

# Safe not sorry

Supporting the campaign for safer child contact

Key issues raised by research on child contact and domestic violence

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# I. Context

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

Existing research provides strong evidence that in making arrangements for child contact when there is a history of domestic violence, the current workings of the Family Justice System support a pro-contact approach that neglects the safety needs of children and women, and the impact on them of previous or continuing domestic violence. This frequently exposes children and women to further violence, causes them significant harm, and prevents their recovery. For a substantial number of children, the privileging of men's rights to contact over children's welfare negatively affects every aspect of their wellbeing and development. The individual and societal costs are unacceptable.

In the UK there have been conflicting developments in safeguarding children and women. It is widely acknowledged that, whilst criminal justice responses have improved, the law, policy and practice in relation to child contact arrangements following parental separation remain dominated by models that marginalise the impact of domestic violence. Studies reveal that concerns about children's safety and the effects of men's violence are routinely overlooked, in voluntary as well as court ordered arrangements. Indeed, it has proved inordinately difficult to improve safety, with serious implications for the health and development of children and their mothers. This promotion of fathers' involvement in children's lives at the expense of safety considerations (MacDonald, 2014) has perpetuated what Thiara and Humphreys (2015) describe as the 'absent presence' of violent men in the lives of children and women. More than anything, the presumption that contact is beneficial for children, unless proven otherwise, has been shown to be incredibly harmful for some children (Women's Aid, 2016).

The UK is a signatory of the Istanbul Convention (see [www.humanrights.ch/en/standards/ce-treaties/violence-against-women](http://www.humanrights.ch/en/standards/ce-treaties/violence-against-women)). This extends the commitments of European countries in combating domestic violence and its impact on children and women. Article 31 of the Convention requires member countries to strengthen legislation relating to visitation (contact) and custody (residence). Quite specifically, the Convention establishes an expectation that incidents of violence against the non-abusive parent will be taken into account by judicial authorities when determining arrangements for children i.e. contact orders should not be issued without taking into account the impact of domestic violence on children **and** women, and no arrangements should be made which jeopardise the rights and safety of a child **or** mother. This highlights a further contradiction in the UK government's stance; although the UK is a signatory to the Convention, it has not yet been ratified.

It is also possible that the few gains made in addressing domestic violence within the Family Justice

System may be undermined by recent legal changes – the introduction of the Child Arrangements Order, emphasis on shared parenting and legal aid cuts. The emphasis on shared parenting in the Children and Families Act 2014 (based on a presumption about the involvement of both parents) further elevates risk for children whose fathers have been abusive and distorts the principle that the child’s welfare is paramount. Research from Australia about similar reforms there supports this concern about the philosophy of shared parenting (Bagshaw et al., 2011).

This review of research focuses on the safety and wellbeing of children when having contact, whilst also acknowledging that this is related to the safety of women. It identifies major messages from research about what is needed to ensure that child contact arrangements are safe, beneficial and informed by children views. The report:

- Examines the implications of the presumption of contact that underpins the current legal process and the risks this poses for children’s safety and wellbeing;
- Identifies what is required to improve the safety and wellbeing of children when arrangements for child contact are made where there is a history of domestic violence;
- Makes recommendations for changes that are urgently needed.

## 2. Background

Around three million, or one quarter of children in the UK are affected by parental separation (Hunt and Macleod, 2008). Although the majority (85%) of separated parents resolve contact arrangements by agreement (Hunt and MacLeod, 2008), the Family Justice System is used when voluntary agreement cannot be reached, or when issues of safety and wellbeing are raised (Wasoff, 2007; Trinder, 2013). Even so, it cannot be assumed that where contact arrangements are agreed between parents without court involvement, domestic violence is not an issue.

A high proportion of the 10-15% of separations that lead to court applications for contact involve domestic violence (Aris and Harrison, 2007), and there have been longstanding concerns about whether maintaining contact in these circumstances truly serves children’s interests. As early as 2000, Sturge and Glaser Experts’ Report (2000) emphasised that promoting contact with the non-resident parent has to be carefully weighed against the potential harm caused by exposure to violence<sup>1</sup>. There is now a substantial knowledge base highlighting concerns about children’s and women’s safety and wellbeing with regard to contact in the context of domestic violence, which contrasts with current government thinking about promoting the involvement of both

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<sup>1</sup> Sturge and Glaser (2000) viewed beneficial contact as being to:

- Help build or maintain a meaningful and beneficial relationship.
- Provide a foundation for the healthy emotional growth of the child.
- Allow the child, family and parent to share cultural and historical knowledge and information (particularly relevant to black and minority ethnic (BME) families, see Radford et al., 1997).
- Allow parent and child to repair difficult relationships.

parents after separation. Choudhry (2012) also argues that the courts have failed to apply human rights to child contact, and suggests that if Article 3 of the European Convention on Human Rights was applied, direct contact would be refused in the majority of cases where children have been adversely affected by violence.

Evidence about domestic violence, with its widespread damaging effects on children and women, fundamentally challenges the pro-contact philosophy dominating the family courts. In addition, knowledge that domestic violence begins and/or escalates in pregnancy (Mezey and Bewley, 1997; Lewis and Drife, 2005), that abuse impairs women's ability to look after children or that a central aspect of domestic violence is an attack on mothering and the mother-child relationship (Bancroft and Silverman, 2002; Lewis and Drife, 2005; Thiara and Breslin, 2006; Radford and Hester, 2006; Lapierre, 2008) also has to be taken into account when considering the continuing role of abusive men in children's lives.

A further dimension of concerns that the family courts operate on the basis of a presumption of contact, is that children's voices are not properly heard within the court arena and that they are marginalised in professional practices and assessments (Morrison, 2009; Caffrey, 2013). This is not only a major worry to women, but is evident in the small body of research with children themselves. Like women's experiences, it is easy for children and young people's voices to become lost in the process of determining contact.

### 3. Domestic violence and its impact on children before and after parental separation

*Any discussion about child contact must be contextualised within the knowledge base on children's experiences of domestic violence (Coy et al., 2012:10).*

Children's experiences are closely related to those of their mothers (Mullender et al., 2002; Lapierre, 2008) and domestic violence is a major source of adversity for substantial numbers of children who witness violence, get caught up in it, or suffer because they and their mothers are constantly afraid (Mullender et al., 2002). Children may be exposed to perpetual criticism of their mother, or suffer as a result of economic deprivation and social isolation that is frequently an aspect of domestic violence. Recent research (Katz, 2015) underlines the extent to which such coercive control of the mother can negatively affect children. They may also experience frequent moves of home and school and sources of support may be lost, including significant family relationships and friendships. Although those working in the Family Justice System often differentiate between direct and indirect violence, this can seriously underestimate the harm caused to children and young people. Even those who are indirect witnesses are likely to be aware of domestic violence (Parkinson and Humphreys, 1998; Mullender et al., 2002; Morrison, 2009), and they will undoubtedly be affected if it has eroded their mother's ability to care for

them (Wyndham, 1998; Rossman et al., 2000; Rossman, 2001). In between 75%-90% of families where men have been violent to women, children have been in the room or in the room next door when this happened (Morrison, 2009).

Possibly one in three children and young people will be exposed to domestic violence to some degree during their childhood; a national prevalence study conducted by the NSPCC estimated that 18% of 11 to 17 year olds had been exposed to domestic violence and abuse (Radford et al., 2011).

*It used to be behind closed doors. But I used to know and I would see the bruises that she had before that. (Mullender et al., 2002:93).*

The relationship between mothers and children is itself a specific target of domestic violence and children may be manipulated by threats or inducements on the part of perpetrators, who are known to involve children and young people in violence, for example by encouraging them to act in an abusive way towards their mother. This is widely reported in the context of child contact (Radford and Hester, 2006; Thiara and Gill, 2012; Barron, 2007; Katz, 2015; Thiara and Humphreys, 2015).

The inter-connections between violence against women and child abuse have been established for some time (Brown et al., 2001; Hume, 2003). Domestic violence increases the likelihood of violence towards children, and the severity and length of time over which violence has occurred increase the risks for and impact on children (Hester and Pearson, 1998; Cawson, 2002; Humphreys, 2000). Edleson (1997) estimated this overlap to be between 30%-60%:

*My dad used 2 hit me and my sisters and every week he used 2 come home drunk and hit me and my sisters... he hurts my mum and us and I feel sad and I don't want 2 see him again. Jay, young person writing on Barron's message board. (Barron, 2007:7)*

For example, Kaye et al.'s (2008) Australian study found that more than a third of the women they interviewed who had experienced domestic violence said their children had also experienced abuse. Such issues are likely to be compounded for some minority ethnic children who, because their mothers are subjected to abuse over longer periods before seeking help, are likely to witness or be directly abused within a pattern of repeated abuse (Humphreys and Thiara, 2002; Thiara, 2010).

Studies emphasise that children's responses to domestic violence vary, and that age, gender, disability, stage of development and other factors influence the consequences for them (Mullender et al., 2002; Jaffe et al., 2008; Radford et al, 2011). The nature of domestic violence means that

most children who are exposed to it will be affected, but some children appear to have greater resilience than others (Laing, 2000; Humphreys, 2006; Stanley, 2011). For children who are also facing other forms of discrimination, such as poverty, racism or homophobia (Sokoloff and Dupont, 2005), the harmful impact of domestic violence can be exacerbated. Such experiences may also be incorporated in the perpetrator's violence (for example, in the form of racist abuse towards a mother or child). For black or minority ethnic (BME) children and young people, racism (or fears of racism), and lack of understanding about their cultural contexts, have meant that they have had difficulties in accessing services, adding to their distress and to the impact of harm (Thiara and Breslin, 2006; Malley-Morrison and Hines, 2007; Izzidien, 2008).

The complex and traumatic impact of exposure to domestic violence may result in a range of emotional, social, psychological and behavioural responses with short and longer-term implications (Hester, 2000; McGee, 2000; Postmus and Merritt, 2010). Children's developmental outcomes, including those related to learning and educational development, are poorer when their exposure is greater (Kitzmann et al., 2003). The literature describes the effects in terms of externalised responses, such as aggression, destructiveness, and defiance (O'Keefe, 1995; Maker et al., 1998), and internalised responses, such as anxiety, depression, fear and low self-esteem (Mathias et al., 1995; McCloskey et al., 1995). There may also be somatic signs of distress, such as stomachaches and headaches, and both externalised and internalised responses may result in difficulties in social interaction with adults and peers, including difficulties at school (Kitzmann, et al., 2003; Martinez-Torteya et al., 2009). Many children, including those exposed to severe or repeat violence, show signs of post-traumatic stress disorder (PTSD) (Jarvis et al., 2005; Graham-Bermann and Seng, 2005). Emotional abuse of children by violent men is likely to be even greater than physical violence (Wolfe et al., 2004) and the on-going fear that violence will recur has also been shown to be damaging to children (Jaffe et al., 2003).

Another critical area of understanding relevant to the safety of child contact arrangements relates to the extent and impact of post-separation violence. For many women and children, violence continues or intensifies after separation (Statistics Canada, 2002; Kaye et al., 2008; Bagshaw et al., 2011; Morrison, 2015). In a UK study, Humphreys & Thiara (2002) found that 76% of women using domestic violence outreach centres experienced further abuse, and 36% suffered persistent post-separation violence. Murders of women and children where there is a history of domestic violence frequently take place at the point of separation (Wilson and Daly, 2002; Smith et al., 2011), including during child contact (Saunders, 2001; Saunders 2004; Women's Aid, 2016), as do child abductions (Plass et al., 1997; Kilsby, 2001). Separation with disputes about contact (or residence) was identified in the Metropolitan Police Service Risk Assessment Model for Domestic Violence Cases as one of six high risk factors for escalating domestic violence (Richards, 2003) with a possibility of domestic homicide.

It has been recognised that children living with post-separation violence may be amongst the most distressed in the population (Johnston, 1989; Buchanan et al., 2001; Bagshaw, 2007), for whom contact with violent men is unlikely to be of benefit (Jaffe et al., 2003) or will impede their recovery (Mertin, 1995; Strategic Partners, 1998). Conversely, where children have no contact with violent fathers, the harm they have sustained can be ameliorated. A child's recovery is known to be related to that of her/his mother; continuing threats or contact proceedings used to protract conflict impede mothers' recovery and this has an indirect effect on children (Strategic

Partners, 1998; Hogan and O'Reilly, 2007; Barron, 2007). Violence is significant in a sizeable proportion of cases being dealt with in private law, as in public law, although less likely to be identified as child protection issues (Buchanan et al., 2001, Brown et al., 2001; Hunt and Macleod, 2008; Coy et al., 2012; Caffrey, 2013). As already noted, Sturge and Glaser (2000), based on research about the impact of direct and indirect domestic violence on children, were unequivocal that, 'there should be no automatic assumption that contact to a previously or currently violent parent is in the child's interest; if anything, the assumption should be in the opposite direction' (p.623). If post-separation violence is neglected, risk and safety issues for children and women may not be systematically assessed, leading to a 'judicial failure to protect' (Saunders, 2004; Saunders and Barron, 2003; Kaye et al., 2008):

*He still follows my mum. He's always been standing outside and my mum kept telling the police but the police don't arrest him... (Thiara and Gill, 2012: 45).*

Attempts to use children to control their mother have been shown to occur more often after separation (Beeble et al., 2007).

## 4. Domestic violence and child contact

*...problems with family court processes and outcomes in child contact cases where there has been domestic violence persist (MacDonald, 2014: 9).*

Research and campaigning by women's organisations have improved recognition of the damage caused by men's violence. . However, an emphasis on the role of the father in the post-separation family (Thiara and Humphreys, 2015) has frequently displaced considerations of children and women's safety and wellbeing, reinforcing persistent concerns about the failure of family courts to take account of domestic violence (Coy et al., 2012; Caffrey, 2015). This minimisation of the impact of domestic violence leads to contact arrangements that are frequently unsafe (Harrison, 2008; Bagshaw et al., 2011; Caffrey, 2015; Morrison, 2015).

Evidence from court files also indicates that a substantial number of applications for child contact (under Section 8 of the *Children Act 1989*, now replaced by Section 12 of the *Children and Families Act 2014*), applications euphemistically described as 'high conflict', are characterised by domestic violence. Domestic violence features in 60-70% of Child and Family Court Advisory and Support Service (Cafcass) caseloads (Home Affairs Committee, 2008) and in 70-90% of cases going to the family courts (this includes public as well as private law proceedings) (HMICA, 2005). In their examination of contact and residence court application files, Aris and Harrison (2007) found that 63% of 297 applications involved domestic violence.



## A pro-contact philosophy?

The pro-contact position within family law, also described as a ‘contact at all costs’ approach (Harrison, 2008; Barnett, 2014) or ‘judicial failure to protect’, (Saunders and Barron, 2003) is pervasive in a number of jurisdictions (see for example Wasoff’s review, 2007; Kaye et al., 2008; Bagshaw et al., 2011). The presumption of contact results in high numbers of contact orders being issued, the majority of which allow direct contact; less than 1% of applications for contact are refused, even when there is a history of violence (Aris and Harrison, 2007; Giovannini, 2011). Research has demonstrated that all professional groups involved in the contact process start from a position in favour of contact and ‘make considerable efforts to bring this about’ (Hunt and Macleod, 2008: 8. See also Harrison, 2008 and Thiara and Gill, 2012). The routine granting of direct unsupervised contact, even when concerns about abuse are prevalent, reveals a pronounced lack of understanding about the effects of domestic violence on women and children.

In Hunt and Macleod’s research (2008: 239), only 37% of contact cases had no ‘serious welfare issues’, with domestic violence being raised as a concern in 34% of these cases, but featuring at some point in half the cases, child abuse and neglect were noted in over a fifth of cases (23%) and fear of abduction in 15% of cases. Despite such concerns, the majority of non-resident parents achieved the type of contact and the amounts of contact they sought - 60% of cases with welfare concerns resulted in either staying or unsupervised contact; only in 4% of cases was supervised contact ordered. In general, non-resident parents applying for contact are likely to get it unless they withdraw, drop out or do not turn up, leading researchers to argue that ‘the courts and Cafcass are not biased against non-resident parents who generally get a good deal’ (Hunt and Macleod, 2008: 6). Consequently, the foregrounding of fathers’ rights, rather than the welfare of children, continues to reinforce the presumption of contact within private law proceedings (Smart, 2004).

## Listening to children’s voices and children’s perspectives on contact

*In the specific context of child contact, it can be argued that there is particular impetus to hear the ‘voice of the child’ since a child refusing to meet a parent may be distressed by contact and total ongoing disregard for his/her distress may be damaging for the child. (Caffrey, 2013: 358)*

Within both private and public child welfare law there is a requirement that children’s wishes and feelings will be sought, represented to the court and taken into account within the decision making process. This is enshrined in the welfare checklist (Section 1 (3) *Children Act 1989*) and is consistent with the UK’s ratification of the UN Convention on the Rights of the Child. It has been argued that the concept of ‘the ascertainable wishes and feelings of the child’ is so vague that it is open to wide interpretation by the courts. It has also been found that there is considerable latitude in terms of how wishes and feeling are sought and represented within proceedings (Wallbank, 1998; Caffrey, 2013).

A number of studies have highlighted that within the complex mixture of feelings experienced by children affected by domestic violence, including after parental separation, fear, dread and ambivalence are prominent (Aris and Harrison, 2007; Buckley et al., 2007; Morrison, 2009; Bagshaw et al., 2011; Thiara and Gill, 2012). One child in Morrison's study (2009), for example, described how it would require guards and CCTV to make contact safe for him. Thus research with children and young people about contact shows that their fears persist and that, for them, being safe is a primary consideration (Buckley et al., 2007). Bagshaw et al. in an Australian study concluded:

*Even though the sample size is small, these findings support other research that suggests that family violence (domestic violence and child abuse) can lead to children feeling unsafe in the company of a violence parent, some for many years following violence. (Bagshaw et al., 2011)*

Studies also clearly illustrate that children and young people affected by domestic violence want to be consulted and their views properly ascertained (Houghton, 2006; Humphreys et al., 2008; Barron, 2007; Bagshaw et al., 2011; Holt, 2011). Child and Family Court Advisory and Support Service (Cafcass) officers, who are appointed to represent children's voices in the family courts (see Appendix 2), generally assess children's needs and wishes in one session (Thiara and Gill, 2012). It is unlikely that the rapport needed for children to freely discuss their feelings could develop over such short period of time.

Caffrey's typology of child engagement in child contact centres also demonstrates how the concept of listening to children can be interpreted in very diverse ways, with only the minority of centres having meaningful engagement. Caffrey (2013: 379) concludes that 'it seems there is a pressing need to emphasise the capacity of children and babies of all ages to have and articulate .... wishes and feelings, which are important in terms of their safety and wellbeing'.

There are few studies that include children's perspectives of contact arrangements (Hunt and Roberts, 2004; Barron, 2007; Holt, 2011). One study showed that while some children were positive about contact, a third were ambivalent, reluctant and opposed to contact (Aris et al., 2002). Holt's study with 16 children and young people who were aged between 7 years to 24 years of age found that the majority of participants painted 'a largely negative picture of contact' (p.329), for children and their mothers and fathers. As already indicated, when children's own experiences have been explored, they have revealed a tumultuous, confusing range of feelings that include fear, anger, sadness, terror, loss, torn loyalty, responsibility, helplessness, despair, worry, and guilt (Morrison, 2009; Thiara and Gill, 2012). These often result in extreme feelings of shame and powerlessness.

The presumption of contact has led to a selective approach to children's perspectives in court – there is evidence that children are believed if they say they want contact, but that they are more likely to be ignored or over-ruled if they say they do not want contact (Harrison, 2008; Holt, 2011).

*Ruby: I don't like seeing him. (5 year old girl, supervised contact centre). (Harrison, 2008: 399)*

Existing research provides clear examples of children having been coerced into having contact against their clearly articulated wishes (Harrison, 2008; Holt, 2011; Thiara and Gill, 2012). As one child in Barron's study (2007) wrote:

*My dad used to hit us and mum and shout and throw things all the time my mum used to cry then he left and we were a real family without being scared. Then my dad said he wanted to see us and he used to shout when we saw him and was mean all the time except when the lady from the court was there. The judge said we had to see him now were all not happy again. I just want dad to go away. Why can't he just leave us alone?????! Fink the judge is mean for this. Reuben (Barron, 2007: 24)*

Children's accounts also provide evidence that they experience harm as a result of contact arrangements, including from fathers' rigid requirements that do not recognise children's needs and more serious welfare concerns about direct abuse during contact (Holt, 2011):

*He's just bold....he'll hit ya (Sean, aged 7) (Holt, 2011: 341)*

The tendency to approach domestic violence as 'conflict between parents' and an erroneous view that women influence children against contact with fathers, comes to the fore and pushes the views of children themselves out of the picture. It also means that professionals involved in child contact arrangements may disregard the need for a thorough assessment of risk and/or of the outcomes of contact for children and young people.

## Are women implacably hostile?

*I haven't got a prison record, I'm not a drug user, I've never been violent and yet I'm looked at as if I'm implacably hostile, which is the term that is always used, because I don't feel happy with my child seeing his father (mother whose ex-partner had served a custodial sentence for domestic violence)*

Implacable hostility is a value laden concept which is often applied in situations where a mother is opposed to contact. It implies a callous and unreasonable disregard for a father's rights and deliberate actions on the part of a mother to influence children against contact. The view of women as 'implacably hostile', even when they are drawing attention to very real concerns and being 'appropriately protective' continues to have much traction among professionals (Radford and Hester, 2006; Harrison, 2008). Sturge and Glaser (2000: 10) identified the reasons why a resident parent may adopt a position of implacable hostility, including a fully justified fear of abduction and a fear of violence or other threat and menace. In addition, there is very little evidence to support the concept of the 'implacably hostile mother', which has been described as a professional construct (Trinder et al., 2013; Barnett, 2014). Hunt and Macleod (2008) showed that implacable hostility is rare, present only in around 4% of cases. The 'parental alienation' syndrome has also received much support from some quarters, with women being accused of alienating their children from their fathers. In contrast, the reverse has been found – to a surprising degree, resident mothers who have experienced domestic violence try to promote contact (Hunt and Macleod, 2008; Thiara and Gill 2012; Morrison, 2015). Indeed, it has been argued that men's tactics through contact are aimed at 'maternal alienation' by undermining the relationship between mothers and their children both pre and post-separation (Morris, 2009; Thiara and Humphreys, 2015).

Resident mothers report facilitating contact themselves and encouraging reluctant children (Hunt and Macleod, 2008; Peacey and Hunt, 2009), and even those who have serious concerns about the care of children by non-resident parents try to ensure that children are not put at risk (Harrison, 2008; Peacey and Hunt, 2009). Informal contact arrangements are extremely common, but, where there is a history of domestic violence, tend to involve unpredictability or power and control issues on the part of non-resident parents (usually fathers). Concern about their own safety is a factor in almost a fifth of cases where resident parents (most often mothers) had stopped contact (Peacey and Hunt, 2009: 161):

*Responsibility for contact not happening at all or not being regularly maintained was very largely attributed to the non-resident parent and typically explained in terms of that parent's lack of commitment to the child (Fortin et al., 2012: 5).*

Conflict between parents over contact, rather than an absence of contact, is more likely to result in poorer outcomes (Johnston and Roseby, 1997; Stanley, 2011) and research points to the importance of the *quality* of contact in reducing any likely negative outcomes of parental separation for children (Hunt and Roberts, 2004). In research by Fortin et al. (2012) on the perspectives of young adults who had experienced parental separation, young people agreed overwhelmingly that contact should never take place in circumstances of an abusive parent-child relationship and that no contact was better than bad contact in such situations (p.4). This led these researchers to conclude that the courts' current approach that contact is almost always in the interests of the children is not sufficiently nuanced, and should take account of the child's need for good contact rather than simply any contact (Fortin et al., 2012: 10).

### Minimisation of the impact of violence

Research has shown how in the courts and contact centres, and amongst professionals, pro-contact arguments often over-ride evidence of domestic violence (Dewar and Parker, 1999; MacDonald, 2014). A strong theme emerging from a number of studies is that at each stage in the judicial process (see Appendix 1) a number of factors combine to minimise or disqualify the accounts of women and children about the violence they have experienced (Harrison, 2008; Coy et al., 2012). Women are often accused of using allegations of domestic violence to prevent contact, something that negates women's capacity to narrate their own experiences in credible ways. BME women, who are less likely to have the necessary evidence, experience even greater barriers in being believed (Thiara, 2010; Thiara and Gill, 2012). Even where there is evidence of domestic violence this does not always influence court decisions (Aris and Harrison, 2007) and even men with corroborated histories of violence are readily rehabilitated, something also reinforced by findings in the US (O'Sullivan et al., 2006).

The attitudes of professionals (Cafcass officers, legal professionals and the judiciary) are critical. For example, MacDonald's (2014) examination of welfare reports prepared for the Family Court in 70 contested contact and residence applications considered how domestic violence was taken into account (and similarly how the perspectives of children were taken into account). It was found that very few applications for contact with violent men were refused and that in the vast majority of the cases examined, contact was seen to be a desired, future oriented action. In support of this, domestic violence was viewed as a mutual issue between parents and/or relegated to the past. This allowed the separation of these considerations from child welfare concerns in ways entirely at odds with the substantial research literature outlined here.

The responses to men and their violence differ between public and private law, whereby the former creates greater restrictions on men's involvement with children and the latter operates with contact as a default position. Hester (2011) has conceptualised current practices as represented by 'three planets', characterised by contradictory professional ideas, practices and approaches to domestic violence (violent male partner), child protection (mother failing to protect) and child contact ('good enough' father) which display few linkages and differing constructions of women and men.

For example, the welfare checklist in section 1 of the *Children Act 1989* applies to all proceedings in public and private law. However, women often describe how they have experienced stark

differences between the expectations of child protection professionals that they should leave violent men to safeguard their children, and the expectations of judicial staff in family courts that women should facilitate contact, despite their concerns about safety and wellbeing (Hester, 2011; Harrison, 2006; Harrison, 2008; Coy et al., 2012). Although it is clear that women often have good reasons to view contact arrangements as a source of danger, to both their children and themselves, they are expected by the courts to facilitate such arrangements and they risk being seen as 'implacably hostile' and maliciously uncooperative if they raise concerns about safety (Harrison, 2008).

### Men and their fathering

The separation of a consideration of men's potential to be 'good fathers' from their violence towards their partners and the impact on their children often from before birth, results in an over-estimation of abusive men's parenting capacity (Radford and Hester, 2006). Although there is limited research in the UK on fathering in the context of domestic violence (Stanley, 2011), available research shows that men frequently blame others, including children, for their abusive behaviour and take little responsibility themselves (Harne, 2004 and 2011). Women often describe abusive men as having been disinterested or under-involved in children's care prior to separation, and not familiar with their children's developmental needs. This is often reflected in high levels of neglectful care during contact (Radford et al., 1999; Harrison, 2008; Kaye et al., 2008; Thiara and Gill, 2012), with inadequate attention to safety or wellbeing:

*He had a temper tantrum once upstairs. He was slamming the door an effing and blinding and I was told – 'Well you can understand that he is frustrated.' Every time I am told that he is frustrated. (Justine, supervised contact centre) (Harrison, 2008: 398)*

The relegation following separation of men's violence as past behaviour, or an enduring dichotomous view of violent men as 'good fathers' (Hester and Harne, 1996) has potentially dangerous consequences for the safety of women, children and children's welfare (Eriksson and Hester, 2001; Saunders, 2004):

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

Research draws attention to the strategies adopted by perpetrators to get alongside professionals, including in contact proceedings, and to minimise the extent and impact of their violence (Bancroft et al., 2012), as exemplified by the above mother's experience. This includes suggesting that violence is mutual, and/or shifting the responsibility on to women. This contributes to the 'disappearance' of histories of violence and the readiness with which abusive men are rehabilitated (Harrison, 2008). Abusive men are inconsistent in their parenting, but often display their 'best' behaviour when in contact with professionals or being observed during supervised contact (Aris et al., 2002; Edleson et al., 2003; Thiara, 2010; Thiara and Gill 2012). When granted contact, some men fail to turn up for visits or generally do not adhere to contact orders, leaving children feeling let down and distressed (Morrison, 2009). Women are left to manage the effects on children (Thiara, 2010). Children who do not have contact voice feeling safer (Mullender et al., 2002; Thiara and Gill, 2012).

*I would say to him that I would actually like to talk to him about his daughter if he has the time. I would ask if he even knew what she was up to these days. Does he even know what stage of development she was at? He would be like don't give me that, swearing and 'f-ing' and blinding. It got to the stage where it got very intimidating, very controlling and bullying. (Thiara and Gill, 2012: 46)*

Although there are some initiatives that aim to engage with abusive men as fathers, there is an absence of interventions to address and improve men's parenting (Coy et al., 2011; Radford et al., 2006), and calls have been made for early intervention projects with abusive men (Featherstone and Peckover, 2007).

## 5. Child contact as a site of continuing violence

Child contact is, then, a vulnerable point for continued post-separation violence which has direct and negative consequences for children (Humphreys and Thiara, 2003; Kaye et al., 2008):

*We lived in 13 different places, he kept following us so I kept having to move. He wanted us to live together again. He became more violent abusing me in the street in front of my son. (Celeste; Coy et al., 2012: 27).*

When making safe arrangements for contact when there has been domestic violence, the principle of promoting a child's relationship with a separated parent has to be reconciled with recognition of the damaging consequences of domestic violence for children and women. Despite some positive developments, difficulties persist and these can be even more profound for women from diverse minority ethnic communities.

## Child contact as a form of post separation violence

For many women and children, violence intensifies after separation (Statistics Canada, 2002; Humphreys and Thiara, 2010), a period which creates greater danger and sometimes results in death for women and children (Saunders, 2001 and 2004; Richards, 2003; Brownridge, 2006). All the women in Coy et al.'s (2012) study had experienced post-separation violence. This risk of post-separation violence is further complicated for BME women, especially Asian women, for whom there are often greater numbers of people involved. Seventy-eight per cent of BME women involved in contact proceedings reported severe and chronic post-separation violence for as long as five years involving not just the partner but also extended family members (Thiara and Gill, 2012). Harassment or violence from extended family members was the most common form of post-separation violence experienced by 56% of BME women reported in another study (Thiara and Roy, 2009).

A number of studies demonstrate that child contact arrangements, including court ordered contact, are used to track women to perpetuate abuse (Hester and Radford, 1996; Radford et al., 1999), even when there are high levels of supervision (Aris et al., 2002; Harrison, 2008). Some suggest that child contact often replaces the intimate relationship as the avenue for men to control women (Eriksson and Hester, 2001). Thus, child contact can become a form of post-separation violence, and includes violence and harassment 'before, during and after child contact but also continuous litigation' where use of the legal system itself has been identified as a form of harassment (Bancroft and Silverman, 2002; Harrison, 2008).

Violence linked to child contact makes it difficult for children and women to establish independent and safe lives (Kaye et al., 2008). However, there remains limited understanding of these issues among professionals, and when called out by women, police officers still regard men's behaviour as a 'tiff' over children rather than as repeat victimisation. Legal professionals, the judiciary and Cafcass practitioners were all found to lack insight into post-separation violence issues (Thiara and Gill, 2012):

*He said 'what I can't f\*\*king see my son? I'm going to f\*\*king kill you, I'm going to shoot you, I'm going to stab you up'. He's said that in the past and I thought that was heat of the moment, but I actually took this very seriously and I called the police. They just said not to let him in. (Lisa; Coy et al., 2012).*

## Litigation as a form of abuse

As indicated, women have to contend with legal processes and practices that bring them into frequent and direct contact with violent men (Lapierre, 2010; Bancroft et al., 2012), with an associated impact on children. Continuing litigation and other aspects of the lengthy process of determining contact are used to perpetuate further intimidation and harassment and to sustain and regain control, including before, during and after contact (Thiara, 2010; Coy et al., 2012). Despite legal and policy reforms over recent years, in and out of court family law processes have often served to undermine protective factors, prevent recovery and perpetuate harm (Trinder,



2014). The legal process can also be used by some men as a way of 'publicly' humiliating women and tainting their character in order to reclaim the 'honour' of the man and his family. At the very least, some men use the legal process to obtain information about women's lives, including from children, and there is often a lack of awareness on the part of legal professionals and the judiciary about these issues:

*Some perpetrators get the message that the relationship is over and are genuinely interested in their children. Others use it as a mechanism to keep back into the relationship, others to undermine the victims confidence and self-esteem, others to make the victim feel trapped and some to 'get at them' further by undermining them as a parent. (Barrister; Coy et al., 2012; 34).*

### Threats to take the children

Women's fears of abduction are extremely common and reported in much of the existing research (Humphreys and Thiara, 2003; Thiara and Gill, 2012; Coy et al., 2012; Harrison, 2008). Aris and Harrison (2007) report that in their sample, a quarter of resident parents (34 out of 146) had concerns about abductions, with 20% (30 out 146) reporting that abduction had been threatened:

*He's threatened to abduct her before and told me exactly how easy it is, particularly when he's got a girlfriend who's got on her passport a child of exactly the same age; how easy it would be to get her out of the country and to Greece and he looks Greek and he can speak Greek and there's no extradition treaty and they would just disappear. (Mother attending supervised centre) (Harrison, 2008: 392).*

Threats of abduction<sup>2</sup> are a significant issue and worry for high numbers of BME women (Thiara, 2010) as it is more likely that the perpetrator will have family and social links in other countries. In 2011/2012 there were 127 cases of child abduction by a parent, giving weight to women's perceptions that their fears could become reality (Newis and Traynor, 2013):

*He would take him away down the stairs and say he is my son and at times it was like he was going to leave the house. I had a fear he'd take him away from me, he had said it to a girl he was with at the time. ... I was wondering why he kept on pressurising me for a passport for [son] so I have always had the fear even before we had separated. (Thiara and Gill, 2012: 45).*

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<sup>2</sup> In this context abduction refers to situations where a parent (usually a father) is alleged to have kept children after contact; taken them from school; from the street; has taken them abroad or has threatened to take the children to another country.

Women's well-founded anxieties about children being abducted often arise from their experiences of children being returned late after contact. These are usually not taken seriously by court professionals, nor are the effects on children always recognised. Children's accounts also show that they have their own fears about abduction (Morrison, 2009):

*Well I don't know 'cos something its starts like that (contact with a father) and then they'll hold then hostage and want custody of them (boy, 12). (Morrison, 2009: 2)*

### Abuse towards children

In contexts where children may witness violence more frequently after separation, the benefits of contact for children with men who continue to be abusive have been widely questioned (Jaffe et al., 2003). Women's testimonies indicate that child contact arrangements are a significant site for the perpetuation of physical and emotional abuse towards children and women (Aris et al., 2002; Aris and Harrison, 2007; Thiara and Gill, 2012; Coy et al., 2012).

As mentioned earlier, men are reported to neglect children during contact visits, put them at risk, and to subject them to abuse (Harrison, 2008; Kaye et al., 2008; Thiara and Gill, 2012). Children are often afraid to resist contact, but those who have contact with abusive men are reported to display a range of effects before and after contact visits, such as fear, anxiety and distress, expressed through behaviours such as being withdrawn, clingy, bedwetting, anger, and nightmares (Thiara and Gill, 2012; Coy et al., 2012).

A survey of 130 abused parents found that 76% of the 148 children ordered by the courts to have contact with their estranged parent were said to have been abused in the following ways during visits: 10% were sexually abused; 15% were physically assaulted; 26% were abducted or involved in an abduction attempt; 36% were neglected during contact; and 62% suffered emotional harm. Most of these children were under the age of five (Radford et al., 1999.) Another study showed that more than half of those with post-separation child contact arrangements with an abusive ex-partner continued to have serious, on-going problems with this contact (Humphreys and Thiara, 2002; see also Stanley et al., 2011). This is also demonstrated by homicide statistics and findings from serious case reviews (Ferguson, 2009; Saunders, 2004; Brandon et al., 2009; Kiely and Barnett, 2008; ONS, 2015).

Children continue to also be manipulated by men through contact, especially to get information about women's movements and relationships, to undermine mothers to children, and to coach children to make negative comments and repeat abusive messages (Holt et al., 2008; Coy et al., 2012; Thiara, 2010). Despite measures to give voice to children in proceedings, efforts to do so are limited and the value placed on contact can serve to marginalize the experiences and views of children who express opposition to contact (Hunt and Macleod, 2008; 236).

This supports Sturge and Glaser's position (2000) and their challenge to the automatic assumption that contact with a violent parent is in the interests of children, instead suggesting that it should work in the opposite direction and *'the case of the non-residential parent one of proving why he can*

*offer something of such benefit not only to the child but to the child's situation'* (2000: 11). Children's recovery is widely linked to that of their mothers, with safety being the key determinant of children's recovery, along with being able to speak to someone in safety (Mullender et al., 2002). Keeping children's welfare and safety linked to, though not subsumed by, that of their mothers (Edlesen et al., 2003; Harrison, 2008), especially in the face of limited therapeutic or support services for children, is clearly of importance to those making decisions about contact.

## 6. The Family Courts and Cafcass

Until 2014 all arrangements for the care of children after parental separation, where parents could not agree and applied for the direction of the Family Court, were made under Section 8 of the *Children Act 1989* (referred to as private law). Available orders included: Residence; Contact; Prohibited Steps; Specific Issues; and Parental Responsibility. Two recent legal changes introduced by the *Children and Families Act 2014* are relevant here, both in their letter and in the intentions that lie behind them. The first is the insertion of the Child Arrangement Order, which in effect combines Contact and Residence Orders. The second is that under Section 10 of the Act, the system now presumes that mediation, through a MIAM will take place before any litigation occurs. Although there can be exceptions when there has been domestic violence, the reinforced presumption in favour of contact, as well as of shared parenting, provides little evidence that the limitations and weaknesses identified throughout this report have been or will be addressed.

Although changes in recent years have emphasized the importance of courts considering domestic violence at the earliest opportunity in contact disputes, the extent to which they ensure the safety of women and children in contact proceedings has continued to be questioned (MacDonald, 2014). A repeated finding from the research is that women, whose health, wellbeing and self-confidence are often already undermined by domestic violence, find private law proceedings anxiety provoking, confusing, lengthy and disruptive (Kaye et al., 2008). This is most profound for BME women and in particular where English is not the first language (Thiara and Gill, 2012). Even where women want to make some arrangements for contact (Radford and Hester, 2006) they find themselves constantly dealing with the lack of attention to safety for them and their children throughout the whole process.

It is widely accepted by professionals that men's initiation of legal proceedings (including repeat litigation) is often motivated by a desire to perpetuate abuse or to 'pay women back', rather than being related to the interests of children and young people. The average length of proceedings is two years, but many women and children find themselves embroiled in proceedings that are much more protracted because abusive men use these as a way of continuing to exert power and control over women (Aris and Harrison, 2007; Harrison, 2008; Coy et al., 2012; Thiara and Gill, 2012).

*Louise, for example, has been the subject of post-separation intimidation and harassment for eight years, since her children were two and three. Contact proceedings had been contested and protracted, but eventually Louise acceded to a contact order with a condition of attendance at a supervised service. She did so because she thought some form of contact was inevitable and that going to a centre would at least reduce a level of harassment that was distressing for her children. (Harrison, 2008: 394)*

The difficulties that women have in authenticating domestic violence to the standard required by the courts are well documented – and the issue of evidence emerges repeatedly in research about child contact (Humphreys and Holder, 2002; Aris et al, 2002; Harrison, 2008; Kaye et al., 2008; Thiara and Gill, 2012). The reluctance of professionals to validate women’s accounts is experienced by them as disbelief and denial of the abuse they have endured (Bagshaw et al., 2011). Minimising the impact of their violence and creating a situation where a woman is disbelieved are known strategies of perpetrators (Aris and Harrison, 2007; Harrison, 2008; Humphreys and Holder, 2002; Thiara and Gill 2012; Coy et al., 2012):

*They wasn’t listening. This guy’s hit me. They didn’t seem to listen to me, until I went to finding of facts and then they listened to me, which is even worse. It’s like you have to prove yourself not to be a liar before anyone listens to you. (Harrison, 2008: 394)*

If women’s accounts are disqualified then the relevance of the impact of abuse on children will not be taken into account in arrangements for contact. Related to this, it has been found that most professionals involved in the court process, including judges, focus only on physical violence, despite women’s experiences being characterised by coercive control over many aspects of their lives (Coy et al., 2012; Thiara and Gill, 2012). Even where there is physical violence, the research suggests that risk and dangerousness are not adequately assessed leading to domestic violence being marginalised or ignored at every stage in the decision making process (Aris and Harrison, 2007; Kaye et al., 2008).

## Cafcass

Within the family court process, Child and Family Court Advisory and Support (Cafcass) professionals play a defined, but pivotal, role in the extent to which domestic violence is taken into account when there is an assessment of children’s interests (Thiara and Gill, 2012). The service was established to ensure that the interests of children involved in the family proceedings are paramount (*Children Act 1989*, welfare checklist), and since the implementation of the *Adoption and Children Act 2002*, this also includes taking into account the impact on children of ‘seeing and hearing the ill-treatment’ of another (Harne, 2010). Cafcass practitioners are independent of other professionals and responsible for carrying out background safeguarding checks before a first court hearing, as well as risk and other assessments throughout the proceedings. Attempts were made to reinforce this role through the introduction of screening and assessment tools intended to improve the identification of domestic violence and inform professional judgement. This included, for example, the introduction by Cafcass of a Domestic Violence Toolkit in 2005. This was a comprehensive document which combined knowledge from research, practice based examples and professional standards to support practitioners in safeguarding children’s wellbeing when they had experienced domestic violence.

There was some evidence that Cafcass practices improved, although remaining concerns about the consistent implementation of screening and risk assessment where domestic violence is an issue (Thiara and Gill, 2012; Harne, 2009). These concerns have been more acute since Cafcass stopped using the Toolkit, and they have led to calls for its resumption; questions have been raised about the extent to which children's interests are supported and positive outcomes for them promoted:

*There is inconsistent and patchy implementation of even the limited measures that are in place to address women and children's safety. (Coy et al., 2012)*

Cafcass recommendations rest on the personal knowledge and competency of individual officers, resulting in inconsistent outcomes for children. Harne (2009) found that officers who had undertaken risk assessment training had good understanding of domestic violence but 'there was a need for increased understandings of more dynamic risks, particularly in relation to post separation violence and verbal threats and in the risks from parenting by a violent partner' (p.5).

A considerable number of private law service users are reported to be from minority ethnic backgrounds, a proportion of around 13.5%. Research into Cafcass practice with BME families found that almost three-quarters of practitioners stereotyped these families, with almost two-thirds having mainly negative views of South Asian families (Prevatt Goldstein, 2009). This was supported by Thiara and Gill (2012) who found that the complexity involved often led practitioners to avoid issues, creating greater space for minimization of violence and a greater acceptance of individual statements and accounts.

Women have varied experiences of Cafcass. Some describe positive and supportive involvement, however, negative experiences are more frequently cited, with women reporting a lack of understanding of the dynamics and complexity of domestic violence (Thiara and Gill, 2012; Coy et al., 2012). In addition, women have often felt that Cafcass assessments have been based on very limited knowledge and understanding of their children (Harrison, 2008). Women have frequently described how the 'system' takes men's side whilst paying inadequate attention to their concerns (Thiara and Gill, 2012). In particular, studies have found that women repeatedly mentioned not being believed about their experiences of abuse and coercive control, and feeling undermined as mothers, with their parenting coming under constant scrutiny by professionals/agencies. Other research has also argued that professional responses to women are characterised by a disconnection in the major professional arenas so that a dominant aspect of the response to women is to place the responsibility for protecting children from violent men squarely at the door of women (Radford and Hester, 2006; Thiara and Gill, 2012; Coy et al., 2012).

### Finding of fact hearings

Findings of fact hearings have a potentially important role to play in privileging safety in the court process by ensuring that domestic violence is dealt with early in the process (Coy et al., 2012). This allows for the facts of domestic violence to be determined before child contact and other aspects of children's care are considered (see also Practice Direction 12J – Child Arrangements

and Contact Orders: Domestic Violence and Harm). However, evidence suggests that even when there is a finding that violence has occurred, this is no guarantee that this will influence the outcome of contact proceedings. Hunter and Barnett's (2013) report to the Family Justice Council suggested that varied application of the Practice Direction by practitioners may have contributed to the limited effectiveness of hearings. They argue that fact finding hearings are likely to be initiated only in the event of recent severe physical violence; previously Hunt and McLeod (2008) found that they occurred in only a small number of cases where allegations of domestic violence had been made.

An alarming aspect of the examination of child contact proceedings is the ease with which domestic violence is laundered from consideration through its minimisation and denial, and the routine separation that is made between men's violence and men's parenting (Kaye et al., 2008). However, there is evidence that enhanced safety provision, support from dedicated domestic violence services, and more thorough and timely risk assessment led by domestic violence services can improve the implementation of Practice Direction 12J (see [www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12j](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j)).

## 7. Mediation and other forms of out of court dispute resolution

Over the last ten years, moral panic over divorce rates and the assumed implications of the loss of fathers from children's lives (Thiara and Humphreys, 2015) have elevated the significance of mediation (referred to as Mediation Information and Assessment meetings [MIAMS]), and other forms of dispute resolution, as both a means of diverting matters from a costly court process and providing an opportunity to arrive at mutually agreed and less adversarial arrangements for children's care. Now inscribed in law with Section 10 of the *Children and Families Act 2014*, mediation can be out of court (prior to any proceedings) or in court (once proceedings have been initiated). The potential dangers of mediation for women and children affected by domestic violence have been well articulated – an intervention that is appropriate where there is no history of domestic violence can be dangerous where there has been domestic violence (HMICA, 2005). Despite this recognition, Coy et al. (2012) report in their study that in between 25% and 50% of cases where arrangements for children needed to be sorted out in the context of domestic violence, mediation was used. There is also evidence from other jurisdictions that where mediation/dispute resolution appears to have produced an agreement by consent this is far from the case:

*By consenting that means you're happy – wrong. By consenting you're just buying peace. It's got nothing to do with whether you were happy with the arrangements. (Mother, Kaye et al., 2008: 11)*

Without rigorous domestic violence screening in place before mediation is organised, it will be very difficult to distinguish on referral which situations are inappropriate for mediation, thus distorting thresholds. Trinder et al.'s (2006) study of 250 parents' perspectives about mediation in court found that 43% of the 125 mothers interviewed were anxious about further violence and

physical abuse of children as a consequence of this intervention. Hunter et al.'s (2014) more recent study found that women experienced mediation as a further trauma and that they felt coerced to agree to arrangements that they did not believe were safe or beneficial – mediation is not benign. Such coerced arrangements, which do not take account of domestic violence, are more likely to falter, and both women and children may be left managing violent men without the benefit of safe contact provision or supportive practitioners.

The motivations of fathers in relation to mediation have also been examined. A study of private law dispute resolution (Barlow, 2014) found that mothers were likely to be most concerned about their children's welfare, whereas fathers were more preoccupied with their own rights and achieving equal time with their children. Other studies have indicated that women feel further abused by the process of mediation and dispute resolution (Kaye et al., 2008).

An anomalous aspect of private law is that legal aid is available for mediation, although not now for family court proceedings (see further below). This may further distort the process of arranging contact that is safe and beneficial. Women's anxieties about the impact of costly proceedings may be a significant factor in pushing women to agree to mediation, even though they do not believe that it will be wholly safe for their children or for them.

A further concern has been registered about whether all mediators have the understanding or practice skills to evaluate the significance of domestic violence for women and children and this resulting in inconsistent practice. Trinder et al.'s (2013) study, for example, about the enforcement of contact orders found that in a number of high risk cases where there was a referral into the mediation process, there was no or ineffective screening by mediators. The powerlessness of women in discussing their children's welfare when inappropriately referred to mediation, and the potential for harm, cannot be over emphasised:

*So they brought us together in a room, me and his father, and it was explosive. He behaved the way that he's always been behaving with me. I was a quiet mouse and he just carried on and on and on and didn't give me a word in edgeways, started belittling me and it just didn't work. We didn't come to any kind of conclusions whatsoever. The next time we met they had to have two mediators in the room because this was such a challenging case I'm told. That didn't work either because again he lost it. To me at that point in time it was almost as if people were allowing him to behave the way that he was behaving by doing nothing about it. Therefore they were telling him it was OK. Or they saw what he was like and they couldn't address it. (Thiara and Gill, 2012: 63)*

A recent report prepared by the Voice of the Child Dispute Resolution Advisory Group (2015) contains a series of recommendations for increasing the inclusion of children in decisions that affect them by extending the provision to them of family mediation. It is clear that questions have been raised about the extent to which current private law takes into account the voices of children (Caffrey, 2015). However, given existing concerns about mediation it seems reasonable

to approach recent recommendations about extending mediation to children and young people with extreme caution, particularly since there is little/no reference to domestic violence or other child safeguarding considerations in the report.

## 8. The problematic role of supervised and supported child contact centres

*I don't feel safe. I don't feel that I can say what I want to say. I never feel I can say what I want to say because I am still frightened of him...And he's always got some kind of story that he's made up that makes it sound very all very beautiful and I am just this paranoid, overreacting neurotic woman. (Harrison, 2008: 396)*

In response to anxieties about separation and the loss of fathers from children lives, there was rapid growth in child contact centres from the mid-1980s (NACCC 1994, Furniss 2000; Caffrey 2013 and 2015). The vast majority of these (well over 75%) are supported centres, providing a neutral meeting place for non-resident parents and children. They are inappropriate where there has been domestic violence, because they offer low levels of vigilance and few safety features. In these situations, the higher levels of vigilance in supervised centres are needed, or no or indirect contact may be more appropriate. Supervised provision, however, is limited and unevenly distributed across the country (Aris et al., 2002; Thiara and Gill, 2012; Caffrey, 2015).

Caffrey (2013 and 2015) found that 89% of supported centres in the UK and Channel Isles were in the voluntary sector, providing a short term service based on assumptions about the constructive role that men can play in children's lives and the perceived need to encourage contact. These ideas are very different from those underpinning domestic violence services, which emphasise the need to prioritise the safety of children and women. In the contentious area of child contact when there has been domestic violence, contact centres occupy an ambiguous position (Aris et al., 2002; Caffrey, 2015). As the judicial process of determining contact has appropriated supported centres, their original aims have been overridden: research has indicated that supported centres routinely accept referrals where there is a history of male violence (Furniss 1998 and 2000; Aris et al., 2002; Aris and Harrison, 2007; Harrison, 2008; Thiara and Gill, 2012; Caffrey, 2015) and a large proportion of non-resident fathers using child contact centres are men with a history of domestic violence (Aris et al., 2002).

Contact centres, supervised and supported, are mainly used by resident mothers who have experienced domestic violence (reported to be 86% in the research by Aris et al., 2002), and who continued to experience post-separation violence (reported in the same study to be experienced by over 60% of women). High proportions of women from BME backgrounds were found to be using contact centres, reported to be 60% in some (Aris et al., 2002; Thiara and Gill, 2012). However, the majority of centres display inconsistency in practice, especially since supported centres, considered inappropriate in domestic violence situations, form the bulk of provision and are staffed by volunteers. The most commonly used safety strategy by supervised



and supported contact centres is staggered arrival and departure times (Harrison, 2008; Humphreys and Harrison, 2003). Research generally highlights the chronic shortage of contact centres: 'good contact centres with good facilities and good supervision are scarce and by and large not available for long term arrangements; it is expensive' (Sturge and Glaser, 2000: 14).

Most women want their children to have contact with their fathers, but want this contact to be positively experienced by their children, without any threat to their own and children's emotional and physical safety. They have consistently asked for contact between children and men who are abusive to take place in supervised settings, yet the provision of supervised contact centres remains inadequate resulting in unsafe practices (Caffrey, 2015). This undermines women and children's ability to leave violence behind and move forward in building positive and beneficial relationships.

Research has demonstrated how abusive men are adept at using every avenue to perpetrate abuse after separation. Thus contact centres, particularly supported centres where levels of vigilance are low, are a key site for continuing violence. A number of strategies are used to perpetrate violence in settings where mostly voluntary staff view their role as predominantly non-interventive (Caffrey, 2015; Thiara and Gill, 2012). These include putting children on phones to other family members, cross-examining children, and saying negative things to children about their mothers. Such tactics used by men, including the (ab)use of children to 'get back' at women are reported not to be taken seriously by Cafcass and other professionals, leaving women to deal unsupported with such destructive undermining and manipulation of children:

*When nobody was around he used to make remarks, swear at me in Asian, which [son] was picking a lot of things up and he used to come home and he'll say to my mum 'what does this mean?' And my mum...used to look at me and I go 'mum he was like using those words there'. (Thiara and Gill, 2012: 129)*

*A lot of centres are dealing with families where the father has applied for contact more because he wants to stay in control of the mother than he wants to see the kids... Again I'm not always sure that they tune into that fully...Because the woman will often come because the contact centre is the lesser of two evils and if they don't come there they're going to have him round on the doorstep or worse. (Thiara and Gill, 2012: 131)*

Many of these acute concerns about the inappropriate referral of domestic violence cases are confirmed by Caffrey's recent research (Caffrey, 2015). In many centres, there are inadequate safety features or mechanisms in place to secure safety. A lack of close monitoring easily allows emotional abuse. Volunteers not aware of histories of domestic violence, or where there is a high level of woman-blaming, often miss the critical sites where abuse takes place. Moreover, the opportunities for over-busy centres that lack space to ensure safety is compromised.

The discussion above highlights the ways in which, in the voluntary and legal processes in determining arrangements for child contact, women's accounts of domestic violence and abuse are systematically marginalised and overlooked, with entrenched difficulties in court processes, professional practices and judicial decision making (Hunt and Macleod, 2008; Trinder et al., 2010; Coy et al., 2012).

Contact proceedings protract the continuation of the coercive control of violent men (Kaye et al., 2008; Wilcox, 2012), and the outcome almost invariably leads to contact being awarded to violent men (DCA, 2006, Ministry of Justice, 2011). Once a decision is made that contact should occur, conditions can be attached to what was previously a contact order and is now a Child Arrangements Order. In many cases, this does not happen, and no recognition is given to the safety and wellbeing of women and children. In others, consideration will be given to attaching conditions, which have been found to be limited, underfunded, or inappropriate and unsafe (Aris et al, 2002; Coy et al, 2012; Thiara and Gill 2012). Crucially, they are often unsafe for women and their children, and despite evidence about high levels of domestic violence, only 4% of contact is supervised (Hunt and McLeod, 2008). In this respect, the role of supported and supervised child contact centres continues to generate profound concerns about safety and wellbeing, evidenced through the accounts of women, children and dedicated domestic violence services (Coy et al., 2012).

## 9. The impact of changes to legal aid

Many women affected by domestic violence have experienced economic abuse and have limited financial power within the family. In addition, parental separation may have plunged women and children into (greater) poverty. Legal aid is then a vital resource in terms of securing safety and justice for women and their children. Women in Coy et al.'s study (2012) who were not eligible for legal aid reported accruing significant debt to fund their cases, having an impact on the long-term financial stability they could provide for their children. Although paid employment offered a route to economic independence, some women took the logical financial decision to reduce their hours at work, or to give up work entirely in order to qualify for legal aid (Coy et al., 2012). This contributes to child poverty. Furthermore, the lack of affordable legal provision meant that many women had to navigate the complex family court system without representation or guidance (see below, 'Safety in Court').

Recent changes to central Government funding for legal aid which have restricted the availability of legal aid for family court cases have seriously exacerbated this situation. In 2013, through the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, the provision of legal aid was withdrawn from a number of areas of litigation, including private family law proceedings. Whilst there is an exemption where there is evidence of domestic violence in the last two years, this may be difficult or dangerous for women to substantiate (Aris and Harrison, 2007). Hence the Family Court Unions Parliamentary Group estimated that up to 68 000 children in the UK may be negatively affected by the change in legal aid (FCUPG, 2014). One of the results is that there has been a marked increase in private law family court proceedings going to court without either parent being legally represented, i.e. where mothers and fathers are litigants in person (LIP) (Trinder et al., 2014). In the first quarter of 2011, in over 40% of cases both parents had legal

representation, but this had fallen to 26% by the first quarter of 2014. That in over 70% of private law cases either or both parents were legally unrepresented in the period October – December 2013 was confirmed by an Office of the Children’s Commissioner Report (2014). Given that there is a history of domestic violence in a significant proportion of private law proceedings (Aris and Harrison, 2007), this will frequently bring women who are victims of serious physical, sexual or emotional violence into face to face contact with a perpetrator. Not only this, but women will also find themselves being examined and cross-examined by violent men (Office of the Children’s Commissioner, 2014). It has been found that litigants in person tend to be over supported by magistrates/judges to try to avoid appeals, this can result in the perpetrator being supported and the survivor feeling further abused.

The problems for women associated with the establishment of evidence of domestic violence considered compelling in a court setting are acute and this applies also to the exclusion criteria. As an experienced family lawyer commented:

*Even in cases where there is domestic violence, potential new clients struggle to meet the Domestic Violence Criteria to secure eligibility for legal aid. Many genuine victims of domestic abuse are unable to meet the restrictive criteria set by the Legal Aid Agency. (FCUPG, 2014: 9)*

The withdrawal of legal aid is likely to compromise the ability to bring relevant matters to the attention of the court and therefore the issue of violence becomes further marginalised (FCUPG, 2014). It discounts the inequalities between the parties and the impact of a history of domestic violence on a woman’s mental health and/or self-confidence. Equally importantly, this is likely to impact on how children’s needs and interests are determined.

## 10. Lack of safety in court

Criminal courts have special measures available for vulnerable and intimidated witnesses, including screens; provision for giving evidence through video link; separate waiting rooms; and staggered times or separate entrances for arrival and departure. There is no equivalent legislative protection for those involved in civil proceedings. Unlike in the criminal courts, family courts pay little or no attention to providing separate facilities or entrances. This brings women into direct contact with men who have committed serious offences against them, including rape and attempted murder. This also enables abusive men to use hearings in the family court to continue abuse and harassment, to leave women and children in fear and to prolong the impact of abuse:

*He put me in hospital. I am fearful of him. (Harrison, 2008: 387)*

It is a daunting prospect for survivors to face their abusers in court. Coy et al. (2012) found that 74% of women (23 out of 32) reported fearing for their safety in court. Information on existing facilities is not always available and measures may be provided at the discretion of the judge and

judicial staff - meaning that provision is patchy and inconsistent, having a profound effect on the anxieties and levels of intimidation felt by women (Coy et al., 2012). In addition, the inadequate provision of legal representation meant that at some stage some women either had to represent themselves and cross-examine their abuser, or had been cross-examined by the perpetrator. This was a distressing and damaging experience for women, who felt unable to disclose full details about the abuse. Again, women felt pressured or intimidated into agreeing with arrangements that were not in the best interests of themselves or their children (Coy et al., 2012).

Although younger children are unlikely to attend the family court hearing, older children may be asked to attend. In these cases, children and young people may also be brought into contact with an abusive father.

## 11. Women with no recourse to public funding and their children

For women without access to public funding, the options are severely limited in terms of securing safety and recovery for their children and themselves, including to safe accommodation. This is despite some positive changes, such as the improved situations of women on spousal visas:

*The complex combination of political, economic and social factors that immigrant women experience makes them particularly vulnerable to domestic violence. (Voolma, 2014, see [kingsview.co.uk/magazine/blog/2014/10/09/between-rhetoric-and-practice-the-uks-response-to-domestic-violence-against-women-with-insecure-immigration-status](http://kingsview.co.uk/magazine/blog/2014/10/09/between-rhetoric-and-practice-the-uks-response-to-domestic-violence-against-women-with-insecure-immigration-status))*

Whilst there is the possibility of applying for indefinite leave to remain under the Domestic Violence Rule, this can be a lengthy process during which the risks children and women face may increase without there being entitlement to housing or welfare benefits. As Hubbard et al.'s study (undated) shows, some women face a stark choice between staying where they are and enduring abuse, or becoming homeless. Although some local authorities provide some support to women trying to escape domestic violence, 'the legal position regarding the assessment and support of victims of domestic violence is particularly unclear' (Fellas and Wilkins, 2008: 3). Many women with insecure immigration status, for example, find they cannot access refuge accommodation. A study of London refuges in 2007 found that out of 223 women who had no recourse to public funds, only 19 women (who had between them 16 children) were accepted for support (Fellas and Wilkins, 2008). Home Office figures show that of 1000 applications made per year under the domestic violence rule, 35-50% were successful (cited in Fellas, 2008).

For women asylum seekers, reporting domestic violence should not in any way affect their claim for asylum, and they are eligible for accommodation and subsistence from the UK Borders Agency. However, their fears may be intense, and these may be reinforced by the threats of male perpetrators, who may hold their passports and other documentation.

Thus, discriminatory immigration policies, especially ‘no recourse to public funds’, continues to have negative consequences for many women and children in domestic violence situations (Anitha, 2008 and 2010; Mouj, 2008; Sharma and Gill, 2010). In particular, where there is an absence of settled immigration status for women, child contact and the threat of abduction can be used by the abuser to create additional difficulties.

Children and women from BME communities also face a range of other issues related to language barriers, lack of information, difficulty in accessing legal services and advocacy, and racist attitudes. Despite awareness that this group endure high levels of domestic violence, children and women are much less likely to be able to access services, including services for children in need.

## 12. What works: what does safe contact look like?

*Women affected by domestic violence need ‘system responses that offer safety, protection and promotion of healing for children’ (Wilcox, undated: 6).*

*The picture that emerges here from both women’s experiences of family courts and legal professionals’ practice-based evidence is of inconsistency and patchy implementation of even the limited measures that are in place to address women and children’s safety. Awareness of domestic violence and willingness to accept its relevance to decisions about children’s welfare varied by individual judge, despite practice guidance, and having multiple judges involved exacerbated the likelihood that outcomes were affected by personal vagaries (Coy et al., 2012, p.54).*

There is considerable research evidence that can be drawn on, which includes the views of women, children and professionals, to identify the key changes required to achieve safe and beneficial child contact in the context of domestic violence. Rather than pointing to a single change this highlights that systemic change is necessary at every stage of the process of determining child contact and other arrangements for children, with implications for law, policy, practice: in consideration of what works in providing safe contact, the significance of the knowledge and understanding of professionals cannot be over emphasized.

# Recommendations

## 1. Ensure that children's, and women's, safety is always prioritised when arrangements for child contact or residence are made consistent with Section 31 of the Istanbul Convention

The value of shared parenting and the pro-contact position must be urgently reviewed in relation to cases where domestic violence is an issue. As many domestic violence services have maintained, there is a strong case for a presumption that operates in the opposite direction, i.e. a presumption of no contact, where there has been domestic violence, unless there is convincing evidence which suggests otherwise and conditions to secure safety can be put into place. The research evidence is unequivocal about the significance of harm for children when there is post-separation violence including that perpetrated through contact.

The emphasis on shared parenting in the Children and Families Act 2014 (based on a presumption about the involvement of both parents) further raises the risk for children whose fathers have been abusive and undermines the welfare principle that children's interests must be paramount.

The complexities of achieving a shift from a 'contact at all costs' to a 'safety first' approach when determining child contact arrangements cannot be underestimated. This will involve both systemic and attitudinal change that the government has a critical role in coordinating and promoting.

### **Responsibility – Ministry of Justice**

## 2. Take into account the views of children and young people affected by domestic violence

The research evidence is clear that children's accounts, experiences, wishes and feelings are often marginalised in the process of determining contact arrangements and beyond, to their detriment. Greater opportunities should be created, and existing ones fully utilised, for children and young people to express their views about contact with fathers, which are then accepted by professionals, and inform the decision making process for child contact. In addition, where there is a history of domestic violence, including coercive control, there should be a specific and detailed assessment of the impact of this on children who are the subject of proceedings to be presented to the court. Cafcass is an obvious agency to review practices and the nature of involvement with children and young people. Consideration could also be given to establishing an independent advocacy service for children and young people involved in contact proceedings.

### **Responsibility – Cafcass, Family Justice Council, solicitors, Children's Social Care.**

## 3. Regular screening and assessment of risk from domestic violence

For Family Courts and other agencies involved, making informed decisions about the suitability of contact with an abusive father requires that all those who are part of the process of making arrangements are able to implement appropriate and early screening and risk assessment. Screening for domestic violence prior to any mediation meeting is crucial so that women can

freely raise concerns about their and children's safety without causing further risk and to prevent them from entering agreements which compromise their emotional and physical safety. The importance of women being believed about domestic violence cannot be over emphasised and relates directly to improving children's outcomes in terms of health and wellbeing. Professionals too often: do not listen to women's accounts; dismiss domestic violence as one person's word against another's; view it as 'something' that happens between a couple; or relegate it to the past. Screening should not be a one-off and opportunities for the identification and disclosure of domestic violence should exist throughout the whole process. This would involve the following:

- More rigorous screening for domestic violence and its effects on both children and women at key points in the process;
- Particularly in relation to MIAMs, there should be more rigorous screening in place and approaches that aim to elicit and take seriously the views of women about domestic violence and safety. This should reduce the number of women being inappropriately referred;
- Women's accounts should be admitted within the family court process and the use of finding of fact hearings should be initiated more frequently;
- When work is undertaken with children and young people, attention should routinely and explicitly be given to the impact that the circumstances described by women have had on children;
- Revision of assessment frameworks used by professionals in the family court arena need to give greater priority to ascertaining the effects on children and to evaluate the risks to them of various contact arrangements;
- Specialist domestic violence organisations should be a lead agency in undertaking risk assessment;
- Cafcass should review its decision to discard the Domestic Violence Toolkit and develop an evidence based assessment framework that incorporates adequate attention to risk and safety created by domestic violence throughout the court process;
- Implementation of Practice Direction 12J should be followed in cases where domestic violence is suspected or raised, including an initial screening assessment by Cafcass, a finding of fact hearing, and a section 7 report. Where the Direction has not been followed judges should be held responsible.

**Responsible - Cafcass, judges, solicitors, barristers, Family Justice Council, Family Mediation Service.**

#### **4. Ensure all professionals involved have the required knowledge, understanding and attitudes**

All professionals, including Cafcass practitioners, solicitors, barristers, judges, mediators and child contact centre staff should receive compulsory and continuous specialist domestic violence training (CPD requirement), including about coercive control, in order to provide consistent responses to children and women that promote their safety and wellbeing. The role of domestic violence services is central to this.

**Responsibility - Cafcass, judges, solicitors, Family Justice Council, Law Society, Bar Council, Children's Social Care, Domestic Violence organisations, NACCC.**

## 5. Promote safe and beneficial contact

In order to support contact that is safe for children and their mothers a substantial investment in local services is required to extend the range and amount that is currently available and to provide additional support and training for practitioners in various contact services/settings. It needs also to be recognised that in some situations no contact is the only safe outcome of proceedings for children and women.

- Greater use of no contact, supervised contact or other clearly defined conditions as part of Child Arrangement Orders;
- Increase provisions for safe pick up, handover and use of third parties to minimise the risk of further violence and harassment when Child Arrangements Order are made;
- Greater availability of properly staffed supervised contact centres so that contact can take place with appropriate levels of supervision and vigilance, and which will preclude the use of unsupervised settings;
- Staff in contact centres to receive training on domestic violence and post-separation violence and the multitude of ways in which men use this time to be abusive;
- Use of the opportunities offered in the Children and Families Act 2014 to include conditions and monitoring to evaluate what the outcomes of Child Arrangement Orders are for children and for women;
- Ensure that services are appropriate and sensitive to the needs of BME and other groups of women.

**Responsible - Cafcass, judges, solicitors, Family Justice Council, NACCC, Local Safeguarding Children's Board.**

## 6. Hold men accountable for their violence

The relationship between domestic violence, children's development and men's parenting is well-established. In order to hold men, rather than women, responsible for their violence and its effects on children and women a number of responses are prerequisites for safe and beneficial contact.

- A risk assessment of men who have been abusive, including of their motivation in seeking contact and of their parenting, needs to be done at an early stage and over more than one session by specialist domestic violence organisations/experts;
- Assessment frameworks used by professionals in the family court arena need to be developed further to focus on assessing men's parenting;
- In order for men to address the impact of their violence on children, men should be required to attend a perpetrator programme which examines their fathering **before** final arrangements for contact are made;
- There should be sanctions imposed on men who do not adhere to arrangements for court ordered contact.

**Responsible - Cafcass, judges, solicitors, domestic violence organisations.**



## 7. Provide better information and communication about legal proceedings

As advocated by the Family Justice Council, in order to overcome their confusion and be better prepared, women need to be clear about the legal process and they require better and accessible information about legal proceedings. Women need comprehensive information that is easily accessible through a range of media, formats and languages about family law and the family justice system so they can better understand the process of child contact proceedings and the choices open to them.

**Responsible - Solicitors, barristers, Ministry of Justice/Home Office.**

## 8. Ensure support from specialist domestic violence services

The extent and impact of domestic violence on children and women, including after separation, underlines the importance of continuing support and advocacy for those involved in making contact arrangements or involved in contact proceedings. However, available support from specialist domestic violence services is limited due to cuts and the protracted nature of legal processes. This is also likely to impose costs on other services such as health and social care. To optimise the safety of children and women in cost effective ways and to enable children's interests to be paramount in the court process:

- Specialist domestic violence services should be funded to provide support for family justice processes as part of provision for children in need.

**Responsible for coordination – local Children's Social Care and LSCB.**

## 9. Provide judicial continuity and accountability for safety

Currently, different judges may be involved in hearing one case and there is no consistency of approach and attitudes. One judge should hear each case through legal proceedings to ensure that have a clear overview of the history of abuse and its effects on children and women, and their continuing safety when making decisions about contact. Each judge should be held responsible for the safety of women and children in each case they decide and if there is any further abuse by the perpetrator the judge should be informed.

**Responsible - Her Majesty's Court and Tribunal Service; Family Court.**

## 10. Effective response to the situations of BME women and children by all professionals and agencies

The responses to BME children and women are inconsistent and premised on stereotypes which often prioritise culture over gender. In order to address this, the following need to be in place:

- Professionals need to be better informed about the issues impacting on BME women and children;
- Training for the judiciary, practitioners, professionals and volunteers involved in contact processes on the specific dangers and issues for BME children and women is required;

- Interpreters should be routinely available during key stages of the legal process, including in contact centres.

**Responsible - Cafcass, solicitors, barristers, judges, NACCC.**

### 11. Review provision of legal aid and access to representation

Legal aid is crucial to women accessing justice and safety in the family courts. The withdrawal of legal aid maintains the power of violent men, compromises safety for children and women and pushes them into further poverty. The government needs to review the restriction of legal aid in family cases where domestic violence is an issue.

**Responsibility - Ministry of Justice; Family Court.**

### 12. Routinely provide protection measures in the family court

Given women's realistic fears for their safety when attending and leaving court hearings, and the use of the legal process by men to further intimidate women, the routine provision of protection measures in the family courts should be implemented. These should be similar to those in place in criminal proceedings to ensure that women do not come face to face with perpetrators.

**Responsibility – Ministry of Justice, Legal Aid Agency.**

### 13. Ensure a consistent approach to women and children in public and private law

On both national and local levels, action is required to promote a more consistent approach to safeguarding issues in private and public proceedings and to ensure that the welfare checklist is operating in an equitable way. This includes systematically noting information about any current or previous criminal law proceedings and taking this into account in civil proceedings.

**Responsibility – Ministry of Justice, LSCB, Judiciary, Cafcass, Children's Social Care, Magistrates Association, Magisterial Committee**

### 14. Maintain detailed baseline data and research base

In the light of concerns highlighted by existing research and the implementation of new legislation such as the *Children and Families Act 2014*, the implementation of which has raised further concerns, robust data should be collected that enables an evaluation of:

- The extent of domestic violence in private family law proceedings;
- Judges compliance, or otherwise, with Practice Direction 12J in relation to finding of fact hearings and the reasons for why these have not been initiated;
- A methodology to review judicial decisions and hold judges accountable for non-compliance;
- The flagging of domestic violence allegations in cases on the family court databases;
- Recording the detail of Child Arrangement Orders, including conditions.

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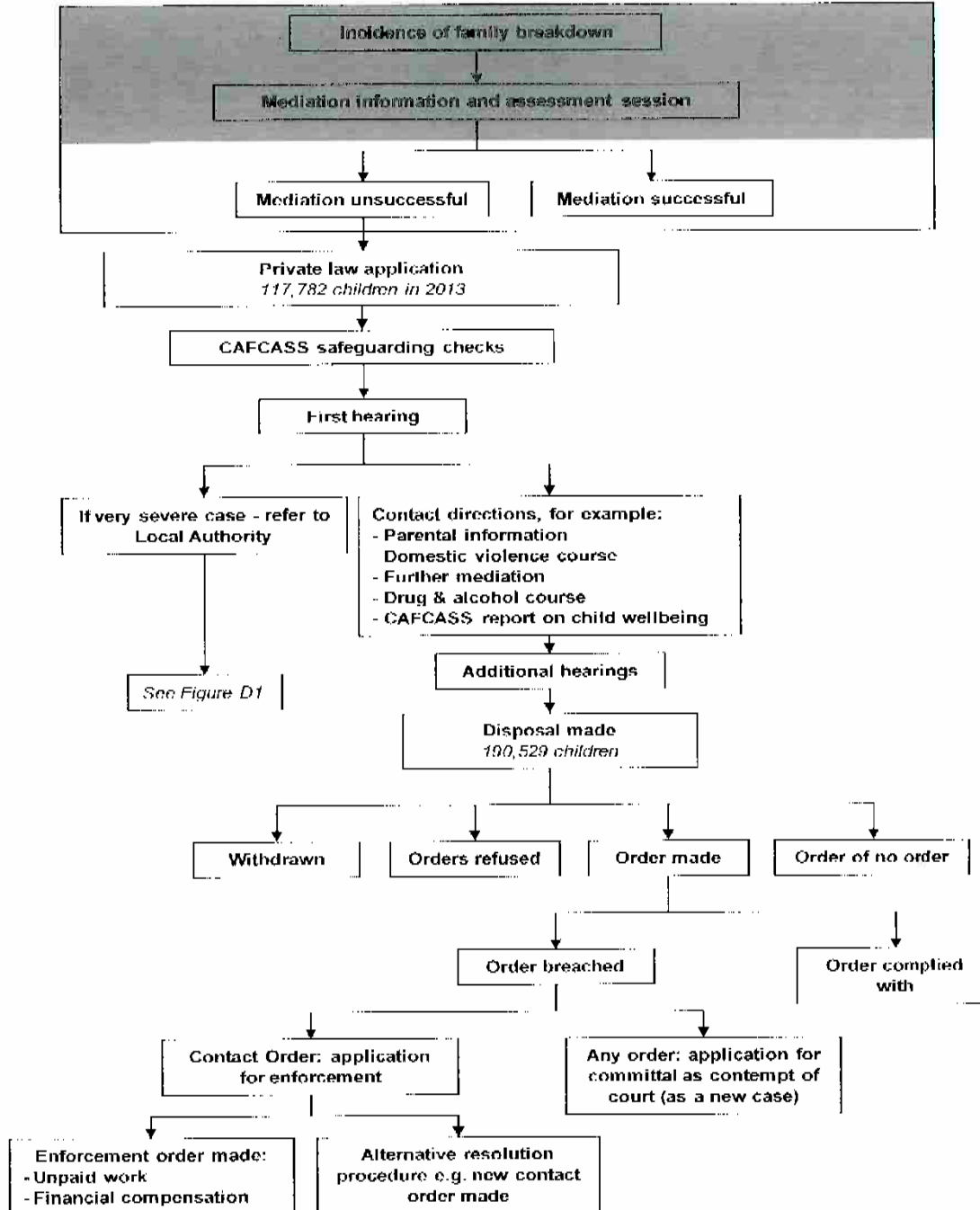
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# Appendix I: court processes

Extract from Ministry of Justice (2015) *Family Justice: Guide to the Family Law Courts*, London Ministry of Justice: 5



## Appendix 2: legal notes

**CAFCASS** do background safeguarding checks before a first hearing for contact in a family court. This will include contacting the local authority and police. The officer from Cafcass may also speak to the child to find out their wishes.

According to the Ministry of Justice Practice Directions for family proceedings in the family courts on child arrangements and contact orders: in every case where a finding of domestic violence or abuse is made, the court should consider the conduct of both parents towards each other and towards the child; in particular, the court should consider

- (a) The effect of the domestic violence or abuse on the child and on the arrangements for where the child is living;
- (b) The effect of the domestic violence or abuse on the child and its effect on the child's relationship with the parents;
- (c) Whether the applicant parent is motivated by a desire to promote the best interests of the child or is using the process to continue a process of violence, abuse, intimidation or harassment or controlling or coercive behaviour against the other parent;
- (d) The likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
- (e) The capacity of the parents to appreciate the effect of past violence or abuse and the potential for future violence or abuse.

Where the court has made findings of domestic violence or abuse but, having applied the welfare checklist, nonetheless considers that direct contact is safe and beneficial for the child, the court should consider what, if any, directions or conditions are required to enable the order to be carried into effect and in particular should consider –

- (a) Whether or not contact should be supervised, and if so, where and by whom;
- (b) whether to impose any conditions to be complied with by the party in whose favour the order for contact has been made and if so, the nature of those conditions, for example by way of seeking intervention (subject to any necessary consent);
- (c) Whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period; and
- (d) Whether it will be necessary, in the child's best interests, to review the operation of the order; if so the court should set a date for the review consistent with the timetable for the child, and shall give directions to ensure that at the review the court has full information about the operation of the order.

Where the court does not consider direct contact to be appropriate, it shall consider whether it is safe and beneficial for the child to make an order for indirect contact.

The court should consider whether there has been any domestic violence to the parent or child early on in a case. The court will need to decide whether the domestic violence affects the decision that the court has to make.

If the other parent denies the allegations of domestic violence the court may hold a finding of fact hearing when the judge will look at all the evidence and decide whether they think the evidence shows that the alleged abuse is more likely to have happened than not. The judge will ask both parents to give oral evidence in court, other witnesses can also be brought. After the finding of fact hearing if the judge decides that one parent has been violent towards the other they need to ensure the child is not at risk of harm. The court's order should also take into account whether the perpetrator should attend a domestic violence programme and how the child might have been affected by the abuse.



*Safe not sorry*  
*Supporting the campaign for safer child contact*  
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