

child
first



safe child contact saves lives



“ WHAT ABOUT MY RIGHT NOT TO BE ABUSED? ”

DOMESTIC ABUSE, HUMAN RIGHTS AND THE FAMILY COURTS

Authors

Jenny Birchall and Professor Shazia Choudhry

With support from Phoebe Nicholson-Pallett

Acknowledgments

We are extremely thankful to the 72 women survivors of domestic abuse who contributed to this report. Their testimonies were essential in determining the report's findings.

We are also grateful to all of our colleagues at Women's Aid Federation of England and Queen Mary University London who contributed to the production of the report.

Supported by:

This research was partially funded by the Queen Mary University of London Humanities and Social Sciences Collaboration Fund. Research ethics approval was obtained by the Queen Mary Research Ethics Panel.

Published by:

Women's Aid Federation of England, PO Box 3245, Bristol, BS2 2EH

© Women's Aid, 2018

ISBN: 978-0-907817-43-7

Please cite this report as: 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.

Women's Aid is the national charity working to end domestic abuse against women and children. Over the past 44 years, Women's Aid has been at the forefront of shaping and coordinating responses to domestic violence and abuse through practice, research and policy. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs.

We are a federation of over 180 organisations who provide just under 300 local lifesaving services to women and children across the country. We provide expert training, qualifications and consultancy to a range of agencies and professionals working with survivors or commissioning domestic abuse services, and award a National Quality Mark for services which meet our quality standards. We hold the largest national data set on domestic abuse, and use research and evidence to inform all of our work. Our campaigns achieve change in policy, practice and awareness, encouraging healthy relationships and helping to build a future where domestic abuse is no longer tolerated.

The 24 Hour National Domestic Violence Helpline on 0808 2000 247 (run in partnership with Refuge) and our range of online services, which include the Survivors' Forum, help hundreds of thousands of women and children every year.

Foreword

The family courts should be a place of safety, where children's rights are put first and where the concerns and fears of survivors of domestic abuse are listened to and respected. However, this report represents a stark reminder of what happens when this is not the case, and child contact proceedings instead become traumatic and dangerous environments for both survivors and their children.

The new research outlined in this report, undertaken in partnership with Queen Mary University of London as part of the next phase of our Child First campaign, looks at domestic abuse and child contact proceedings through the lens of human rights. Human rights are for everyone, and while the family courts are an obvious venue where human rights matter – after all, they make life-altering decisions about children's lives and children's safety – in practice, human rights are not equally accessible by all in the family courts.

The research uncovers a glaring gender gap in the way rights are used by applicants, with non-abusive parents thinking 'child first,' while the focus of perpetrators of abuse remains 'me first'. Echoing this disparity, the research found clear examples of family courts prioritising perpetrators of domestic abuse's rights to family life over survivors' and children's rights to life and to be free from degrading treatment.

On top of this, the research reveals horrifying and deep-seated discrimination against women and mothers. In the worst cases, this discrimination allows perpetrators to continue their abuse, and judges, magistrates and lawyers to participate in grotesquely unequal treatment.

Our findings are illuminating because we hear directly from women about their experiences of the family courts, and through their testimonies we learn how the gender inequalities that brought them there as

survivors of domestic abuse can be replicated in the courtroom.

The research highlights the damaging effects of a toxic combination: a lack of understanding of the dynamics of domestic abuse along with incorrect interpretations of human rights. This combination contributes to what survivors tell us is their most common experience of family courts: an acutely negative and traumatising one.

In addition to making these deeply disturbing findings visible, this report gives us a guide to the next steps necessary to make family courts safe places where justice is done. The forthcoming Domestic Abuse Bill provides a landmark opportunity to improve the response to domestic abuse. The government has proposed a clear set of criminal justice measures to strengthen police and courts' ability to hold perpetrators accountable and keep victims safe. But family justice matters too. This research demonstrates clear and consistent failings of the family courts to ensure that survivors and their children are safe and able to access their rights. The new legislation offers the opportunity to ensure that survivors receive a just response across *all* jurisdictions. In this report we make some practical recommendations on how this can be done, including banning cross-examination of survivors by their abusers, and ensuring survivors can access special measures, whichever courtroom they are in.

Only by challenging the inequalities and discrimination within the culture of the family courts, and promoting the understanding of human rights that apply to all, can we make sure that 'child first' becomes the fundamental approach in child contact proceedings - not just in rhetoric, but also in reality.

KATIE GHOSE
Chief Executive
Women's Aid

Contents

Foreword	3
Contents	4
Executive summary	5
Background to this study	5
Findings	5
Recommendations	6
1. Introduction	9
1.1 Background to the research	9
1.2 The human rights framework in the UK	11
1.3 Methodology	14
1.4 Limitations	16
2. Findings	17
2.1 Domestic abuse overview: how did it feature in our sample?	17
2.2 Human rights: understanding and awareness	19
2.3 Domestic abuse: awareness, understanding and evidence	23
2.4 Gender discrimination: attitudes, stereotypes, myths and behaviours	29
2.5 Discourses of parental alienation	32
2.6 Safeguarding: child abuse and unsafe child contact	36
2.7 Impacts and outcomes	42
2.8 Human rights implications	46
3. Conclusion and recommendations	50
4. References	56

Executive summary

Background to this study

In January 2016, Women's Aid launched the Child First: Safe Child Contact Saves Lives campaign and over the past two years, Women's Aid has pushed for changes to make child contact safer for children and for non-abusive parents. The last 12 months have seen a number of welcome developments around child contact cases in the family courts, including the revised Practice Direction 12J, which contains guidance for judges and magistrates in child contact cases where there are allegations of domestic abuse. However, survivors of domestic abuse continue to raise concerns about unsafe child contact and inadequate understanding of the links between domestic abuse and child wellbeing and safety.

These concerns have been mirrored, to a large extent, in research conducted by academics to date. Professor Shazia Choudhry at Queen Mary University of London has drawn particular attention to the applicability of the human rights framework to issues of child contact in situations where there has been domestic abuse. Therefore, Women's Aid and Professor Choudhry decided to work together to conduct new research examining women survivors of domestic abuse's experiences of the family courts, looking at these experiences through the lens of human rights. Talking to survivors about rights – using plain language around the right to a fair trial and the right to life – helped to uncover stark problems with culture and practice in the family courts that affect the courts' ability to do justice, safeguard against further trauma, and prioritise children's safety.

Findings

Domestic abuse: awareness, understanding and evidence

Our research findings echoed those of many previous studies.¹ A common finding was that survivors in our sample felt that evidence of domestic abuse was not taken seriously by the courts and other professionals involved in the child contact process, and that the dynamics and impact of domestic abuse were not understood. This led to potentially unsafe decisions on child contact being made, and survivors of domestic abuse being placed in dangerous and frightening situations, including cross-examination by their ex-partners in court.

Gender discrimination: attitudes, stereotypes, myths and behaviours

The testimonies of women in our sample highlighted gender discrimination within the culture of the family courts and evidence of a culture of disbelief. Our research indicates that the systemic nature of negative stereotypes and perceptions around survivors of domestic abuse and mothers who raise concerns about child contact arrangements is blocking the effectiveness of policies and practices to promote safe child contact and increase awareness of domestic abuse within child contact procedures.

Discourses of parental alienation

One of the most extreme examples of the way that gendered attitudes, myths and perceptions can block safe child contact and the realisation of survivors' and their children's human rights is the use of accusations of parental alienation against women who raise concerns about domestic abuse. The testimonies of women in our sample revealed disturbing examples where domestic abuse and child abuse were obscured by allegations of parental alienation against the non-abusive parent.

Safeguarding: child abuse and unsafe child contact

Our findings highlighted clear safeguarding gaps around child contact, both for children and non-abusive parents. In some of the cases in our sample, allegations of child abuse appeared to have been outweighed by a pro-contact approach. In addition, survivors of domestic abuse had been expected to place themselves in very dangerous situations in order to facilitate contact between their child and their former partner.

Impact and outcomes

The women in our sample told us about the long-lasting effects of going through the family courts as a survivor of domestic abuse, for both them and their children. Their family finances and resources had been significantly depleted, and their health and the behaviour of their children had suffered. Women told us they lived every day with anxiety and fear about their child's safety during contact visits and the possibility of being taken back to court by their former partner at any time.

Human rights implications

We found clear gender differences in the way that parties in court understood and used the language of human rights. In our sample, it appeared that women survivors of domestic abuse were more likely to focus on their children's rights, while their abusive former partners were more likely to advocate for their own rights. We also found gaps in knowledge around human rights and their applicability in child contact proceedings among family court professionals.

The testimonies of women in our sample highlighted a range of potential human rights protection gaps and inconsistencies, including under Article 2 of the Human Rights Act: the right to life; Article 3: the right to be free from degrading treatment; Article 6: the right to a

fair trial; and Article 8: the right to privacy and family life.

We also found examples where the rights of children to have their views respected and to be protected from violence, abuse and neglect, as set out in Articles 12 and 19 of the United Nations Convention on the Rights of the Child (UNCRC) were not upheld. Meanwhile, Article 3(1) of the UNCRC, which states that the best interests of children must be a primary concern in decisions that may affect them, was being misinterpreted as part of a belief that it is always in the best interests of the child to have contact with both parents.

Overall, the findings of this study illustrate the ways in which human rights legislation, along with policies, procedures and guidance around domestic abuse and child contact in the family courts, cannot be realised in a practical sense unless gender discrimination within the underlying institutional culture of the courts and child contact procedures is recognised and addressed.

Recommendations

As a result of these findings, we make several recommendations, which can be read in full in Section 3 of this report. Below is a summary of all our recommendations.

An independent inquiry into the handling of domestic abuse by the family courts

Despite a number of welcome reforms, research and evidence stretching over more than a decade points to systemic failings of the family courts in cases involving domestic abuse. A wholesale review of the culture, practice and outcomes of the family courts in child contact cases where there are allegations of domestic abuse is now required to work towards creating the changes that we need to see in the courts. We are therefore calling for an independent statutory inquiry with relevant

legal powers, equipped with the necessary resources to conduct an in-depth examination of the family courts’ handling of domestic abuse. The inquiry should build on the excellent collaboration that has led to practical changes so far.

Improved education and awareness raising for all professionals involved in child contact cases

The Judicial College, the Magistrates Association, the Law Society, the Solicitors Regulation Authority, Cafcass and Her Majesty’s Courts & Tribunals Service (HMCTS) should ensure that all professionals involved in child contact cases in the family court can benefit from greater awareness raising and training on human rights, domestic abuse, discourses of parental alienation, and discrimination. This should be developed in partnership with specialist domestic abuse and human rights organisations.

Clarify the approach on parenting in cases involving domestic abuse

The Ministry of Justice and the President of the Family Division must clarify that the presumption in the Children and Families Act 2014 (that the welfare of the child is best served by the involvement of both parents) does not apply where there is evidence of domestic abuse.

Improved use and awareness of Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm

To maximise the impact of the recently revised guidance, the Judicial College, the Magistrates Association and HMCTS should continue with and expand their current educational provisions to ensure that all family court professionals have specialist training on what the guidance means in practice. This training should incorporate the links and overlaps

between the practice direction and human rights.

Create a national oversight group for the implementation of Practice Direction 12J

The Ministry of Justice should create a mechanism for oversight of the judiciary in child contact cases involving domestic abuse. This could be an independent, national oversight group overseeing and advising upon the implementation of Practice Direction 12J.

Take a safer approach to unsupervised contact

Through the forthcoming Domestic Abuse Bill, the government must ensure there is no unsupervised contact for a parent who is awaiting trial or on bail for domestic abuse related offences, or where there are ongoing criminal proceedings for domestic abuse.

Ensuring that supervised and supported contact options are regulated and safe

The government must ensure that all child contact centres are properly resourced and risk assessed so that contact is safe for both children and non-abusive parents. Staff and volunteers in both supervised and supported contact centres should benefit from comprehensive training on domestic abuse and its links to child safety and wellbeing. A clear mechanism should be set up to ensure that inappropriate referrals to contact centres can be challenged and the National Association of Child Contact Centre’s national standards and guidance on risk assessment should always be followed.

Ban cross-examination in family courts of survivors by their abusive former partners

The government committed to prohibit perpetrators from cross-examining their victims in the family courts in 2017, but the

legislation has been delayed. The government is now proposing to ban cross-examination in the criminal justice system through the Domestic Abuse Bill, but to fully protect survivors of domestic abuse from this abhorrent practice the family court ban must also be applied as soon as possible. The ban must be enacted by the quickest legislative vehicle available.

Guarantee special measures for survivors of domestic abuse in the family courts

While the government has proposed, as part of the Domestic Abuse Bill, to guarantee survivors of domestic abuse's access to special protection measures in the criminal courts (such as separate entrances and exits, waiting rooms, screens and video links), this guarantee is also needed in the civil and family courts.

Better regulation of expert witnesses in the family court

The Ministry of Justice should conduct a review on the use of expert psychological witnesses in the family courts, in order to further investigate concerns about credibility, standards and consistency among experts. Expert psychological witnesses preparing reports for the family court should be registered with relevant professional bodies and societies, and required to practise within a clear professional, practice-based framework.

Continued monitoring of the legal aid domestic violence gateway

Many survivors do not report the abuse they experience, and therefore will not be able to meet the evidence requirements for legal aid. Continued review by the Ministry of Justice of the impact of the domestic violence legal aid gateway is important, to ascertain whether it is providing the protection that survivors of domestic abuse need. Awareness also needs

to be raised of exceptional case funding, a provision available to parties who can show their human rights will be breached if they cannot access legal aid.

Actions to prevent the family courts being used to perpetuate post-separation and financial abuse

The Ministry of Justice and the president of the family division of the High Court should ensure that courts are given guidance on making use of Section 91 of the Children Act 1989, which gives courts the power to make an order preventing further applications by a party. This guidance should alert judges as to how some perpetrators of domestic abuse make applications under the Children Act 1989 so that they can continue their coercive and controlling behaviour over survivors, even after separation.

Better, empowering support for survivors of domestic abuse

The government should ensure that survivors of domestic abuse are able to access free specialist support and advice. This should include having access to an advocate throughout family court proceedings, and should be provided within the context of a sustainably funded specialist domestic abuse support sector. Support should be tailored to recognise the disempowering nature of domestic abuse, with the aim of building women's confidence to advocate for their own, and their children's, rights.

Further research

Research should be conducted to explore the nature and causes of discriminatory attitudes and stereotypes among the legal profession around domestic abuse and child contact, and the extent of, and reasons for, knowledge gaps around domestic abuse, human rights and discourses of parental alienation.

1. Introduction

1.1 Background to the research

In January 2016, Women's Aid launched the Child First: Safe Child Contact Saves Lives campaign, to end avoidable child deaths as a result of unsafe child contact with perpetrators of domestic abuse.ⁱ Survivors of domestic abuse told Women's Aid that child contact is one of their utmost concerns and an ongoing source of distress. Frequently, they are re-victimised and traumatised by their abusers through the family court process. Additionally, children are subjected to unsafe contact arrangements, which in the most extreme cases, cost lives. The campaign began with the Women's Aid report *Nineteen Child Homicides*², which highlights the tragic stories of 19 children and two women in 12 families who were killed by perpetrators of domestic abuse in circumstances related to unsafe child contact within a ten year period. The report examines the circumstances in which abusive parentsⁱⁱ were given access to their children (whether through informal arrangements or those made in the family court) and investigates what lessons can be learned for government policy, legislation, the family judiciary and for agencies working with families where one parent is abusive.

In January 2017, Women's Aid marked the anniversary of the Child First campaign by handing a petition to 10 Downing Street, signed by over 40,000 people, calling on the government and family courts to ensure there are no further avoidable child deaths as a result of unsafe child contact with a perpetrator of domestic abuse.³ Follow up research⁴ showed that since the cases published in *Nineteen Child Homicides*, at least one further child had been killed

during contact with a parent who was also a perpetrator of domestic abuse.

In July 2017, Women's Aid partnered with Cafcass on research looking at allegations of domestic abuse in child contact cases. The research found that 62% of cases in the research sample featured allegations of domestic abuse. Despite this, in 23% of these cases, unsupervised contact was ordered at the first hearing.⁵

Women's Aid has continued to push for changes to make child contact safer for children and for non-abusive parents. In 2016 the All Party Parliamentary Group on Domestic Violence conducted an inquiry on domestic abuse, child contact and the family courts. The resulting report highlighted and supported many of Women's Aid's recommendations in this area.⁶ We have seen a number of welcome developments around child contact cases in the family courts:

Revised guidance for judges and magistrates in child contact cases where there are allegations of domestic abuse

The updated Practice Direction 12J guidance⁷ came into force in October 2017. Some of its key features are that it:

- sets a mandatory requirement for the courts to determine whether children and/or non-abusive parents will be at risk of harm from a contact order;
- clarifies definitions of domestic abuse, coercive control and the harms caused to children;
- makes clear that judges must carefully consider how domestic abuse impacts

i The Child First campaign was guided by an expert advisory panel which included Professor Shazia Choudhry and Professor Rosemary Hunter from Queen Mary University of London.

ii Women's Aid did not apply any exclusion criteria regarding the gender of the perpetrator of domestic abuse. However, in all of the cases included in the report the abusive parent was a father.

children, and question whether the “presumption of contact” applies in these cases;

- states that interim contact orders should not be made if there are findings of domestic abuse, and states where risk assessment finds that children are at ongoing risk from domestic abuse there should be no contact ordered, even in a contact centre; and
- makes clear that if victims or children require special measures within the family court, appropriate arrangements, specifically separating the waiting rooms and the entering and exit times, need to be made.ⁱⁱⁱ

Changes to legal aid rules for survivors of domestic abuse

In December 2017 the government announced that it would be changing the legal aid evidence requirements for survivors of domestic abuse to access the domestic violence legal aid gateway. This decision followed a legal challenge under the Human Rights Act 1988, and campaigning by Rights of Women, Women’s Aid and other organisations who had highlighted the difficulties survivors of domestic abuse faced in accessing legal aid. It resulted in revised regulations, which have made it easier for survivors to access the gateway by:

- removing the five year time limit for evidence of domestic abuse; and
- widening the types of evidence allowed to prove domestic abuse. Evidence from housing support officers and domestic abuse support organisations can now be admitted.

Banning cross-examination of victims by their abusers in the family courts

In 2017 the Ministry of Justice included a welcome provision in the Prisons and Courts Bill which would ban cross-examination of survivors by their abusive former partners in the family courts. Recognition of the need for the provision reflected the shocking findings brought to light by the Child First campaign. Unfortunately, the bill fell due to the general election, but the provision had wide cross-party support. Women’s Aid has urged the government to reintroduce the provision by the quickest legislative vehicle available.

A new practice direction on vulnerable persons in family court proceedings

In 2017 the Ministry of Justice introduced new measures (Family Rules Part 3A and Practice Direction 3AA) 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. The courts then have the option of ordering an appropriate measure to address this, such as a screen or a direction for parties to enter and leave court separately.⁸

Despite these steps forward, survivors of domestic abuse continue to raise concerns about unsafe child contact. They have made us aware of broader, interconnected issues that run deep within the culture of the family courts and processes around child contact, and which serve to block progress and interventions for improvement. These include: differences in the ways that mothers and fathers are treated in the family courts; myths and presumptions about mothers making up allegations of domestic abuse to block fathers seeing their children; the use of theories of ‘parental alienation’ by abusive parents in order to obscure evidence of

iii Practice Direction 12J does not contain reference to the Human Rights Act 1998 or any of its applicable rights.

domestic abuse and concerns around child welfare; and abusive parents using the family courts to continue a campaign of domestic abuse. The long-term impact of these factors on survivors of domestic abuse and their children are multiple, and include distress and re-traumatisation, continual fear about unsafe child contact and the prospect of being taken back to court, and severe depletion of financial resources.

These concerns have also been mirrored, to a large extent, in research conducted by academics to date.⁹ In particular, the applicability of the human rights framework to this issue has been raised by Professor Shazia Choudhry at Queen Mary University of London, along with the lack of apparent use of this framework by survivors and children of domestic abuse.¹⁰ As a result, we decided to work together to conduct new research examining women survivors of domestic abuse’s experiences of the family courts and to look at these experiences through the lens of human rights, asking how the language of rights is used in the family courts, by whom, and on whose behalf.

1.2 The human rights framework in the UK

The human rights of all individuals residing in the UK are set out in the Human Rights Act 1998 (HRA). In addition, children and young people have rights under the United Nations Convention on the Rights of the Child (UNCRC). The boxes on the following pages explain more about these provisions. In them we focus on specific sections of the legislation that particularly apply in the context of domestic abuse, child contact and the family courts.

As can be seen overleaf, a number of the rights contained in the HRA have direct relevance to situations of domestic abuse and children’s relationships with their parents. Two of those rights, Articles 2 and 3, are ‘absolute rights’ which means that they cannot be balanced against the rights of others or the needs of society. In addition, Article 3 cannot ever be restricted or limited in any way.

Some rights, such as Article 8 on the right to private and family life, are ‘qualified rights’ which means they may be interfered with in order to protect the rights of another or the wider public interest. What this means is that any claims made under the qualified rights such as Article 8, cannot ‘trump’ claims made under the absolute rights of Articles 2 and 3.

The European Court of Human Rights, which oversees the implementation of the European Convention on Human Rights, has made it clear that domestic abuse can fall within the scope of Articles 2, 3, 8 and 14 and that a state can be held to be in breach of those rights if they have not taken sufficient steps to protect victims from further abuse. These decisions have been taken in relation to the actions of the police and other public authorities within the context of criminal *and* civil disputes.^{iv}

iv See *Kontrová v. Slovakia*, No. 7510/04, 31 May 2007; *Bevacqua and S. v. Bulgaria*, No. 71127/01, 12 June 2008; *E.S. and Others v. Slovakia*, No. 8227/04, § 43, 15 September 2009 and *Opuz v. Turkey*, No. 33401/02, ECHR 2009 amongst others.

The Human Rights Act¹¹

The Human Rights Act 1998 (HRA)¹² sets out a range of provisions to protect the human rights of everyone resident in the UK. It is based on the articles contained in the European Convention on Human Rights.¹³ The articles that are of most relevance in the context of domestic abuse, child contact and the family courts are:

Article 2: right to life

This article sets out the right to life. It means that no one can end another person's life, and that the government should take appropriate measures to safeguard life – by, for example, making laws that protect those whose lives are at risk.

Article 3: freedom from torture and inhuman and degrading treatment

This article sets out the right to be free from torture and inhuman and degrading treatment. Torture is defined as serious and cruel suffering inflicted on another person in order to punish them or to obtain information. Inhuman treatment is treatment that causes intense physical or mental suffering, and degrading treatment is defined as extremely humiliating and undignified, based on the principle of dignity and the innate value of all human beings.

Article 6: right to a fair trial

This article protects individuals' rights to a fair trial or hearing. It applies to criminal charges heard in court, as well as situations where public authorities are making decisions that will impact on an individual's civil rights or obligations.

Article 8: respect for private and family life, home and correspondence

This article protects the right to family life. This means the right to enjoy family relationships and to live with family (or where this is not possible, to have regular contact). It also sets out the right of an individual to enjoy their home peacefully. Finally, Article 8 protects the right to private life. This has been broadly interpreted and can include, for example, the secure storage of personal information; and the right to make friendships and other relationships.

Article 14: protection from discrimination in respect of the rights and freedoms in the convention

This article states that all of the rights in the convention must be applied without discrimination. Discrimination might occur when one person is treated less favourably than another in the same circumstances, or when a person is treated less favourably than another due to their gender, age, disability, sexual orientation, religion or ethnicity, for example.

Absolute rights and qualified rights

The European Convention on Human Rights contains two type of rights: absolute (or unqualified) rights and qualified rights. Absolute rights are rights that cannot be balanced against the needs of other individuals or against any general public interest. They cannot be undermined or ignored other than in very specific circumstances; for example in the case of the right not to be deprived of liberty, Article 5. Qualified rights are rights which may be interfered with in order to protect the rights of another or the wider public interest, for example the right to private and family life, Article 8.

The United Nations Convention on the Rights of the Child¹⁴

In addition, children and young people in the UK have rights under the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC is the most universally accepted of all UN human rights instruments and the most comprehensive in its promotion of children's rights — civil, political, economic, social and cultural — informing other human rights standards through a framework of state responsibilities applicable to all children within the jurisdictions of the signatory states. Although not directly incorporated into domestic law, the principles of the UNCRC guide domestic law and practice, and are often referred to by the courts when interpreting obligations imposed by human rights and other legislation. The UNCRC has 54 articles, but some of those most relevant to this study are:

Article 3: best interests of the child

The best interests of children must be a primary concern in making decisions that may affect them. All relevant adults should do what is best for children. When decisions are made, the impact on the child must be considered.

Article 4: protection of rights

Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. This includes assessing domestic legislation and practice to ensure that the minimum standards set by the Convention are being met.

Article 9: separation from parents

Children must not be separated from parents against their will unless it is in their best interests (for example if a parent is harming a child). If a child's parents separate, the child has a right to contact with both parents, unless this could cause them harm.

Article 12: respect for the views of the child

A child capable of forming his or her own views will be given the right to express those views freely in all matters affecting the child, with those views being given due weight in accordance with their age and maturity. In particular, a child will be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child.

Article 19: protection from all forms of violence

Children have the right to be protected from being hurt or mistreated, physically or mentally.

The responsibility of the family courts under the Human Rights Act 1998

Under Section 6 of the Human Rights Act (HRA), public authorities are not allowed to act in a way that is incompatible with the Act. Courts and tribunals are clearly defined as public authorities for the purposes of the HRA. Furthermore, under Section 3 of the HRA, courts are required to interpret all legislation ‘so far as is possible to do so’ in a manner which is compatible with the European Convention rights.^v The courts are also under an obligation to act in compatibility with the ECHR even when an action is a private one between two individuals. As a result, judges must give effect to the Children Act 1989 and the Children and Families Act 2014 — two key pieces of legislation governing family law — in a way that is compatible with the rights contained in the HRA.

In line with their duty under the HRA as public authorities, it is clear that the family courts should ensure that they are (a) acting in a manner that is compatible with convention rights and (b) interpreting any legislation before them in a manner which is compatible with those rights. This is particularly relevant when the court is faced with survivors of domestic abuse and their children who may be at risk of further abuse as a result of contact and whose particularly vulnerable position demands, at the very least, the recognition and protection of their human rights. We therefore thought it was important to undertake research to try to ascertain how far human rights, if at all, were being applied by the courts within this context.

The relevance and value of human rights protections are beginning to be better understood for UK citizens and residents^{vi}, and the family courts are an obvious venue where this relevance comes to life. Yet our research demonstrates that in this arena, human rights are not being fully or properly utilised, and gender discrimination is preventing their proper use. By taking a human rights perspective as we looked at domestic abuse survivors’ experiences of the family courts,

we have been able to highlight a range of disparities, inequalities and gaps in human rights protection for both children and non-abusive parents. Talking to survivors about rights – using plain language around the right to a fair trial and the right to life – helped uncover stark problems with culture and practice in the family courts that affect the courts’ ability to do justice, safeguard against further trauma and prioritise children’s safety.

1.3 Methodology

This exploratory study, conducted during 2017 and 2018, aimed to provide an analysis of whether and how a human rights framework (with reference to the rights contained in the Human Rights Act 1998) is being employed in relation to women survivors of domestic abuse’s experiences of the family courts and the granting of child contact to perpetrators of domestic abuse in England. We wanted to use human rights law, principles and practice as a lens for exploring the experiences of survivors and their children in the family courts and examine the extent to which survivors are using these principles and rights to help their situations and those of their children.

v If it is not possible to do so then a declaration of incompatibility may be issued under Section 4 of the HRA.

vi Work by the [British Institute of Human Rights](#) demonstrates this growing understanding.

In addition, we wanted to find out if and how domestic abuse was raised as part of child contact cases, and what the outcome and impact was in terms of contact allowed with perpetrators of domestic abuse. We were also interested to learn more about the measures provided in the family courts for survivors of domestic abuse, the agencies that were aware of the abuse, and if and how the abuse was dealt with.

The research collected evidence of survivors' experiences of the family courts via quantitative and qualitative methods. These were:

- An online survey, disseminated through the Women's Aid Survivors' Forum^{vii} and network of member domestic abuse services in July 2017. The survey had 20 questions, and was analysed using the online Survey Monkey analysis options. Sixty-three women participated in the survey.
- A short follow up online survey with a focus on human rights. Respondents in the first survey who had indicated that human rights were raised in their child contact cases were invited to complete the follow up survey in October 2017 to give more information about this. Fourteen women completed this survey.
- Two focus group discussions with survivors, in September and December 2017, in which emerging findings from the survey data were discussed in greater depth. Nine women participated in the focus groups.
- Individual telephone interviews with survivors, in January 2018, in which emerging findings from the survey data were discussed in greater depth. Nine women participated in the interviews.

In total, 72 women living in England were involved in the research. We tried to ensure that a diversity of women could take part in the research, by offering different ways to participate; online, face to face, or by telephone. Some of these women took part in the surveys and a focus group discussion or interview, and some only took part in one activity. In order to take part, participants needed to be women survivors of domestic abuse who had experiences of the family courts in the last five years, and whose cases were complete. We invited women participants only because we recognise that women are more affected by domestic abuse; both in terms of its occurrence and its severity.¹⁵ We wanted to conduct a gendered analysis of the way human rights are applied within child contact processes.

There were particular ethical considerations and risks to be addressed in relation to the research. These included: confidentiality and anonymity; obtaining informed consent; risks of disclosure of details about current court proceedings; and risks of disclosure of harm to a child or vulnerable adult. A comprehensive ethics strategy was put into place and ethical approval was obtained from the Ethics Committee at Queen Mary University of London.

We have chosen to present our findings largely through the testimonies of the survivors who took part in the research. We wanted to provide a space for these women's voices to be heard, because many of them felt they had been silenced during child contact proceedings.

vii The [Women's Aid Survivors' Forum](#) is a safe, anonymous space for women over 18 who have been affected by domestic abuse to share their experiences and support one another.

1.4 Limitations

The data and evidence collected as part of this research comes from a self-selecting group of 72 women who are survivors of domestic abuse and have had a child contact case in the family courts in the last five years which has now concluded. We have not corroborated their testimonies or spoken to the other parties in the cases referred to. Research findings therefore relate to the experiences of these 72 women. We do not claim that our findings apply in child contact cases where there are no allegations of domestic abuse, and we do not claim to represent the experiences of all survivors of domestic abuse in the family courts. However, we know from previous work that the experiences of the women in our sample are likely to echo those of many other women in similar situations.

Our aim was to find out more about women domestic abuse survivors’ experiences of the family courts and to look at these experiences through the lens of human rights. As such, we were interested to hear not only about negative experiences and examples where human rights had not been recognised, but also about cases where domestic abuse allegations were addressed well by the family

courts, and the human rights of domestic abuse survivors and their children were protected and upheld. Unfortunately, our research did not uncover many examples of good practice. This may be because the women in our sample elected to take part because their experiences of child contact proceedings were poor, and they wanted to help improve the situation for others in similar positions. However, it is also worth noting that while research is emerging on international best practice around contact disputes and allegations of domestic abuse,¹⁶ it remains very difficult to find published or publicly available evidence or testimonies demonstrating good practice in this area.

We recognise the exploratory nature of our study and its small sample size.^{viii} The findings emerging from our study are so horrifying, and the evidence of a culture of disbelief around domestic abuse is so strong, that they prompt further research and investigation on a wider scale.

viii In 2017, between 12,000 and 13,000 private law cases under the Children Act were started each quarter, and between 10,000 and 11,000 cases were concluded each quarter ([Family Court Statistics Quarterly](#), October to December 2017).

2. Findings

Below we present discussion of our findings. We begin with an overview of the women who took part in the study, and how domestic abuse featured in their cases. We then go on to discuss the seven key themes which emerged from our analysis:

- Human rights: understanding and awareness
- Domestic abuse: awareness, understanding and evidence
- Gender discrimination: attitudes, stereotypes, myths and behaviours
- Discourses of 'parental alienation'
- Safeguarding: child abuse and unsafe child contact
- Impacts and outcomes
- Human rights: implications

2.1 Domestic abuse overview: how did it feature in our sample?

All respondents to the online survey, and all participants in focus groups and interviews were women survivors of domestic abuse. In the vast majority of the family court cases we heard about as part of the research, the other party in the proceedings was the child's father and the alleged perpetrator of domestic abuse.^{ix}

Survey data highlighted the following information about the 63 women who responded to the survey:

Who was the perpetrator of the abuse?

For 90% of survey respondents, the perpetrator of domestic abuse was a male former intimate partner. Three per cent had experienced abuse from a female former intimate partner, and 5% had been abused by multiple perpetrators.^x

What type of domestic abuse did participants experience?

67% of survey respondents had experienced physical abuse, 57% sexual abuse, 95% emotional abuse and 83% financial abuse. Coercive and controlling behaviour had been experienced by 89%.

Who was aware that the abuse was going on?

Survey respondents were asked which public agencies or authorities were aware of the domestic abuse they had experienced (they could choose more than one option).

Table 1: Agencies aware of the abuse

Type of agency	Percentage of women who said this agency was aware of the abuse
Police	82%
Health	66%
Domestic abuse services	66%
Social services	58%
Education (such as children's schools)	50%
Victim support services	37%
Housing	31%

^{ix} Ninety per cent of survey respondents said that the perpetrator in their case was a male former intimate partner. Three per cent of survey respondents said that the perpetrator in their case was a female former intimate partner. All focus group and interview participants said that the perpetrator in their case was a male former intimate partner.

^x Multiple perpetrators in this case could have been more than one man, more than one woman, or a combination of men and women.

What action was taken against the perpetrator?

Survey respondents were asked what action was taken to deal with the abuse.

Table 2: Action taken to deal with the abuse	
Action	Percentage of women who said this action was taken in their case
The abuse was reported to the police but the perpetrator was not charged	74%
The abuse was reported to a public agency but no action was taken	50%
A civil injunction or protection order was put into place	24%
The perpetrator was arrested and charged	16%
The abuse was not reported	16%
The perpetrator was arrested, charged and convicted	8%
A prohibited steps order was put into place	8%
The perpetrator attended a domestic abuse perpetrator programme	6%
The perpetrator received a custodial sentence	5%
The perpetrator received a non-custodial sentence	5%
A domestic violence protection order (DVPO) was put into place	2%

The majority of respondents chose more than one of the above options. It is difficult to draw definitive conclusions from this data, because some women were answering the question based on years of abuse, during which many of the answer options applied. However, looking at their answers in more detail provides more context. For example, of the 74% cent of women who said that they had reported the abuse to the police and the perpetrator had not been charged, 26% said that a civil injunction or protection order had been put into place. This shows that in cases where criminal charges were not made, there were some instances where alternative sanctions were put in place.

Was the abuse raised as part of family court cases?

For 62% of survey respondents, domestic abuse was raised as part of their family court case. In 17% of cases, domestic abuse was not raised. The remainder of survey participants were not sure if the abuse had been formally raised during the case.

Who raised the domestic abuse?

Of those survey respondents where domestic abuse was raised as part of the case, 71% said they had raised it themselves. Fifty-nine per cent said their legal representative raised the

abuse, and 37% said Cafcass^{xi} had raised it.^{xii} In many cases, domestic abuse had been raised by more than one source: for 26% it had been raised by both the survey respondent and their legal representative; for 12% it had been raised by the survey respondent, her legal representative and Cafcass; for a further 12% it had been raised by the survey respondent and Cafcass.

Domestic abuse was a clear factor in the cases of the women included in our sample. We were interested to know more about what these survivors of domestic abuse knew about their rights, as well as those of their children and their ex-partners. We wanted to find out if, and how, arguments and language about rights featured in the survivors’ child contact cases. The next section gives an overview of what we found.

2.2 Human rights: understanding and awareness

The first thing that comes to mind is do [human rights] really exist? Things happened to me and people said ‘oh what about the court of human rights? To take it further you should do this, do that’ because I lost my kids to the system [but] how can it be... what does that look like?

(Focus group participant)

Our online survey asked some initial questions about human rights. Answers to these questions gave us information about which types of human rights had been raised as part of the women in our sample’s cases. As Table 3 shows, the most common right referred to as part of survey respondents’ child contact cases was the right to family life (Article 8 of the HRA), raised in 49% of survey respondent’s cases. Forty per cent of survey respondents, however, said that human rights had not been raised in their case.

Table 3: Which human rights were raised?	
Which human rights were raised in your case?	Percentage of survey respondents who said this right was raised as part of their case^{xiii}
The right to family life (Article 8 of the Human Rights Act)	49% (28 women)
The right to a fair trial (Article 6 of the Human Rights Act)	14% (8 women)
The right to be free from torture, inhuman or degrading treatment (Article 3 of the Human Rights Act)	9% (5 women)
The right to life (Article 2 of the Human Rights Act)	7% (4 women)
No human rights arguments raised	40% (23 women)
Not sure if human rights were raised	7% (4 women)

xi Cafcass represents children in family court cases in England. Its Family Court Advisers may be asked by the court to work with families and then advise the court on what they consider to be the best interests of the children involved in the cases.

xii Survey participants could choose more than one answer to this question.

xiii These figures represent the percentages of a total of 63 women who completed our online survey. Respondents could choose more than one option.

After the online survey data was analysed, we asked those respondents who had answered that human rights were raised as part of their case to complete a follow up survey in order to elicit more detail. Data collected in this follow up exercise allowed us to see who had brought up and used human rights and the language of rights, and whose rights they were referring to.

Table 4: Who raised human rights?	
Who raised human rights or the language of rights?	Percentage of respondents who selected this option^{xiv}
I raised it myself	50% (7 women)
My ex-partner	29% (4 women)
My legal representative	29% (4 women)
The judge	29% (4 women)
My ex-partner’s legal representative	7% (1 woman)

Survey respondents were able to choose more than one of the above options if appropriate. Of the seven women who had raised human rights themselves, four said that human rights had also been brought up by their legal representatives.

Table 5: Whose rights were referred to?	
Whose rights were referred to?	Percentage of respondents who selected this option
My ex-partner’s rights	50% (7 women)
My rights	36% (5 women)
Children’s rights	79% (11 women)

At first glance, these figures may suggest that women were actively raising and advocating for their own human rights in the family court, and that children’s rights were commonly being promoted. However, further analysis of the data reveals a more complicated picture. Of the seven women who said they raised human rights themselves, five raised the human rights of their children in addition to their own, and two had raised only their children’s human rights. Of the five women who said that either their ex-partner or their ex-partner’s legal representative had raised human rights, all said that the rights referred to had been their ex-partner’s. In the four cases where human rights had been brought up by the judge, the rights referred to were the abusive ex-partner’s in two cases, and the child’s in two cases. So in our small sample, it appeared that women were more likely to focus on their children’s rights, while men were more likely to advocate for their own rights. This demonstrates a clear gender difference in the use of human rights arguments.

^{xiv} These figures represent the percentages of a total of 14 women who were selected to complete our follow up online survey which had a specific focus on human rights.

Focus groups and interviews with women survivors built on these initial findings, highlighting some clear gender differences in how rights are perceived and advocated for. Echoing the survey data, the main understanding of rights for the women taking part in interviews and focus groups was related to their children’s rights, rather than their own.

I don't know if we used the words human rights but we [the participant and her legal representatives] focused on the rights of the children. Their rights and their best interests. We were consistent throughout that. So it was always about what was best for the children rather than what I wanted [...] I focused on what was best for the children, about what I felt was best for them at the time.

(Interview participant)

When we asked the women if their own rights had been considered, promoted or protected during the family court process, the response was overwhelmingly negative:

My rights were never brought up. My right to walk away and be safe, I mean I was with him for several years and it was just absolute hell. When I was pregnant with the little one he tried to kick him out of me. But they knew all this, it was in the police reports, but they were still pushing for him to have contact.

(Interview participant)

I don't believe I had any rights in court. I don't believe I had any equality, or any equal rights in court. It never came across like that. We were there to make contact happen between father and child, and that was it.

(Interview participant)

As far as I'm concerned, all the rights that I should have, the right to private life, the right to a fair trial, the right to live with my children and have a decent personal relationship with my children, every single human right that I personally should have, were completely disregarded by the family court.

(Focus group participant)

In our sample, there was only one case where a survivor had been explicitly advised that her human rights had potentially been breached. Even in this case, the woman experienced considerable barriers in taking action to address the issue, as the testimony below shows:

Through lengthy child proceedings in the family court, I lost any meaningful access to my child. And towards the end of those proceedings, when my child was not living with me, my barrister who'd been with me for some years through the proceedings [...] she brought in, I think it was a legal magazine, and she said 'I saw this the other day' and she showed me a case where they took it to the human rights courts in Europe, under the right to family life. And she said 'I strongly believe this is an avenue you should explore, I think it's a similar case story' and she encouraged me to do that.

At the time you're like a cork bobbing around in a stormy ocean at that point of the game when you've lost your child, so I wasn't well and I wasn't myself. It was only a couple of years later when I asked a friend who's a barrister 'what about this human rights stuff?' and he put me in touch with [a chambers] specialising in the Human Rights Act. But really [...] no one was prepared to look at it without me putting my house on the line, and I had another child and I couldn't risk that we'd lose our home....

With hindsight and being in a better frame of mind, I'm very much aggrieved that barristers seem to be very much enthralled to the proceedings and the judge and won't say anything that's going to upset them. It's all very well the barrister having shown me this case [...] but it wasn't raised in front of the judge. Why was it being raised in private?

(Interview participant)

In the family court cases that we heard about as part of the research, it appeared that

understandings and use of human rights were very different for the women’s ex-partners. In these cases, echoing our follow up survey findings, it was seemingly much more common for a father to prioritise his own human rights before those of his child or ex-partner:

My ex-husband was of the opinion that it was his human right to see his children on a 50% basis. My rights weren’t considered, my children’s rights weren’t considered. [He was] completely controlling and emotionally abusing myself and the children. It was all disregarded, I was branded a liar, the judge never saw any of his behaviour as controlling or abusive, and he got 45% access.

(Focus group participant)

That’s what he went for. Article 8. And my response to that, which my barrister didn’t pick up on, was what about my right not to be abused? And the coercive control thing with children. So let’s talk about equality. But no, they didn’t go for that, it was just accepted by the judges ‘he’s got a right, let’s give it to him’. And I thought no – he’s abusing his children.

(Focus group participant)

We also heard about judges or magistrates actively encouraging abusive ex-partners to claim their rights, as in the excerpt below, but there were no examples in our sample of judges encouraging women to do the same.

The judge kept reiterating to my ex that he had rights [...] My ex kept saying ‘I’m not doing this anymore, I’m leaving, I can’t be doing with this’ and the judge kept saying to him ‘you do have rights, you’ve got father’s rights’.

(Interview participant)

Different ideas and understandings around children’s human rights were uncovered by the research. There were some cases of judges advocating for the child’s right to be heard, and have a say in how their family life was to

be arranged, as the positive example below shows:

The judge said in her summing up and in making the order: ‘I want this child to know that I have heard her. So therefore the order will be as follows’ [...] So that was very much about listening to and taking into account the wishes and needs of my daughter, and not so much just going with ‘this is what a standard contact agreement looks like’.

(Interview participant)

However, it was more common for the child’s human rights to be combined and conflated with those of the father; we heard of cases where judges and magistrates argued that the child had a right to contact with both parents, and that the child’s father had a right to contact with their child, but little was said about the child’s right to have their views on this respected, or their right to be free from violence and abuse. The language of the ‘best interests of the child’ was often used, but not in the way intended in Article 3 of the UNCRC, which is that when decisions are made, the impact on the child should always be considered, alongside the child’s other rights, such as the right to be free from all forms of violence, as set out in Article 19. For many of the women in our sample, viewing the child’s right to contact with both parents in isolation from the child’s right to safety and freedom from abuse was extremely problematic:

It’s quite frustrating because they talk about the child’s rights, that the child must have a relationship with the father, but they don’t seem to understand that actually it’s sometimes in the child’s best interests not to have a relationship with the father. Obviously in an ideal world we would like the child to see both parents and have a happy, healthy relationship with both, but that’s not always the case. I don’t feel the court do that. They just want to put the child back together with the father at any cost - to the child.

(Interview participant)

If it's not a safe relationship it shouldn't be facilitated. I was saying 'it's not safe', and that's the point for me, the judges don't look at it from that view, they don't make that distinction, but if it's not safe then it shouldn't be being facilitated.

(Focus group participant)

Some women we spoke to brought up what they saw as the issue of conflicting rights and misinterpreted rights. As discussed in Section 1.2, some human rights are absolute, and cannot be balanced against the needs of other individuals, whereas others are qualified, and may be interfered with in order to protect the rights of another. Research participants discussed what they felt should happen when the human rights of different parties involved in a family court case do not align neatly, or even explicitly clash:

I think the biggest difficulty with the family court is it is so unable to address... when you have two human rights that clash, which right prevails? [...] Whose right prevails, the mother's or the non-abusive partner's right to parent as they see fit? Surely the abusive partner should be fitting in with that rather than the abusive person's rights smashing down on top and destroying what the children are used to and happy with?

(Focus group participant)

This section has begun to examine some gender differences around the understanding of, and advocating for, human rights in the family courts. It has also highlighted several instances where the women in our sample felt their human rights, and those of their children, had not been protected. The sections below discuss findings in the following areas: evidence and understanding of domestic abuse; gender discrimination; discourses of parental alienation; safeguarding; and impacts and outcomes. We will then, in Section 2.8, go on to consider the human rights implications of these findings.

2.3 Domestic abuse: awareness, understanding and evidence

I feel like I'm really impressed with what Practice Direction 12J says. I think it's bang on right you know how domestic violence should be treated. But I feel the bar for proving whether there has been domestic violence, it's one of the most difficult things to show because the bar is so high. But for it to be disproved or not believed is so low [...] Us normal women who live, survive, protect our families with our silence are the ones who are not believed.

(Focus group participant)

As we saw in Section 2.1, all of our research participants were women survivors of domestic abuse, and in the vast majority of the family court proceedings we heard about, the other party was the child's father and the alleged perpetrator of domestic abuse. In this section, we look at how evidence of the abuse was considered and taken into account in the family courts. We also consider whether survivors' concerns and fears – arising from domestic abuse – were recognised and addressed.

How was evidence of domestic abuse collected and used?

As we explored the issue of how domestic abuse is regarded in the family court in greater depth during the qualitative stage of the research, many findings emerged that echoed Women's Aid's previous research around domestic abuse and child contact.¹⁷ A common theme was that survivors felt that evidence of domestic abuse was not taken seriously by the courts and other professionals involved in the child contact process, and that the dynamics and impact of domestic abuse were not understood. This led to potentially unsafe decisions on child contact being made without all of the facts,

and survivors of domestic abuse being placed in dangerous and frightening situations, including cross-examination by their ex-partners and being forced to negotiate with, and sit next to, their abusers in court. These findings are summarised below.

Research participants told us about how they attempted to draw the courts’ attention to the domestic abuse they had experienced. Matching the findings of previous studies,¹⁸ some women in our sample had been advised not to bring up domestic abuse as part of their case. Often domestic abuse was perceived as historical, and there was little understanding of the prevalence and nature of post-separation abuse, and its ongoing impact on survivors and their children:

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)

Other women had tried to bring evidence of domestic abuse into their case, but found that this could have a negative impact:

I keep getting told, well all you can do is keep documenting [...] I’ve been documenting for so long and I don’t see the point because no one looks at it. He’s the only one that looks at it and then he gets more and more enraged with me and it just makes my situation worse. I don’t want to submit evidence unless it’s going to have an impact otherwise I’ve just made things worse, because I have to disclose everything to him as well.

(Interview participant)

The issue of proving that there had been domestic abuse was a common theme brought up by the women we spoke to. Women felt that an unfair onus lay with

them to prove that they were not fabricating accounts of abuse:

It didn’t feel like the system was particularly interested in domestic abuse. If I hadn’t have ticked the domestic abuse box and then found and printed off the forms that supported my accusation then nobody would have made any effort to ask why or what. I felt I was treated like another spiteful woman getting revenge on an ex-husband by denying access to the children.

(Survey respondent)

Echoing the findings of previous Women’s Aid research¹⁹, women described how domestic abuse became misinterpreted, in their cases, as conflict in a relationship:

They made it look like it was tit for tat but it wasn’t. But then they don’t know who to believe. And because emotional and psychological abuse is in essence between two minds, it’s very hard to prove. Even though I’d gone through counselling with my kids, through Women’s Aid I had a counsellor and I could evidence it all, and I had IDVA intervention. They ignored it all.

(Focus group participant)

Some participants also felt that there was a lack of understanding among family court professionals about the ways that perpetrators of domestic abuse could use coercive and controlling behaviour. This type of behaviour became a criminal offence in 2015 and entails acts of humiliation, intimidation, threat and assault used to harm, frighten or punish the victim. These acts create a sense of fear that pervades all elements of a victim’s life and limits their human rights by depriving them of their liberty and reducing their ability for action²⁰:

I don’t think they see the subtleties that go on with characters like my child’s father. They don’t understand what he’s doing and how he’s doing it, and how good he is at what he does.

(Interview participant)

My solicitor didn't feel I had enough evidence, so we didn't put it down [...] It's gonna sound crazy, but she was manipulated by him as well, and it was only when she heard him in the court room and we actually came out and she said 'oh, I'm sorry' and that was the moment she realised that what I'd been saying all along was the case.

(Interview participant)

The research also uncovered examples of a lack of understanding about domestic abuse - including the levels of fear survivors experience - and victim-blaming by other professionals involved in the child contact process:

I was very disappointed in the Cafcass officer, she showed no understanding around domestic abuse at all and in the court she agreed to everything my ex-partner had asked for and actually suggested he should get more contact than he was asking for. I believe she saw me as weak but at the time I was so scared and felt so intimidated by my ex-partner and she didn't understand this.

(Survey respondent)

At one time my own solicitor took me out for a coffee during a break in proceedings, and I was visibly shaking. I was in a terrible, terrible state, and she said to me 'oh you've got to stop being so silly, if you just let him push all your buttons, you need to stop this nonsense'. I was literally terrified and told to 'man up' by my own solicitor.

(Interview participant)

These findings echo other recent research highlighting the ways that domestic abuse can be dealt with in the family courts as a series

of minor incidents, rather than as an ongoing pattern of significant and highly controlling behaviour.²¹ In one 2012 study, which involved a national survey of judicial officers and practitioners, survey respondents expressed concerns about the adequacy of their own or others' training on domestic abuse. They noted the differences and gaps between a 'legalistic' understanding of domestic violence, focused on physical violence, incidents and corroborative evidence, and the social science understanding of the power and control dynamics of domestic abuse.²² This is reflective of the patchy and inconsistent responses to domestic abuse that survivors tell us they experience.

Women said they felt they faced a lottery as to whether their case would be heard by a judge or magistrate who understood the dynamics of domestic abuse:

A policeman friend said 'you can have all of your buttons all done up ready to go, and when you get to court it's la la land. It will all depend on the judge on the day'.

(Focus group participant)

And even the barrister who had taken on my case, the minute she found out who this new judge was, she backed out. And she actually turned around to me and said 'this judge who's been allocated your case will make a decision, a very serious decision. You probably won't like the decision she makes, but she will make a decision.' And then she backed out the week after. And I think it was because she knew this judge's reputation.

(Focus group participant)

Although fact finding hearings should take place in circumstances where domestic abuse is alleged and disputed by one of the parties,^{xv}

xv The newly revised Practice Direction 12J has detailed guidance on the considerations to be taken before ordering a fact finding hearing. It also states that if no hearing is ordered, the court must provide written reasons to explain its decision. www.judiciary.gov.uk/wp-content/uploads/2017/09/presidents-circular-domestic-abuse-pd12j-substituted-pd-20170914.pdf

our research, echoing previous studies,²³ indicated that this does not always happen. In our online survey, only 29% of respondents said a fact finding hearing had been held as part of their case. As we saw in Section 2.1 above, in 17% of our survey respondents' cases, domestic abuse was not formally raised; in these cases a fact finding hearing would not have been ordered. However, a much larger proportion of our sample – 48% of survey respondents – said that no fact finding had been ordered in their case, and 11% of respondents were not sure. This indicates that fact finding hearings were not ordered in a significant number of cases involving domestic abuse allegations. In focus groups and interviews, research participants told us more:

That's what I don't get, why didn't I have a fact finding hearing? I asked my solicitor – why aren't they doing fact finding? [He answered] 'Oh well they don't always do it'. And I said 'but we need to prove what he's doing to me and I've got the proof, I can prove it'.

(Focus group participant)

Women who did have a fact finding hearing told us they felt the hearing was not conducted in the best way, without understanding or recognition of the dangers and impacts of domestic abuse, and in some cases even replicating the dynamics of domestic abuse:

I remember it being terrifying and my ex's barrister questioning me and accusing me of lying, using lots of techniques to break me down. I was crying and shrinking basically, and he still went on and my ex had none of that, he wasn't questioned in the same way.

(Interview participant)

Some women thought that the findings of the hearing were not taken into account:

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)

The fact finding hearing was in my favour. With police documentation, hospital records, photographs of my injuries, you name it, we had it. Yet still they pushed for contact.

(Interview participant)

Other women were advised not to request a fact finding hearing at all:

I was told that the idea was that you tried to negotiate, and if you couldn't, come to - his words were - if you couldn't come to an adequate solution in negotiation, you went to a fact finding. That's how it was sold to me. It was almost like 'if you fail, you'll have to go to this fact finding, and if you don't, if you achieve, then you won't have to go'.

(Focus group participant)

Were the concerns and fears of survivors of domestic abuse taken into account in family court processes?

When the women in our sample described their experiences of the processes that take place on the family court estate, a picture emerged of what appears to be a clear lack of understanding about the dynamics of domestic abuse and how it might impact on survivors' experiences in court:

In the first hearing we were made to go outside and agree contact between us and I had requested that I not be made to talk to him on my own and I said to the judge, could I have the Cafcass officer present, and the judge said 'Cafcass are very busy'. I didn't have the confidence to refuse, so

I went off and talked to him on his own which was a big mistake, but it wasn't until afterwards that I realised I had the right to say I'm not going to talk to him on his own [...] I always feel a bit scared in court so I don't stand up for myself.

(Interview participant)

Our online survey showed that some women were cross-examined in court by their ex-partner, who was also a perpetrator of domestic abuse. Twenty-four per cent of survey respondents had been cross-examined in this way. These findings are similar to those from a Women's Aid survey conducted in 2015, in which a quarter of respondents had been cross-examined by their abuser in the family court.²⁴

The negative impact that cross-examination can have in these circumstances has been clearly demonstrated by previous studies²⁵, with survivors of domestic abuse feeling traumatised and degraded, unable to advocate properly for the safety of their children. This was illustrated again in our research:

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, and it was ridiculous.

(Interview participant)

Our research also showed clear inconsistencies and failures in the provision of special measures for survivors of domestic abuse; 61% of respondents in our online survey (35 women) had not had any form of special measures in court, and 35% (22 women) told us they had accessed some type of special measure.^{xvi}

Of the 22 women who had been allowed some sort of special measures, 59% told us that the measures were only in place in some of the hearings they attended, rather than all. These findings are similar to those of previous studies that have looked at the provision of special measures for survivors of domestic abuse and reported gaps and inconsistencies.²⁶ In focus groups and interviews, participants spoke about their experiences in greater depth:

Table 6: Special measures

Type of special measure	Percentage of women who were allowed this measure ^{xvii}
No special measures	61% (35 women)
Separate waiting room	33% (19 women)
Separate entry and exit times	7% (4 women)
Screen	7% (4 women)
Video link	3% (2 women)
Other types	14% (8 women)

xvi Six survey respondents did not answer this question.

xvii Survey respondents could choose more than one option.

I had to request for myself a separate waiting room area. And every time I put in that request, [...] when I'd arrive I'd find that the arrangement hadn't been passed on to the people on the front desk, and he'd always be there – standing and intimidating, and one of the waiting rooms in the court [...] was so small that there was nowhere to sit other than feet away.

(Focus group participant)

Focus groups and interviews revealed complicated factors determining whether a survivor of domestic abuse asks for special measures or not. Some women refrained from requesting any form of special measures, even when they were afraid of attending court without them, because they feared their request would not be received well by judges or magistrates:

I was advised with particular judges that they didn't like women in domestic violence cases who chose to have screens and separate entrances because it gave the wrong impression and wasn't fair because it hadn't been proven at that point. (Focus group participant)

I know that if I asked for a screen or separate entrances, it would go against me. And that means it would go against the outcome I'm trying to get for my child, so I wouldn't do it. You just have to deal with the trauma that it brings, you just have to deal with it all.

(Interview participant)

Some of the women we spoke to had been expected to take part in mediation with their abusive ex-partners. The requirement to attend a mediation information and assessment meeting (MIAM) before entering the family justice system is now statutory except where domestic violence has been alleged. In order to qualify for this exception, women need to meet the evidence criteria (which matches legal aid criteria). Those survivors of domestic abuse who are unable to provide the necessary evidence however,

will be required to attend mediation, which is problematic in any cases of domestic abuse, as the interview participant below explains:

The problem is the courts are saying you really should go to mediation before you launch court proceedings. Well how can you mediate with someone who intimidates and frightens you? If you've got no previous evidence that that person has intimidated and frightened you, 'cause you've never reported it, 'cause you're too frightened and intimidated? [...] and the legal system wants you to go and sit in a room with that person and a mediator who is not trained to deal with that level of coercive control.

(Interview participant)

Finally, our research also found examples where perpetrators of domestic abuse who were on bail for violent offences against the non-abusive parent were allowed into the family courts to argue for contact with their children. In at least one case, unsupervised contact was awarded by the court to a perpetrator who was on bail at the time.

The evidence collected as part of this research, along with previous reports published by Women's Aid and others,²⁷ demonstrates a range of inconsistencies and gaps in protection around the way that domestic abuse is considered and taken into account as part of child contact procedures in the family courts. This research also highlights that these gaps and inconsistencies are continuing despite a range of measures taken by the family courts and other professionals involved in child contact proceedings to improve awareness around domestic abuse and its impact on child wellbeing. It is clear, and the women's testimonies we heard as part of this research demonstrate, that these measures cannot be truly successful unless there is recognition of, and action to address, gender discrimination within the institutional culture of the family courts. The next section will discuss this further.

2.4 Gender discrimination: attitudes, stereotypes, myths and behaviours

When a mother goes to court, you have to come across very calm, you can't show emotion, you can't get upset, if you get upset, well you're unstable, and you're not healthy for the child. You're not acting in the child's best interests. They say 'if that's what you're like with us then that's what you're like with the child'. But if the father goes in and shows emotion, the judge will say 'well he's hurting, of course he's like this, he's hurting, he's not seeing his child'. It's so different how the two are treated.

(Interview participant)

This section will look at what research participants told us about the culture and environment of the family courts. This includes the way that gendered myths, stereotypes and perceptions about domestic abuse survivors and about mothers surface in the discourses used in the family courts. Often domestic abuse is understood as a trait of parents' relationships, rather than the abuse of one person by another in the context of unequal, gendered power relations. As previous Women's Aid studies have argued, domestic abuse is in fact deeply rooted in gender inequality and oppressive social constructions of the family and of femininity and masculinity.²⁸ During child contact processes, the gendered nature of abuse is often not recognised and euphemistic language, such as calling abusive relationships 'tempestuous', obscures experiences of power, control and violence.²⁹ This research study reinforces that finding. It also shows, however, how the environment and culture of the family court and the processes around it can actually serve to reinforce these inequalities and oppressive social constructions of the family.

Experts in organisational and institutional cultures have noted the ways that the 'deep

structure' of institutions can block the success of policies and procedures designed to create positive change.³⁰ Deep structure is a term used to describe the hidden layers within societies, organisations and institutions where a number of unconscious or even conscious but hidden processes occur. Within the deep structure lie taken-for-granted assumptions about gender roles and the place of women. These assumptions are below awareness level, and are therefore not talked about or challenged, but they determine how people think and act.³¹ We found examples of both explicit gender bias and stereotypes, and more implicit, hidden ideas and perceptions within the deep structure of the family courts.

How were women and men treated differently in our sample?

A common theme expressed by the women we spoke to was that they felt they were expected to conform to different standards of behaviour from their former partners. For example, one woman told us: *"I did actually get told by the judge that they were going to make allowances for him because I'm such a good parent, and that as long as a child has one good parent they can cope with the other parent not being quite as good"* (Interview participant 5). In some cases, affording greater weight and applying extra leniency to abusive ex-partners' feelings and demands led to aggressive or dangerous behaviour being tolerated:

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)

He could do anything – he was dragged out of the court room by security, he was arrested halfway through a hearing, and one time he was sat in the court in handcuffs. The judge would ask why the police were in court and they’d tell him. He’d say ‘oh right thank you’. I thought ‘this is a child contact hearing and nothing was said!’ [...] In fact the judge praised him one day and said ‘can I just thank you for being calm’.

(Interview participant)

Echoing the findings of Women’s Aid’s *Nineteen Child Homicides* study,³² women told us that when they tried to raise domestic abuse as a safety factor to consider in relation to child contact, they were perceived as trying to block contact for no good reason, because the links between domestic abuse and child safety and wellbeing weren’t being made:

They seemed to think ‘oh right, maybe he abused the mum’, but that’s separate. ‘Mum, put that behind you, you’re not with him now, support your child to see their father’.

(Interview participant)

If a partner is abusive, that is abusive towards another partner, how can you presume they’re going to be a good parent? How can you presume that behaviour doesn’t translate into other relationships, into the work environment, into a public place? Why wouldn’t it translate into parenting?

(Focus group participant)

Evidence shows that the majority of mothers who have experienced domestic abuse do try to promote contact where they feel it is safe and in the child’s best interests, and ‘implacably hostile’^{xviii} mothers are involved

in only a minority of cases, most of which arise because of irrevocable parental conflict, serious welfare concerns, or children’s own wishes.³³ One study, which used the Cafcass electronic case management system to look at a national sample of 205 enforcement applications made in England in March and April 2012, found that in cases returning to court seeking enforcement of contact ordered, there was a high incidence of safeguarding allegations, with concerns about domestic violence or child abuse in a third of cases.³⁴ Despite evidence demonstrating domestic abuse survivors’ efforts to promote safe contact for their children, however, a clear public perception persists of mothers deliberately flouting contact orders as part of efforts to ‘punish’ their ex-partners.³⁵ The testimonies of the women we spoke to illustrated that this perception extends into the culture of the family courts, with women telling us that they felt family court professionals had preconceptions about their motivations:

I felt like I was invisible. I was completely invisible, and it was like ‘oh here’s another woman trying to stop the father from seeing the child and punishing him’. I wasn’t interested in punishing him. I was interested in keeping me and my child safe.

(Interview participant)

What gendered attitudes, perceptions and behaviours were observed?

As well as differences in treatment and in expectations of behaviour between abusive and non-abusive partners, many of the women’s responses detailed differences in the ways they were addressed by members of the family judiciary. Survivors described situations where judges and magistrates had used the same type of demeaning language that their

xviii The term ‘implacably hostile’ is used by some to describe a parent who takes negative actions to undermine a child’s relationship with the other parent. ‘Implacably hostile’ behaviour is believed by some to lead to ‘parental alienation’.

abusive ex-partners had used, describing them as difficult, irrational, and telling them to calm down if they became upset or angry. The survivor quoted below felt that in her case, the judge showed solidarity with or sympathy for her abusive ex-partner while displaying derision for her:

I was crying [...] and the judge said to me, and used my name and said, 'I'm sorry, I can see why Mr [...] finds you such a difficult woman,' and I said, 'I'm not a difficult woman,' and he said, 'And I can see why he's saying you're argumentative.' [...] When the criminal charges were read out he looked straight at my husband and said, 'I can see why this is a very difficult situation for you Mr [...].' And I was thinking 'what is going on? The police have charged him with this, why am I being made to feel bad?'

(Focus group participant)

Some research participants talked about the minimisation and denial of domestic abuse by professionals in the family court. For example, one survey respondent said that the judge described her experience of rape by the father of her children as *'just something she didn't fancy'*. A focus group participant, who had also made allegations of sexual assault, recalled the questions she was asked about *'my sexual preferences, what positions I liked, how often I had sex with my husband, and why I had sex with him when he did these things to me'*.

In other cases, women gave us examples of outdated language and expressions that revealed a clear unawareness of gender equality issues:

I sold my flat and I gave [my ex-partner] all the money, so once the mortgage was paid off, all the money went to him [...] and when we were telling the judge how things happened financially over the years, I'll never forget, the judge actually looked up and said 'oh, so it was like a dowry then'. I nearly fell off my chair.

(Interview participant)

In addition, some of the women's testimonies highlighted aggressive and inappropriate behaviours from family court professionals directed towards them:

The judge banged his fists on the desk and shouted that he would never give me my children back. This shocked the staff at my local court doing the video link and I think they reported the judge as after that he wouldn't allow video link.

(Survey respondent)

As survivors of domestic abuse, some of the women we spoke to had experienced responses from family court professionals that were victim-blaming:

The judge said to me, when he was asking me questions in the stand: 'oh, I see you've been in a previous relationship that was quite abusive'. And I just looked at him and said, 'Sorry?' and he said: 'You were in a previous abusive relationship.' [...] And I looked and I said to him, 'are you trying to say that it's my fault I've had two pretty abusive relationships?' And he just looked at me, and I thought, 'that's exactly how you see it, you think that I attract abusive men'. And I just felt so degraded, I just sat there thinking 'wow'.

(Interview participant)

Some women felt they were looked upon disparagingly, in a way that their former partners were not, if they showed knowledge or interest in the legal process and their own rights:

One barrister said to me, when coercive control was first added to definition of DV, that as I knew the law so well it seemed there was no need for her services.

(Survey respondent)

I'd been on the Freedom Programme – and [in court] I got accused of being over-researched. How insulting is that? It's very insulting. There is no such thing as over-researched!

(Focus group participant)

The ways that women spoke about their experiences of the family courts suggested parallels with institutional cultures described as ‘old boys’ clubs’, where informal alliances, relationships and understandings are made and observed between men:

The court recorder was talking to my husband's barrister about the event they'd been to the night before and actually said 'don't worry I know you've got to get off 'cause there was a golf thing, 'we'll have this over and done with quickly'. As I was standing there in the doorway. And within ten minutes – we didn't even get to speak – there were no submissions, and they gave him interim contact straight away. Without hearing any evidence.

(Focus group participant)

There was zero tolerance towards me as a mother with concerns and there were often times the judge would laugh and pass side comments with my ex and his legal representative, mocking me.

(Survey respondent)

Following on from this, several of the women spoke about the way that the culture and physical environment of the family court made them feel, as survivors of domestic abuse and as women:

Everything about the court room is very masculine. You walk in, and for me as someone who has been sexually assaulted, you walk into the building and the first thing you come up against is some great big burly guy... they're normally lovely... sitting behind the desk is normally a man, the judge is normally a man, the clerk is normally a man, it's all very red, it's all very solid, there is nothing nurturing, caring or gentle about this place.

(Focus group participant)

As the examples featured in this section show, the women in our sample had experienced a

range of behaviours, attitudes and beliefs that are based on underlying perceptions around gender. These perceptions often match the inequalities and constructions around women and men's roles that lie behind domestic abuse, and they also often prioritise the human rights of men over those of women. Several of the women we spoke to had been accused of ‘parental alienation’ as part of child contact proceedings. We found that these cases highlighted some of the most extreme examples of underlying gender discrimination and stereotypes. The section below discusses this further.

2.5 Discourses of parental alienation

I was punished for telling the truth. I was punished for trying to follow procedure. My ex used the court to bully and further abuse me and now holds my son captive, telling him that I don't want to see him. He tells all of our former friends that I have severe mental health problems and abandoned my child.

(Survey respondent)

Women's Aid, along with academic experts and other organisations working with survivors of domestic abuse, has become increasingly concerned with the growing debate surrounding parental alienation, which is a term used by some to describe the actions of one parent to cause a child to reject or distance him/herself from another parent. The separation of parents can be traumatic event for a family and can result in significant impacts on the child, but there is no recognised ‘syndrome’ of parental alienation. One parent may have valid safety and welfare concerns about a child having contact with an abusive parent and expressing these concerns should not be dismissed as an abusive act in itself. The development of this theory in the US is highly disputed and it has not been officially recognised by the World Health Organisation.³⁶

The testimonies of participants in this study corroborated anecdotal evidence already heard by Women’s Aid about child contact cases involving allegations of domestic abuse where non-resident parents - typically fathers - are using the theory of parental alienation to justify why a child may present anxiety and fear about contact with that parent and to try to secure child contact arrangements, often despite the presence of significant welfare concerns. Resident parents - overwhelmingly mothers - are being accused of alienating their children from their fathers, when, as discussed above in Section 2.3, research shows that the reverse is actually true, with resident mothers frequently facilitating contact themselves, despite previous experiences of domestic abuse.³⁷ There is also evidence to show that fathers who are perpetrators of domestic abuse use contact with their children with the aim of undermining the relationship between mothers and their children both pre- and post-separation.³⁸ One recent international study introduced the term ‘custody stalking’, defined as “a malevolent course of conduct involving fathers’ use of custody and/or child protection proceedings to overturn historic patterns of care for children”.³⁹

Despite the scarcity of valid research on parental alienation, a perception of ‘implacably hostile’ mothers, who emotionally manipulate children against fathers, appears to be gaining traction in the family courts, with some parties using expert witnesses and psychologists to justify such arguments within proceedings. As the section below shows, some of the women we spoke to had lost residence or contact with their children, after they raised domestic abuse as part of their child contact case, but in turn were accused of parental alienation.

What were the women’s experiences of parental alienation accusations?

The majority of women we spoke to were aware of the existence of theories around parental alienation, and some had been

explicitly accused of it. For them, the theories were linked to a culture of not believing survivors of domestic abuse, especially when they raised concerns about contact between their children and an abusive parent. Some women had been accused of intractable hostility or emotional abuse of their children after they had raised safety and welfare concerns about contact, or withheld contact between their child and a perpetrator of domestic abuse. Women told us that they felt pressured to play a role that they did not believe in, in order to avoid or counter such accusations:

It got to the point where he got charged by the police and I was told to withdraw access. But [in court] everything was turned around against me, and basically I was told by my barrister that if I did not accept the judgement and agree that I had emotionally abused my children by withdrawing access, then my children would be taken off me. [So I said that] I was fully aware that by children – not my children – but by children not seeing their fathers it can cause emotional damage and I was aware that may have happened in my situation. I was told if I did not say that my children were going to be taken from me.

(Interview participant)

I was told that if I didn’t make it clear – they never used these exact words – but if I didn’t force my child into that room with him [...] that they could change residency and make her live with her father. Which is absolutely horrific, to put that sort of pressure on me, to pressurise my child when she’s going through an awful lot as it is, and needs to know that the parent she’s living with is actually supporting her.

(Interview participant)

Even if they had not been explicitly accused of parental alienation, women felt at risk of accusations being raised against them. This resulted in them being hyper-aware of their own actions in terms of helping to facilitate contact:

They'd say to me: 'the fact that you cry in front of him, he must take from that that he is wrong in seeing his father' and I said: 'that's not why I was crying. I get in that car, I take him every week, driving there with him crying and screaming in the back'. That goes against every instinct as a mother. You just want to stop the car and go 'it's fine, we won't do it'. And I couldn't do that [...] I was terrified that I'd lose my child, terrified of them saying 'right well I'm sorry we're gonna give him residency'. That was my biggest fear, that I would lose my baby.

(Interview participant)

Women also shared examples illustrating attitudes and beliefs among family court professionals that lend strength to ideas of mothers alienating their children from their fathers:

The female judge would quite openly say 'oh yes mums do manipulate children, mums do turn children against fathers. Unfortunately that's what happens because they are the parents they live with'.

(Interview participant)

Professionals are indoctrinated into the culture of Richard Gardner^[xix] and they just believe it. Or they just use it, even if they don't believe it, it's convenient. If you're a solicitor representing a father, it's so easy, you can just use that [...] The whole thing of not believing mothers and then using the abuse as a symptom of this so-called syndrome, it's all come from that I think.

(Interview participant)

Some of the women who had been accused of parental alienation told us about the expert witnesses^{xx} who had been involved in their cases:

An 'expert witness' was chosen by my ex's solicitor. I later found out he says mothers have 'false beliefs' in all these cases, and runs workshops on 'parental alienation syndrome'. On reading about this I realised this was the tactic used against me and is a catch-22 I had no chance to defend against.

(Survey respondent)

When they interviewed my children, they said that their sentence construction was too advanced and therefore they must have been coached. They both spoke from the heart and told the truth about the long history of domestic abuse, and it was totally disregarded. How can that be allowed?

(Interview participant)

These testimonies reveal disturbing situations where the experiences and rights of women and children survivors of domestic abuse are obscured by discourses of parental alienation, to the extent that women feel there is no point in continuing to raise allegations of domestic abuse, or that to do so would be counterproductive. Women survivors in our sample felt that they were undermined as people with 'false beliefs', as well as being over-emotional, unstable, and unable to put the past behind them.

In some cases, women's sexual relationships and activities appeared to be of more interest to professionals involved in the child contact process than the domestic abuse those women had experienced. Sexual activities

xix Richard Gardner was an American psychologist and psychoanalyst who researched and developed theories on 'Parental Alienation Syndrome' in the 1990s.

xx Guidance from the Family Justice Council and the British Psychological Society states that "Expert psychological witnesses may be instructed in the family courts when their expertise is necessary to make decisions in the case. Psychologists offer expertise in considering the individual and collective psychological profiles of different family members, and their impact on key issues and decisions for determination by the Court." (Family Justice Council and British Psychological Society 2016: 4).

were examined and associated with parenting capacity and credibility in a way not done for the women’s male former partners. One interview participant told us that in her case, an independent expert “spoke to me for a couple of hours about my sex life with my other children’s father. He was so hung up about that sex life. What it had to do with the proceedings I do not know.” Not only did women have to prove that they had experienced domestic abuse, at the same time they had to prove that they were credible, rational and even asexual mothers.

Our research findings raise concerns about the use of expert psychological witnesses in the family courts, especially in cases involving accusations of domestic abuse and counter-accusations of parental alienation. A 2012 study conducted by academics at the University of Central Lancashire, with funding from the Family Justice Council, examined 126 expert psychological reports submitted in family court proceedings. Results indicated wide variability in the quality of reports; two thirds of the reports reviewed were rated as poor or very poor, with just one third rated as good or excellent quality. The study found evidence of unqualified experts being instructed to provide psychological opinion, and one fifth of instructed psychologists were not deemed qualified on the basis of their submitted CV. Only one tenth of experts were engaged in clinical practice alongside the provision of expert witness work.⁴⁰

For some of the women we spoke to, the result of the accusations of parental alienation made against them, backed up by the testimonies and reports of psychological witnesses, was that they lost residence of, or contact with, their children:

The perpetrator used parent alienation syndrome (Richard Gardner theories) throughout the case to gain residency. He paid for top barristers and I was poorly represented on legal aid, often with no consultation or position statements, no

access to solicitor or barrister except for bare minimum [...] The most traumatic experience of mine and my children’s lives.

(Survey respondent)

I was told I was crazy, that’s what they come at you with, that you’re crazy. When you say it out loud it sounds like you’re paranoid [...] that everyone’s against you [...] No, I’m not paranoid, I was not paranoid. Real evidence was just turned away, time and time again [...] I was seen as an alienating mother, when in fact, he alienated me from the child, and that child ended up paying the price.

(Interview participant)

One survivor described how, despite losing contact with her child, she refused to conform to the role of the alienating parent into which she had been cast:

In the end I was saying to Cafcass – they said ‘if you admit that you told lies about him being violent, then we’ll see there’s some attrition, you’re taking some responsibility’ and I said ‘look, I’m an intelligent woman, it’s clear to you and me that I know what to say to play the game and get access to my child. The fact that I will not play it should speak volumes’. But they didn’t want to know. They wanted me to play the game and say ‘look, I messed it all up, I’m really sorry, I was trying to alienate my child’.

(Interview participant)

What was the impact of allegations of parental alienation on the child?

Survivors in our sample gave us examples of what happened when they raised concerns about their children’s welfare and safety, but these concerns were not taken seriously because the survivor was accused of parental alienation. The example below demonstrates the serious consequences on child safety of applying a theory of parental alienation:

My daughter made a disclosure of sexual abuse. She told the health visitor, she told professional people, but because she didn't tell the police, [my ex-husband] managed to twist it to say the police and social services had found him to be not guilty [...] The judge kept saying 'she's brought this thing up in her mind' [...] I allowed the guardian to take my daughter to a contact centre and she was petrified but they kept trying to force her to see him [...] She started wetting the bed, waking up three or more times a night [...] My other child was ordered to go unsupervised [...] And in that respect they completely failed my children. They have put them through so much mental abuse I don't know how it's going to affect them in the future.

(Interview participant)

As the former two sections have shown, the evidence collected as part of this research illustrates many examples of gendered myths, stereotypes, attitudes and behaviours around survivors and perpetrators of domestic abuse that lie within the deep structure of the family court system. Use of parental alienation accusations against women who raise domestic abuse and their concerns around unsafe contact between their child(ren) and the perpetrator of the abuse are one of the most extreme examples of this.

This deep structure can be seen as creating a substantial barrier to the success of policies and procedures such as Practice Direction 12J, which are intended to ensure that the links between domestic abuse and unsafe child contact are realised and understood. The next section will consider child contact outcomes for the women in our sample, asking what the impacts are of gaps in understanding around the links between domestic abuse and child safety, combined with systemic gender discrimination.

2.6 Safeguarding: child abuse and unsafe child contact

I think at one point I lost my temper and said to the judge 'would you allow your child to be anywhere near this man?' And he said 'that's not the issue'. Well actually, it is.

(Interview participant)

Previous work by Women's Aid has highlighted concerns about a 'pro-contact' approach in the family courts, and the results of this approach in cases where children have died or been seriously harmed during unsafe contact with a parent who was a perpetrator of domestic abuse.⁴¹ These concerns are backed up by several other studies, including a study published in 2014 (which comprised an analysis of case law and in-depth interviews with barristers, solicitors and family court advisers employed by Cafcass) which found that most professionals and judicial officers continued to endorse a message of 'contact at all costs' after Practice Direction 12J was issued.⁴²

This is despite evidence to show that one in seven children and young people under the age of 18 will have lived with domestic violence at some point in their childhood and in households where domestic abuse is happening, 62% of children living with domestic violence are also directly harmed.⁴³ One study found that 34% of under 18s who had lived with domestic violence had also been neglected or abused by a parent or guardian.⁴⁴ Another study looking at 139 overview reports from serious case reviews between 2009 and 2011 found that around two thirds of cases featured domestic abuse,⁴⁵ and a subsequent analysis of serious case reviews between 2011 and 2014 found that domestic abuse featured in all cases of overt filicide. The authors of this latter report noted the prevalence of coercive and controlling behaviour recorded in the reviews, and

commented that ‘it is now abundantly clear from research that living with domestic abuse is always harmful to children, and it is rightly seen as a form of child maltreatment in its own right’.⁴⁶

Research published in 2017 by Cafcass, in partnership with Women’s Aid, showed that more than two thirds of the 216 child contact cases in the sample involved allegations of domestic abuse, yet in 23% of these cases, unsupervised contact was ordered at the first hearing.

In this section, we will look at what research participants told us about how their children had been impacted by domestic abuse, the type of contact ordered in their cases, and how decisions were made about whether the contact was safe, for both children and non-abusive parents.

How did the children experience domestic abuse?

Sixty-nine per cent of respondents to our online survey said their ex-partner had been emotionally abusive towards their child(ren), 38% said their ex-partner had been physically abusive towards their child(ren), and 8% said their ex-partner had sexually abused their child(ren). Thirty-eight per cent said their ex-partner had been abusive in another way towards the child(ren); open ended survey comments showed that this was often defined as neglect or forms of emotional abuse.

Sixty-three per cent of survey respondents said a section 7 report had been ordered in their case.^{xxi} Fourteen per cent said the report hadn’t been ordered and 12% were not sure. Of the respondents who said a section 7 report had been done and who

volunteered further details, just under half (12 respondents) said that domestic abuse had been mentioned or recognised in the report. However, in seven of these cases, contact between the child and the perpetrator of the abuse was still ordered. Eight respondents said that the section 7 report did not mention domestic abuse, even though they had raised it with the report author. This raises concerns that the gaps in awareness around the dynamics of domestic abuse, as well as the gendered attitudes, behaviours and stereotypes discussed above, are also an issue for some professionals engaged in writing section 7 reports.

Cafcass couldn’t decide who to believe. The children were not totally believed about what they said about their father. [The 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)

[The report said] that my ex-partner would have contact with the children at weekends. The report disclosed very sensitive personal information about me to my ex-partner which I believe put myself and my children at greater risk. I was accused of being unable to separate my feelings about the abuse towards me and what was best for the children. Despite his abuse towards me being assessed as high risk, it was considered he was no risk to the children.

(Survey respondent)

xxi A section 7 report is ordered by the court in accordance with the Children Act 1989. It is written either by Cafcass or the local authority. Its purpose is to investigate all the circumstances of the family, including the wishes and feelings of a child or young person.

What types of contact was ordered?

Survey respondents told us if contact had been ordered in their cases, and if it had, what type of contact it was: ^{xxii}

Table 7: Type of contact ordered	
Type of contact	Percentage of women who said this type of contact had been ordered in their case^{xxiii}
No contact order was made	11% (6 women)
Sole residence was awarded to me	18% (10 women)
Sole residence was awarded to my ex-partner	21% (12 women)
Shared residence awarded	9% (5 women)
My ex-partner to have supervised contact at an accredited contact centre	7% (4 women)
My ex-partner to have supervised contact with a third party or volunteer	11% (6 women)
My ex-partner to have unsupervised contact visits	30% (17 women)
My ex-partner to have overnight stays	23% (13 women)
My ex-partner to have weekend stays	21% (12 women)
Other	49% (28 women)

As the table above shows, in our sample, sole residence was awarded to the women’s ex-partners more often than it was to the women themselves. Unsupervised contact in different forms, including overnight and weekend stays between the child and a parent who has been accused of domestic abuse, was by far the most common arrangement ordered. Echoing other studies in this area, supervised contact was ordered in only a low number of cases.⁴⁷ As the table shows, a high proportion of respondents (49%) chose the ‘other’ category; details given about this answer showed that in most cases the contact was a variation of the other categories. For example, supervised contact could take place after the ex-partner had

attended an anger management course. This category was also chosen for more complex arrangements; for example, no contact ordered for one child, but unsupervised contact for a sibling.

What were survivors’ concerns about the contact ordered and its impact on their children?

Women’s testimonies highlighted several examples in which they felt evidence of safeguarding concerns was ignored or not taken seriously. Several of the women in our sample described their concerns about contact ordered to take place at contact centres. Child contact centres play a vital role in safeguarding children during contact

^{xxii} 57 (out of 63) respondents answered this question.

^{xxiii} Respondents could choose multiple options and different types of contact – eg supervised and unsupervised, which may have been ordered at different stages of the process.

where there has been domestic abuse. There are two types of contact centres that families may be referred to: supervised contact centres, intended to be used where a child has suffered or is at risk of harm from a contact visit; and supported contact centres, designed to aid contact where communication between parents is difficult.^{xxiv}

Previous studies have highlighted problems around inappropriate referrals to supported contact centres where there has been domestic abuse, contact centres finding it difficult to refuse referrals if they are concerned, and contact centre staff not receiving full training on safeguarding and domestic abuse.⁴⁸ Women taking part in our focus groups and interviews had similar concerns, about both supported and supervised contact arrangements:

We'd go into a side room and the contact centre workers would try to persuade her to go into the room. They'd say 'your father's got a present for you – come on, just come in and get the present off him'. To be honest I find it all very, very disturbing [...] At one point, the support worker said to me that my daughter's father had suggested, and used this word, 'ambush' my daughter, and put her in a room, and then her father walk in on her. And they were actually thinking about doing that.

(Interview participant)

They totally ignored what he wanted, and he was pleading and saying he didn't want to go. He said it many times – to the workers who came to sit in on the sessions, and then to the Cafcass worker [...] He'd say 'can I go to the toilet?' and then after the toilet he'd say 'I want to go and see mummy and I don't want to go back in'. And he'd come and sit with me and say 'can we go home mummy?' and I'm looking at them and they're going 'ah, just come in for a little bit longer'. You know, they just ignored it.

(Interview participant)

We also heard about situations where contact centres had raised concerns about the welfare of children having contact with parents in the centres, but these concerns were not seriously considered:

When I first lost my child we were able to use a contact centre, and the contact centre raised all sorts of concerns, that my child was sexualised [...] she was dirty, she smelt, all kinds of things [...] and that my ex-husband had been abusive and thrown things in the office and refused to cooperate with the contact centre [...] They did a really damning report on the wellbeing of the child [...] And the judge said 'well they're not in court here today so we can't give any weight to that'. But they hadn't been called to court – a professional, independent body – why would that have no weight?

(Interview participant)

There were also examples of contact being ordered at contact centres where procedures were not in place to guarantee the safety of the non-abusive parent:

xxiv There are 375 child contact centres across the UK. 331 of these contact centres are located in England, Wales and Northern Ireland and undergo an accreditation process through the National Association of Child Contact Centres every three years. NACCC's accreditation (which is recognised by Cafcass and the family courts) demonstrates that centres are working to agreed and approved national standards ensuring that families using the services are safe. NACCC's training programme (which includes awareness of safeguarding and domestic abuse) is mandatory for all co-ordinators and volunteers running contact centres and forms part of NACCC's accreditation. 191 of these contact centres provide supported contact and 125 are centres where qualified workers facilitate supported and supervised contact. There are 15 centres which only provide supervised contact. An additional 44 contact centres are based in Scotland run by Relationship Scotland.

He got supervised contact with a Cafcass officer. That put me completely at risk – I'm in the Cafcass building, in another room, and because it shuts at five, they'd lock it all up, and there's no way I could get out unless I had the keypad code, and I'm in the building with this man who's put me in hospital – it was ridiculous [...] The next time it was in a contact centre, with volunteers supervising. I said 'what are your safety procedures?' and they said 'oh we've never had any problems before'. I said 'this is a man who's attacked me in public and put me in hospital. None of you will stop him from getting to me. And therefore you're gonna be hurt as well'.

(Interview participant)

Another concern expressed by women taking part in focus groups and interviews was around situations where their right to confidentiality and safety had been breached, as evidence used in court included information such as addresses or children's schools. This was seen as a threat to both the women's safety and that of their children:

The judge gave him the school details which I was fuming about, as I'd had to move him twice 'cause he kept locating him. I moved for safety so for him to locate him at school means he can locate where I live. But the judge insisted he had a right to know where his child was, he had a right as a parent to know which school his child was at.

(Interview participant)

Because of the amount of evidence and going through Marac [Multi-Agency Risk Assessment Conference], I had all the correct things happen for me, until I got to family court. I was emergency moved by my local council, and my address was protected like Fort Knox. And then in the hearing – my barrister warned me it would happen – we were in the hearing and a report was submitted and it was from the police and they hadn't removed my address.

(Focus group participant)

A common theme emerging from the testimonies of women in our sample concerns the dismissal of evidence that flagged potential risks around contact between a child and an abusive parent. Two of the women explained how, in their situations, safeguarding concerns became confused with stereotypes and misconceptions about how victims of domestic abuse should, or shouldn't behave:

The social workers' section 7 report was very clear that this man should not be near these children, we're recommending only supervised contact. The police engaged a consultant paediatrician who specialised in sexual abuse [...] and found they had been abused. Two police officers and the social workers, all those gave evidence that my children had been abused and I was cross-examined and the judgement starts by saying that I am not a credible witness because I showed emotion and then didn't show emotion and was able to get angry. Because I am educated and knowledgeable I would never have allowed anybody to abuse my children... therefore because I can't be a victim of abuse, they can't be victims of abuse.

(Focus group participant)

We had a finding of fact hearing on domestic violence and despite the local police telling me 'we use your file as a door stop' – they had been called so many times by neighbours, by my children, by me [...] All of that was ignored, and they decided that – and these are quotes that will stick with me forever – because I'd been abused as a child, that abused children would be hyper vigilant, and therefore, cannot be abused as an adult.

(Interview participant)

What differences were there between safeguarding approaches in the family court and in other arenas?

Some of the women we spoke to described discrepancies and inconsistencies between the culture and processes of the family courts and other arenas in which issues of domestic abuse and child safety were addressed.

At the point my IDVA [Independent Domestic Violence Advisor] said you need to stop contact, I rang my solicitor and said 'I need to stop contact as this is what my IDVA said' and my solicitor's advice was no, don't stop contact because the judge won't look at it as if you're protecting your kids, and she was right. So I had to decide whose advice do I listen to - a legal expert or the IDVA who is a specialist?

(Focus group participant)

It was everybody's best advice – the solicitor, the police, the IDVA – to withdraw contact. I don't feel as if I made that decision, but when it came down to the final judgement it was all put down on me as if it was my decision and I'd done that purposefully.

(Focus group participant)

The women's testimonies echo Marianne Hester's 'three planet model', which illustrates the different, and often conflicting ways that domestic violence is viewed and dealt with across three different realms: the domestic violence planet, where domestic abuse is considered a crime and the focus is on taking action against the perpetrator; the child protection planet, where mothers are expected to move their children away from the perpetrator and keep them safe, effectively making them, rather than the perpetrator, responsible for dealing with the consequences of the abuse; and the child contact planet, where the emphasis moves to the child having contact with both parents, and mothers who were formerly expected to remove their children from dangerous situations are now

ordered to force them back into contact with the perpetrator.⁴⁹

One survey respondent's comments illustrate her fear and confusion when moving into the child contact planet: *"Very frightening. I found myself in an alternate universe where what we believe to be right and normal does not apply."* Hester links her model with gender stereotypes around women survivors of domestic abuse, noting that "tackling the 'three planet problem', and dealing more effectively with domestic violence as it impacts on adults and children, requires both a unified approach across the separate 'planet' areas and acknowledgement of the processes of gendering that are situating women as culpable victims".⁵⁰

The testimonies of the women in our sample highlighted clear gaps in safety around child contact, both for children and non-abusive parents. They also illustrated the ways that concerns over safeguarding and children's rights to express their wishes and feelings appeared, in some case to have been outweighed by a pro-contact approach. In the next section we consider some of the impacts of this, on both children and non-abusive parents. We also document what the long-term impacts of the family court process have been on the survivors of domestic abuse we spoke to.

2.7 Impacts and outcomes

I want the courts to understand how life changing it is and how devastating it is not only to be abused yourself and then have your child abused, but to then go through such an awful process to try and keep your children safe [...] How frightening it is to have your child go off every week to someone who is capable of that [...] They've taken away safety from my child and I pray nothing will ever happen. If it does I will always feel guilty but in the end there is nothing else I can do.

(Interview participant)

When the women in our sample told us about their experiences of child contact procedures in the family courts, they also told us about how this experience had made them feel, how gendered imbalances in power and resources had affected the outcome of their case, and the longer term impacts the experience had on their health, wellbeing and family lives.

How did the family court process allow perpetrators to continue with abusive and controlling behaviours?

The period after leaving an abusive relationship is often the most dangerous and frightening for survivors of domestic abuse, and post-separation abuse is an all too common experience.⁵¹ Our research echoed other studies highlighting the ways that perpetrators of domestic abuse use the family court and child contact process to continue abusing their former partners.⁵² Many women in our sample felt that the family court not only failed to stop the abuse, but also gave their former partners the power to continue it:

The court, rather than removing the power from the perpetrator, empowered him even more, so now a good few years after everything that happened I am still being harassed and used by the perpetrator.

(Survey respondent)

They don't see that he's actually not interested in the child at all, it's a way of keeping contact with me and making my life difficult, they don't see any of that and instead I come across as the one who's in the wrong all the time.

(Interview participant)

Some women's testimonies highlighted the vulnerable state that survivors are likely to be in after experiences of abuse. They felt that their former partners capitalised on this vulnerability, which depleted survivors' self-esteem and abilities to advocate for their own and their children's rights:

He took me to court when I was at my lowest emotionally and financially. I think I was suffering PTSD at the time and thought the court would see through his lies but everyone bought it hook line and sinker.

(Survey respondent)

My ex-husband completely got in my head, reduced my self-worth [...] And I felt completely intimidated by the whole court process, I felt intimidated by the solicitor, the barrister [...] I just felt like, I needed some support, I needed somebody to make me aware of my rights, and what was going on and what I could do, it's just been very overwhelming for me, so yeah, it's been traumatic. More traumatic than it needs to be if there was more awareness of this sort of abuse.

(Focus group participant)

As previous research by Women's Aid has shown,⁵³ survivors of domestic abuse frequently experience financial and economic abuse, both during and after leaving an abusive relationship. When combined with the fact that women are more likely to be the main carers for children and to earn less than their male counterparts,⁵⁴ this creates an unequal situation in terms of the economic resources needed to take a family court case forward. Some of the women in our sample explained

how they felt imbalances in finances impacted on them, in some cases allowing former partners to continue to perpetrate financial abuse:

The balance of power with regard to being able to afford legal representation [...] Effectively they deplete your pot as fast as they can in the hope that you'll run out of money to afford to challenge them in court.

(Interview participant)

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)

Not only [was it an] emotionally, terrifying and horrendous ordeal, it also changed me in every bit of my resources. I had to be prepared to sell my house and live in a caravan for the lives of my children. I feel the court enabled him to abuse us financially by prolonging things.

(Interview participant)

How did unequal access to legal representation impact on the outcomes of cases?

Inequalities around access to legal representation and the impact of these inequalities on court outcomes has been well evidenced.⁵⁵ Many of the women in our study told us about how they felt inequalities around access to legal representation had influenced the outcome of their case. Survivors of domestic abuse who did not meet the requirements for legal aid described how they were faced with a choice between getting into debt in order to pay for legal representation, or taking on the daunting task of representing themselves in court. Survivors who did qualify

for legal aid told us how, while they felt lucky to have legal representation, at the same time they felt disadvantaged because their ex-partners were able to pay for top family law barristers:

I was against two barristers who were QCs and I had a legal aid barrister, and I'm not criticising the work that he did, but literally he received the case notes at 4 o'clock on the night before, was writing things up, emailing me, I was going into court at 9.30/10 o'clock in the morning at most of my hearings, being handed a position statement that was my position, that I hadn't even read, and receiving position statements from four or five other parties that I hadn't even read. And the whole process was very gung-ho if you didn't have money to represent yourself and that I found was really quite disturbing and incredibly traumatic.

(Focus group participant)

My legal aid solicitor was not fully qualified [...] She submitted all my response to my ex-husband's call to court, she filed my response without filing those domestic violence things because she said it didn't matter and they could be filed later. But the impact of that was we had the first hearing and I had to keep pressing on at her to submit it, so that by the time it came to the second hearing the judge was like 'oh this old chestnut, now you're bringing up domestic violence'.

(Focus group participant)

Other women described positive sources of support and strength that helped them when poor representation, or a lack of legal representation, disadvantaged them:

I was very let down by a barrister I paid for a final contact hearing, she was not supportive at all and did not represent my views or wishes. After this bad experience less than a year later my ex-partner took me back to court to try to get even more contact. This time I was stronger in myself and represented myself. Rather than paying for someone to represent me I wrote the statements with some great advice from Rights of Women. The judge was a lot more understanding and I was so pleased with the outcome as the new contact order means less contact and it's just what I was hoping for.

(Survey respondent)

I think one of his friends said ‘oh just take her to family court and they’ll sort it out for you’. I don’t think he read anything about family law, or family courts. I’m a good researcher, so I researched everything, and I think he wasn’t prepared for all the work I’d done on my case. I was practically my own solicitor that day.

(Interview participant)

I have a friend that I met through Women’s Aid, and she supported me through court. She’d drive up and be my McKenzie Friend^[xxv] in court. We really helped each other over the years.

(Interview participant)

While the solutions found by the women quoted above demonstrate the positive impact that support from friends, family, and advice and information services for women survivors of domestic abuse can have for women involved in child contact cases, this support should not, and cannot be a replacement for effective and affordable legal representation.

How did the family court process impact on survivors of domestic abuse’s health and wellbeing?

Participants in the research explained the impacts they felt the court and child contact process had on their health and wellbeing. For some, the court experience had re-traumatised them and created extra barriers in their recovery after domestic abuse:

I still don’t see a professional alone, cos I’m frightened they’ll twist what was said afterwards. It’s deeply affected me.

(Interview participant)

And honestly, my mental health, oh god. I’ve got PTSD [...] and the doctor told me ‘we’ll get you properly diagnosed’ and I said ‘no you’re not’. I don’t want it on my records, for obvious reasons. ‘Cause they’ll use it against you.

(Interview participant)

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)

How did the family court process impact on family life and relationships?

Some of the women we spoke to told us about the behavioural issues their children were now experiencing, which they felt were a result of the abuse, combined with the court and/or child contact process, and which were impacting on the mother-child relationship:

xxv A McKenzie Friend is someone who accompanies a litigant into court, where they are permitted to provide moral support, take notes, help with case papers and quietly give advice on any aspect of the conduct of the case.

It's a massive change for my children [...] Now he's asking for more and I'm saying 'no, because it's about the children and this is a massive change for them so let's do it gradually'. And now I'm getting behavioural issues – oh it's been awful, it's all coming back through my kids' behaviour and [...] it's the worst it's been again.

(Focus group participant)

He wouldn't play like a normal child, he had so many worries – 'What time is it? When are we going back? What are we gonna eat? Dad says I must only have this much or only eat this.' So it's like we'd separated but he was still fully under dad's control, and dad was controlling what I did in my life through him.

(Focus group participant)

He was pleading with me and saying he didn't want to go [to the contact centre]. He felt frustrated 'cause I'm supposed to be there to protect him and I couldn't [...] So then our relationship was suffering, because he's thinking 'why's my mummy making me do these things?'

(Interview participant)

How have women's experiences in the family court changed their lives going forward?

The majority of women involved in our research told us that their lives have been permanently changed in some way following their family court case. Most often, they reported a fear of being taken back to court at any time by their abusive former partners:

The first thing that comes to mind about going to court a second time around is terror. You're so scared because they have the power to destroy your child's life, and yours. And it's sheer, horrific terror, to feel that something that's meant to be there to protect your child, is not'.

(Interview participant)

I nearly had a nervous breakdown but I kept going [...] It's not something I'd ever want to do again which is why I'm covering my back [...] I go to my doctors regularly and they have a whole history going back several years.

(Interview participant)

Women also described how they felt they were constantly trying to minimise negative impacts on their children and make extremely difficult compromises on safety. Even after separation from their former partners, women felt they were still having to manage their abusive behaviour:

I have to think through everything to think how I can get the best out of my ex-husband so my children aren't at harm [...] there is so much pressure and you know you have to ... you almost have to go with the best deal – horrendous.

(Interview participant)

You can't defend them, because you're in danger of losing residence. At least it's only part time abuse. It's normalising abuse. The child has got to put up with it.

(Interview participant)

If the options are both me and my child be abused, or just my child being abused, is it better for just my child to be abused and not me so I can support them? How sick is that? That's the sick way that we have to deal with this. I'm going to let you be abused but I'm going to protect myself so that when you are with me I can help you recover [...] I am going to let you go against all my parenting instincts, do that and protect myself so I can still protect you when you're with me. It's absolutely screwed.

(Interview participant)

They also reported feelings of powerlessness and a denial of their right to protect their children:

Being with him was hell but that, well that was just something else. Not being able to protect my child [...] was horrendous, and I felt everything was taken from me, me as a mother, everything was taken away from me.

(Interview participant)

I just felt violated. And angry – I went through that stage. And hopeless – completely helpless that he can take over your life and your children [...] It's so horrifically painful to have your children taken in any circumstances, like going through a bereavement but they're still alive. You don't know how you can still exist [...] I feel guilty because you always think you could have done something. You couldn't really, but you're a mother and you're supposed to protect, and I couldn't do it.

(Interview participant)

This section has demonstrated the ways that domestic abuse – before, during and after child contact proceedings have concluded – combined with unequal access to resources and support, and underlying gender discrimination, helps to create a range of long lasting, negative outcomes and impacts for survivors of domestic abuse and their children. Survivors told us that they have been left with an overwhelming feeling of powerlessness to protect their children, and a constant fear that their abusive former partners will take them back to the family court.

The women we spoke to as part of this research had all demonstrated great courage and tenacity in rebuilding their lives and protecting and supporting their children, often at the expense of their own wellbeing and safety. But they felt that their lives and their human rights, and those of their children, had been profoundly, and negatively, impacted upon by their experiences in the family court. Below we pull out some of the human rights implications of these women's stories.

2.8 Human rights implications

I would say that when you say the words human rights, in theory that means civil liberties and having individual liberties and rights. But in practice in my experience, not only did I lose my rights by being in an abusive relationship, but that was perpetuated by the family courts afterwards.

(Focus group participant)

As discussed in Section 2.3, when we began to talk about human rights with the women in our sample, their initial thoughts were that their human rights, and those of their children, had not been protected in the family courts. Their testimonies also highlighted gender differences around understandings of human rights. As we analysed the evidence emerging within our key themes, as set out in the sections above, we were able to draw out more detailed analysis on the human rights implications of the issues we identified. Below we discuss what these implications are, in the context of Articles in the Human Rights Act 1998 and the UN Convention on the Rights of the Child.

The right to life (Article 2 HRA)

In the most extreme cases, women felt their lives and sometimes their children's lives had been threatened by the ordering of contact which placed them in unsafe proximity to their former abusive partners, or the revealing of confidential information about their address or location.

The right to freedom from degrading treatment (Article 3 HRA)

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)

A commonly expressed feeling among women in our sample, as illustrated in the excerpt above, was that the treatment they received from legal professionals and during child contact hearings was degrading. They described feeling degraded when they had been interrogated about, for example, their sex lives or their mental health, by solicitors, barristers or expert witnesses. Some also felt that their former abusive partner had been allowed to treat them in a degrading manner during cross-examination or mediation.

Furthermore, some women felt that their own safety had been compromised to such an extent that they were at further risk of abuse under Article 3. However, this was not raised or considered by the court, despite it being an absolute right. Some of the women we spoke to felt that abuses of their human rights were perpetrated by their former partner, but that these abuses were also continued by the family court process. There is clear evidence of the courts and Cafcass failing to recognise and discuss the applicability of Article 3 to a number of the cases involved.

The right to a fair trial (Article 6 HRA)

I thought I had the right to a fair trial, the right to be heard, to speak, but I was repeatedly told by the judge to 'shut up'. By various judges to 'shut up', just 'shut up'. And I was referred to not by my name but by my status as a wife even though I was divorced. And also referred to as 'you'. Not Mrs or Ms or anything but 'you'. Whereas he was repeatedly called by his name, given a status and title while mine was taken away.

(Focus group participant)

Women did not feel their cases were heard fairly in the family court. A common theme expressed by the women in our sample was a feeling that they were treated differently in ways that were linked to their gender; for example being expected to be a calm and accommodating mother while aggressive behaviour from fathers was tolerated in the court room, not being given an opportunity to respond or being addressed using discriminatory language, as discussed in the excerpt above. Women felt they were viewed as over-emotional, difficult, weak or unstable women, and they encountered victim-blaming attitudes.

Several of the women participating in the research spoke about the impact that poor legal representation, or a lack of legal representation had had on their right to a fair trial. They described submitting evidence of domestic abuse that was not considered; a lack of fact finding hearings; poor legal advice; and inconsistencies between the approaches of different judges and other family court professionals. Accusations of parental alienation were, women in our sample felt, prioritised and easily believed without an opportunity to provide expert testimony in response, while evidence of domestic abuse was overlooked or dismissed.

The right to respect for private and family life (Article 8 HRA)

The judge deemed that it was my ex-husband's right to have contact with his children, and who was I to stop contact, and that every child has the right to see both parents, which under normal circumstances I'm fully in support of. However, we had an issue where he assaulted my youngest child. [...] All that the judge kept bringing up were the rights of the children to have contact with their father. Not the rights of the children to have normal contact and not live in fear.

(Focus group participant)

Women in our sample felt that their own and their children's rights to privacy and family life (as set out in Article 8) and to be free from further degrading treatment (as set out in Article 3) were breached when unsafe contact was ordered, and evidence of abuse dismissed. Meanwhile, the rights to family life of fathers who were also perpetrators of domestic abuse were given higher priority than those of the women and their children despite evidence of abuse, thereby creating the impression of a hierarchy within Article 8.

The women we spoke to who had been accused of parental alienation and lost residence of their children felt that their right to family life had been completely disregarded and not sufficiently balanced against the applicant's right to family life. As one woman told us: *'For those years I was separated from my child, a prisoner on death row would have seen her child more.'* (Interview participant)

As discussed earlier in Section 1.2, Article 8 rights are 'qualified rights'; rights that may be interfered with in order to protect the rights of another or the wider public interest. This means that claims made under the qualified rights in Article 8 should not be able to 'trump' claims made under the absolute

rights of Articles 2 and 3, but for some of the women in our sample, this is precisely what appeared to have happened. Worryingly, there was little evidence of Article 2 and 3 rights being raised in such cases. Far more often Article 8 rights were raised and given higher priority, even where Article 2 and 3 rights were clearly relevant and applicable.

The right to protection from discrimination (Article 14 HRA)

If parties of different genders are being treated unequally within the court process, and have different expectations placed onto them about the ways they can behave in court, it could be argued that Article 14 on protection from discrimination in conjunction with the right to a fair trial and the right to freedom from degrading treatment is not being met.

Where the Article 8 rights of men are given higher priority in child contact cases where there are allegations of domestic abuse, the Article 2 and 3 rights of the women and their children could be being breached. This could also raise issues under Article 14 if, in conjunction with those claims, this constitutes discriminatory treatment within the meaning of Article 14.

Children's rights under the UNCRC

I do remember one judge said, although he'd read that when it was supervised contact, that the child didn't want to see father [...] he said 'she doesn't understand what she will lose out on, not seeing her father. She doesn't understand that she needs him in her life, and I will not allow her to make this decision until she is 15 or 16' [...] Never once did they say 'hang on a minute, this child has told us from a young age she doesn't want to see her father, there's something not right here'.

(Interview participant)

Another commonly expressed view from the women in our sample was that, where the courts had dismissed evidence of child abuse and/or had ordered unsafe contact, the rights of children to have their views respected and to be protected from violence, abuse and neglect, as per Articles 12 and 19 of the UNCRC, were not upheld. While Article 9 of the convention states that children have a right to contact with both parents, this right must not be enforced if it could cause the child harm. Too often Article 12 and 19 rights are being obscured by a focus on the abusive parent’s rights under Article 8 of the HRA. In the most extreme cases, where survivors of domestic abuse are accused of parental alienation and lose residence of, or contact with, their children, children’s rights under Article 9 not to be separated from a parent against their will are being ignored and undermined. Meanwhile, children’s rights as set out in Article 3 of the UNCRC, which states that best interests of children must be a primary concern in decisions that may affect them, are being misinterpreted and conflated with abusive parents’ rights to family life, under a belief that it is always in the best interests of the child to have contact with both parents.

Other human rights implications

Our research has demonstrated the importance of recognising that while survivors of domestic abuse may recognise abuses of their human rights retrospectively, some may be in no position to recognise or claim their own rights in the family courts at the time of proceedings. They may feel dehumanised; not a person to whom rights apply:

Through the court process I still didn’t even feel - because I was still very much a victim - that I was even a person at that point. I didn’t exist. I was very much in that place of being a victim. My whole world revolved around making sure that my ex was not upset was not unhappy because when he gets unhappy then I suffered, the children suffered. So as I was going through the court process - the right to [freedom from] torture didn’t even enter my mind because that was my role and is my role in this relationship, is to be the one who’s tortured.

(Focus group participant)

Thinking about human rights from this perspective sheds further light on the gender dynamics and power relations lying within the deep structure of the family courts. Emerging from our research is a picture of women survivors of domestic abuse focusing largely on the human rights of their children, while either not recognising their own rights, or purposefully setting their own rights to one side in order to try and achieve the safest outcome for their children. Meanwhile abusive parents actively advocate for their own rights to family life. Underlying gender discrimination within the culture of the family courts allows this picture to continue, despite the best efforts of the judiciary to introduce policies and practices to promote safe child contact and increased awareness of domestic abuse within child contact procedures.

3. Conclusion and recommendations

He got quite intensive contact and they didn't want to go. So they didn't go and there was an emergency hearing [...] I had to force them to get in the car and go back with him and after that I never saw them for months, he got residence and they never came back. They were over a hundred miles away.

(Interview participant)

Women's Aid's 2016 report *Nineteen Child Homicides* concluded by noting that, in cases involving a perpetrator of domestic abuse, the family courts need to challenge the existing 'contact at all costs' culture in order to always put the child first. The findings of this research reiterate this statement, highlighting a range of examples where the child's safety and wishes were not prioritised. In addition, this study has also uncovered a number of broader concerns around survivors' experiences of the family courts.

When we looked at perceptions of human rights, and the ways that the human rights of children, non-abusive and abusive parents are promoted and protected in the family courts, we found clear gender differences in interpretations and claiming of rights, with women survivors of domestic abuse more likely to focus on their children's rights, while their male former partners were more likely to advocate for their own rights. Talking to survivors about rights – using plain language around the right to a fair trial and the right to life – helped uncover stark problems with culture and practice in the family courts that affect the courts' ability to do justice, safeguard against further trauma and prioritise children's safety. We found some extremely worrying gaps in professional knowledge and use of human rights, and in human rights protection, with claims made under the qualified rights such as Article 8 prioritised over the absolute rights of Articles 2 and 3 of the Human Rights Act (HRA).

When thinking about the ways that evidence of domestic abuse was used in the cases in

our sample, and how survivors who included allegations of domestic abuse as part of their family court case were treated, our findings echoed those of several previous studies. A lack of understanding of the gendered nature of domestic abuse, including coercive and controlling behaviour, its impacts on survivors, its relationship with child wellbeing and safety, and the way perpetrators can use family court procedures to continue their abuse, meant that many of the survivors we spoke to felt their rights to a fair trial, to private and family life, and to be free from degrading treatment, were not respected or fulfilled.

Through the testimonies of women in our sample, we uncovered a range of examples of gendered attitudes, myths and behaviours within the deep structure of the family courts, which act to block the effectiveness of formal policies and procedures – such as the revised Practice Direction 12J – intended to ensure that safe child contact is prioritised in cases where there are allegations of domestic abuse. Underlying gender discrimination of this type meant that the women we spoke to felt they were treated unequally, disbelieved when they spoke about domestic abuse or blamed for having experienced it, and in some extreme cases, treated with outright hostility or misogyny by family court professionals. For these women, the human right to be free from degrading treatment, or to have a fair trial without discrimination, felt very far from real.

Some of the most extreme examples of underlying gender discrimination and gaps in human rights protection were in cases where women had been accused of parental alienation. We heard about cases where evidence purporting to prove that non-abusive parents had made up allegations of domestic abuse, coached their children into believing they had been abused, and blocked contact between the child and the abusive parent for no good reason, was prioritised over evidence of domestic and child abuse, and used to obscure and block the human rights of survivors and their children. Sadly, some of

the women we spoke to had lost residency and contact with their children for a number of years. In these cases, survivors’ human rights to family life were completely taken from them.

When we looked at safeguarding issues, many of the women we spoke to reported examples of unsafe child contact – unsafe both for children and non-abusive parents. Given that all of the cases in our sample involved allegations of domestic abuse, the numbers of survey respondents reporting that their abusive former partner had been awarded unsupervised contact, including overnight stays and in some cases, sole residency, was very worrying. In the most extreme cases, survivors of domestic abuse had been expected to place themselves in very dangerous situations in order to facilitate contact between their child and their former partner. In several of the cases that we heard about, where children were clearly expressing their wish not to see the abusive parent, it was clear that children’s human rights to have their views respected, to have their best interests put first, and to be protected from violence and abuse, had not been fulfilled. In these cases, the human rights of the abusive parent were prioritised over and above those of the child and the non-abusive parent.

Several of the cases in our sample show that the family court did not consider the potential of child contact arrangements to enable the continuation of abuse falling within the definition of degrading treatment under Article 3 of the HRA. In this sense, if this small sample is an indication of the experience of the majority, it indicates that the human rights of survivors of domestic abuse to life and to be free from degrading treatment (Articles 2 and 3 of the HRA) are not being considered in the vast majority of cases by the family courts as part of the overall risk assessment when considering contact. This is occurring in cases where Article 2 and 3 are clearly relevant and should be prioritised over any competing claims for family life under Article 8. If this is

indeed the case for the majority, is not only extremely concerning in terms of a potential failure of the family courts’ duty under the HRA but, as previous Women’s Aid research has shown,⁵⁶ it may also lead to devastating consequences for the survivors and children involved.

Finally, when we considered the outcomes and impacts of the family court process on survivors of domestic abuse, we found that inequalities around legal representation and resources impacted negatively on the outcomes of the child contact process for the women in our sample. The women also told us about the long-lasting impacts that going through the family courts as a survivor of domestic abuse had had on them, and their children. As a result, survivors felt extremely distrusting of the family court system, and lived every day with anxiety and fear about their child’s safety during contact visits and the possibility of being taken back to court by their former partner at any time. In this respect, the women did not feel that their human right to privacy and to family life was real or recognised.

This research has illustrated the ways in which human rights legislation, along with policies, procedures and guidance around domestic abuse and child contact in the family courts, cannot be realised in a practical sense unless gender discrimination within the underlying deep structure of the courts and child contact procedures is recognised and addressed. The focus group participant quoted below explained what she felt a human rights respecting system would look like in its approach to domestic abuse in child contact cases:

[Human rights] should be the founding of our system. When we go up before these judges it should be inherent in their culture to do the just thing and to be knowledgeable, to be accountable, for the training they’ve had, to be up-to-date with what coercive control means and domestic

violence, everything, what the definitions are, to understand how a victim presents and how sometimes she can present hostile because of years of abuse, how she can sometimes can be defensive, all of those things should be understood.

(Focus group participant)

All institutions and organisations exist within wider society and therefore it is not surprising if they are influenced by the values, perceptions and behaviours of that society. Just as change is needed within wider society to challenge the gendered, root causes of domestic abuse, as well as victim-blaming beliefs and stereotypes about survivors of domestic abuse, change is also needed within the family courts to address similar underlying behaviours and perceptions. Only by recognising and challenging these underlying, often hidden factors, will the family courts be able to ensure that the human rights of survivors and their children are met.

As a result of these findings, we are making the following recommendation:

An independent inquiry into the handling of domestic abuse by the family courts

Despite a number of welcome reforms, research and evidence stretching over more than a decade points to systemic failings of the family courts in cases involving domestic abuse. A wholesale review of the culture, practice and outcomes of the family courts in child contact cases where there are allegations of domestic abuse is now required to work towards creating the changes that we need to see in the courts. We are therefore calling for an independent statutory inquiry, equipped with the necessary resources to conduct an in-depth examination of the family courts' handling of domestic abuse. The inquiry should build on the excellent collaboration that has led to practical changes so far. It should have legal powers to compel witnesses

to give evidence, have legal safeguards, and set limits upon the government's discretionary control of the inquiry. It should include an exploration of the extent to which, in cases involving domestic abuse, key relevant legislation such as the Children's Act 1989 and the Children and Families Act 2014 has been interpreted in a manner which is compatible with human rights legislation.

In addition, we are making the following shorter term, practical recommendations:

Improved education and awareness raising for all professionals involved in child contact cases

This research has highlighted numerous examples of gaps in knowledge and awareness around domestic abuse and human rights. The Judicial College, Magistrates Association, Law Society, Solicitors Regulation Authority, Cafcass and HMCTS should ensure that all professionals – including judges and magistrates in the lower courts, as well as legal advisers, recorders, barristers, solicitors, court support staff and Cafcass officers - involved in child contact cases in the family court can benefit from greater awareness raising and training, which could be developed in partnership with specialist domestic abuse organisations, around the following areas:

► Human rights

This should cover the human rights that all non-abusive parents, children and abusive parents have, the applicability of these rights in child contact cases and their relation to other key legislation relevant to the family courts.

► Domestic abuse

This should cover understanding of what domestic abuse is, including coercive and controlling behaviour, legal and economic abuse, and the gendered dynamics and roots of domestic abuse. It should include the

impact of domestic abuse on children, and on survivors’ abilities to advocate for their rights and their children’s rights. It should also cover financial abuse, and the ways that perpetrators of domestic abuse may try to use family court proceedings as a form of post-separation abuse.

► **Discourses and theories of parental alienation**

This should provide clarity on where the term parental alienation has come from, how it is currently being used, and debates around its recognition as a ‘syndrome’. It should make clear that accusations of alienation should not divert attention away from allegations of domestic abuse or other behaviours threatening child safety. It should break down the myths surrounding the term and explain what parental alienation *is not*: for example, that in cases where there has been domestic abuse, the non-abusive parent is justified in raising concerns about, and in some cases stopping, child contact with the abusive parent. Training on this area should also highlight the ways that accusations of parental alienation can be part of a perpetrator’s controlling and coercive behaviour, as a form of post-separation abuse.

► **Discrimination**

This should provide greater awareness around equality and diversity, including gender equality. It should encourage participants to examine their own attitudes, behaviours and biases, and provide guidance on how to avoid stereotypes and victim-blaming, particularly within the context of domestic abuse and common misconceptions about survivors of domestic abuse.

It is essential that all professionals involved in the family court and child contact process are equipped with the knowledge and skills to separate out cases where there are allegations of domestic abuse from those

deemed to involve ‘conflicted parents’ or ‘alienation’. Professionals need to be able to understand domestic abuse, human rights, and discourses of ‘parental alienation’ in context and in relation to each other, so that they can ensure that the rights of survivors of domestic abuse, and the rights of their children, are protected rather than obscured by child contact proceedings.

Clarify the approach on parenting in cases involving domestic abuse

The Ministry of Justice and the president of the family division of the High Court must clarify that the presumption in the Children and Families Act 2014 (that the welfare of the child is best served by the involvement of both parents) does not apply where there is evidence of domestic abuse.

Improved use and awareness of Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm

Along with previous studies, this research has highlighted examples where Practice Direction 12J has not been followed in the family courts. In order to maximise the impact of the recently revised guidance, it is essential that the Judicial College, Magistrates Association and HMCTS build upon and expand their current educational provisions to ensure that all family court professionals have specialist training on what the guidance means in practice. This training should incorporate the links and overlaps between the practice direction and human rights.

Create a national oversight group for the implementation of Practice Direction 12J

The Ministry of Justice should create a mechanism for oversight of the judiciary in child contact cases involving domestic abuse. This could be an independent, national

oversight group overseeing and advising upon the implementation of Practice Direction 12J. There is no precedent to follow for this type of mechanism, but given that a practice direction on child arrangements and contact orders in situations of domestic abuse and harm has now been in place for ten years, and the same concerns continue to be raised, there is a clear need to explore new methods of judicial accountability and compliance.

Take a safer approach to unsupervised contact

Through the forthcoming Domestic Abuse Bill, the government must ensure there is no unsupervised contact for a parent who is awaiting trial or on bail for domestic abuse related offences, or where there are ongoing criminal proceedings for domestic abuse.

Ensure that supervised and supported contact options are regulated and safe

The government must ensure that child contact centres are properly resourced and risk assessed so that contact is safe for both children and non-abusive parents. Staff and volunteers in both supervised and supported contact centres should continue to benefit from comprehensive training on domestic abuse and its links to child safety and wellbeing, as well as the importance of trauma-led approach in cases where there has been domestic abuse. A clear mechanism should be set up to ensure that inappropriate referrals to contact centres can be challenged, and the National Association of Child Contact Centre’s national standards and guidance on risk assessment should always be followed.

Ban cross-examination in family courts of survivors by their abusive former partners

The government committed to prohibit perpetrators from cross-examining their victims in the family courts in 2017, but the legislation has been delayed. The government is now proposing to ban cross-examination in the criminal justice system through the Domestic Abuse Bill, but in order to fully protect survivors of domestic abuse from this abhorrent practice the family court ban must also be applied as soon as possible. The ban must be enacted by the quickest legislative vehicle available.

Guarantee special measures for survivors of domestic abuse in the family courts

While the government has proposed, as part of the Domestic Abuse Bill, to guarantee survivors of domestic abuse’s access to special protection measures – such as separate entrances and exits, waiting rooms, screens and video links – in the criminal courts, this guarantee is also needed in the civil and family courts. This would strengthen what Practice Direction 12J and 3AA already say about the need for special measures, and would need to be accompanied by training for court staff to ensure effective implementation and an enabling environment for special measures to be successfully used.

Better regulation of expert witnesses in the family court

The Ministry of Justice should conduct a review on the use of expert psychological witnesses in the family courts, in order to further investigate concerns about credibility, standards and consistency among experts. Expert psychological witnesses preparing reports for the family court should be registered with relevant professional bodies and societies, and required to practise

within a clear professional, practice-based framework.^{xxvi}

Continued monitoring of the legal aid domestic violence gateway

While the recent changes around the time limit and evidence requirements for survivors of domestic violence to qualify for legal aid are extremely welcome, it remains the fact that many survivors do not report the abuse they experience, and therefore will not be able to meet the evidence requirements. Continued review by the Ministry of Justice of the impact of the domestic violence legal aid gateway is important, in order to ascertain whether it is providing the protection that survivors of domestic abuse need. More awareness raising is also needed around exceptional case funding; a provision available to parties who can show their human rights will be breached if they cannot access legal aid.⁵⁷

Actions to prevent the family courts being used to perpetuate post-separation and financial abuse

The Ministry of Justice president of the family division should ensure that courts are given guidance on making use of Section 91 of the Children Act 1989 which empowers courts to make an order preventing further applications by a party. This guidance should alert judges as to how some perpetrators of domestic abuse make applications under the Children Act 1989 in order to continue their coercive and controlling behaviour over survivors, even after separation. These orders could therefore assist survivors in appropriate cases.

Better, empowering support for survivors of domestic abuse

Survivors of domestic abuse should be able to access free, specialist support and advice. This should include being allocated an advocate who is attached to a local domestic abuse service, who support survivors throughout child contact proceedings. Support should be provided within the context of a sustainably funded specialist domestic abuse support sector, and it should be tailored to recognise the disempowering nature of domestic abuse, with the aim of building women’s confidence to advocate for their own, and their children’s rights. It should include education for survivors of domestic abuse on their human rights, within in a safe space that is sensitive to, and recognises the need for, an enabling environment where women can claim their rights without the risk of losing residency or jeopardising their children’s safety.

Further research focusing on the legal profession

This study uncovered a range of inconsistencies around knowledge and understanding of domestic abuse and human rights within the legal profession. In order to understand these inconsistencies better, further research should be conducted, exploring the nature and causes of discriminatory attitudes and stereotypes around domestic abuse and child contact, and the extent of, and reasons for, knowledge gaps around domestic abuse, human rights and discourses of parental alienation. Work is also needed to explore what the next steps should be in changing attitudes and practices. Judicial engagement in this research will be vital to its effectiveness and impact.

xxvi Jane Ireland, in her 2012 review of expert witness reports, made a number of useful recommendations in this regard, including: more thorough assessment of the competence of experts; requiring that experts can only be instructed if they are currently engaged in clinical practice outside of providing court reports, and if they are registered to practice with the Health Professionals Council with full membership of an applied division of the British Psychological Society; requiring that generally accepted psychological theory should support core findings in reports; and making peer review and periodic judiciary oversight of expert psychological reports a routine part of good practice.

3. References

- 1 Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid, 2016; APPG on Domestic Violence (2016), *Domestic abuse, child contact and the family courts*. Bristol: Women's Aid; Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid.
- 2 Women's Aid (2016). *Nineteen Child Homicides*. Bristol: Women's Aid.
- 3 'Twenty Child Homicides: Child First goes to Downing Street': www.womensaid.org.uk/twenty-child-homicides-child-first-goes-downing-street/
- 4 Women's Aid (2017), *Child First: A call to action one year on*, Bristol: Women's Aid.
- 5 Cafcass and Women's Aid. (2017). *Allegations of domestic abuse in child contact cases*. London: Cafcass.
- 6 APPG on Domestic Violence (2016). *Domestic abuse, child contact and the family courts*. Bristol: Women's Aid.
- 7 Ministry of Justice (2017). *Substituted Practice Direction: Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Violence and Harm*: www.judiciary.gov.uk/wp-content/uploads/2017/09/presidents-circular-domestic-abuse-pd12j-substituted-pd-20170914.pdf
- 8 The Family Procedure Rules around vulnerable persons can be found here: www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu
- 9 Barlow, A., Hunter, R., Smithson, J. and Ewing, J., (2017) *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times*, Basingstoke: Palgrave Macmillan; Buchanan A., Hunt J., Bretherton H. and Bream V. (2001) *Families in Conflict: Perspectives of Children and Parents on the Family Court Welfare Service*. Bristol: The Policy Press; Cassidy D. and Davey S. (2011) *Family Justice and Children's Proceedings: A Review of Public and Private Law Case Files*. London: Ministry of Justice; Cowan S. and Hodgson J. (2007) 'Violence in a Family Context: the criminal law's response to domestic violence' in Probert R. (ed) *Family Life and the Law: Under One Roof*. Aldershot: Ashgate pp 43-60; Coy M., Perks K., Scott E. and Tweedale R. (2012) *Picking Up the Pieces: Domestic Violence and Child Contact*. Bristol: Rights of Women; Harding M. and Newnham A. (2015) *How Do County Courts Share the Care of Children Between Parents: Full Report*. London: Nuffield Foundation; Harrison C. (2008) 'Implacably Hostile or Appropriately Protective? Women managing child contact in the context of domestic violence' *Violence Against Women* 14 pp 381-405; Hester M. (2011) 'The Three Planet Model: towards an understanding of contradictions in approaches to women and children's safety in contexts of domestic violence' *British Journal of Social Work* 41 pp 837-853; Humphreys C. (2007) 'Domestic Violence and Child Protection: exploring the role of perpetrator risk assessments' *Child and Family Social Work* 12 pp 360-369; Humphreys C. and Thiara R.K. (2003) 'Neither Justice Nor Protection: women's experiences of post-separation violence' *Journal of Social Welfare and Family Law* 25 pp 195-214; Hunt J. and McLeod A. (2008) *Outcomes of Applications to Court for Contact Orders after Parental Separation or Divorce*. London: Ministry of Justice; Hunter, R. (2011) 'Doing Violence to Family Law' *Journal of Social Welfare and Family Law* 33, 343-359. Hunter, R., (2014) 'Domestic Violence: A UK Perspective', in Eekelaar, J. and George, R (eds.) (2014), *Routledge Handbook of Family Law and Policy*, Routledge, Abingdon, 315-326; Hunter R. and Barnett A. (2013) *Fact-Finding Hearings and the Implementation of the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm*. London: Family Justice Council; Hunter, R. and Barnett, A. (2013) 'Fact-Finding Hearings and the Implementation of Practice Direction 12J' *Family Law* 43 (April) 431-437; Hunter, R., Barlow, A., Smithson, J. and Ewing, J. (2014) 'Mapping Paths to Family Justice: Matching Parties, Cases and Processes' in *Family Law* 44 (October), 1404-1411; Jaffe P., Johnston J., Crooks C. and Bala N. (2008) 'Custody Disputes Involving Allegations of Domestic Violence: towards a differentiated approach to parenting plans' *Family Courts Review* 46 pp 500-522; Jaffe P., Lemon N. &

Poisson S. (2003) *Child Custody and Domestic Violence: A Call for Safety and Accountability*. Thousand Oaks, CA: Sage.

10 Choudhry, S. and Herring, J. (2006) 'Domestic Violence and the Human Rights Act 1998: A New Means of Legal Intervention' (2006) Winter, 752-784, *Public Law*; Choudhry, S. and Herring, J. (2006) 'Righting Domestic Violence' *International Journal of Law, Policy and the Family* 2(20): 1- 25; Choudhry, S. and Herring, J. (2012) 'Contact, Domestic Violence and the ECHR', *Current Legal Issues*, Oxford University Press.

11 For more details on the Human Rights Act, see information from the [Equality and Human Rights Commission](#), the [British Institute of Human Rights](#), and [Liberty](#).

12 Text of the Human Rights Act: www.legislation.gov.uk/ukpga/1998/42/contents

13 Text of the European Convention on Human Rights: www.echr.coe.int/Documents/Convention_ENG.pdf

14 Information on the UN Convention on the Rights of the Child: https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_summary.pdf

15 Office for National Statistics (2017) *Statistical bulletin - Domestic abuse in England and Wales: year ending March 2017*; Myhill, A, (2015) Measuring coercive control: what can we learn from national population surveys? *Violence Against Women* 21(3), pp. 355-375; Hester, M, (2013) 'Who Does What to Whom? Gender and Domestic Violence Perpetrators in English Police Records' *European Journal of Criminology* 10: 623- 637, pp. 627-628; Dobash, R.P. and Dobash, R.E., (2004) Women's violence to men in intimate relationships. Working on a Puzzle *British Journal of Criminology* 44(3), pp. 324-349.

16 Hunter, R. and Choudhry, S. (2018), 'Contact Disputes and Allegations of Domestic Abuse – Identifying Best Practices' *Seen and Heard*, Vol 28, Issue 2 46-56; Special Issue: International Symposium on Contact Disputes and Allegations of Domestic Abuse – Identifying Best Practices, *Journal of Social Welfare and Family Law*, Vol 40, No 4 (2018) forthcoming.

17 Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid, 2016; APPG on Domestic

Violence (2016), *Domestic abuse, child contact and the family courts*. Bristol: Women's Aid; Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid.

18 Barnett, A. 'Contact at all costs? Domestic violence and children's welfare', *Child and Family Law Quarterly*, Vol 6, Issue 4, (2014); Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid; APPG on Domestic Violence (2016), *Domestic abuse, child contact and the family courts*. Bristol: Women's Aid; Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid.

19 Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid.

20 Women's Aid (online), *What is coercive control?* www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/; Schechter, S. (1982) *Women and male violence: the visions and struggles of the battered women's movement*. Cambridge, MA, USA: South End Press; Stark, E. (2007) *Coercive control. How Men Entrap Women in Personal Life*. U.S.A: Oxford University Press.

21 Barnett, A. 'Contact at all costs? Domestic violence and children's welfare', *Child and Family Law Quarterly*, Vol 6, Issue 4, (2014); Women's Aid (2016), *Nineteen Child Homicides*, Bristol: Women's Aid.

22 Hunter, R. and Barnett, A. (2013) *Fact finding hearings and the implementation of the President's practice direction: Residence and contact orders: domestic violence and harm*. London: FJC Domestic Abuse Committee.

23 Hunter, R. and Barnett, A. (2013) *Fact finding hearings and the implementation of the President's practice direction: Residence and contact orders: domestic violence and harm*. London: FJC Domestic Abuse Committee.

24 Women's Aid (2015) *Survey of survivors of domestic abuse* (25.3% of 91 responses).

25 APPG on Domestic Violence (2016), *Domestic abuse, child contact and the family courts*. Bristol: Women's Aid.

26 For example, Women's Aid's 2015 survey of survivors of domestic abuse found that 55%

of women respondents who had been to the family courts had not had access to any special measures.

27 Barnett, A. 'Contact at all costs? Domestic violence and children's welfare', *Child and Family Law Quarterly*, Vol 6, Issue 4, (2014); Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid.

28 Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid.

29 Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid. Women's Aid's (2016) analysis of serious case reviews where children had been killed or seriously harmed during unsafe contact with a parent who was a perpetrator of domestic abuse found that this gendered nature was often missed. The failure to identify domestic abuse as a gendered offence leads to failures to identify who holds the power and control in the situation, and missed opportunities to address the safety of the child(ren) and the non-abusive parent.

30 Rao, A., Sandler, J., Kelleher, D., and Miller, C. (2016), *Gender at Work: Theory and practice for 21st century organisations*, New York: Routledge; Rao, A. and Kelleher, D., 'Is there life after gender mainstreaming?', *Gender & Development*, 13 (2) pp. 57-69, 2005.

31 Horn, J. (2013) *Gender and Social Movements*, Brighton: BRIDGE.

32 Women's Aid (2016), *Nineteen Child Homicides* Bristol: Women's Aid pp. 23-24.

33 Hunt, J. and McLeod, A. (2008) *Outcome of applications to court for contact orders after parental separation or divorce*, London: Ministry of Justice; Morrison (2009) *After domestic abuse: Children's perspectives on contact with fathers*, CRFR Research Briefing 42, Edinburgh; Morrison, F. (2015) ' "All over now?" The ongoing relational consequences of domestic abuse through children's contact arrangements' *Child Abuse Review*, 24 (4), pp. 274-284; Thiara, R.K. and Gill, A. (2012) *Domestic Violence, Child Contact and Post Separation Violence: Issues for South Asian and African-Caribbean Women and Children: A Report of Findings*, London: NSPCC.

34 Trinder, L., Hunt, J., Macleod, A., Pearce, J., Woodward, H. (2013) *Enforcing contact orders:*

problem-solving or punishment? Exeter: University of Exeter.

35 Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid.

36 See, for example, Fortin, J. (2009), *Children's Rights and the Developing Law*, Cambridge: Cambridge University Press, p. 263; Bruch, C. (2001) 'Parental alienation syndrome and parental alienation: getting it wrong in child custody cases' *Family Law Quarterly* 527; Stark E. (2009), 'Rethinking Custody Evaluation in Cases Involving Domestic Violence' *Journal of Child Custody*, 6: pp. 287-321; Walker, L. et al (2004), 'A Critical Analysis of Parental Alienation Syndrome and its Admissibility in the Family Court' *Journal of Child Custody* 2004(2).

37 Hunt, J. and McLeod, A. (2008) *Outcome of applications to court for contact orders after parental separation or divorce*, London: Ministry of Justice; Thiara, R.K. and Gill, A. (2012) *Domestic Violence, Child Contact and Post Separation Violence: Issues for South Asian and African-Caribbean Women and Children: A Report of Findings*, London, NSPCC; Morrison, F. (2015) ' "All over now?" The ongoing relational consequences of domestic abuse through children's contact arrangements' *Child Abuse Review*, 24 (4), pp. 274-284; Trinder, L., Hunt, J., Macleod, A., Pearce, J., Woodward, H. (2013) *Enforcing contact orders: problem-solving or punishment?* Exeter: University of Exeter; Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid.

38 Morrison (2009) *After domestic abuse: Children's perspectives on contact with fathers*, CRFR Research Briefing 42, Edinburgh; Thiara, R.K., Humphreys, C., Skamballis, A. and Mullender, A. (2006) *Talking to My Mum: Developing Communication between Mothers and their Children in the Aftermath of Domestic Violence. Report of Key Findings*, Warwick, Centre for the Study of Safety and Well-being, University of Warwick; Katz, E. (2014) *Strengthening mother-child relationships as part of domestic violence recovery*. Published online: Centre for Research on Families and Relationships.

39 Elizabeth, V. (2017) 'Custody Stalking: A Mechanism of Coercively Controlling Mothers

Following Separation' *Feminist Legal Studies* 25 p185-201.

40 Ireland, J. (2012), *Evaluating Expert Witness Psychological Reports: Exploring Quality*, Lancaster: University of Central Lancashire.

41 Women's Aid (2016), *Nineteen Child Homicides*, Bristol: Women's Aid.

42 Barnett, A. 'Contact at all costs? Domestic violence and children's welfare', *Child and Family Law Quarterly*, Vol 6, Issue 4, (2014); **See also:** APPG on Domestic Violence (2016), *Domestic abuse, child contact and the family courts*. Bristol: Women's Aid; Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid; Coy, M., Perks, K., Scott, E. and Tweedle (2012) *Picking up the Pieces: Domestic Violence and Child Contact*, London: Rights of Women/ Child and Woman Abuse Studies Unit, London Metropolitan University.

43 Radford, L. et al. (2011) *Meeting the needs of children living with domestic violence in London*, London: NSPCC and Refuge.

44 Radford, L. et al. (2011) *Meeting the needs of children living with domestic violence in London*, London: NSPCC and Refuge.

45 Brandon, M. et al. (2012) *New learning from serious case reviews: a two year report for 2009-2011*, Department for Education.

46 Sidebotham, P. et al (2016) *Pathways to harm, pathways to protection: A triennial analysis of serious case reviews 2011 - 2014*, p. 77. Department for Education.

47 Hunt, J. and McLeod, A. (2008) *Outcome of applications to court for contact orders after parental separation or divorce*, London: Ministry of Justice; Harding M. and Newnham A. (2015) *How Do County Courts Share the Care of Children Between Parents: Full Report*. London: Nuffield Foundation; Cafcass and Women's Aid (2017), *Allegations of domestic abuse in child contact cases*, London: Cafcass.

48 Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid; APPG on Domestic Violence (2016), *Domestic abuse, child contact and the family courts*. Bristol: Women's Aid.

49 University of Bristol (2009) *The Three Planets*, www.bristol.ac.uk/news/2009/6703.html

50 Hester, M. (2011), 'The Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence' *The British Journal of Social Work*, Volume 41, Issue 5, 1 July 2011, pp. 837-853.

51 Kelly, L., Sharp, N., and Klein, R. (2014) *Finding the costs of freedom: How women and children rebuild their lives after domestic violence*, London: Child and Woman Abuse Studies Unit at London Metropolitan University and Solace Women's Aid; Women's Aid and Karen Ingala Smith (2016) *The Femicide Census: Redefining an isolated incident*, Bristol: Women's Aid.

52 Thiara, R.K. and Harrison, C., (2016), *Safe not sorry: supporting the campaign for safer child contact*, Bristol: Women's Aid; Women's Aid (2016), *Nineteen Child Homicides*, Bristol: Women's Aid.

53 Howard, M. and Skipp, A. (2015), *Unequal, trapped and controlled: Women's experiences of financial abuse and potential implications for Universal Credit*, TUC and Women's Aid.

54 Fawcett Society (2017), *Equal Pay Day 2017 Briefing*; Ferrant, G., Pessando, L., Nowacka, K. (2014), *Unpaid care work: the missing link in the analysis of gender gaps in labour outcomes*, OECD Development Centre.

55 Choudhry, S., and Herring, J. (2017), 'A Human Right to Legal Aid? - The Implications of Changes to the Legal Aid Scheme for Victims of Domestic Abuse' *Journal of Social Welfare and Family Law*, 39 (2), pp. 152-167; Welsh Women's Aid, Rights of Women and Women's Aid (2014), *Evidencing domestic violence: reviewing the amended regulations*; Trinder, L. et al (2014), *Litigants in person in private family law cases*, Published online: Ministry of Justice.

56 Women's Aid (2016), *Nineteen Child Homicides*, Bristol: Women's Aid.

57 Rights of Women (undated) *New exceptional case funding service for women*, www.womensaid.org.uk/rights-women-new-exceptional-case-service-women/

"What about my right not to be abused?" Domestic abuse, human rights and the family courts

Women's Aid Federation of England,
PO Box 3245, Bristol BS2 2EH

T: 0117 944 4411 F: 0117 924 1703
info@womensaid.org.uk || www.womensaid.org.uk

0808 2000 247
Freephone 24 Hour National Domestic Violence Helpline
(run in partnership between Women's Aid and Refuge)

© Women's Aid, 2018
ISBN: 978-0-907817-43-7