Domestic violence and private family court proceedings:

Promotion child welfare or promoting contact?

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“Domestic Violence and Private Family Court Proceedings: promoting child welfare or promoting contact?”

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Abstract
Despite improved understanding regarding domestic violence, child welfare and child contact, and related policy developments, concerns persist regarding how the family courts deal with fathers’ violence in contested contact/residence cases. In the study reported here, analysis was undertaken of welfare reports prepared for the courts in such cases in order to investigate how and to what extent issues of domestic violence and children’s perspectives on these issues were taken into account when making recommendations to the courts. Analysis found that despite evidence of domestic violence and child welfare concerns, contact with fathers was viewed as desirable and inevitable in the vast majority of cases.

Keywords
Domestic violence; child contact; child welfare; Cafcass; family court proceedings.
Introduction

Awareness of domestic violence as a child welfare concern has grown significantly in recent years, resulting in changes to policy and practice in the UK and other countries. The risks for children - physically, emotionally, psychologically and developmentally - associated with exposure to domestic violence are well established, both in relation to the links between domestic violence and child abuse (for example, Bowker et al., 1988, Farmer and Owen, 1995; Hester and Pearson, 1998; Stark and Flitcraft, 1988) and the detrimental impacts of being witness to, or aware of, one parent’s violence against another (for example, Abrahams, 1994; Edleson, 1999; Harold and Howarth, 2004; Holden et. al., 1998; Jaffe et al., 1990; Wolfe et al. 2003). The potential risk of harm for children exposed to domestic violence has been recognised in statute in England and Wales by section 120 of the Adoption and Children Act 2002 which extends the definition of ‘significant harm’ (Children Act 1989 s.31) to include ‘impairment suffered from seeing or hearing the ill-treatment of another’. This came into force in January 2005. Since then children’s social care departments have received an increased number of police notifications of domestic violence incidents, although, according to Stanley et al. (2010) this has not necessarily produced consistently effective responses.

It is also increasingly recognised that where there has been domestic violence risks of harm to women and children do not necessarily diminish with the ending of the parental relationship. Domestic violence may start or escalate at the point of separation and/or post-separation (Abrahams, 1994; Hester and Radford, 1996; Humphreys and Thiara, 2003; Richards, 2003) and the post-separation period can be a time of acute danger for women and children, where risk of homicide increases (Wilson and Daly, 2002). Child contact with the domestic violence perpetrator has been repeatedly highlighted as the potential site of further abuse and violence to both women and children where risk of serious harm is heightened (Anderson, 1997; Hester and Radford, 1996; Radford et al., 1999; Walby and Allen, 2004). Furthermore, serious case reviews of child deaths in England and Wales have consistently highlighted domestic violence as an important feature in these cases (Brandon et al., 2009; Reder et al., 1993; Reder and Duncan, 1999; Rose and Barnes,
Similarly, Saunder’s (2004) review of 29 child homicides resulting from contact/residence arrangements in England and Wales between 1994 and 2004 found that there had been clear evidence of domestic violence in eleven of the thirteen families and that contact was court ordered in five cases.

In English and Welsh law disputes over children following parental separation are dealt with in private family law proceedings under Part II of the Children Act 1989. Parents who are in disagreement over post-separation arrangements concerning their children can apply to the court for an order under Section 8 of the Act, usually in relation to residence and/or contact. It should be noted that the majority of separating couples make private arrangements for their children without recourse to court involvement. Less than 10% of separating couples seek the assistance of the court in making arrangements for their children post-separation (Blackwell and Dawe, 2003; Lader, 2008). Ordinarily in private law, if a case cannot be resolved through dispute resolution services and the court requires more information regarding the welfare of a child, the Judge will request a welfare report under Section 7 of the Children Act 1989 (s7 report). An s7 report is normally undertaken by a Cafcass¹ children and family reporter (CFR). In general, the report should consider the disputed issues, the options available to the court and, where feasible, make a recommendation to the court concerning future action, including consideration of whether an order should be made. The CFR also has a statutory duty to have regard to the welfare checklist set out in s 1(3) of the Children Act 1989 in order that an outcome can be achieved which is in the child’s ‘best interests’. In preparing a welfare report the CFR is expected to meet with the parties and the children subject to the application. Additional information may be gathered from other relevant adults or children (for example family members) and other professionals (for example social workers, teachers or health professionals), as felt appropriate by the CFR or as directed by the court.

Concerns about family justice system responses to child contact in domestic violence cases have been persistently raised by specialist women’s support services. These concerns are well supported by a substantial body of empirical research (for example, Anderson, 1997; Aries et al., 2002; Aris and Harrison, 2007; Hester and

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¹Cafcass: Children and Family Court Advisory and Support Service.
Radford, 1996; Hester et al., 1997; Humphreys and Thiara, 2002; Hunt and Macleod, 2008; Thiara and Gill, 2012; Trinder et al., 2009). As a result of such concerns government consultation on the matter was issued (CASC, 1999). The resultant government report (CASC, 2000) coincided with an important Court of Appeal case Re LVMH² in which the Appeal Judgement ruled that where it is identified as an issue domestic violence must be taken seriously as a risk factor in disputed child contact cases. The judgement was informed by the CASC report and by expert advice provided by consultant child psychiatrists Sturge and Glaser (2000)³. As a result of the Court of Appeal Judgement, the expert’s report and the CASC report, guidelines were produced for the courts on contact in domestic violence cases (CASC, 2002).⁴

However, concerns about family court processes and outcomes in child contact cases where there has been domestic violence persist. The legal presumption of contact was set in Re O (Contact: Imposition of Conditions)[1995] where the Appeal Court ruled that contact is "almost always in the child's interest" and this presumption continues to dominate in all but the most exceptional cases. Official government statistics continually show that contact is denied in less than 1% of all contact application cases (DCA, 2004, 2006), with more recent statistics showing this figure to have dropped even lower – in 2010 only 300 contact orders were refused of 95,460 disposals (MoJ, 2011). There are various figures concerning the number of private family law cases involving domestic violence, but there is overwhelming evidence that the incidence of domestic violence in cases that go to court is high (ACOP, 1999; HMICA, 2005; NAPO, 2002). More generally, research has found that cases which come before the courts tend to involve multiple problems with high levels of parental conflict and child welfare concerns, including domestic violence (Buchanan et al., 2001; Hunt and Macleod, 2008; Smart, et al., 2005; Trinder et al., 2006). The reluctance to order no contact, when considered alongside the research evidence regarding the incidence of post-separation violence, the impact of domestic violence upon children and the high number of private family law cases involving domestic violence, indicates that further questions need to be asked about potential safeguarding failures with respect to children’s contact with violent fathers.
The purpose of this paper is to present and discuss some of the data from a doctoral study which examined the concerns regarding the legal presumption of contact in domestic violence cases. The data presented here is taken from a content analysis of Cafcass s7 reports which examined how and to what extent domestic violence and the representation of children’s perspectives in domestic violence cases are included in child welfare reports prepared for the courts by Cafcass CFRs in private family court cases involving domestic violence (in England), and how this impacts on recommendations made to the court.

**Method**

Documentary analysis of 70 Cafcass s7 reports involving domestic violence was undertaken to investigate Cafcass practices within their “own social setting” (Ritchie, 2003: 34), in order to examine actions and perspectives within the context of the agency and wider culture. Reports were sampled over a nine month time period in 2006-2007 from two Cafcass teams in England, using predetermined selection criteria. Reports were selected for analysis on the basis that:

- The case had been closed for at least 3 months, in order to avoid any ethical or practical difficulties associated with accessing the paperwork relating to an open case;
- The case involved domestic violence. A screening tool was developed and systematically used by the researcher to detect domestic violence in reports written in the chosen time period. This tool was based on an inclusive definition of domestic violence in order to recognise a range of controlling and abusive behaviours as a part of a domestically violent relationship;
- The case involved at least one child aged eight years or over, in order to ensure reports included children who were likely to have been interviewed by a CFR, so that the inclusion of children’s perspectives could be analysed. Analysis was undertaken regarding the views of all children subject to proceedings which were included in reports, regardless of age.
Documentary analysis consisted of content analysis of all the reports and critical discourse analysis of a sub-sample of reports. Content analysis provided a profile of cases and was used to identify how and to what extent issues of domestic violence and children’s views were presented in reports across the whole sample. Analysis also examined the types of recommendations made to the courts and how these were constructed in relation to information provided about domestic violence, children’s views and any risks identified to child safety and welfare in relation to contact with a violent father. Key findings from the content analysis of reports are presented here.

**Results**

*Profile of Cases*

The reports sample consisted of 70 reports written in relation to 70 families and 147 children. Fifty-two reports referred to applications made by fathers (74%), 16 referred to applications made by mothers (23%) and one referred to a step-father’s application. In the remaining report no details of the applicant were provided. The majority of applications were made by non-resident fathers in relation to contact, although a significant minority of father’s applications made were for residence. The trend for applications to be made mainly by non-resident fathers reflects other research findings (Hunt and Macleod, 2008; Smart et al., 2003; Trinder et al., 2005). Mother’s applications were mainly concerned with formalising residence and contact arrangements or varying existing contact orders. Six reports referred to applications made by non-resident fathers to enforce existing contact orders. Contact had been stopped in all of these six cases according to children’s wishes and/or because of children’s observable distress around contact. In most of these cases children’s opposition to contact was respected, although contact was still pursued as a long-term goal through the use of indirect contact to build towards direct contact in the future. In two cases contact was facilitated by Cafcass between fathers and children who had expressed a direct wish for no contact.
Domestic Violence: Who Was Violent to Whom?

Over 50% (n=36) of reports identified fathers alone as the main perpetrator of violence. It is argued below that this figure is likely to be under-representative due to a tendency to take a gender neutral approach to violence in family court cases (Bancroft and Silverman, 2002). In 33% of reports the violence was presented as a mutual problem of the parental relationship. Only two reports contained allegations that the mother involved in proceedings was the sole or main perpetrator of domestic violence. In one of these cases, the non-resident mother’s violence – which was described in the report as being directed towards the children rather than the father – was attributed directly to her mental health problems. In the other case – a father’s application for residence of two children already living with him and contact with a third child living with the mother – the respondent mother did not engage with the court proceedings and so did not answer the father’s allegations of domestic violence and harassment against her. In the remaining reports domestic violence was referred to in relation to new or ex-partners (all male) outside of the main parental relationship, or it was not possible to ascertain perpetrator/victim status due to insufficient detail. Only one report stated that a Finding of Fact had taken place, despite Re LVMH establishing that domestic violence allegations should be investigated by way of a Finding of Fact hearing. In this case the Judge had made 11 findings of domestic violence.

Descriptions of Domestic Violence

Detail describing violence varied amongst reports. Furthermore, analysis identified that not all the violence being described or referred to in reports was the same, or that violence was presented in different ways. However, there did appear to be commonalities across these presentations of domestic violence, which indicated groupings or ‘categorisations’ of how domestic violence was being presented across the sample. How violence is described can have important consequences for how it is understood and assessed (Bancroft and Silverman, 2002; Dobash and Dobash, 2000; Mirrlees-Black, 1999; Walby and Allen, 2004). In order to explore the
assessment and impact of domestic violence within reports it was first necessary to identify categorisations of violence; that is, to classify groupings of how violence was presented in each report, in order to make sense of what was being discussed. Categorisations were demarcated on the basis of how information was presented in reports in relation to who were identified as perpetrators of violence, who were identified as victims of violence, the nature and impacts of violence and what were the perceived relevance and consequences. Taking these factors into consideration, several categorisations of ‘domestic violence’ were identified.\(^6\)

The majority of reports were identified as presenting domestic violence as a “mutual” issue \((n=23)\), closely followed by violence presented as “historic or uncorroborated” \((n=19)\). Without further information, or verification from other sources, it was not possible to confirm whether or not violence was indeed mutual, no longer an issue or falsely alleged. A total of 42 reports \((60\%)\) presented domestic violence as “mutual” or “historic/uncorroborated”.

Nearly 33\% of reports were identified as using language indicative of “mutual” domestic violence, where both parents were presented as responsible for reciprocal violence. These reports did not contain sufficient information to establish the nature, context and impacts of the violence. Rather, descriptions of violence tended to be evasive and often conflated terminology relating to domestic violence with descriptions of ‘mutual abuse’ or ‘family violence’. Such descriptions were presented as impartial and without judgement, fulfilling the CFR duty of ‘fairness and equity’. However, neutrality in these reports resulted in making individual actors invisible, which, in effect, diminished personal responsibility for violent behaviour. Instead, the relationship itself and inter-parental conflict became the focus of concern and the site for change, which both parents were viewed as having equal responsibility for.

Research has repeatedly demonstrated the gendered nature of domestic violence \((\text{for example, Dobash and Dobash, 1992, 2000; Hague and Malos, 1993; Mirrlees-Black, 1999; Nazroo, 1999; Saunders, 1988; Walby and Allen, 2004). Furthermore, research on the family courts has also identified the problem of gender-based violence in private family law cases (Buchanan et al., 2001). Bancroft and Silverman (2002) stress that in their practice experience of family court
proceedings mutual, un-gendered domestic violence is rare. Consequently, within the context of other research evidence, the high incidence of what was identified as mutual violence in this reports sample indicates that gender-based violence is likely to have been mistakenly viewed as something mutual and equal, meaning that potential risk factors would have been missed. Furthermore, this suggests that the figure regarding male perpetrators in this study is under-representative.

“Historic or uncorroborated” domestic violence was identified as the second largest category in the content analysis of reports. A total of 19 reports (27%) contained information which suggested that allegations of domestic violence were not viewed as relevant or not seen as particularly serious because they were historic or because there was felt to be insufficient evidence to corroborate victims' accounts of violence. In these reports allegations of domestic violence were disregarded or were, again, treated as an issue of inter-parental conflict. Other research has found that allegations of domestic violence tend not to be addressed or taken seriously in family court proceedings if there is no external evidence to substantiate personal accounts (Aris and Harrison, 2007; Trinder, 2009). Similarly, in this study, analysis found that without hard, external evidence to support what women and children said about the father’s violence, descriptions of violence tended not to be seen as relevant and not taken into account when making recommendations about contact.

Only 12 reports out of the total sample of 70 contained sufficient information, presented in such a way as to be able to identify a clear pattern of systematic gendered abuse, often involving the abuse of children, which was taken seriously as a relevant issue to proceedings. These 12 reports were categorised as presenting “classic” domestic violence. In these reports domestic violence was presented as it has come to be understood following years of research. That is:

- violence which involves current or former partners who are or were in an intimate relationship;
- violence which may include various types of abuse, including physical, sexual, psychological, emotional and financial abuse;
- a pattern of abusive behaviour where often various types of abuse are used by one partner/ex partner to exercise a dominant regime of power and control over the other person and the family;
- where there is often evidence of escalation of abuse, particularly towards the ending of the relationship or on/after separation;
- is usually male to female.

Reports were categorised as “classic” where it was possible from the information provided to identify that: one parent was primarily responsible for the violence within a relationship; this parent was using violence to control or coerce the other parent (Stark, 2007) and this abuse was having a persistent and negative impact on the other parent and her children. Most of these reports contained evidence from external sources, such as police reports and domestic violence related convictions, to substantiate personal accounts of abuse. All the reports identified as “classic” involved male perpetrators of violence against women and these perpetrators were all fathers party to proceedings.

Categorising 12 reports as presenting domestic violence in a “classic” sense, is not to suggest that other cases in the sample did not involve systematic, gender based abuse. Rather, that information was presented in all but 12 reports in ways that did not explicitly and unmistakably identify gendered patterns of ongoing abuse. Consequently, it was not possible in the majority of cases, looking at the reports alone, to be certain about the nature of the violence described, it’s relevance to the issue of contact/residence and how it should factor within family court decision-making. Reports where the main presenting issue was something other than domestic violence within the main parental relationship were grouped into other categories, consisting of: “other partner domestic violence” (n=5), “insufficient information” (n=3), “child abuse” (n=2) and “mental health” (n=2). In four reports it was unclear whether the violence was “classic” or “mutual” domestic violence due to conflation of terminology and/or a lack of detail regarding the violence. The information provided in these reports suggested to the researcher that they may have been “classic” cases, but there was insufficient detail to be certain. Thus, these reports were not included in the “classic” category.
The majority of reports contained within the sample referred to routine statutory checks undertaken with the police and social services as part of the preparation of s7 reports. Sixty percent of reports provided some detail regarding criminal justice system (CJS) involvement with the family as a result of domestic violence. This included:

- the police being called out to domestic violence incidents and taking no further action;
- DV notifications made by the police to social services;
- charges being made as a result of assaults or harassment;
- convictions for crimes related to domestic violence.

A significant minority of such reports provided details of prolific and serious CJS involvement with families due to domestic violence. Some of the violence identified in reports had resulted in criminal convictions. A significant proportion of the violence discussed did not. This does in no way invalidate accounts of violence, as most reported domestic violence does not result in conviction. A conviction would only result if the behaviour was deemed a crime, resulting in a charge which the Crown Prosecution Service judged to be worth taking to court and finally that the court agreed a crime had been committed. This is likely for only four percent of all domestic violence incidents recorded by the police (HMIC and HMCPSI, 2004; Hester, 2006; Westmarland and Hester, 2007; Hester et al., 2008). However, despite this, it is important to note that there was a relatively high number of convictions across the sample if compared to the general population for a range of offences.

Notably, twelve fathers held convictions for violence. Six of these fathers were reported to have more than one conviction for violent offences and three possessed five or more convictions for violent offences. Five of these fathers had committed violent offences against female partners. One father was convicted of offences against the person in respect of the children’s mother on three separate occasions and had also been convicted twice of assaults against his daughter. This
father had also been convicted of breaching a restraining order granted to mother twice. One father was serving an eight year prison sentence for the attempted murder of the mother of his child. This father had applied to the court to have contact with his son on his pending release, despite the boy previously stating adamantly to the courts via Cafcass that he never wanted to see his father again. One father was convicted of an assault on the child’s mother whilst two others held convictions for physical assaults on previous partners. Convictions for other types of violence were evident in the sample. One father held 14 convictions for 28 offences, including actual bodily harm to a male social worker, and was also known to have committed many acts of domestic violence, although there were no details of domestic violence related convictions in the report.

Nine of the 12 fathers with criminal records for violent offences were seeking contact with their children, including staying contact in one case. In one of these cases the father had also applied for Parental Responsibility (PR). The remaining three out of the 12 cases in which fathers were identified as having convictions for violence were in relation to:

- A mother’s application to the court for Contact and PR Orders held by the father to be rescinded due to his violent behaviour.
- A mother’s application for residence of children living with her following an incident where the girls were not returned after contact with their father.
- A father’s application for sole residence of his daughter (a shared residence arrangement had been in place at the time of the application). In this case 11 findings of fact regarding this father’s violence against the child’s mother had been made by the court.

Nearly two thirds of the reports sample (61.4%) included information about some level of social services involvement with families. This ranged from one police notification resulting in no action to significant and sustained social services involvement. Reasons for social services involvement were documented to be various, but frequently domestic violence was named as a key, if not primary, concern. Nearly a quarter of the reports identified child abuse, past and present, as
an issue. Fathers alone were more likely to be identified as the perpetrator of abuse against a child than anyone else.

Information was provided in 44% of all reports regarding both criminal justice system and social services involvement with families. The high number of cases involving the CJS and/or social services and the overlap in 44% of reports is indicative that the cases in the study sample commonly involved families where issues of risk and children’s welfare were of paramount concern. This finding echoes previous research which profiled families involved in private family proceedings and found disproportionately high levels of inter-parental conflict, domestic violence and child protection concerns in residence/contact cases before the family courts (Buchanan et al., 2001; Hunt and Macleod, 2008; Smart et al., 2005; Trinder et al., 2006).

It could be argued from the figures and details concerning CJS involvement and convictions that these reports are dealing with the ‘higher end’ of domestic violence in terms of physical abuse and criminal acts. Whilst very much wanting to avoid ‘scaling’ domestic violence or to diminish the impact of sustained emotional abuse, the high level of physical and verbal acts of abuse is a very concerning factor when considering children’s physical safety and wellbeing. Research evidence has demonstrated links between physical domestic violence and physical child maltreatment in around 50% of cases (Hester et al., 2007). Additionally, domestic violence commonly involves a range of abusive behaviours. If physical abuse is present it is very likely that other forms of abuse, not necessarily deemed criminal but nonetheless damaging, will also be used. It is well established by research evidence that psychological, emotional and verbal abuse can have detrimental effects on women and children equal or worse to physical abuse (Dobash and Dobash, 1992; Hague and Malos, 1993; Hester and Radford, 1996). Furthermore, perpetrators of psychological abuse who feel like they have lost power and control have been identified as a risk group in respect of potential to commit murder/suicide. Saunders’ (2004) examination of 29 homicides by fathers in child contact cases identified a high level of mental health problems combined with the motivation to exact revenge on a partner who had left the relationship. Therefore, all types of domestically violent behaviour must be viewed as risk factors to be considered in contact cases.
Profiles of Children

Information regarding 147 children was provided in these reports. All of these children were subject to private family court proceedings at the time the report was written. Demographic information about all the children included in the sampled reports who were subject to proceedings at the time the report was written was included in the content analysis. The total reports sample comprised of 77 girls (52%) and 70 boys (48%). The majority of children in the sample were aged 10 to under 16 years of age, closely followed by children aged 5 to under 10 years. The vast majority of children across the sample were identified as White British. Religion was not mentioned or was identified as ‘not an issue’ in almost all the reports. 24 children were identified as having a disability. The majority of these children were described in reports as having learning difficulties, resulting in many cases in a statement of special educational needs. In nine of these cases educational needs were linked to emotional and behavioural difficulties, including attention-deficit hyperactivity disorder (ADHD). These difficulties were not necessarily linked to experiences of domestic violence in the reports, but it is worth noting that a number of research studies have identified links between exposure to domestic violence and emotional and behavioural problems in children (Holden and Ritchie, 1991; Jaffe et al., 1990; Rossman and Ho, 2000).

At the time the reports were written the vast majority of children lived with their mothers (82%). Seventeen percent lived with fathers, one child was subject to shared care arrangements between both parents and one child lived in another country with his step-father. These patterns are generally reflective of other research profiling contact and residence cases (Trinder et al., 2005). Sixty-six children were not having any contact at the time the report was written; 61 children were having regular or fairly regular contact; 16 children were having inconsistent contact; and two children were having indirect contact (telephone contact in one case due to the child living overseas and court ordered indirect contact through the means of written communication in the other). In two reports it was not clear if the children were having contact or not. Of the 66 children who were not having any contact, some had not had any contact for a number of years, some had not had contact for a few months and in some cases contact had only recently ceased.
The vast majority of children represented in the main reports were interviewed at least once by a Cafcass CFR (90%) as part of report preparation and over 50% had been interviewed more than once. Where children were not interviewed legitimate reasons were provided (for example the child was an infant, the child had already been interviewed recently as part of proceedings). Children were interviewed in a variety of locations and were often given the choice whether they wanted to be interviewed alone or not. Most children were interviewed alone. The findings of this research support the notion that Cafcass is committed to meeting with children subject to private family court proceedings and gathering information regarding their wishes and feelings. The vast majority of children interviewed were given the opportunity to share their views about residence and/or contact. Furthermore, consideration was given to most children's views to some extent, particularly in the case of older children.

Frequently, in cases where children wanted contact, children’s voices were used to support contact recommendations, even in cases where the child’s disclosure revealed potential risks relating to a father’s violence. In cases where the child expressed a wish for no contact this tended to be viewed within reports as obstructive. Children resistant to contact were generally viewed as needing to be moved forward to a more desirable position where contact could be restored. In cases where children were steadfastly opposed to contact frequently recommendations were made of indirect contact, in order to preserve or re-build the father-child relationship with the view to progressing to direct contact in the future. Children did not appear to be routinely asked about their father’s violence. Where children did disclose experiences of violence, either as witnesses or as direct victims, these accounts did not necessarily factor in report recommendations and certainly were not as influential as children’s stated preferences regarding contact arrangements.

*Report Recommendations*

Contact was the most frequent recommendation made in reports (n=28). Contact recommendations included direct (n=12); indirect (n=11); supervised (n=3); and
mixed contact arrangements (n=2 – where it was recommended that different children within the same family have different contact arrangements for the time-being).

A third of reports in which direct contact was recommended also included information regarding both police and social services involvement with families due to domestic violence. Where it was felt that it was not possible to recommend direct contact at that time, indirect contact was more likely to be recommended than supervised contact. Indirect contact was most likely to be recommended instead of direct contact due to children’s resistance to contact. In 10 of the 11 reports where indirect contact had been recommended a total of fifteen children voiced their opposition to contact. The children’s ages ranged from seven to 16 years. All of these cases involved contact with fathers. The majority of these children referred to father’s behaviour or their fear of him as reasons for not wanting to see him. Two younger children (both aged seven years) were also displaying very distressed behaviours at home and at school as a result of contact.

In the majority of reports where indirect contact was recommended direct contact was viewed as ‘unachievable’, in a practical sense, at the time the report was written, largely because of the child’s firm and intractable opposition to it. Overall, direct contact in these 10 reports was described as unworkable and indirect contact recommended instead on the grounds that it would promote an ongoing relationship between child and father and would hopefully lead to direct contact in the future. Mothers were often called upon to support indirect contact as a means to promote the father-child relationship and to build towards direct contact, despite their misgivings or explicit concerns about the impact of this relationship upon their children. A number of these children also expressed a wish for no contact at all because they did not have, or want, a relationship with their father. However, recommendations commonly included the view that relationships could and should be preserved and that opportunities for future reconciliations should be pursued. Examples of these ‘forward-looking’ recommendations included:

- Realistically, I do not see that there is any scope for reintroducing direct contact at the present time. I would support continuing indirect contact as a
way of ensuring that the children know, despite their past experiences and misgivings, that their father continues to love them and to keep the door slightly open with a view to the future. I hope mother will actively and positively support this course (report 213).

- ...an order should allow for Ophelia to resume direct contact at an appropriate time without an order being too prescriptive. In the meantime I recommend that father should have indirect contact via cards/letters and, if possible, mobile ‘phone texting at regular intervals (report 019).

- It appears that the best way forward may be that (father) continues to write to Nicholas. In time with the pressure off, I would hope that Nicholas will then want to resume his relationship with his father (report 043).

- I am however unable to make a recommendation for direct contact at this time. However, this should not mean the door is closed to future contact. I would suggest that (father) continues to write to Lily and that (mother) encourages Lily to read them and if willing, to reply (report 216).

- It is clearly in the interests of ‘the child’ to maintain an open channel of communication at some level in order to accommodate for child’s needs and wishes which may change with time... It is very much to be hoped that sufficient sensitivity can be exercised such that a positive connection can be promoted, rather than lost forever (report 010).

The potential loss of the father-child relationship presented as a mostly unacceptable position throughout these recommendations, with the focus instead being firmly placed on building/re-building this relationship and establishing/re-establishing direct contact for the benefit of the child.

In just one of the 11 reports where indirect contact was recommended were links made relating to how direct contact could pose risks to the children due to father’s behaviour. In this report father’s drug and alcohol use, which were also
linked to his violence, was identified as a risk factor, resulting in a recommendation for indirect contact via a family webcam.

Research undertaken by Smart and colleagues for the DCA (2003) found that whilst interim orders restricting contact were in place in relation to a quarter of fathers’ contact applications, only 10% of final orders confirmed these arrangements. Instead, the most common outcome was direct, unsupervised contact. Similarly, Hunt and Macleod’s (2008) examination of court outcomes found that the majority of contact applications involving welfare concerns ended with unsupervised, direct contact. In this context, it cannot be assumed that a recommendation of indirect contact is in the child’s best interest, short or long-term, or guaranteed to keep the child safe, now or in the future.

Residence Orders were recommended in 14 reports, the majority of which reinforced the existing living arrangements for the child, regardless of the gender of the resident parent. This finding supports other research (Smart et al., 2003) that residence recommendations are more likely to be made to reinforce the status quo, irrespective of the resident parent’s gender, than to change residence. This contradicts concerns raised by fathers’ groups that the family courts are biased towards mothers. Research by Hunt and Macleod (2008) has also challenged the misconception of gender bias in the family courts. The findings of this study demonstrate general support of father’s applications for residence (more residence orders were recommended for fathers in this sample than for mothers) even in cases where fathers were found to have been violent. In 10 of the reports which made recommendations for residence, recommendations were also made regarding contact. These included nine recommendations in respect of direct contact and one recommendation for indirect contact. Seven of the reports which made recommendations regarding residence and direct contact recommended that the direct contact include staying contact.

Consideration of a recommendation of no contact was rare. In only two reports were such recommendations made. It was not clear, however, whether the recommendation conceding no contact in one of these reports related to a No Contact Order or to the court making no order. Overall, contact very much presented as the overriding goal within s7 recommendations made to the court. A
strong sense of ‘moving on’ and ‘future-focus’ was identified throughout the reports sample as a means to achieving workable contact for the long-term benefit of children.

Discussion

In summary, content analysis of a sample of Cafcass s7 welfare reports found that where there was external evidence to corroborate allegations of domestic violence, fathers were more likely to be identified as responsible for their violence. However, contact was still framed as inevitable and desirable in almost all cases. Risks and safeguarding issues associated with contact were not, on the whole, fully addressed. Rather, preserving family relationships presented as a stronger motivating factor even in cases where it was conceded that direct contact was not possible at that time. In such cases, indirect contact was recommended in order to protect some sense of relationship and to promote the strengthening of relationships with view to the establishment of direct contact in the future. In particular, this sense of family preservation highlighted a focus on shared parenting and equalising parental involvement as important to children’s wellbeing, security and development (Smart and Neale, 1999). A prevalent sense that some father presence, despite his behaviour and the impact of this on the children, is better than no father presence in a child’s life was identified throughout the reports sample. This is in contradiction to Pryor and Rodger’s famous assertion, based on their empirical research of children’s lives post parental separation, that the “mere presence of fathers in children’s lives is not enough” to promote children’s wellbeing (Pryor and Rodgers, 2001:3). Conversely, the research presented here found a pervasive sense of optimism in relation to future contact was regularly conveyed without reference to safeguarding concerns or practical risk management strategies.

A sense of promoting agreement between parents was also evident in recommendations where this was perceived to be possible. Linked to this, a sense that “time heals” and that decision-making should be “future-focused” was identified; that is, that the problems of the past must be overcome and left behind in order to look towards a more harmonious and conflict-free future. Where some
consideration of safety issues was acknowledged in relation to contact with a violent father, practical measures to protect women and children were glaringly absent from recommendations. Furthermore, mothers were often requested to negotiate, support or encourage contact arrangements despite their legitimate concerns regarding safety for their children and themselves.

In at least one case where the children involved were adamant in their wish to see their father despite father’s ongoing abusive behaviour, it was concluded that contact was inevitable due to the children’s wilfulness and mother’s malleability. In this case risk factors were high, yet any sort of risk assessment in respect of domestic violence and potential child abuse had disappeared almost completely from the recommendations section of the case. Instead, father and mother were encouraged to negotiate contact arrangements between themselves, which would have undoubtedly put the mother at risk. In other cases where children refused contact with a violent father it was conceded that the court should respect these wishes as contact would not work at that time due to the children’s resistance. However, a proviso concerning future pursuance of contact was almost always added in these cases. Furthermore, recommendations frequently failed to take into account any current or future risk factors posed to these children by their father’s violent behaviour, particularly if direct contact were to be established, or to recognise children’s resistance to contact as a reasonable, legitimate response to the father’s violence.

The research findings presented and discussed in this article support a persistent argument: despite policy developments, practice directives and improved professional knowledge, in practice the presumption of contact continues to usurp this knowledge in all but exceptional cases. Therefore, whilst some progress related to recognition and understanding of domestic violence has undoubtedly been made, the unrelenting influence of deeply embedded ideologies regarding relationships with fathers continues to have the effect of marginalising issues of safeguarding in the majority of cases.

As a result of concerns that the legal principles set in Re LVMH and the court guidelines which followed have not been followed in practice, the President of the Family Division issued *Practice Direction 12J – Residence and Contact Orders:*
Domestic Violence and Harm (PD12J) in 2008. This practice direction reiterates the need to take domestic violence seriously where it is alleged, or where there is any reason to suspect it, and for any welfare issues to be identified and considered expeditiously and fairly. Furthermore, PD12J asserts at paragraph 26 that the court, 

should only make an order for contact if it can be satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact.

In 2011 Hunter and Barnett (2013a) undertook a survey of judicial officers and practitioners on behalf of the Family Justice Council Domestic Abuse Committee to examine the effectiveness of the implementation of PD12J. The findings of their survey suggest that the Practice Direction has not been completely successful in shifting the culture from seeking to promote ‘contact at all costs’ to only pursuing contact that is ‘safe and positive for the child’ (Hunter and Barnett, 2013b). This is, the researchers conclude, because many of the respondents surveyed continue to,

hold narrow, legalistic views of what constitutes domestic violence, of the effects of domestic violence and the harm resulting from it, and of the risk of future violence (Hunter and Barnett, 2013b: 7).

As a result of these narrow definitions of domestic violence, some allegations are perceived to be ‘too old’ or ‘not sufficiently serious’ to be taken into account, which mirrors the findings of the primary research presented in this paper. Furthermore, according to Hunter and Barnett’s (2013ab), Finding of Fact Hearings continue to be held infrequently and to be unpopular amongst legal professionals. Where they are held findings made are not necessarily “given sufficient weight or fully followed through in the orders made” (Hunter and Barnett, 2013b: 7).

Consequently, it appears that the same problems with contact/residence court proceedings in domestic violence cases endure. Therefore, unless there is a cultural shift in the importance currently placed on guaranteeing child welfare through contact with fathers, despite the risks this might present, it appears that policy guidance and practice directions alone cannot effectively ensure safe practice in child contact cases.
NOTES

1 The Children and Family Court Advisory Service (Cafcass) was created in 2001. The primary aim of this service is to safeguard and promote the welfare of children subject to family court proceedings, both in private and public law. Within the private law arena, the majority of Cafcass’ work involves the preparation of s7 welfare reports for the courts in contested contact and residence applications.

2 Re. L (A Child) (Contact: Domestic Violence); Re V (A Child) (Contact: Domestic Violence); Re M (A Child) (Contact: Domestic Violence) and Re H (Children) (Contact: Domestic Violence) [2000] 2 FLR 334.

3 Sturge and Glaser were requested by the UK’s official solicitor to produce an expert report giving a child psychiatric opinion on the implications of domestic violence for child contact. The report was accepted by the Court of Appeal in its entirety and informed its judgement. The report was subsequently published in the Family Law journal in September 2000.

4 The Guidelines for Good Practice on Parental Contact in Cases Where There is Domestic violence were issued in 2002 and were extracted from section five of the CASC report (2000).

5 Addendum reports which met the selection criteria were excluded from the sample due to lack of detail in these reports and to avoid duplication of data.

6 It is important to stress that it was not the intention of the researcher to develop or use categories of domestic violence at the outset of this research. The problems associated with typologies of abuse have been discussed at length and are well documented (e.g. Stark, 2006). However, initial content analysis identified that violence was presented in varying ways across the sample, indicating different issues and problems, but with commonalities in how information was presented. Therefore, it was necessary to identify clearly and systematically what was being discussed in different reports, that is, what was meant by ‘domestic violence’, how different CFRs appeared to interpret violence and how issues of risk were presented according to these different interpretations. Consequently, these categorisations
were used as a way of interpreting and analysing what was presented in the reports sample.

7 The domestic violence discussed in the report was in relation to a current or ex-partner of the one of the parent’s who was not the applicant or respondent in the presenting court case. There was no information contained in these reports which referred to domestic violence in the main parental relationship.

8 These reports did not provide sufficient information on which to ascertain the categorisation of violence.

9 These reports were focused on child abuse. Domestic violence was referred to but little detail was provided and domestic violence was presented as a peripheral concern or not addressed at all.

10 These reports described violence or concerns attributed directly to the non-resident parent’s mental health difficulties.

11 For the full Practice Direction see http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j
References


Her Majesty's Inspectorate of Court Administration (HMICA) (2005) *Domestic Violence, Safety and Family Proceedings: Thematic Review of the Handling of Domestic Violence Issues by the Children and Family Court Advisory and Support Service (CAFCASS) and the Administration of Family Courts in Her Majesty’s Courts Service (HMCS)*. Bristol: HMICA.


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