Introduction

Concern over the response to domestic abuse in child arrangement cases in the family courts is long standing.

The Children Act Sub-Committee of the Advisory Board on Family Law (CASC) issued a report in 2000 which argued "that there needed to be greater awareness in private law residence and contact cases of the adverse impact of domestic violence on children and on resident parents, and that a major concern of the courts in such cases should be to safeguard the child and the resident parent from the risk of further physical and/or psychological harm".

CASC issued "good practice guidelines", endorsed by the Court of Appeal in 2001, on the finding of fact in allegations of domestic abuse and then decide on the effect of those findings on the question of contact.[1]

Research dating back to 2004, *"Twenty-nine Child Homicides",* by *Women's Aid* identified instances of child homicides as a result of decisions ordered by the family courts between 1994 and 2004. The research drew on public documents relating to 13 families where 29 children had been killed by abusive families.

The findings prompted a review of judicial practice which found that, despite the "good practice guidelines", "contact agreements were being made without proper consideration of the child's or the resident parent's safety"[2]. This led the then President of the Family Division to issue *Practice Direction: Residence and Contact Orders: Domestic Violence and Harm,* which came to be known as *Practice Direction 12J,* directing the courts to presume that the involvement of a parent will further the child's welfare, so long as the parent can be involved in a way that does not put the child or the other parent at risk of suffering harm.[3]

In 2014, *Practice Direction 12J* was further updated, following a report by Professor Rosemary Hunter & Adrienne Barnett to the Family Justice Council, to contain a wider definition of domestic abuse that emphasises coercive control and considers a range of ways in which domestic abuse may be evidenced and directs the court to ensure any child arrangement order protects the welfare of the child and the parent with care.[4]

Nevertheless, a second report by Women's Aid in 2016, "*Nineteen Child Homicides",* looked at serious case reviews for England and Wales published between January 2005 and August 2015 and uncovered details of 19 children in 12 families who had been killed by perpetrators of domestic abuse. All the perpetrators were fathers to the children they killed. All 12 fathers

---

[1] RE L (A Child) (Contact: Domestic Violence) [2001] Fam 206.

[2] *Report to the President of the Family Division on the approach to be adopted by the Court when asked to make a contact order by consent, where domestic violence has been an issue in the case,* Family Justice Council, 2006:
https://web.archive.org/web/20081202181116/www.familyjusticecouncil.org.uk/docs/Reportoncontact.pdf

[3] *Nineteen Child Homicides,* Women's Aid, 2016: https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf

[4] *Practice Direction 12J,* Ministry of Justice Archive, 2014:
Jhttps://web.archive.org/web/20120701000000*/https:/www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j

were known to the statutory agencies as perpetrators of domestic abuse. All of the perpetrators had access to their children through formal or informal child contact arrangements. Two women had also been killed, and seven fathers had committed suicide. [5]

On 21 April 2016 the All-Party Parliamentary Group on Domestic Violence published a parliamentary briefing on domestic abuse, child contact and the family courts. It drew attention to the importance of Practice Direction 12J, but raised concerns about 'inconsistent implementation'. It recommended that the Ministry of Justice and the President of the Family Division should clarify that there must not be an assumption of shared parenting in child contact cases where domestic abuse is a feature, and child contact should be decided based on an informed judgement of what's in the best interests of the child.[6]

In his response to "*Nineteen Child Homicides*" and the APPG's report the former President of the Family Division, Sir James Munby, requested Mr Justice Cobb to review Practice Direction 12J to examine whether further amendment was required.[7] The most recent revision in 2017 was published by Sir James Munby after concerns that the Practice Direction was not being consistently implemented by the judges in contact cases with "the presumption of contact explicitly displaced", the "definition of domestic abuse widened" and "a presumption against making interim contact orders where there are disputed allegations of domestic abuse".[8]

Finally, the *BBC Victoria Derbyshire Show* published a further analysis of Serious Case Reviews in the fast four years (2015-2019) which showed that four children had been intentionally killed during contact with a parent with a known history of domestic violence. In each case contact was ordered by a family court. This means that a further two children have been killed in these circumstances since "*Nineteen Child Homicides*" was published.[9]

The problem

The problem is two-fold. Firstly, despite efforts to tackle this issue in public policy terms over two decades, there remains troubling anecdotal evidence, research and evidence drawn from public sources that child contact decisions where domestic abuse is a factor are still not being appropriately managed.

Existing research provides strong evidence that in deciding arrangements for child contact when there is a history of domestic abuse the current workings of the family jurisdiction 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 abuse, causes them significant harm, and prevents their

[5] *Nineteen Child Homicides, pp17,* Women's Aid, 2016: https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf

[6] All Party Parliament Group on Domestic Violence, Parliamentary briefing on domestic abuse, child contact and the family courts, April 2016.

[7] 16th View from the President's Chambers, Children and vulnerable witnesses: where are we?, Sir James Munby, President of the Family Division, 20 January 2017

[8] *The revised Practice Direction 12J: Child Arrangements & Contact Orders: Domestic Violence and Harm*,

[9] *Call for inquiry into abusive parents' access to children*, BBC Online, 15th May 2019: https://www.bbc.co.uk/news/uk-48230618

recovery.[10] As research by Women's Aid and the BBC have shown, this can have life-threatening consequences.

Secondly, children exposed to domestic abuse are also victims of child abuse. The Serious Crime Act 2015 made it explicit that cruelty to children which causes psychological suffering can be a crime. This includes where children are emotionally harmed by exposure to domestic abuse. Under existing law the definition of 'harm' to children recognises the impact of seeing or hearing the abuse of someone else.

The chilling evidence set out in the Women's Aid publication *"Twenty-Nine Child Homicides"* spanned a period of 10 years and the murder of 29 children by their fathers who had been found to be violent to their mothers, but whom the court had deemed 'safe' to have contact with their children. The report noted a serious lack of knowledge on behalf of all professionals involved in public and private children's family law about the impact of domestic abuse and a very narrow understanding of the risk a violent partner of one parent poses to their children.

Domestic abuse remains a major issue for the family court to address. The majority of applications (62%) to the family court about where a child should live or spend time involve allegations of domestic abuse.[11] Unfortunately, therefore, not a rare issue, so one where you would expect to find consistency of approach. Yet, despite the volume of domestic abuse cases within the family courts practitioners, charities and participants are still concerned that mandatory guidance established through Practice Direction 12J may be being inconsistently applied;[12] processes in place to safeguard children from harm are not being followed by the courts; abuse is being minimised in terms of the risk of future harm; and, those tasked with assessing the abuse and associated risk are not effectively qualified or trained to do so.

Ultimately victims are failed by poor and inconsistent decision making with a focus on 'contact at all costs', in spite of relatively robust legal guidance designed to protect them and their children.

Bath University Research found that the unrelenting influence of deeply embedded beliefs regarding the preservation or promotion of relationships with fathers continues to have the effect of marginalising issues of safeguarding, including children's voiced experiences of violence in all but the most exceptional of cases. Rather, safeguarding concerns in respect of domestic violence and child abuse were persistently overshadowed by a dominant presumption of the overall benefits of contact with fathers.[13]

[10] Thiara, R.K. and Harrison C., University of Warwick, Safe not sorry: Supporting the campaign for safer child contact (Bristol: Women's Aid, 2016)

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

[12] *Is it time's up for the Family Courts?* Women's Aid, 2018: https://www.womensaid.org.uk/is-it-timesup-for-the-family-courts/

[13] https://researchportal.bath.ac.uk/en/publications/hearing-childrens-voices-including-childrens-perspectives-on-thei

However, substantiating this is difficult. Discovering whether the processes are being followed involves an insight into decisions and practices which are, by default, restricted. Relaxing those restrictions depends on an application by the judge hearing the case.

The *Women's Aid* reports and the *BBC* research both acknowledge limitations in their research as a result of the stringent reporting restrictions in that they only have access to public, redacted documents and in certain cases only the executive summaries of relevant case reviews.[14]

The BBC acknowledge that Serious Case Reviews (SCRs) 'do not investigate the family courts, so it is not possible to establish whether the courts' decisions led directly to the deaths.

However, the former President of the Family Courts, Sir James Munby, noted that authorities would be "very foolish" to ignore findings of children coming to harm as identified by the *BBC* and argued that "the only way we are going to get to the bottom of this once and for all is if there is a detailed independent analysis by reputable academic researchers."[15]

In short, there is evidence of a real issue, but full exploration of the issue is stifled by a lack of independent, authoritative scrutiny.

This is the essence of the problem. Because of a lack of proper data, we do not know for certain what is going on, though the large amount of anecdotal and other information which is available strongly suggests that things are far from as they should be. The only way we are going to make real progress is to do as Sir James Munby suggests and ensure there is a detailed independent analysis by reputable academic researchers – independent, that is, of the judiciary, of Whitehall and of pressure groups and other third parties – into the treatment of domestic abuse and violence in the family courts; the application of the existing rules and guidance; and thorough proposals for change based on detailed analysis of the evidence.

So, whilst this review is incredibly welcome from the Government, and it is hoped that it makes strong recommendations for improvements in the treatment of domestic abuse in the family courts, much more authoritative, independent research and analysis is required to get to the heart of the issues outlined and explored in more detail below.

The lack of accountability across the system

Sir James Munby said in a recent speech:

"A vital aspect of the ongoing transformation in the family justice system has to be reform of our still creaking rules about access to and reporting of family cases. Nothing short of radical reform will enable us to rid ourselves of the relentlessly repeated and inevitably damaging charge that we operate a system of private – some say secret – justice."[16]

[14] *Nineteen Child Homicides, pp14,* Women's Aid, 2016: https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf

[15] *Voices of children overlooked in family courts, says ex-head,* BBC Online, 16th May: https://www.bbc.co.uk/news/uk-48280292

[16] Edinburgh, May, 2018

It feels that the lack of scrutiny, and indeed of sunlight, across the entire family justice system, but particularly the courts, are at the root of many of the issues that parents and children encounter through their experiences.

Transparency campaigner and journalist Louise Tickle has explained the issue best:

"*Section 12 of a nearly 60 year old piece of legislation means that anyone who describes or publishes what happens in front of a family judge risks being in contempt of court. The sanction is a fine or jail – possibly both.*

The result is that if people working in the family law system – social workers, expert witnesses, children's guardians, lawyers and judges – act unprofessionally, unethically or even unlawfully, unless a judge says it's okay to talk about it, or a judgment is published (and the judge is the sole arbiter of what goes into that), nobody is allowed to know.

It means there is little effective scrutiny or accountability in our family courts.

It means that parents cannot protest their treatment at the hands of the state – and when you stand to lose your children, sometimes for ever, this is an extraordinary loss of your human right to freedom of speech; the very opposite of open justice.

It means that although for the most part, since 2010 journalists have been able to attend family courts, we cannot, by right, report the detail of what goes on in them – and so we can't do our job as the eyes and ears of the public when extraordinary intrusions into family life are made and draconian actions that change people's futures are taken by the state.

It means that citizens are prevented from knowing what is being done in their name."[17]

The understandable objective of protecting children's privacy has had the consequence that it is often difficult to shine a light on the process and secure accountability for any decisions that are made incorrectly or without adherence to the careful judicial guidance which has been put in place to protect victims of abuse and their children.

In fact, there have been many instances where it has been held against parents who have attempted to make complaints either to their local MP, to their solicitor or to Cafcass. This has been used to evidence that the parent is 'hostile.'

As a local MP I have attempted to represent a constituent of mine by simply asking if a finding of fact report had been conducted but my constituent was instructed by her solicitor that they would no longer represent her if I made the formal request.

Not only is much of the information not known to individuals' representatives, it is routinely not made available to the individuals themselves; for example:

I recently did a Subject Access Request to Cafcass, police, GP.

[17] https://openfamilycourt.wordpress.com/2018/08/15/letting-in-sunlight-on-family-justice/

GP- it has emerged no checks or request for my childs medical records have been made, despite clearly stated by Cafcass they had.

Police, it was confirmed the incident that was investigated by police regarding my son being left alone were not checked.

Cafcass- it is staggering the lengths Cafcass have gone to hide the fact they made significant errors and trying to cover them up so I cannot have them investigated is astounding.

It is the role of an MP to ensure that the state is carrying out its duties, responsibilities and services in a way that is fair and that processes are followed properly. This is the case and is possible in all other areas of law except family and yet the power available to the family courts is one of the most intrusive and potentially harmful available to the state– to remove a child from their family, with all the separation anxiety and trauma that it entails for everyone involved.

The President of the Family Division is currently reviewing the transparency guidelines of the court but Government and Parliament should consider that we must reverse the presumption that no reporting is permitted towards one that - subject to anonymity - reporting is permitted.

Vexatious applications to the court as a means to perpetuate abuse

The Women's Aid report, "*Safe Not Sorry"*, laid out how women have to contend with legal processes and practices that bring them into frequent and direct contact with violent men, which has an associated impact on their 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. 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.

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.

The system effectively allows perpetrators the ability to control their victims even when there are criminal proceedings in place, non-molestation orders, restraining orders. I have repeatedly been told by victims that such orders and processes are routinely ignored by the family courts.

Furthermore, although special measures are meant to be available to all victims of abuse in every court these are inconsistent across the country and there is something of a postcode lottery in respect of courts' attitude towards ensuring that special measures are in place and easily secured.

Family courts must be required to reference the criminal justice system and the processes must work in tandem and Barring orders should be strengthened to explicitly bar parents who should not have access to their children or any parental responsibility to be absolutely barred from applying to the court except in the most exceptional circumstances.

Some examples:

1. I recently met with a mother whose ex is a convicted paedophile who has had to spend £100,000 in defence of repeated applications through the family courts, which the father has been able to make through the assistance of legal aid. She tells me that she has been granted barring orders in the past but they are essentially meaningless as they merely require the judge to look at the case again and then grant the application.

2. *"In 2017 my ex husband was jailed for 15years for sexually abusing my young children. Since then I have spent over £40k fighting him in court - divorce, changing the children's surnames, he took a court order out to stop me taking the children on holidays, contact issues with his parents - the list goes on.*

   As he still holds parental responsibility for my children despite his life long sexual harm prevention order and instructions that he will not be allowed contact with my children -ever....... he is able to exorcise these rights whenever he fancies.
   He can request their school reports, medics records, can be included in decisions about their education, religion and also can stop me from leaving the country.
   Over 2years later I've found out this week that he and his parents are taking me to court AGAIN."

3. Parents are also able to use the courts despite conflicting advice or protection orders from other agencies:

   "My ex-husband was arrested and charged for assaulting myself and my child 2 years ago. There was historic abuse dating back throughout the marriage. The social worker put the children on child in need and after 6 weeks they were signed off and not under ss care. My ex attempted suicide many times. He threatened on many occasions to flee back to his own country with the children.

   I was told by social worker repeatedly that if I let the children see their Father then the children would be taken away. My ex has been fighting for access through courts for 2 years. It has cost me 70k (All the inheritance from my parents) and I'm still being forced to fight for them. Now I would and have spent every single penny to keep my children safe. After 2 years the children have been appointed a guardian and my ex has to undertake perpetrator course. I don't believe he will ever change but the guardian is talking about introducing phone and Skype calls. Up until now he has had monthly contact via letter which he hasn't bothered with, plus no Xmas or birthday cards or gifts. We are now back at court to check his interim progress on perpetrator course and for feedback from guardian (she has yet to meet them). I have no money left and now need to self represent. I've informed my solicitor and I now feel totally

lost. I cannot get legal aid as my ex husband is refusing to give permission to sell our property . He demanded it be sold as part of financial agreement. There is a small amount of equity in the house so I can't get any help. I cannot afford to take him to court to make him sell. He is trying to control me and is being allowed to financially abuse me through the court system. I want to move so he doesn't know where I am, I feel he is being allowed to control through the system all the time. I want to be safe and him to not to know where we are living, the constant memories from this house is distressing, I feel it is important to give my children a fresh start. What can I do?"

The Imbalance of Legal Aid

In 2012 legal aid was decimated for private family law cases. Over 80% of legal aid was cut for these cases, however victims of abuse were to be safeguarded provided that they could prove the abuse through a stringent set of evidence (now slightly relaxed).

Legal aid has both a merits and a means test and whilst proving that they are victims of abuse might assist them in passing the merits test, the means test is woefully out of date. Many victims on or below the breadline are unable to secure legal aid even though they are in receipt of the lowest state benefits.

The government itself recognises that the means test needs reviewing, however primary legislation is needed in order to do this and the timetabled review is a considerable way off. It is essential that a fresh means test is brought in which enables victims of abuse to secure the funding they need to protect themselves and their families.

Sir James Munby recently described the family court as 'a lawyer-free zone', thanks to legal aid cuts.

Some examples:

1. *Currently I am also self-representing as I do not qualify for Legal Aid due to the budget cuts for this in 2012. I receive tax credits and child benefit. This is all taken into account as earnings, but the only outgoings that are taken into account are my rent and the childcare that I pay for. This is not a true reflection on my actual disposable income. To live in my house I have to pay council tax, if not I could be taken to court. I have to pay for gas, electricity and water to keep the house running, if I didn't pay this I'm sure I could end up losing my house which would impinge on my care of the children. I also have to have enough money to provide food and clothes for the children, again if I didn't do this I would be considered neglectful and risk losing them out of my care. So why are these necessities that could cause me to lose my children or end up in court not included in outgoings? If they were it would show the true reflection of living costs, leaving a more realistic disposable income figure. I am currently £32 over the threshold for Legal Aid meaning that I am not entitled to legal aid at all. I think this is appalling considering the circumstances we have been through mean that I do clearly meet the domestic abuse criteria for legal aid.*

2. *I've been forced by ss to use all my money to safeguard my children through the court and now the guardian is encouraging contact. I've nothing left and am expected to keep paying out. Its 2 years down, 70k in cash and no further forward. I have no savings and £60 in my bank now. I've been told to sell my car but that's my lifeline. I have no family, no support. Where do I turn to? My depression is returning, my anxiety is sky high and I just feel mentally, emotionally and physically exhausted.*

   I cannot get legal aid as there is equity in the house but he will not agree to the sale.

There is also a serious issue with victims of domestic abuse receiving legal aid and their perpetrators appearing as litigants in person.

In order to level the playing field for a litigant in person the courts are having to bend over backwards to ease the rules and compliance with directions to ensure that the litigant in person has the opportunity to be properly heard. Persistent applications, the late filing of evidence, the opportunity to use evidence to raise issues which are of no legal relevance and the lenience granted to litigants in person can all serve to further terrorise victims through the court process itself. Many victims have described it as a re-traumatising event.

Legal aid for early legal advice should be reintroduced for ALL separating parents who are financially eligible. The non-abusive parents could then be diverted from the court system into other remedies to fix the issues between them and the court process can be preserved for those more complicated cases where allegations of abuse have been raised.

Lack of a Child's Voice and Parental Alienation

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.[18]

This is repeated time and again as both parents and children feel that the child's voice and wishes are not heard:

1. *"My contact with my children has been suspended due to my children being very upset when returning to their father and the court blames that on myself. My children are telling me that they are being hit on return from contact with myself and that makes them frightened to return to their father. They are also telling me that they are witnessing domestic violence between their father and his girlfriend and they are being regularly locked in the girlfriends property whilst their father and his girlfriend go out. Each time I have returned my children to their father I have heard*

[18] Safe Not Sorry, Women's Aid Report Jan 2016

father say "if you cry you will never see your mother ever again". My children have spoken to me about this and say they have tried and tried not to cry when they return to their father but they just can't help it. They have then ran away from their father due to being scared. Social services have been fully informed but do....NOTHING!!"

2. *"Every time the children had to leave their mother's care they would get very upset and refuse to get out of the car. The police have been called on several occasions. Rather than look at the situation and ask why the children weren't running happily to their father after a nice stay with their mother, instead, XX was classed as being emotionally abusive. Something she is not guilty of. She wants them to have a good relationship with their father but he lacks good parenting skills. The children have turned up at school in dirty clothes, the little girls hair hasn't been brushed and the teachers have had it to do and when they get upset at having to leave their mother, they are threatened , by XX that if they don't behave they will never see their mother again."*

3. *"I was cross examined for 7 hours about being raped and the other allegations of coercive control I had made, with my ex a few feet away from me. I had a panic attack. I couldn't answer any of the questions. I couldn't remember anything. I felt completely dissociated. I was outside my body looking down. I annoyed the judge (a woman) who lost patience with me not answering the questions. Although I had good evidence on paper, my evidence on the witness stand was so bad that the judge said I was not credible and there were no findings made against my ex.*
   My son, now aged 9, has made allegations of his own since he was 3 years old of being hit and abused by his father. His allegations were heard at the same fact finding hearing. He was not in Court and so I effectively brought his allegations to the Family Court on his behalf. Because I gave such bad evidence, the allegations he made (and my daughter – also not in court) were automatically dismissed. This is one of the hardest things for me to come to terms with."

Again, to quote James Munby:

"There is a pressing issue as to how the family justice system can meet the aspirations and accommodate the needs of children who want to come to court themselves, whether to see the court, give evidence or meet the judge. Detailed proposals were worked up by the rule-making committee, but nothing can come into effect without the approval of the Minister. An official letter made clear that approval was not going to be given because "these proposals cannot be implemented at the current time given their assessed operational impacts" – because, in plain English, it would all cost too much."

Parental Alienation, an increasingly controversial theory imported from the US where its author has already been widely discredited, is of concern to parents and observers of the family justice system. The Review of research and case law on parental alienation commissioned by Cafcass CYMRU found that:

Parental Alienation Syndrome, as devised by Gardner, has been largely discredited or, even where still cited in American literature, has been subject to considerable modification. The issue of PAS as a diagnosable condition may have more relevance in the USA, where it sits largely within a psychotherapeutic discipline, than it has in Wales and England. However, the argument appears to have created confusion in attaching an unnecessary label to the very rare instances of a parent instilling false beliefs in a child which is a form of emotional abuse. While such extreme cases are rare, they clearly fall within definitions of significant harm in statutory guidance. What is far less clear is the level of risk of emotional harm to a child who is refusing contact when there are no real or fabricated allegations of violence or abuse, and how the reasons for the child's resistance can be identified and resolved so as to resume what had been a positive relationship prior to separation.

Attaching a label of parental alienation does not appear to assist in analysing the complex family dynamics at such a time.

Despite this, parental alienation is increasingly discussed and influential in family court processes and wider public discussions around child contact and parental separation.

Lack of understanding/time to consider coercive control and domestic abuse beyond physical abuse

I have received repeated complaints that there is a lack of understanding across the child protection system of the more insidious, and less obvious, forms of domestic abuse. Furthermore, the serious pressure on court time is leading to quicker 'rough justice' with insufficient, forensic analysis of the facts of each case and associated risks.

It is, according to family law practitioners, very common for Judges to order that only five facts can be listed by a victim for the purposes of a fact find hearing. The victim will potentially choose five facts which appear the most grave in order to try to demonstrate the danger they consider themselves and their children to be in.

This decision will be perverted by a number of factors such as whether they can give evidence safely and whether they will be listened to. They may exclude, for this reason, any sexual abuse or rape suffered, coercive control, emotional or financial abuse for which they would have to show a pattern of behaviour which would use up too many of their 'incidents of abuse'.

Coercive control is an offence, however the insistence on limiting to five incidents for a fact finding hearing mitigates against its disclosure within family court proceedings and as such its existence is minimised.

There are countless examples of coercive controllers who have subsequently gone straight from coercive controlling behaviour to the most serious of crimes including assault and murder. There is a serious lack of understanding about domestic abuse itself and patterns of abuser behaviour associated with it which need to be fully explored, understood and trained into the decision making process within the courts. This will allow the extent and nature of an individual's abuse to be properly understood before any decisions are made about whether or not it is safe or beneficial for children to spend time with their abuser.

"There seems to be a theory within the family courts who operate under the secrecy act that if there are no bruises then there is no abuse – when actually most abuse is emotional and psychological."

"The Judge who represented me around child contact threatened me with prison and community service and referred to me as the girl who cried wolf. He had firm evidence of my ex-husbands history, police reports, social services evidence, children's wishes and feelings, school reports and chose to stick to a framework that guaranteed access to his children, when their own wishes and feelings were ignored."

Cuts in children's social care and to Cafcass have also led to less thorough safeguarding for children in the court system. There is a growing concern that Cafcass are not qualified or resourced to properly identify and understand the risks and behaviours associated with abuse.

"Despite the increase in publicity, I have found a complete lack of understanding about domestic violence on the ground in social services and the police. Faced with an articulate, smooth-talking man in a suit and a highly anxious basketcase of a mother, they will automatically lump any problems under 'conflict between the parent'."

Recommendations:

1. The presumption of contact should be reversed; there must not be an assumption of shared parenting in child contact cases where domestic abuse is a feature, and child contact should be decided based on an informed judgement that it is both safe and within a child's best interests to have such contact. In order that children's relationships with absent, non-abusive fathers are not damaged and minimized, this process needs to be expedited.
2. Government and Parliament should consider that we must reverse the presumption that no reporting is permitted towards one that - subject to anonymity - reporting is permitted.
3. The Family Justice system must be brought into line with and the process must make reference to all relevant criminal justice proceedings.
4. Barring orders should be strengthened to explicitly bar parents who should not have access to their children or any parental responsibility to be barred absolutely from applying to the court except in the most exceptional circumstances
5. Legal aid must be reinstated for separating parents who are financially eligible.
6. Compulsory training on domestic abuse for the courts and all professionals associated with abuse and how to keep children and their parents' safe, particularly on the nuances of some forms of psychological abuse such as gas lighting, coercive control, and financial abuse. Training should also be provided by specialists on human rights and theories of parental alienation and their implications in cases where there has been domestic abuse.
7. Children's voices must be properly represented and heard as part of the process.
8. All meetings and telephone calls must be recorded.

9. As further data collection and ongoing research, Cafcass or the Family Division should collect the following statistics in cases where DA is alleged/proven:

Initial safeguarding

- Percentage of cases where Cafcass EIT phone call does not take place before FHDRA
- Percentage of cases where children are/not interviewed
- Percentage of cases where a risk assessment is not completed

Court proceedings

- Percentage of cases where a Finding of Fact hearing is not part of proceedings
- The Percentage of cases where contact is not recommended but is ordered
- The Percentage of cases where Cafcass use their powers to veto a court order on safeguarding grounds
- The Percentage of cases where no contact is ordered
- The percentage of cases where DA is found (civil burden of proof or criminal) to have taken place, but some form of contact is ordered

Return hearings

- The percentage of cases returning on safeguarding grounds
- The number/percentage of cases where Judges use their powers to prevent a party brining the case back to court to prevent abuse

Protective Orders

- The number of breaches
- Convictions for breaches