappropriate referrals to supported contact centres:

[I]n the supported centres where they are just staffed by volunteers, they quite often get referrals for contact through the family courts and they don't feel able to push back on unsafe referrals because they are volunteers and they are pushing back to the judiciary. That's really full-on, so often they feel like they have to take all the referrals, even when they are like 'Is this safe? Probably not. But we can't push back because that's a family court judge. I am a volunteer'. (domestic abuse organisation) (ibid)

Particular concerns have been raised about 'supervision' by family and friends, who could withdraw from facilitating contact because of perpetrators' behaviour during contact or at handovers (Morrison, 2015). In some cases, resident parents who had sustained domestic abuse from contact parents were expected to supervise contact themselves. Harding and Newnham's (2015) case file analysis found that in a small number of cases, "the courts gave resident parents, grandparents and others the responsibility of supervising and monitoring contact with some of the least reliable, or potentially frightening parents" (ibid, p109).

Caffrey (2017) undertook the most recent UK study of child contact centres, involving quantitative and qualitative research into the practices of child contact centres, with data collected in 2012. In addition to analysis of 10 years of the National Association of Child Contact Centres' annual survey, observations were undertaken of practice in six child contact centres, as well as interviews with contact centre staff, solicitors, social workers and judges.²⁶ The quantitative analysis found that only about a quarter of contact centres offered supervised services, and that most cases involving concerns about domestic abuse were facilitated at supported contact centres, which proved to be highly problematic. Conversations were not closely monitored, and in some centres, families were left alone

²⁶ See Appendix A for further details of this study's methodology.

for periods of time. Volunteers were often unaware of information about case histories, including concerns about domestic abuse. While staff were aware of the importance of child safety and protection, they placed more emphasis on other goals, with adverse implications for child safeguarding. These goals were providing a 'welcoming' service, providing a 'non-judgemental' service and providing a 'neutral' service. In support of these goals, it was found that the failure of centre managers to pass on information about case histories to volunteers was not accidental but intentional. Many volunteers said that if they were given 'too much' information, this could lead to them being 'biased' or 'taking sides' against parents. Being 'neutral' led to abuse being "reconstituted as parental conflict and in this way actual or potential maltreatment could be 'disappeared'" (ibid, p345). Additionally, it appeared that the desire to be neutral and non-judgemental was reserved for non-resident fathers, as volunteers experienced no anxiety about making unsupported judgments about the motivations of resident mothers who objected to contact arrangements. Even direct knowledge of abuse did not prevent staff from viewing mothers as fabricating claims of abuse to obstruct contact. The study concluded that referring cases involving domestic abuse to supported contact centres placed adults and children at risk of harm.

In light of concerns raised by the All-Party Parliamentary Group on Domestic Violence (2016) about supported contact centres and informal supervision of contact, PD12 2017 included a new provision in Paragraph 38 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 supported by a parent or relative, is not appropriate". What effect this provision will have, or whether it will be circumvented by consent orders, the lack of risk assessment and limited availability of and funding for supervised contact centres remains to be seen.

9.14 Consistency of the application of PD12J

The pre-2014 research found a marked lack of consistency in the application of PD12J between different courts and different judges in the same court, leading to the appearance of a 'post code lottery' (Coy *et al.*, 2012; Hunter and Barnett, 2013). More recent research by Harwood (2019) confirmed that these inconsistencies remain a live issue.

A linked issue which emerged from the research, exacerbated by the numerous hearings that could take place in contact cases, was that cases were rarely overseen by the same judge. A mother interviewed by Coy *et al.* (2012, p 53) reported having “25 different judges” in her case. Where the same judge did oversee different hearings, they were able to recognise patterns of abuse which had a positive impact on case management and outcomes. To remedy this situation, PD12J was amended in 2014 to emphasise the importance of judicial continuity and provide for the same judge or magistrates to hear both the fact-finding hearing and any subsequent hearings unless this would result in detrimental delay (paras 20 and 31). It is not yet known whether these provisions are being implemented as envisaged by PD12J.

10. The enforcement of contact orders

Applications for enforcement of contact orders are rare. Less than 5% of contact applications in 2011 involved enforcement applications (Trinder *et al.*, 2013). However, the perceived lack of enforcement of contact orders has been portrayed as a problem in the media and by policymakers because of concerns raised by fathers' groups. Contact orders can only be enforced against the resident parent; the courts have no power to coerce a non-resident parent to exercise contact (Holt, 2018).

Until 2006, the only options available to courts for enforcing contact orders were to treat a breach of an order as a contempt of court and impose a fine or imprisonment. These sanctions were rarely used because of the general view that they would negatively impact the child and could adversely affect the child's relationship with the non-resident parent (Trinder *et al.*, 2013).²⁷ Courts could also transfer the residence of the child to the non-resident parent and have become more willing to do so or to use the threat of transfer through a suspended residence order, particularly in cases of perceived parental alienation (Barnett, 2020). However, this remedy, too, remained, until recently, a 'weapon of last resort' because it may adversely impact the child's welfare (Trinder *et al.*, 2013).

After a government consultation between 2002 and 2005, the Children and Adoption Act 2006 gave courts new methods to prevent breaches of contact orders and enforce breached orders. These include attaching automatic notices warning of the consequences of non-compliance to all contact orders, ordering the parent in breach to undertake unpaid work (community service), and/or ordering the parent in breach to pay compensation for financial loss to the non-resident parent.

Enforcement of contact orders can put women who have experienced domestic abuse in an invidious position, particularly in light of the high number of orders for direct contact made in favour of perpetrators of domestic abuse discussed in Section 9 (Saunders and Barron, 2003).

²⁷ However, in the case of *A v N* [1997] 1 FLR 533, CA, the Court of Appeal showed a greater willingness to support committal against mothers who disobeyed contact orders.

Hunt and Macleod's (2008) case file study included 30 enforcement cases. They found that the majority of cases involved unworkable or outdated orders, rather than orders that were flouted. Less than half the cases had the previous order reinstated. In 10 of those cases the court decided that direct contact was not appropriate because of serious welfare concerns or because the child refused to comply.

Trinder *et al.* (2013) conducted the first (and only) major study on contact enforcement in England and Wales. This study provides quantitative and qualitative data based on an analysis of 215 case files involving 312 children undertaken in 2012. It was found that, whilst the 'implacably hostile' mother type of case does occur, it constitutes a small minority (4%) of enforcement cases. Of far more concern were issues about child or adult safety, which were raised at index and enforcement stages in 63% of cases.²⁸ The most common concern was domestic abuse, reported in nearly half of cases at index stage and in a third of cases at index and enforcement stages. The seriousness of these concerns was reflected in the high incidence of police involvement and of criminal convictions among non-resident parents. The researchers classified 31% of cases as involving current risk/safety issues, of which the largest category comprised domestic abuse (58% of risk cases) followed by child abuse (46%). Few of the allegations were the subject of a fact-finding hearing.

While the researchers considered that the court generally adopted the most appropriate approach, this was not the case for the risk/safety cases. A protective approach was taken to half these cases, but courts also appeared to 'misread' 41% of the risk cases as involving mutual conflict and applied a co-parenting or settlement approach. A further 8% of the risk cases were viewed as implacable hostility, in which case the court either enforced the order or considered a transfer of residence. As a result, it was found that in 44% of the risk cases, safeguarding was managed marginally or inadequately by, for example, referring the parties in high risk cases to mediation or to a PIP, making orders for unsupervised contact, or failing to refer or enforce attendance at a DAPP.

The views of older children were influential, although not determinative, of outcomes, and in some cases where older children were refusing all or substantial contact with an abusive

²⁸ Index stage refers to the order that the non-resident parent was applying to enforce.

father, the court stopped or reduced contact. However, there were cases where children's opposition to the contact sought by the father was overridden, including in high risk cases involving domestic abuse. The researchers concluded that "the strength of the contact presumption appears to have diverted the court's attention from effectively assessing and managing risk" (ibid, p63).

11. Orders under Section 91(14) of the Children Act 1989 (barring orders)

Section 91(14) of the CA 1989 provides that: “On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court”.

These orders do not present an absolute bar to future applications but prevent a party to proceedings from having an automatic right to make applications under the Children Act 1989. Rather, the party is required to seek the court’s permission to make any new application (Lee, 2015). The type of application prohibited must be specified in the order.

Guidelines for the making of Section 91(14) orders were laid down in the case of *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573. They emphasise that, while the child’s welfare remains the court’s paramount consideration and the court has discretion in exercising its power to make a barring order, these orders should be the exception rather than the rule and are very much weapons of last resort to prevent repeated and unreasonable applications or to avoid a serious risk that the child or the primary carer(s) will be exposed to unacceptable strain if the order is not made. The court must say how long the bar will last for. Orders for indefinite periods can, in exceptional cases, be made, but need to be justified and reasoned.

If a party wishes to make a new application while a Section 91(14) order is in place, they have to apply for permission to bring the application and show that they have an ‘arguable case’ (a real prospect of success or a serious issue to be tried) (Lee, 2015). The welfare of the child is not the court’s paramount consideration in deciding whether to grant permission, although it is a ‘relevant consideration’ (Burrows, 2019).

There is also the possibility of the court making a civil restraint order (CRO), which prevents vexatious litigants from repeatedly making unmeritorious applications to court. These orders, formerly called ‘Grepe and Loam’ orders, can be traced back to the decision

of the Court of Appeal in *Bhamjee v Forsdick (Practice Note)* [2003] EWCA Civ 113, which emphasised that they are appropriate only in cases involving persistent applications that are totally devoid of merit. CROs restrain applications being made without the permission of the court and, unlike Section 91(14) orders, they ensure that a judge decides at the outset whether the application can proceed, rather than at the end of proceedings.

The power to make CROs is set out in rule 4.8 of the Family Procedure Rules 2010 and the accompanying Practice Direction, PD4B. There are three types of CROs. Limited CROs can be made in the county court and the High Court where there have been at least two applications made 'totally without merit'. They apply only to the proceedings in which they are made, and last for the life of those proceedings. Extended CROs can restrain applications in other, loosely related, proceedings where a party has 'persistently' made applications which are 'totally without merit'. General CROs are the most draconian; they prohibit the making of any application in any court without the permission of the court where a party has 'persistently' made applications which are 'totally without merit' in circumstances where an extended CRO would not be sufficient or appropriate. Extended and general CROs can only be made by a High Court judge and can last for up to two years. PD4B states that the court *must* consider making a CRO when it strikes out a statement of case or dismisses an application (including an application for permission to appeal) and considers the application is totally without merit.

PD4B clarifies that CROs are separate from, and do not replace Section 91(14) orders. For this reason, CROs are very rarely made in private law children proceedings because there would be very few cases where a Section 91(14) order would not prevent the mischief aimed at by a CRO. They are mainly made in financial remedies proceedings (Burman, 2010; Sambrooks-Wright, 2018).

Section 91(14) orders have clear benefits for children and victim/survivors of domestic abuse. 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, p385). US researchers Bancroft *et al.* (2012) pointed out that abusive fathers often harass their former partners by being frequent and tenacious litigators. Numerous other research studies have revealed how perpetrators of domestic

abuse may use continuous litigation involving numerous applications to the family courts, and repeated requests for assessments of mothers and children, as a tool or tactic for the purpose of continuing the abuse post-separation, as part of an ongoing pattern of control and harassment, which has been experienced by women as further abuse (Birchall and Choudhry, 2018; Coy *et al.*, 2012, 2015; Harrison, 2008; Thiara and Gill, 2012; Thiara and Harrison, 2016).

Lawyers participating in Coy *et al.*'s (2012) research reported on patterns they had experienced from their caseloads, of abusive non-resident parents initiating and pursuing contact proceedings as a means of sustaining or regaining control, protracting the proceedings as much as possible and then not engaging with contact when it was ordered: "They [perpetrators] take unreasonable stances on contact, make extra applications to increase the number of hearings and face-to-face encounters, but don't actually properly apply themselves to such contact as they may get' (R113, solicitor)" (ibid, p76).

A qualitative Australian study undertaken by Douglas (2018), which involved interviews with 65 victim/survivors of domestic abuse, found a variety of ways abusive men pursued endless litigation and implemented abusive practices in the process by repeated court applications, multiple applications to vary orders, requests for adjournments, numerous appeals against orders, constantly firing lawyers and instructing new ones to extend litigation, and making spurious complaints against lawyers and judges.

Research studies have revealed the harmful and debilitating impact on women of these protracted proceedings, which many found as bad as, or worse than the abuse itself. Parents in Perry and Rainey's (2007) follow-up study pointed out "that protracted litigation had been stressful both for them and their children, for some it was described as a 'nightmare' that had ruined their lives" (ibid, p41). Women interviewed by Coy *et al.* (2015) experienced the repeated attendances at court where they had to face their abusers as more debilitating and more harmful to their physical and mental health than the ongoing violence, threats and harassment that they were sustaining. Women have reported that the lengthy, protracted litigation depleted their physical, emotional and financial resources (Birchall and Choudhry, 2018; Coy *et al.*, 2012; Douglas, 2018):

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, p43)

Some women were re-traumatised by the court process which impeded their recovery from domestic abuse:

It destroyed me. It made me feel mad, it made me feel frightened, it made me feel dehumanised, it made me feel belittled, it made me feel cheap, it made me feel dirty. It honestly, it destroyed my life. And it destroyed my children's lives.
(interview participant) (ibid, p44)

A number of studies found that the family courts rarely understood how abusive fathers may pursue and protract proceedings as part of a strategy of harassment and control, pointing to the fact that perpetrators were rarely, if ever, identified as vexatious litigants (Coy *et al.*, 2012, 2015; Thiara and Gill, 2012; Women's Aid, 2016). Barnett's (2017) analysis of the case law from 2014 to October 2016 found that in a very limited number of cases, trial judges had good insight into these strategies and made Section 91(14) orders to prevent further litigation. These insights were not always shared by the appellate courts, which overturned all but one of these Section 91(14) orders, prioritising the pursuit of contact over ending the litigation. The issue, therefore, is not with the terms of Section 91(14) but in the strict guidelines developed by the case law, and their implementation being filtered through the presumption of contact.

12. Conclusions

The topics discussed in this review were encompassed by three broad themes:

- children's and parents' experiences of domestic abuse before and after parental separation
- children's and parents' experiences of family court proceedings and decision-making in the context of domestic abuse
- how the family courts respond to and manage domestic abuse in private law children cases, including how the courts apply PD12J, enforce contact orders and manage abusive litigation

A rapid evidence assessment approach was adopted, focusing primarily on existing literature reviews and studies conducted in England and Wales from 1996 to August 2019. The searches produced a total of 87 publications for review. Summaries of the methodologies of all these studies are set out in Appendix A. Quality assurance was met by searching only for peer-reviewed literature and practice-based research undertaken by or with academic researchers for nationally and internationally recognised organisations.

This literature review has revealed the multiple and interlinked forms of domestic abuse that victim/survivors and children may experience both before and after parental separation, which are woven into family life and interactions, with 'normal' family life being an unrealistic expectation for victim/survivors and children (see Section 4.2). The literature reviewed revealed the cumulative devastating, harmful and even lethal effects of domestic abuse on both victim/survivors and children, the debilitating impact of domestic abuse on the parenting capacities of victim/survivors, and the harmful parenting practices of abusive parents (usually but not always fathers) (see Sections 4.4 and 5). The literature identified child contact as the key site for post-separation abuse, which could increase in severity and, at worst, result in homicide of children and mothers. Contact could be used by perpetrators as a site to undermine mothers (see Sections 6.2 and 6.3). Post-separation abuse can impede the recovery of both victim/survivors and children and meant that for many victim/survivors and children, their post-separation lives mirrored their pre-separation lives in all but cohabitation (see Sections 5.2 and 6).

The research has shown that while the majority of mothers, including those who had experienced domestic abuse, were supportive of post-separation contact, they experienced the emotional and physical work of encouraging and facilitating relationships between children and abusive fathers as distressing, daunting and risky (see Section 6.2). While children expressed a range of views on contact with abusive fathers, the priority for nearly all children, including those who did want a relationship with their father, was safety, for themselves and the rest of their families (see Section 6.4).

Predominantly quantitative studies conducted in England and Wales have found that the prevalence of domestic abuse in private law children cases is considerably higher than in the general population, with allegations or findings of domestic abuse in samples of child arrangements/contact cases ranging from 49% to 62% (see Table 4.1). However, the studies examined in this literature review suggest that there is a disconnect between the lived experiences of victims of domestic abuse and their children, and the perceptions, attitudes and responses of the family courts and professionals. This disconnect appears to be underpinned and manifested by interrelated systemic factors that reinforce each other.

First, the presumption that contact/involvement with non-resident fathers invariably benefits children, has led to courts and professionals strongly promoting contact between children and non-resident fathers following parental separation, even in circumstances of domestic abuse. This approach is now reinforced by the statutory presumption of parental involvement (see Sections 7.1 and 7.2).

Second, while more judges and professionals have gained an 'in theory' understanding of the wide-ranging nature of domestic abuse, these insights do not necessarily translate into practice. The literature reviewed found that many courts and (particularly legal) professionals hold narrow, incident-based understandings of domestic abuse, akin to assaults by strangers (see Sections 7.2, 7.4 and 9.3). There appears to be a distance to travel before a substantive and concrete appreciation of the power and control dynamics of domestic abuse, its consequences and effects, and the manipulative strategies of perpetrators is gained by all family courts and professionals.

Third, qualitative and quantitative studies conducted throughout the period of the literature review found that mothers faced attitudinal challenges in the family courts. Mothers who

opposed or sought to restrict contact, or even raised concerns about domestic abuse, could be viewed by courts and professionals as implacably hostile or alienating and suspected of fabricating claims of domestic abuse (see Sections 7.2, 7.4 and 9.8). Qualitative studies found that this contrasted with a more sympathetic view of fathers, including perpetrators of domestic abuse, and a reluctance to see fathers in a negative light (see Section 7.4).

Fourth, the challenges of promoting contact between children and abusive fathers were rarely recognised in family court proceedings, while very little was expected of non-resident fathers to 'make contact work' (see Sections 7.2 and 7.4). Several commentators have suggested that this is underpinned by wider social, political and legal discourses that downgrade the work of 'caring for' in favour of 'caring about' children (Eriksson and Hester, 2001; May, 2008; Reece, 2006; Smart, 1991).

Finally, there continued to be a tendency for domestic abuse to be seen as separate and distinct from parenting (see Sections 7.1 and 7.4). In this respect we can see evidence of Hester's (2011) 'three planets' model, with perpetrators being seen as violent criminals in the criminal courts, invisible in child protection proceedings, and as 'good parents' in family court proceedings.

The research reviewed for this literature review indicates that these systemic assumptions, perceptions and attitudes underlie the responses of many courts and professionals to domestic abuse in family court proceedings and have significant consequences for victim/survivors of domestic abuse and children, and for the conduct of family court proceedings.

Qualitative and quantitative studies undertaken prior to and after the implementation of PD12J revealed that domestic abuse was frequently minimised, marginalised, downgraded and not taken seriously by courts and professionals (see Section 7.2). Domestic abuse was predominantly considered by courts and professionals to be 'relevant' to child arrangements/contact only when it involved recent, severe physical violence (see Section 9.3). Additionally, courts and professionals tended to see domestic abuse as 'a thing of the past' and expected mothers to 'move on', with pressure on all sides to reach agreement for contact. This could involve persuading mothers not to raise allegations of domestic abuse

and to agree to contact arrangements that carried risks for victim/survivors and children (see Sections 7.4 and 9.6).

The studies reviewed revealed that courts and professionals expected mothers to be fully committed to contact, and even raising allegations of domestic abuse could be used as evidence of implacable hostility or alienation. Victim/survivors were deeply impacted by the disbelief and dismissal of their concerns about domestic abuse, which disqualified their experiences and left them feeling degraded, belittled and disempowered (see Section 7.4). This disbelief, together with the humiliating and degrading treatment that many mothers received from courts and professionals, inconsistent and inadequate safety measures at and after court hearings, frequent and protracted proceedings involving numerous applications by perpetrators, and the prospect of facing cross-examination by perpetrators, meant that victim/survivors experienced family court proceedings as being as bad as or worse than the abuse they sought to escape (see Sections 7.4, 8 and 11). Yet perpetrators' use of proceedings as a tactic of post-separation abuse were not fully understood by courts and professionals, and perpetrators were rarely identified as vexatious litigants (see Section 11).

The studies reviewed found that a selective approach was taken to children's wishes and feelings, which were taken seriously if they wanted contact with non-resident fathers but were more likely to be discounted and treated as problematic if they opposed contact (see Sections 7.3 and 7.5). This invalidated their experiences and could have serious implications for risk and safety. A range of qualitative and quantitative studies found that when children voiced reluctance or opposition to contact, considerable efforts were made to persuade them to have contact, or to increase the amount of contact they were having (see Section 7.3).

No empirical research evidence on the implementation of PD12J since its amendment in 2017 was found. However, evidence from qualitative and quantitative research on or conducted under earlier versions of PD12J is likely to remain relevant and provide substantial evidence of consistent findings on common themes over a sustained period of time. These studies found that fact-finding hearings, which were usually restricted to allegations of recent, very severe physical violence, were held relatively rarely and were considered by some legal professionals as 'a waste of time' because contact would be

ordered in any event (see sections 9.4 and 9.5). The fact-finding process encourages a focus on individual incidents of physical violence and women attempting to prove abuse encountered systemic barriers, such as being viewed through stereotypical images of 'typical' victims and victim behaviour, and allegations being disbelieved where there was no external evidence to corroborate women's accounts (see Section 9.8). Risk could be inadequately assessed, and proven findings of domestic abuse could also be given insufficient weight and not factored in to welfare decisions about child arrangements (see Section 9.9).

Pre-2017 qualitative studies also found that the quality of contact with a perpetrator of domestic abuse was rarely evaluated by courts and professionals. There was considerable reluctance to hold fathers to account for their abuse or to require evidence that they had acknowledged its impact on their families and sought to make amends, with courts readily accepting expressions of contrition at face value (see Section 9.11). As a consequence, some form of direct contact was found to be the outcome in the great majority of cases, with 'no contact' orders extremely rare even in proven cases of domestic abuse. The literature reviewed revealed that the most common outcome was direct, unsupervised contact (see Section 9.12).

This literature review found, however, that where mothers felt believed by courts and professionals, and where judges and Cafcass officers were insightful about domestic abuse, it was more likely that the impact of the abuse on victim/survivors and their children would be factored into decisions (see Section 7.4). The literature showed that judicial continuity could play an important role in promoting safer practices and responses, as this enabled the judiciary to recognise patterns of abuse and acquire a more coherent picture (see Section 9.14).

The review of the available research into the operation of PD12J suggested that the approach of courts and professionals was one that attempted to 'fit' or 'shoehorn' domestic abuse into the legal process, rather than the legal process adapting and responding appropriately to the lived reality of domestic abuse. Hunter *et al.* (2018) concluded that, while there is always room for improving the detail of PD12J, that alone would be unlikely to achieve the cultural change called for by the Family Justice Council 13 years ago in the report that led to the introduction of PD12J. The fact that there have been four revisions of

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PD12J since then suggests that the ongoing problems in the effective implementation of PD12J may continue unless judicial and professional perceptions and practices are addressed at a more fundamental level.

Anyone who has been impacted by the contents of this literature review can contact support services at the National Domestic Abuse Helpline:

24 hour freephone: 08082000247

nationalhelpline.org.uk

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Appendix A

Research methodologies

The following studies were undertaken in England and Wales unless otherwise stated.

All-Party Parliamentary Group on Domestic Violence (APPG) (2016) *Domestic Abuse, Child Contact and the Family Courts*. London: All-Party Parliamentary Group on Domestic Violence and Women's Aid.

This briefing paper reports on a Parliamentary Hearing in January 2016 with oral evidence from legal professionals, domestic abuse practitioners, senior academics and survivors of domestic abuse about their professional or personal experiences of child contact and the family courts. Witnesses were also questioned by officers of the APPG and were asked to provide written accounts of their evidence after the hearing.

Allen, D.W. and Brinig, M. (2011) 'Do Joint Parenting Laws Make Any Difference?' *Journal of Empirical Legal Studies*, 8, 304–324.

This US study analysed the effects of changes to custody laws in 1997 in the state of Oregon, which introduced a presumption of shared parenting. Electronic files for the period 1995 to 2002 were analysed for demographic and other administrative information, which were matched with a random sample of divorces with children from the Oregon Online Judicial Information Network to obtain specific information about court proceedings. From this information the researchers created a randomly selected dataset of 3,806 divorces which were analysed using regression analysis.

Aris, R. and Harrison, C. (2007) *Domestic Violence and the Supplemental Information Form C1A*. London: Ministry of Justice.

This quantitative and qualitative study analysed all Section 8 application case files for contact or residence (n = 297) following the introduction of a new supplemental court form (C1A) asking parents to disclose harm concerns, in three different court sites over a period of three months. Semi-structured interviews were held with family court judges, court managers and Cafcass service managers, questionnaires were administered to five solicitors and training workshops were provided to 13 solicitors.

Bailey-Harris, R., Barron, J., and Pearce, J. (1999) 'From utility to rights? The presumption of contact in practice'. *International Journal of Law, Policy and the Family*, 13(2) 111–131.

Bailey-Harris, R., Davis, G., Barron, J., and Pearce, J. (1998) *Monitoring private law applications under the Children Act 1989: Report to the Nuffield Foundation*. Bristol: University of Bristol.

These publications report on a study, funded by the Nuffield Foundation, involving observations of 'family day' hearings in four county courts in the south-west of England between January and September 1996 and observations at Bristol Family Proceedings Court between February and May 1997. Brief observations at four other courts in different areas of the country were undertaken in April and May 1997. Interviews were held with 38 parents, and 345 court files were studied drawn from four county courts in the south-west.

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

This book draws primarily on the American authors' extensive experience of working with parents and children in the US in the context of domestic abuse as well as their review of substantial published research on this issue.

Barlow, A., Hunter, R., Smithson, J., and Ewing, J. (2017) *Mapping paths to family justice: Resolving family disputes in neoliberal times*. London: Palgrave Macmillan.

This study aimed to provide a robust, substantial evidence base for a comparative analysis of the most common forms of alternative dispute resolution (ADR). A mixed methods approach was adopted involving a nationally representative survey, in-depth interviews with lawyers, mediators and separating parties who had experience of different styles of ADR. A selection of mediations, collaborative law sessions and lawyer-client interviews were recorded and analysed. Findings from these three phases were synthesised to provide a 'map' of family dispute resolution pathways.

Barnett, A. (2000) 'Contact and domestic violence: The ideological divide' in Bridgeman, J. and Monk, D. (eds.) *Feminist perspectives on child law*. London: Cavendish Publishing.

This small-scale qualitative study explored barristers' representation of mothers involved in child contact disputes where domestic violence was an issue. Questionnaires were sent to all barristers in England and Wales with family law practices, which resulted in 36 completed questionnaires. In-depth interviews were conducted with four barristers. The data was analysed thematically.

Barnett, A. (2014) 'Contact at all costs? Domestic violence and children's welfare'. *Child and Family Law Quarterly*, 26(4), 439–462.

Barnett, A. (2015) "'Like gold dust these days": Domestic violence fact-finding hearings in child contact cases'. *Feminist Legal Studies*, 23, 47–78.

These two publications report on a study involving in-depth semi-structured interviews with 29 professionals (8 barristers, 10 solicitors and 11 Cafcass officers) from five diverse HMCTS regions. Twenty-four interviews were conducted in 2011 and five in 2010. All reported cases relevant to the operation of PD12J from May 2008 to September 2013 were reviewed. The data from the interviews and case review were analysed thematically using discourse analytic and qualitative approaches.

Barnett, A. (2016) 'Family law without lawyers – A systems theory perspective'. *Journal of Social Welfare and Family Law*, 39, 223–245.

This study utilised data from Barnett (2014, 2015) as well as an updated analysis of more recent case law on litigants in person in family court cases and contextual material.

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

This study reviewed contextual material on domestic abuse and family court cases, and reviewed and analysed all child arrangements/contact cases from the end of 2013 until October 2016. Eight cases were found where domestic abuse was identified as an issue in the judgments. The cases were analysed thematically, drawing on the contextual material.

Barnett, A. (2020) 'A genealogy of hostility: parental alienation in England and Wales'. *Journal of Social Welfare and Family Law*, 42(1), 18–29.

This study reviewed policy and historical background and case law analysis. A total of 40 cases comprised in 54 judgments were identified and reviewed in which parental alienation was raised or referred to using the search terms 'parental alienation', 'parental alienation syndrome' and 'alienation', covering the period from 2000 (when these terms first appeared in reported judgments) to October 2019. These were identified in Family Law Reports and on BAILII, and a few unreported judgments were identified in Casemine.

Birchall, J. and Choudhry, S. (2018) *What About My Right Not To Be Abused: Domestic Abuse, Human Rights and the Family Courts*. Bristol: Women's Aid.

This study undertook research involving 72 women survivors of domestic abuse involved in family court proceedings by way of an online survey in 2017 (which received 63 responses), two focus group discussions in 2017 and telephone interviews with nine women in January 2018.

Brandon, A., Bailey, S., Belderson, P., Gardner, R., Sidebotham, P., Dodsworth, J., Warren, C., Black, J. (2009) *Understanding Serious Case Reviews and their Impact: A biennial analysis of serious case reviews 2005–07*. London: Department for Children, Schools and Families.

This study is the fourth biennial analysis of serious case reviews undertaken in England, in this case between the period 1 April 2005 to 31 March 2007. All available serious case reviews arising out of incidents occurring during this period (n = 189) were reviewed and an in-depth analysis of 40 reviews during the same period was conducted. Telephone interviews were conducted with members of the Local Safe-Guarding Boards and practitioners. A 'layered reading' approach was adopted.

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

This Canadian-based study reviewed international literature on the issue of post-separation violence against women. The methodology for identifying the literature is not set out in this journal article.

Buchanan, F. (2014) 'Addressing the Impact of Domestic Violence on Mothers' Relationships With Their Infants'. *Family and Intimate Partner Violence Quarterly* 41–46.

A small-scale qualitative study was undertaken between 2009 and 2011 involving individual interviews and two consecutive focus groups with 16 women who had parented infants in the context of domestic abuse.

Buchanan, A., Hunt, J., Bretherton, H. and Bream, V. (2001) *Families in Conflict: Perspectives of Children on the Court Welfare Service*. Bristol: Policy Press.

This study was conducted between March 1999 and February 2001. From a pool of 398 parents on whom a welfare report was completed in 1999, 100 separated parents (in 73 cases with 116 children involved in proceedings) were interviewed just after the end of their court proceedings. Eighty-one of these parents were re-interviewed a year later, and 30 children were also interviewed at this time. Welfare reports for all these cases (and 143 contemporaneous welfare reports of cases that were not involved in the study) were analysed and questionnaires were administered to 20 Family Court Welfare Officers (the equivalent at the time of Cafcass officers).

Busby, D.M., Holman, T.B. and Walker, E. (2008) 'Pathways to Relationship Aggression Between Adult Partners'. *Family Relations*, 75(1), 72–83.

The sample for this study was drawn from the entire population of approximately 45,000 respondents who completed an online Relationship Evaluation Questionnaire (RELATE, designed to evaluate the relationship between intimate partners) in different settings between 1998 and 2006. The final sample of participants who were married, engaged or in serious heterosexual relationships and to those who fulfilled all variables was narrowed to 30,600 participants (55% women and 45% men). A multivariate analysis was undertaken.

Cafcass and Women's Aid (2017) *Allegations of domestic abuse in child contact cases*. London: Cafcass and Women's Aid.

A quantitative analysis of 216 cases and a qualitative analysis of 40 of those cases was undertaken from data derived from the Cafcass electronic case management system, of Section 8 cases between parents that closed to Cafcass between April 2015 and March

2016. From the total sample of 15,160 cases, 216 were chosen at random to form the study sample.

Caffrey, L. (2017) 'The Importance of Perceived Organisational Goals: A Systems Thinking Approach to Understanding Child Safeguarding in the Context of Domestic Abuse'. *Child Abuse Review*, 26, 339–350.

Quantitative analysis was undertaken of the National Association of Child Contact Centres (NACCC) annual survey from 2000 to 2010. Between December 2011 and December 2012, 58 hours of observations of practice in six child contact centres was undertaken as well as semi-structured interviews with 27 contact centre staff and 20 referrers (solicitors, social workers and judges). The data presented in the article focuses on a sub-set of 20 interviews with staff working in four of the six contact centres.

Callaghan, J.E.M. and Alexander, J.H. (2015) *Understanding Agency and Resistance Strategies (UNARS): Children's Experiences of Domestic Violence*. Northampton: University of Northampton.

Callaghan *et al.* (2018) 'Beyond "Witnessing": Children's Experiences of Coercive Control in Domestic Violence and Abuse'. *Journal of Interpersonal Violence*, 33(10) 1551–1581.

These two publications report on the study, "Understanding Agency and Resistance Strategies" (UNARS), a four-nation project, funded by the European Commission, which is the largest qualitative study to explore children's experiences of domestic abuse.

Semi-structured interviews with 110 children in the UK, Greece, Spain, and Italy were undertaken, with the aid of photographs and graphics. Eleven focus groups with 74 professionals and nine with 39 parents/carers were held. This article draws on interviews with the UK sub-sample of 21 children aged 8 to 18 years.

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

This Australian study involved interviews with 47 children and young people from 28 families and 90 parents in families that had engaged lawyers and resolved residence and contact matters in the preceding 12 months either by consent, mediation (non-contested

matters) or by court processes (contested matters). The children and young people ranged in age from six to 18 years. Thirty-five children were re-interviewed between 18 and 30 months after the first interview.

Cassidy, D. and Davey, S. (2011) *Family Justice Children's Proceedings Review of Public and Private Law Case Files in England and Wales*. London: Ministry of Justice.

This study reviewed and analysed a sample of closed public and private law family case files from Family Proceedings Courts, county courts and High Courts where an order was made in 2009. The final private law (random) sample comprised 402 cases from 20 courts. Quantitative data was analysed statistically.

Chisholm, R. (2009) *Family Courts Violence Review*. Canberra, Australia: Attorney-General's Department.

Professor Richard Chisholm was commissioned to undertake this Australian review of the "legislation, practices and procedures in relation to matters before the federal family courts where issues of family violence arise" (ibid, p 18). The review was undertaken between July and November 2009. Individuals and organisations were invited by email and through the media, resulting in over 100 submissions from individuals, lobby groups and professional organisations. Additionally, over 30 meetings were held with groups of individuals from a wide range of organisations.

Corbett, N.E., and Summerfield, A. (2017) *Alleged perpetrators of abuse as litigants in person in private family law: The cross-examination of vulnerable and intimidated witnesses*. London: Ministry of Justice.

This study employed a mixed quantitative and qualitative methodology. Quantitative management information was collected between March and May 2015 from all courts in England and Wales that heard private family law cases. This was followed by a small-scale qualitative study based on 21 judicial interviews and a research workshop with external organisations, carried out between August and October 2015. The data was analysed thematically.

Coy, M., Perks, K., Scott, E. and Tweedale, R. (2012) *Picking up the pieces: domestic violence and child contact*. London: Rights of Women.

Coy, M., Scott, E., Tweedale, R. and Perks, K. (2015) ““It’s like going through the abuse again”: domestic violence and women and children’s (un)safety in private law contact proceedings’. *Journal of Social Welfare and Family Law*, 37(1), 53–69.

These two publications report on a study involving interviews with 34 women survivors of domestic abuse who were involved in contact proceedings conducted in 2012, and an online survey of 113 legal professionals, which yielded qualitative and quantitative data. A total of 58 children were involved ranging from infants to 17 years. Of the 32 women who indicated their ethnicity, 28% described themselves as white British.

Davies, L., Ford-Gilboe, M. and Hammerton, J. (2009) ‘Gender Inequality and Patterns of Abuse Post Leaving’. *Journal of Family Violence*, 24(1), 27–9.

This study presented data from the first wave of a longitudinal, prospective survey of 309 women who had left an abusive partner in the previous three years and were recruited from three Canadian provinces (Ontario, British Columbia and New Brunswick). The target population was a community sample of separated women aged over 18. A modified version of the Abuse Assessment Screen was administered by semi-structured interviews. The analysis presented in this paper drew on data provided by 287 women for whom complete data were available on all variables used in the multivariate analyses.

Doughty, J., Maxwell, N. and Slater, T. (2018) *Review of research and case law on parental alienation*. Cardiff: Welsh Government.

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) 68–79.

These two publications report on a review of the empirical literature and case law on parental alienation. A rapid evidence assessment approach was adopted for the literature review drawing on a range of databases and electronic data sources to identify material published since 2000. A total of 45 sources from a number of jurisdictions (principally the US) were included for the literature review. The cases for review were identified in the main judgments databases. Doughty *et al.* (2020) includes updating material.

Douglas, H. (2018) 'Legal systems abuse and coercive control'. *Criminology and Criminal Justice*, 18(1), 84–99.

This Australian publication draws on interviews with 65 women in Brisbane, Australia, who experienced domestic abuse and engaged with the legal system, as part of a longitudinal qualitative study. The interviews were arranged by support workers or lawyers. Each participant was interviewed twice, using a narrative interviewing style.

Dunstan, L., Bellamy, J., and Evans, S. (2012) *The links between coercive controlling violence, parenting problems and children's behaviours among clients of the Parramatta Family Relationship Centre*. Parramatta: Anglicare Diocese of Sydney.

This study involved a trial of four screening instruments conducted in 2011 with 156 clients at the Parramatta Family Relationship Centre in New South Wales, Australia, to screen and assess for violence between parents and its impact on parenting and children's behaviour.

Eriksson, M. and Nasman, E. (2008) 'Participation in Family Law Proceedings for Children Whose Father is Violent to Their Mother'. *Childhood*, 15(2) 259–275.

This Swedish study collected data from individual interviews with children, group interviews with family law investigators (the equivalent of Cafcass officers), and written material submitted to the court by family law investigators. This publication focuses on the data collected from interviews with the 17 children (aged between eight and 17 years) who had been recruited at the time of writing.

Fortin, J., Hunt J. and Scanlan L. (2012) *Taking a longer view of contact: the perspectives of young adults who experience parental separation in their youth*. Brighton: University of Sussex School of Law.

This was a retrospective two-part study with 398 young adults aged 18 to 35 whose parents had separated before they were 16. The first part involved a telephone interview with all the respondents. The second part of the study consisted of in-depth face-to-face interviews with a sub-sample of 50 young adults.

Hague, G. and Wilson, C. (1996) *The Silenced Pain: Domestic Violence 1945–1970. Bristol: The Policy Press.*

This study involved a literature review and interviews with women who had been subjected to domestic violence during the post-war period, with further interviews with adult sons and daughters of other women who had been victim/survivors of domestic violence (total number = 20), supplemented by interviews with domestic violence specialists. The first set of interviews were conducted between 1993 and 1994, and the second set in 1995.

Harding, M. and Newnham, A. (2015) *How do County Courts Share the Care of children Between Parents? Full Report. University of Warwick, University of Reading.*

This study was based on documentary analysis of a retrospective nationally representative sample of 197 case files from five different county courts in England and Wales. The sample was limited to Section 8 application cases which were disposed of by final order in a six-month period between February and August 2011.

Harne, L. (2011) *Violent Fathering and the Risks to Children. Bristol: Policy Press.*

Semi-structured interviews were undertaken with 20 domestically violent fathers who were recruited from four DAPPs in different parts of England. All the fathers, other than two, were separated from children from first families. Ten mothers were interviewed, drawn from two different support groups/networks for separated mothers and children experiencing domestic abuse.

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

This study of child contact centres, funded by the Lord Chancellor's Department, was undertaken between 2000 to 2002. A questionnaire was administered to all NACCC-affiliated contact centres for baseline policy data. Questionnaires and semi-structured interviews were undertaken with 70 resident mothers, one non-resident mother, 35 non-resident fathers, 21 children, 34 referrers and 27 contact centre staff.

Harwood, J. (2019) *Child Arrangements Orders (Contact) and Domestic Abuse – an Exploration of the Law and Practice* (unpublished PhD thesis, University of Kent).

This small-scale, qualitative study involved 41 semi-structured interviews between February 2016 and April 2017 with 10 judges (magistrates, district judges and circuit judges), eight barristers, 10 solicitors, 10 Cafcass practitioners and three organisations which work with, and represent, women affected by domestic abuse. It should be noted that this thesis is not available under open access but the researcher provided the author of this literature review with an executive summary.

Her Majesty's Inspectorate of Court Administration (HMICA) (2005) *Domestic Violence, Safety and Family Proceedings*. London: HMICA.

This review of the handling of domestic abuse issues by Cafcass and the court service involved an inspection in three Cafcass regions and Cafcass central office. Inspectors obtained the views of the judiciary, lawyers and social services, and interviewed 56 Cafcass officers and managers. Sixty-seven private law and 19 public law Cafcass reports were inspected. Inspectors also conducted three discussion groups with 30 women survivors of domestic abuse and conducted a service user survey which received 62 responses. A practitioner survey received 55 responses.

Hester, M. (2013) 'Who does what to whom? Gender and domestic violence perpetrators in English police records'. *European Journal of Criminology*, 10, 623–637.

This quantitative and qualitative study was based on a review and analysis of data contained in a comprehensive police computer-based system for recording and linking domestic violence incidents across police districts. Two earlier studies by the author using the same data source were included to produce a total six-year time frame (2001–2007). Because of the higher numbers of male perpetrators, the samples were weighted to produce comparable numbers of male, female and dual perpetrators, producing a total sample of 96 cases with 128 individuals (64 male and 64 female) identified by the police as perpetrators, with 581 domestic violence incidents between them.

Hester, M., Pearson, C., and Radford, L. (1997) *Domestic violence: a national survey of welfare and voluntary sector mediation practice*. Bristol: The Policy Press.

This quantitative and qualitative study, undertaken between 1995 and 1997, involved the administration of a postal questionnaire to all court welfare officers (now Cafcass officers) and voluntary sector mediators in England, Wales and Northern Ireland. Seventy-eight of 83 teams and 319 of 761 individual court welfare officers responded. In addition, 227 of 518 individual mediators (and 56 of 59 services) responded. Interviews were conducted with smaller samples of 19 court welfare officers and 15 mediators.

Hester, M. and Radford, R. (1996) *Domestic violence and child contact arrangements in England and Denmark*. Bristol: The Policy Press.

This study, conducted in England and Denmark, involved in-depth interviews and observations with 53 mothers in England (and 26 in Denmark) who had experienced domestic abuse over a period of two years. Additionally, 77 professionals in England (and 22 in Denmark) were interviewed comprising solicitors, court welfare staff, refuge workers, mediators and contact centre staff.

Holden, G.W. and Ritchie, K. (1991) 'Linking Extreme Marital Discord, Child Rearing, and Child Behavior Problems: Evidence from Battered Women'. *Child Development*, 62(2), 311–327.

This study compared a sample of 37 mothers and their children who had sustained domestic violence with a sample of 37 mothers and children who had not. The methods used were interviews, mother-child observations and three questionnaires, as well as a computer programme for gathering self-reported data.

Holt, S. (2015) 'Post-separation Fathering and Domestic Abuse: Challenges and Contradictions'. *Child Abuse Review*, 24, 210–222.

This study involved mixed methodological research conducted in Ireland over two phases, with the completion of survey questionnaires by 219 mothers and the participation in focus groups and individual interviews by children and young people, mothers, fathers and professionals. Individual interviews were conducted with six fathers identified through professional gatekeepers.

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

This Irish study used a two-phase mixed-methodological research design to investigate children's experience of post-separation contact with domestically abusive fathers. Phase 1 involved two detailed surveys (one administered to a contact group, the other to a no-contact group) of 219 separated mothers who collectively had 449 children. Phase 2 involved focus groups with 16 children and young people, nine mothers and 30 legal, health, social work and social care professionals and interviews with six fathers.

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), 459–476.

This article draws on the narratives of a total of 24 children and young people participating in three separate research projects in Ireland between 2009 and 2015, all of which had domestic abuse as a central focus. The 'PSC' study, a doctoral study completed in 2009, involved 20 qualitative semi-structured interviews and focus groups with 16 children and young people. The 'CCC' study was an evaluation of a pilot child contact study completed in 2013 involving interviews with five children. The 'SH' study, completed in 2015, involved an evaluation of a pilot domestic violence service with interviews with three children.

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, 797–810.

This literature review reports on studies identified from a search of a number of international databases and bibliographies that yielded over 1,000 articles on the impact on children of exposure to domestic violence, from which they selected those published between 1996 and 2006.

Hunt, J. and Macleod, A (2008) *Outcomes of applications to court for contact orders after parental separation or divorce*. Oxford and London: University of Oxford and Ministry of Justice.

This study involved a quantitative and qualitative review of a representative randomly selected sample of 300 court files covering cases heard in 11 courts in England and Wales

in urban and more rural areas. Interviews were also held with 27 solicitors and group interviews with 20 Cafcass officers, eight magistrates, five legal advisers, nine district judges and four circuit judges. Quantitative data was analysed statistically.

Hunter, R. and Barnett, A. *Fact-Finding Hearings and the Implementation of the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm*. London: Family Justice Council 2013.

A national online survey generating both quantitative and qualitative data was conducted during October to December 2011 which received 623 usable responses from the judiciary, family legal advisers, family lawyers, Cafcass officers and others spread across all HMCTS regions. Potential participants were contacted in their professional capacity via relevant email lists and distributed through their professional bodies. Data was analysed thematically.

Hunter, R., Barnett, A. and Kaganas, F. (eds) (2018) 'Introduction: Contact and Domestic Abuse'. *Journal of Social Welfare and Family Law*, 40(4), 401–425.

This article introduces a Special Issue of the *Journal of Social Welfare and Family Law* containing articles based on papers presented at an International Symposium on Contact Disputes and Allegations of Domestic Violence – Identifying Best Practices. It goes on to review and analyse research studies undertaken in England and Wales on this issue.

Kaganas, F. (2011) 'Regulating emotion: judging contact disputes'. *Child and Family Law Quarterly*, 23(1), 63–93.

This study reviewed all judgments reported in the *Family Law Reports* and *Family Court Reports* published between 1994 and the first half of 2010 to identify cases dealing with contact disputes. The cases referred to in this article were those which the researcher considered best illustrated or contradicted the trends identified in a thematic and textual analysis as relevant to the issues focused on.

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

This study drew on a sample of reported cases and contextual material relevant to Section 1(2A) of the *Children Act 1989* (the presumption of parental involvement). The Westlaw

database and Family Law Week were searched for relevant cases (child arrangements cases and relocation cases dealing with disputes between parents) between 1 June 2014 and 30 June 2017. Forty-nine child arrangements' disputes between parents concerning contact (including transfers of residence) were identified and 27 relocation decisions.

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K. and Qu, L. (2009)
Evaluation of the 2006 Family Law Reforms. Melbourne: Australian Institute of Family Studies.

This evaluation of changes to Australian family law used a broad range of data sources through three main projects which examined the implementation of the legislative reforms, changes to service delivery and the experiences of separated families. Each project used a variety of research methods including a large-scale longitudinal study of 10,000 separated parents, two quantitative studies based on general samples of parents, analysis of court file data, surveys with parents and professionals, and several qualitative studies examining the experiences of grandparents and professionals.

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), 46–59.

This article reports on the findings of 30 semi-structured interviews with 15 mothers and 15 children (who were not all paired) who had all experienced past domestic abuse from fathers. All participants were living in the community. Interviews were conducted in the Midlands between 2011 and 2012.

Lapierre, S. (2010) 'Striving to be "good" mothers: abused women's experiences of mothering'. *Child Abuse Review*, 19(5), 342–357.

This qualitative, participant study, conducted between 2004 and 2007 in the Midlands, involved individual interviews with 20 women survivors of domestic abuse who had children under the age of 18 and five group interviews, as well as a short questionnaire to collect socio-demographic data. The data was analysed using an inductive thematic approach.

MacDonald, G. (2015) 'Domestic Violence and Private Family Court Proceedings: Promoting Child Welfare or Promoting Contact?'. *Violence Against Women*, 1–21.

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*, 1–13.

These two publications report on a study involving documentary thematic analysis of 70 Cafcass Section 7 reports prepared for contact cases involving domestic abuse. The reports related to 70 families with 147 children where at least one child was over eight years old. Cases were selected from two English Cafcass teams over nine months in 2006–2007. Critical discourse analysis was adopted for a smaller sub-sample of reports.

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.

This publication reports on two Australian studies on outcomes for children of different post-separation parenting arrangements, both commissioned by the Australian Government Attorney-General's Department. One was a panel study of high-conflict parents in 131 families who sought mediation to resolve parenting disputes which involved data collected over time. The second study used data collected as part of a longitudinal study from national random samples of parents of 5,000 infants and parents of 5,000 children aged four to five years.

McLeod, D. (2018) *Coercive Control: Impacts on Children and Young People in the Family Environment*. Totnes: Research in Practice.

This literature review, undertaken in 2018 for SafeLives, reviewed 141 sources of data from multiple jurisdictions but does not specify the review's methodology for identifying the literature.

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), 311–334.

This publication provides a brief literature review of the theory of parental alienation and reports on the authors' pilot study of US court opinions (judgments) published online between 2002 and 2013. A search of the databases, Google Scholar and Westlaw, identified resulted in 238 judgments from all US states which met the study's criteria.

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), 92–105.

This US study, funded by the US National Institute of Justice, collected data from all US court opinions (judgments) published online between 1 January 2005 and 31 December 2014, producing a total of 4,338 cases that matched the study's criteria.

Morrison, F. (2009) 'After domestic abuse: children's perspectives on contact with fathers'. Centre for Research on Families and Relationships, Briefing 42.

This qualitative Scottish study involved interviews with 11 children aged eight to 14 years from Women's Aid's refuge support service.

Morrison, F. (2015) "'All Over Now?" The Ongoing Relational Consequences of Domestic Abuse through Children's Contact Arrangements'. *Child Abuse Review*, 24, 274–284.

Morrison, F. (2016) *Children's views on contact with non-resident fathers in the context of domestic abuse*. Centre for Research on Families and Relationships, research briefing 84.

These two publications report on a qualitative study involving separate in-depth interviews with 18 children aged eight to 14 years and their 16 mothers who had experienced domestic abuse in Scotland. Participants were recruited from domestic abuse support services in the voluntary and statutory sectors.

Neilson, L. (2018) *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights? Fredericton and Vancouver, Canada: Muriel McQueen Fergusson*

Centre for Family Violence Research and The FREDA Centre for Research on Violence Against Women and Children.

A review and analysis of Canadian case law on parental alienation was conducted by searching two Canadian case law websites, Canadian Legal Information Institute and LexisNexis Quick Law, which together generated 1,331 cases over the ten-year period 2008–2018. The final sample for analysis comprised the 357 most relevant (and some most recent) cases.

Nevala, S. (2017) ‘Coercive Control and Its Impact on Intimate Partner Violence Through the Lens of an EU-Wide Survey on Violence Against Women’. *Journal of Interpersonal Violence*, 32(12), 1792–1820.

This publication reports on the first EU-wide survey carried out in 2012 by the European Union Agency for Fundamental Rights, which interviewed 42,000 women about their experiences of domestic abuse. Respondents were identified using probability sampling procedures to ensure representativeness of the survey results.

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

This study, funded by the Nuffield Foundation, examined 343 randomly selected court records taken from five courts in different areas of England and Wales, with 60 follow-up interviews with parents and 10 interviews with judges responsible for making contact orders. The research was carried out between June 2003 and December 2005, with the sample cases involving Section 8 applications made in 2000 or 2001.

Radford, L., Aitken, R., Miller, P., Ellis, J., Roberts, J. and Firkic, A. (2011) *Meeting the Needs of children living with domestic violence in London*. London: Refuge/NSPCC.

This London-based study, funded by the City Bridge Trust, involved collaborative work by Refuge (a national domestic abuse charity) and the NSPCC. Mixed qualitative and quantitative methods were used to collect data from all London boroughs from winter 2008 to spring 2011, including a literature review, analysis of 608 core-planning documents, 192 survey questionnaires, 101 responses to Freedom of Information requests, 74 interviews

with professionals, interviews with 37 mothers and 23 children who had lived with domestic abuse.

Radford, L., Sayer, S. and AMICA (1999) *Unreasonable Fears: Child Contact in the Context of Domestic Violence: A Survey of Mothers' Perceptions of Harm*. Bristol: Women's Aid Federation.

This study, undertaken in 1998, collaborated with the group, Aid for Mothers Involved in Contact Applications (AMICA). Data was obtained by way of a postal questionnaire survey of 130 abused parents (129 mothers and one father).

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

This book is based on the findings of six research studies completed by the authors which were published between 1996 and 2005, comprising:

- in-depth interviews and observation with 79 abused mothers and 77 professionals in England and Denmark (1996) (the 'contact study')
- a community-based study with a random sample of 484 women and 171 service providers (the 'inter-agency study')
- a postal questionnaire and interviews carried out between 1995–1997 of court welfare officers and voluntary sector mediators (the 'follow-up survey')
- a multi-method study undertaken between 1997–1998 involving interviews with NSPCC staff, observation and analysis of case files (the 'NSPCC study')
- working with the independent women's group, AMICA, in 1998, a questionnaire survey of abused parents (the 'AMICA study')
- a meta-evaluation of 27 domestic violence projects funded by the Home Office between 2000 and 2003 (the 'Home Office meta-evaluation')

Rights of Women (2011) *Women's Access to Justice: a research report*. London: Rights of Women.

Three online surveys on legal aid and access to justice were completed between 17 December 2010 and 31 January 2011 by individual women, domestic abuse professionals and legal professionals. Just under 1,000 people responded to the surveys.

Rose, W. and Barnes, J. (2008) *Improving safeguarding practice Study of serious case reviews 2001–2003*. Research Report No DCSF-RRO22. London: Department for Children, Schools and Families.

This second biennial study of serious case reviews presented an overview of findings from a selection of case reviews undertaken during 2001 to 2003. A total of 45 reviews were received from eight of the nine regional offices of the Social Services Inspectorate, five of which were incomplete and therefore omitted from the study. The number of reviews provided were lower than the 180 estimated by the Department of Health.

Saunders, H. (2004) *Twenty-nine Child Homicides: Lessons still to be learnt on domestic violence and child protection*. Bristol: Women's Aid.

This study compiled details of 29 children in 13 families who were killed between 1994 and 2004 as a result of contact/residence arrangements, based on the executive summaries of serious case reviews for that period.

Saunders, H. and Barron, J. (2003) *Failure to Protect: Domestic Violence and the Experiences of Abused Women and Children in the Family Courts*. Bristol: Women's Aid.

This study, carried out between 2000 and 2001, involved questionnaires completed by 180 women recruited from 12 Women's Aid outreach projects for women and two for children. Twenty-five percent of the sample were BAME women. In-depth interviews were undertaken with 20 women across all the women's outreach projects, of whom four were from BAME groups.

Smith, L. (2018) *Children experiencing inter-parental coercive control*. Glasgow: The Institute for Research and Innovation in Social Services (IRISS).

This literature review identified a wide range of literature including academic research from a variety of relevant databases, health and social care guidelines, and recommendations from specialist organisations using relevant key terms and variations of specific terminology.

Stanley, N. (2011) *Children Experiencing Domestic Violence: A Research Review (Research in Practice)*.

This literature review selected a time from 1995 to 2010 although key early studies were included. The review included relevant international research, particularly that from the US, Canada, Australia and New Zealand, as well as Northern Europe. In total, over 1,000 publications were identified, from which material was selected guided by the key themes for the review with an emphasis on research evidence that had been peer reviewed.

Thiara, R. and Gill, A. (2012) *Domestic Violence, Child Contact, Post-Separation Violence: Experiences of South Asian and African-Caribbean Women and Children*. London: NSPCC.

This research was conducted between June 2008 and April 2010. Discussions and interviews were held with 11 national professionals from domestic abuse, legal and academic sectors, 71 local professionals, 45 women (30 South Asian and 15 African-Caribbean) and 19 children (14 South Asian and 5 African-Caribbean). Interviews with senior Cafcass managers, and group discussions with local and national Cafcass were held.

Thiara, R. and Harrison, C. (2016) *Safe not sorry. Supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence*. Warwick: University of Warwick Centre for the Study of Safety and Wellbeing.

This study reviewed research on children's safety and wellbeing in the context of child contact. A full list of references is included but the methodology for identifying the research is not included.

Thiara, R. and Humphreys, C. (2017) 'Absent presence: the ongoing impact of men's violence on the mother-child relationship'. *Child and Family Social Work*, 22, 137–145.

The paper draws on individual semi-structured interviews with 45 mothers and 52 children who participated in an action research project to develop activities to support women and children in the aftermath of domestic violence. A thematic analysis was used to analyse

the data. The project was funded by the Big Lottery Community Fund and involved a partnership with a domestic violence organisation.

Trinder, E., Hunt, J., Macleod, A., Pearce, J., and Woodward, H. (2013) *Enforcing contact orders: problem-solving or punishment?* Exeter and London: University of Exeter and Nuffield Foundation.

This quantitative and qualitative study comprised a case file analysis of a nationally representative sample of all 205 enforcement applications made in England in March and April 2012 (and a further 10 cases from November 2011 to October 2012 where the court made an enforcement order for unpaid work). The combined sample of 215 cases was accessed through Cafcass electronic records.

Trinder, L., Hunter, R., Hitchings, E., Miles, J., Moorhead, R., Smith, L., Sefton, M., Hinchly, V., Bader, K., and Pearce, J. (2014) *Litigants in person in private family law cases.* London: Ministry of Justice.

This research included three interlinked studies:

- a detailed analysis of a sample of 151 cases heard in five courts between January and March 2013 which involved observations of hearings, interviews with the parties (n = 117) and professionals (n = 85) and examination of the court file
- a series of focus groups in each of the five courts with judges, lawyers, Cafcass and court staff (n = over 100), interviews with local LIP support organisations and observations of public court areas
- secondary analysis of two large datasets from recent national studies conducted by members of the research team

Wagner, J., Jones, S., Tsaroucha, A. and Cumbers, H. (2019) 'Intergenerational Transmission of Domestic Violence: Practitioners' Perceptions and Experiences of Working with Adult Victims and Perpetrators in the UK'. *Child Abuse Review*, 28(1), 39–51.

This qualitative study comprised interviews with 12 practitioners providing services to victims and perpetrators of domestic abuse focused on participants' knowledge of service users' childhood experiences and their perceptions on whether such experiences influenced future relationships. The data was analysed thematically.

Wasoff, F. (2005) 'Mutual consent: Separation Agreements and the Outcomes of Private Ordering in Divorce'. *Journal of Social Welfare and Family Law*, 27(3), 237–250.

This article draws on evidence on the outcomes of informal post-separation arrangements for children and finances from a nationally representative Scottish sample of 609 separation agreements made in 1992 and 30 telephone interviews with 14 men and 16 women who were parties to these agreements one to two years after they were made. A random sample of about 20% of the agreements was analysed.

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.

This study reviewed serious case reviews for England and Wales published between January 2005 and August 2015 inclusive where children had been killed by a perpetrator of domestic abuse in circumstances relating to formal or informal contact arrangements. The reviews were identified by searching the NSPCC National Case Review Repository. The study identified details of 19 children in 12 families who were killed by perpetrators of domestic abuse (all perpetrators were fathers of the children killed).

Appendix B

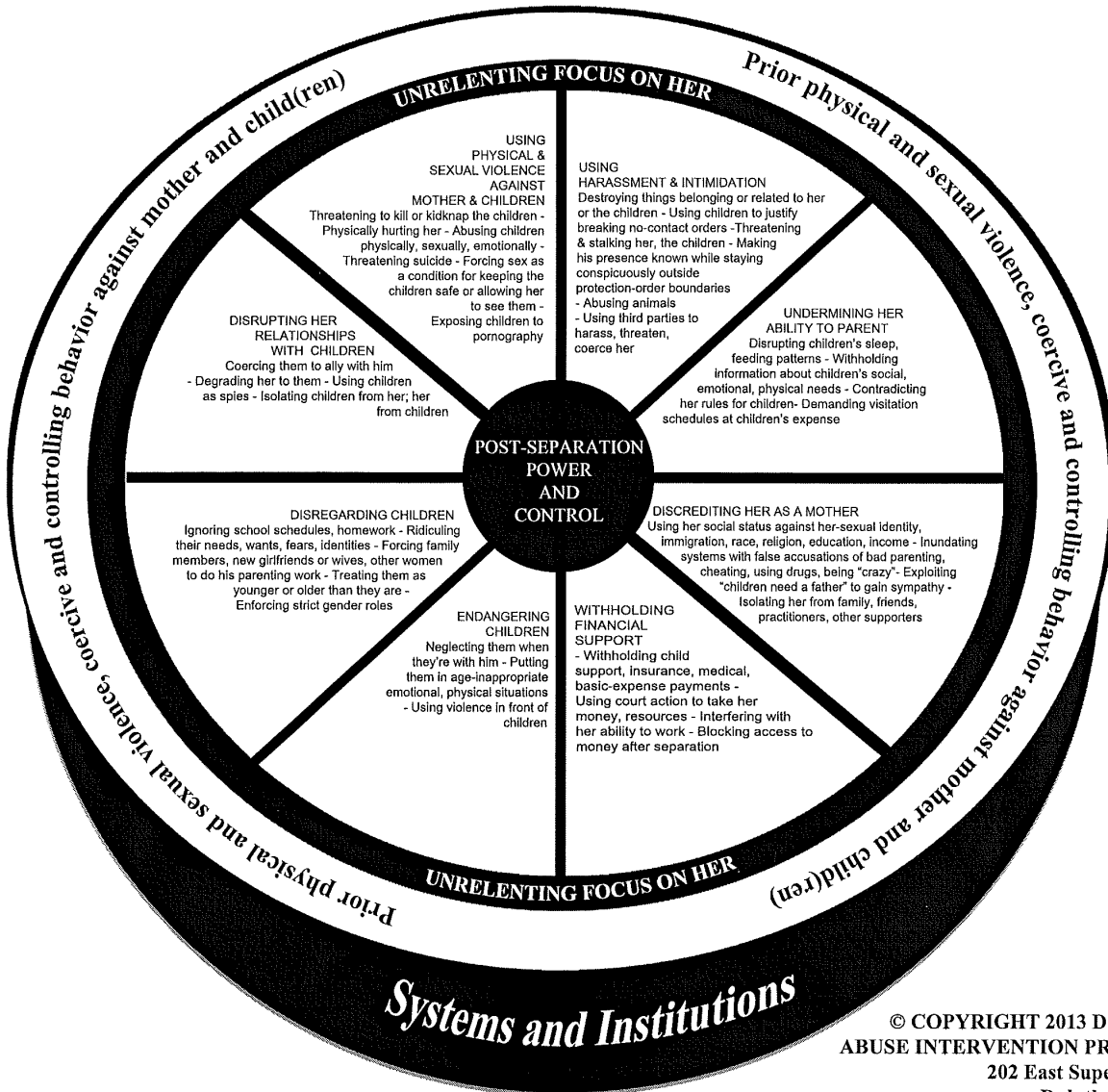
The Duluth Power and Control Wheel²⁹



²⁹ The Duluth Power and Control Wheel was developed by the Domestic Abuse Intervention Project, Duluth MN (<https://www.theduluthmodel.org/wheels/>). The image was obtained from the website of the Domestic Abuse Intervention Programs, Duluth, Minnesota, which invites download and use of its wheels.

Appendix C

The Duluth Post-Separation Wheel³⁰



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 202 East Superior Street
 Duluth, MN 55802
 218-722-2781
www.theduluthmodel.org

³⁰ The Duluth Post-Separation Power and Control Wheel was developed by the Duluth Family Visitation Centre, a division of the Domestic Abuse Intervention Programs which developed the original 'Power and Control Wheel' (Godsey and Robinson, 2014). The image was obtained from the website of the Domestic Abuse Intervention Programs, Duluth, Minnesota, which invites download and use of its wheels.