



DEBATE PACK

Number CDP 2016/0168 , 13 September 2016

Domestic abuse victims in family law courts

By Danny Rogers &
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Backbench Business Debate Main Chamber, 15 September 2016

A backbench business debate on a motion relating to domestic abuse victims in family law courts will be held in the Commons Chamber on Thursday 15 September 2016. This debate was scheduled by the Backbench Business Committee following a representation from Angela Smith, Maria Miller and Peter Kyle.

The text of the motion is:

That this House notes the Women's Aid report entitled Nineteen Child Homicides, published in January 2016; and calls on the Government to review the treatment and experiences of victims of domestic abuse in family law courts.

The proceedings of this debate may be watched on parliamentlive.tv

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

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1. Introduction

In January 2016, Women's Aid¹ published a [report](#) highlighting the cases of nineteen children killed by perpetrators of domestic abuse.² The killings were made possible through unsafe child contact arrangements, formal and informal. Over half of the child contact arrangements were ordered through the courts. The report concluded:

(...) Our study highlights the family courts' and other statutory agencies' limited or lack of understanding of the gendered nature of domestic abuse, the pervasive nature of coercive control, and that child contact is often used by perpetrators of domestic abuse as a vehicle to continue abuse after separation...

We conclude that, in cases involving a perpetrator of domestic abuse, the family courts need to challenge the existing 'contact at all costs' culture in order to always put the child first. Unless this happens, the family courts will continue to enable circumstances that can ultimately cost the lives of the children they are set up to serve, and sometimes their mothers' lives too.³

The report recommended that:

further avoidable child deaths must be prevented by putting children first in the family courts

there is an urgent need for independent, national oversight into the implementation of [Practice Direction 12J - Child Arrangements and Contact Order: Domestic Violence and Harm](#)⁴

Women's Aid launched a [Child First](#) campaign "calling on the Government, all family courts professionals, and involved agencies to make the family court process safer for women and children survivors of domestic abuse".⁵

Child contact arrangements in England and Wales

When a court is considering whether to make, vary or discharge a child arrangements order (which settles the contact or residence (or both) for a child), section 1 of the *Children Act 1989* states that in England and Wales the court's "paramount consideration" shall be the child's welfare, and that "a court shall have regard in particular to ... any harm which he has suffered or is at risk of suffering", among other factors.

The Act was recently amended so that when making, varying or discharging a child arrangements order, to presume, unless the contrary is shown, that the involvement of each parent in the life of the child concerned will further the child's welfare. There are exceptions to the provision where parental involvement would put the child at risk of suffering harm.

¹ [Women's Aid](#) describes itself as "the national charity working to end domestic abuse against women and children"

² Women's Aid, [Nineteen Child Homicides: what must change so children are put first in child contact arrangements and the family courts](#), January 2016

³ Ibid, p37

⁴ Ibid, p8

⁵ Women's Aid website: [Child First](#) [accessed 13 September 2016]

There is a Library Briefing Paper, [Child arrangements orders: residence and contact related matters for parents, grandparents and others after separation](#) (CBP 3100, 27 October 2014).⁶

Scotland

Child contact disputes and domestic abuse

The relevant legislation is the *Children (Scotland) Act 1995*, as amended by *Family Law (Scotland) Act 2006*. It creates a range of parental rights and responsibilities (PRRs) in respect of children living in Scotland. In particular, courts determine disputes about residence and contact under section 11 of the 1995 Act.⁷

The welfare of the child is the paramount consideration. Section 24 of the 2006 Act amended section 11 to require the courts to “have regard in particular” to the need to protect the child from actual or possible abuse; the effect of such abuse on children; the ability of the abuser to care for the child and the effect of abuse on the person’s capacity to fulfil PRRs.⁸

In March 2016 the Justice Committee carried out a [brief inquiry](#) into the operation of the 2006 Act.⁹

Victims of domestic abuse as vulnerable witnesses in child contact cases

There is no specialist family court in Scotland dealing with child contact cases. Instead such cases are usually dealt with by the local sheriff courts (who deal with both civil and criminal matters). In larger urban areas sheriffs may develop particular specialisms, including in family law.¹⁰

There is statutory provision for domestic abuse victims to be treated as vulnerable witnesses in child contact cases, whether they are a party to the proceedings giving evidence or otherwise a witness in the case. The relevant legislation is the *Vulnerable Witnesses (Scotland) Act 2004* (as amended). Part 2 of the Act deals with civil cases. Under the Act, vulnerable witnesses can access a variety of special measures in the criminal and civil courts. These include a screen when giving evidence; giving evidence by video link and having a supporter there. For civil cases this was the first time witnesses had had access to special measures.¹¹

⁶ Contribution from Tim Jarrett, Social Policy Section, x6918

⁷ For a summary of the factors the courts take into account when determining a dispute under section 11 see page 8 of the SPICe Briefing Paper 15/17, [Parenting when parents live apart](#) (31 March 2015)

⁸ 1995 Act, section 11(7A)–(7E)

⁹ Paragraphs 62-69 of the Committee’s [report](#) look at the operation of section 11 in the context of domestic abuse

¹⁰ In addition, the *Courts Reform (Scotland) Act 2014* contained provisions designed to develop greater specialisation in the sheriff courts, both in terms of the courts and individual judges

¹¹ For briefing material on the 2004 Act in civil cases see: [Special measures for vulnerable adult and child witnesses: a guidance pack](#) (Scottish Executive, 2008)

Another relevant piece of legislation is the *Victims and Witnesses (Scotland) Act 2014*. Among other things, the 2014 Act expanded the categories of vulnerable witnesses who have special measures automatically in court. The additional categories included victims of sexual assault, domestic abuse and stalking. However, the expansion only applies to criminal cases. This means that where a criminal case and a civil case are running concurrently affecting a victim of domestic abuse special measures are automatic in the criminal case but have to be applied for in the civil case.¹²

¹² On the 2014 Act see Scottish Parliament website, [Scottish Government action to support victims and witnesses](#)

2. Parliamentary Business

2.1 Parliamentary Questions

Family Courts: Domestic Violence

Asked by: Bridget Phillipson,

To ask the Secretary of State for Justice, if his Department will take steps to end the cross-examination of self-representing survivors of domestic abuse by their abusers in family court proceedings.

Answered by: Caroline Dinenage | Department: Ministry of Justice

The family courts take the issue of domestic violence extremely seriously. The Child Arrangement Programme and Practice Direction 12J sets out a strong and clear framework for judges to apply to the management of difficult court room situations, to ensure they are handled sensitively for alleged victims of domestic violence and other vulnerable witnesses. All judges receive specific training on this framework and they can intervene to prevent inappropriate questions or have questions relayed. Practical protections, for example, protective screens, video links, separate waiting rooms and separate entrances are available where appropriate.

24 May 2016 | c 37695

Asked by: Bridget Phillipson

To ask the Secretary of State for Justice, pursuant to the Answer of 25 February 2016 to Question 27240, on family courts: domestic violence, when his Department last reviewed the security standards referred to in that answer

Answered by: Caroline Dinenage | Department: Ministry of Justice

Family Courts are subject to Security Standards, which provide a framework for security measures at each individual court.

Security standards are under continual review by each local court. In practice this comprises each court undertaking reviews of all significant incidents trends/lessons learned, findings from risk assessments, engagement with inter-agency partners, feedback following complaints and regular local inspections. This is to ensure adequate protection measures are in place to protect court users.

17 Mar 2016 | 30621

Topical Question

Asked by: Helen Hayes

Today is International Women's Day, as other Members have noted. A recent survey by Women's Aid of women survivors of domestic abuse

who have attended the family courts regarding child contact found that a quarter reported being directly cross-examined by their abuser. Does the Minister agree that that is completely unacceptable? What action is being taken to address it?

Answered by: The Parliamentary Under-Secretary of State for Women and Equalities and Family Justice (Caroline Dinenage) | Department: Justice

Protecting women and children from violence is, of course, a key priority for the Government. We will be working with others in the family justice system to discuss and address the report's conclusions, including in relation to the measures already in place to protect women and children, and their effective implementation.

08 Mar 2016 | cc134-5

Asked by: Mims Davies

Victims of domestic violence need a modern family court system that provides special, well considered safety measures for people who are directly facing the perpetrators of those horrific crimes. Can the Minister assure me that the Department is doing everything possible to ensure that we have a modern family court system that protects vulnerable individuals at those times?

Answered by: The Parliamentary Under-Secretary of State for Women and Equalities and Family Justice (Caroline Dinenage) | Department: Justice

Yes, the Government are absolutely committed to supporting all vulnerable and intimidated witnesses, especially those who have been subjected to domestic abuse, to help them to give the best possible evidence so that offenders can be brought to justice. That is why we have put measures in place including, as I said earlier, the ability to give evidence while screened from the accused in the courtroom, by live video link from a separate room within the court building or from a location away from the court building altogether. Our changes to the courts will only help this.

26 Apr 2016 | 608 c1283

Family Courts: Domestic Violence

Asked by: Phillipson, Bridget

To ask the Secretary of State for Justice, with reference to paragraph 1.26 of the National Audit Office report, Implementing reforms to civil legal aid reports, published in November 2014, what assessment he has made of the effect of the increase in the number of litigants in person in family courts for cases involving contact with children on the quality of child arrangements orders made in families known to have a history of domestic abuse.

Answered by: Caroline Dinenage | Department: Ministry of Justice

The family court takes the issue of domestic violence extremely seriously. Where domestic violence or abuse is admitted or proven, any child arrangements order put in place must protect the safety and wellbeing of the child and the parent with whom the child is living, and not expose them to the risk of further harm. In particular, the court must be satisfied that any contact ordered with a parent who has perpetrated violence or abuse is safe and in the best interests of the child.

Where the court concludes that direct contact is safe and beneficial for the child, it can impose conditions such as supervised contact to protect the child.

The Ministry of Justice has improved funding for support and advice projects led by advice, voluntary and the pro bono sector to assist litigants in person and provide them with the information and skills to effectively represent themselves in court. Further, a person who has evidence of domestic violence or abuse, or the risk of such violence or abuse, can still obtain legal aid for advice and legal representation in the family court for a protective order or to deal with other family matters, such as a child arrangements order. This is to make sure that actual or potential victims of domestic violence or abuse are given the protection they need to keep them and other family members, including children, safe.

01 Mar 2016 | 27192

Asked by: Bridget Phillipson,

To ask the Secretary of State for Justice, how many family courts have special access measures in place for victims of domestic violence attending the court for child contact cases.

Answered by: Caroline Dinenage | Department: Ministry of Justice

Every family court has a system to support vulnerable court users. Protective measures are put in place whenever this is considered to be appropriate. These can include separate waiting areas, additional security and the use of separate entrances where appropriate. Parties can also request special measures such as the use of protective screens in the hearing or the use of a video link.

01 Mar 2016 | 27056

Asked by: Caroline Nokes

To ask the Secretary of State for Justice, what steps his Department is taking to ensure that all victims of domestic abuse attending the family courts have access to special measures similar to those available in the criminal courts.

Answered by: Caroline Dinéage | Department: Ministry of Justice

The Government is committed to supporting victims of domestic violence and abuse.

The Ministry of Justice is undertaking research to explore how the family judiciary are currently managing cases where unrepresented alleged perpetrators of abuse can cross-examine vulnerable witnesses in the family court, and to establish what, if any, additional provisions could be considered to support them in doing so. A report will be published in due course.

The research did not aim to assess the psychological impact of any cross-examination on victims of domestic abuse. However, some of the findings relate to the considerations the judiciary make in managing such cases appropriately, and the report will outline options to further protect vulnerable witnesses in the family court. It was out of scope of this research to explore cases where an unrepresented litigant who is a victim of domestic abuse may have to cross-examine their alleged abuser.

Family judges have a range of powers and training to manage difficult court room situations and to ensure they are handled sensitively for victims of domestic violence and other vulnerable witnesses. Judges can intervene to prevent inappropriate questions or have questions relayed. Practical protections, for example, protective screens, video links, separate waiting rooms and separate entrances are available where appropriate. It is for the judge involved, on the basis of the evidence, to determine how the framework will be applied in a particular case.

The family courts take the issue of domestic violence extremely seriously. The Child Arrangement Programme and Practice Direction 12J set out a strong and clear framework where domestic violence is alleged and all judges receive specific training on this framework.

29 Feb 2016 | 27286

Asked by: Bridget Phillipson

To ask the Secretary of State for Justice, what assessment he has made of the safety of the family court estate for victims of domestic abuse during cases involving child contact.

Answered by: Caroline Dinéage | Department: Ministry of Justice

HMCTS takes the issue of security within its courts extremely seriously and has in place a robust security and safety system to protect all court users, and the judiciary, in every family court. Risk assessments are carried out regularly by court managers and assured by security and safety professionals to ensure adequate protection measures are in place. These measures include inter-agency agreements to ensure the safety and security of victims and witnesses when attending court, such

as support and escorts into the building and - where possible - alternative entry and exit routes and separate waiting rooms.

There are also court security officers in place who have legislative powers to protect all those in the court building. Security measures include mandatory bag searches, the use of modern security searching equipment and surveillance cameras, and panic alarms in hearing rooms. Our security standards are continually reviewed to ensure they are effective, proportionate and effectively mitigate against the risks posed to court users, including victims of domestic abuse.

24 Feb 2016 | c 27240

Asked by: Alex Cunningham

To ask the Secretary of State for Justice, if he will commission an assessment of the effect on victims of domestic abuse and their families of the use of common entrances at family courts for both the perpetrators and victims of that crime.

Answered by: Mike Penning | Department: Ministry of Justice

Every family court has a system to support vulnerable court users. Protective measures are put in place whenever a court is aware that an individual involved in a case may be violent. These can include separate waiting areas, additional security and the use of separate entrances where appropriate.

Information on the number of children or women injured by a perpetrator of domestic violence after a Family Court decision relating to child contact is not held centrally and could only be obtained at disproportionate cost by manually checking case files in criminal and family courts and matching records.

The family court takes the issue of domestic violence extremely seriously. Where domestic violence or abuse is admitted or proven, any child arrangements order put in place must protect the safety and wellbeing of the child and the parent with whom the child is living, and not expose them to the risk of further harm. In particular, the court must be satisfied that any contact ordered with a parent who has perpetrated violence or abuse is safe and in the best interests of the child.

Where the court does conclude that direct contact is safe and beneficial for the child, it can impose conditions such as supervised contact to protect the child.

10 Feb 2016 | c 26113

Asked by: Alex Cunningham

To ask the Secretary of State for Justice, what steps he is taking to ensure that Practice Direction 12J: Child Arrangement and Contact Orders: Domestic Violence and Harm is properly implemented in each case involving domestic abuse seen in the family courts.

Answered by: Caroline Dinenage | Department: Ministry of Justice

The family courts take the issue of domestic violence extremely seriously. The Child Arrangement Programme and Practice Direction 12J set out a strong and clear framework for use where domestic violence is alleged. All judges receive specific training on this framework. The judge, on the basis of the evidence, will determine how the framework will be applied in a particular case and in particular, must be satisfied that any contact ordered with a parent who has perpetrated violence or abuse is safe and in the best interests of the child.

26 Jan 2016 | 22821

3. Media Articles

3.1 Newspapers

Guardian

28 January 2016

[Domestic violence victims forced to face abusers in court due to legal aid cuts](#)

Telegraph

20 January 2016

[19 children killed from 12 families. When will family courts in Britain start putting kids first?](#)

Guardian

1 April 2015

[Legal aid cuts have worsened the plight of the vulnerable](#)

Guardian

12 March 2015

[Third of domestic violence victims cannot provide evidence for legal aid](#)

3.2 Magazine/Journal articles

The Law Society Gazette

3 March 2016

[Domestic violence victims 'routinely abused' in family court – charity](#)

Law Society Gazette

20 January 2016

[Abuse survivors 're-victimised' through family court process](#)

4. Press Releases

4.1 Women's Aid

Press release, 20 January 2016

No parent should have to hold their children and comfort them as they die" – Claire Throssell, mother to Jack and Paul, both killed in 2014 by their father

The national domestic abuse charity Women's Aid has today launched a major new campaign, [Child First](#). The campaign calls on the family courts and the Government to put the safety of children back at the heart of all decisions made by the family court judiciary. [Child First](#) launches alongside the report, [Nineteen Child Homicides](#). The report tells the stories of the cases of nineteen children, all intentionally killed by a parent who was also a known perpetrator of domestic abuse. These killings were made possible through unsafe child contact arrangements, formal and informal. Over half of these child contact arrangements were ordered through the courts.

Key Statistics from Nineteen Child Homicides

- **19 children killed from 12 families**
- **2 mothers killed**
- **2 children seriously harmed through attempted murder**
- **For 7 out of the 12 families, the contact had been ordered through court**

Polly Neate, Chief Executive of Women's Aid, said:

"There is a misguided belief within the family courts and among judges that, because a relationship has ended, so has the domestic abuse. Survivors frequently report to us that they and their children are re-victimised and traumatised by their abusers, even after separation, through the family court process. This trauma makes it extremely difficult for the non-abusive parent to advocate clearly and effectively for the safety of their child. In the criminal courts, there are protection measures in place to give victims fair access to justice. This is not the case in the family courts. For example, it is common for victims of domestic abuse to be cross-examined by the perpetrator. This must end.

"The desire by the family courts to treat parents in exactly the same way, and get cases over with quickly, blinds them to the consequences of unsafe child contact. As the report *Nineteen Child Homicides* shows, these consequences can be fatal. The culture of, 'contact with the child, no matter what', must end. Less than 1% of child contact applications are refused[i], but we know that domestic abuse features in around 70% of CAFCASS caseloads, and in 70-90% of cases going to the family courts [ii]. Clearly, the system is failing. The best interests of children should be the overriding principle of the family courts, but far too often this is simply not the case."

Claire Throssell (pictured right), mother to Jack and Paul, both killed in 2014 by their father, said:

“No parent should have to hold their children and comfort them as they die, or be told that their child has been harmed in an act of revenge or rage. Having experienced the family court judicial process and its protocols, the tragic outcome that occurred – whilst court proceedings were still ongoing – exposes flaws and malpractice within family law.

“All too often children’s voices are not heard or acted upon. Attending court is an emotional, frightening and at times a traumatic experience which nobody decides to initiate lightly – but does so to protect their children’s physical and emotional wellbeing.”

Women’s Aid urges the Government and family courts to undertake two key recommendations from *Nineteen Child Homicides*, in order to protect children and their non-abusive parent, and stop further avoidable child deaths. These form the two campaign asks of [Child First](#):

1) Further avoidable child deaths must be prevented by putting children first in the family courts – as the legal framework and guidance states.

Ensure that domestic abuse is identified and its impact fully considered by the family court judiciary. Child contact arrangement orders must put the best interests of the child(ren) first and protect the well-being of the parent the child is living with, in accordance with ‘Practice direction 12 J Child arrangements & Contact order: Domestic violence and harm’. There is an urgent need for independent, national oversight into the implementation of Practice Direction 12J.

2) Make the family courts fit for purpose through the introduction of protection measures for survivors of domestic abuse

Ensure survivors of domestic abuse attending the family court have access to protection measures, similar to those available in criminal courts. Survivors of domestic abuse should always have access to a separate waiting room or area, and judges must ensure there is time for the non-abusive parent to leave court safely before releasing the perpetrator.

Professor Evan Stark, Ph.D, MSW, Professor Emeritus, Rutgers University, said:

“*Nineteen Child Homicides* describes one devastating consequence of the Family Court’s failure to make safety a priority in contact orders. But child deaths from unsafe contact are only the most tragic outcome of the huge gap that separates the justice for abused women and the failure of the Family Court to protect children and the non-abusive parent. [Child First](#) aims to close this gap.”

Sarah Forster, family law barrister and Deputy District Judge, said:

“I am supporting [Child First](#) to help drive the culture change needed within the family courts to keep children safe. There must never again be a report such as ‘Nineteen Child Homicides’. Everyone within the family court system must work together to stop avoidable child deaths. It can, and must, be done.”

John Bolch, solicitor, family law blogger and writer, said:

“As a former family lawyer with over 20 years of experience, and having seen all too many such tragedies reported, I wholeheartedly support this campaign.”

“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

To find out more about the campaign and download the report, go to: www.womensaid.org.uk/childfirst

To sign the [Child First](#) petition go to:
<https://you.38degrees.org.uk/p/childfirst>

For more information or to arrange interviews with [Child First](#) spokespeople or case studies, please contact Alice Stride in the [Women’s Aid Press Office](#) on 0207 566 2511/ 07807 218687 or a.stride@womensaid.org.uk

[i] Figures for 2003 show that less than 1% (601 out of 67184) of contact applications were refused, even when there is a history of violence (Aris & Harrison, 2007; Giovanni, 2011).

[ii] Domestic violence features in 60-70% of CAFCASS caseloads (Domestic Violence Commons Enquiry, 2008) and in 70-90% of cases going to the family courts (this includes public as well as private law proceedings) (HMIC, 2005).

ENDS

NOTES TO EDITORS

Nineteen Child Homicides Executive Summary

“*Nineteen Child Homicides* tells the stories of the cases of nineteen children who were intentionally killed by a parent who was also a perpetrator of domestic abuse, through unsafe child contact arrangements, informal and formal. Our focus is on children, but in some of these cases, women were also killed. The blame for these killings lies with the perpetrators. However, we have concluded that these cases demonstrate failings that need to be addressed to ensure that the family court, Children and Family Court Advisory Service (Cafcass), children’s social work and other bodies actively minimise the possibility of further harm to women and children. This study reviewed relevant Serious Case Reviews for England and Wales, published between January 2005 and August 2015 (inclusive). It uncovered details of 19 children in 12 families who were killed by perpetrators of domestic abuse. All of the perpetrators were men and fathers to the children that they killed. All of the perpetrators had access to their children through formal or informal child contact arrangements. As well as 19 children killed, the perpetrators also attempted to kill two other children at the time of these homicides, and killed two mothers.”

You can find the report at: www.womensaid.org.uk/childfirst

Practice Direction 12 J

This Practice Direction applies to any family proceedings in the Family Court under the relevant parts of the *Children Act 1989* or the relevant parts of the *Adoption and Children Act 2002* ('the 2002 Act') in which an application is made for a child arrangements order, or in which any question arises about where a child should live, or about contact between a child and a parent or other family member, where the court considers that an order should be made.

The purpose of this Practice Direction is to set out what the Family Court should do in any case in which it is alleged or admitted, or there is other reason to believe, that the child or a party has experienced domestic violence or abuse perpetrated by another party or that there is a risk of such violence or abuse.

About Women's Aid

Women's Aid is the national charity working to end domestic abuse against women and children. Over the past 40 years, Women's Aid has been at the forefront of shaping and coordinating responses to domestic violence and abuse through practice. We empower survivors by keeping their voices at the heart of our work, working with and for women and children by listening to them and responding to their needs. We are a federation of over 220 organisations who provide more than 300 local lifesaving services to women and children across the country. We provide expert training, qualifications and consultancy to a range of agencies and professionals working with survivors or commissioning domestic abuse services, and award a [National Quality Mark](#) for services which meet our quality standards. Our campaigns achieve change in policy, practice and awareness, encouraging healthy relationships and helping to build a future where domestic abuse is no longer tolerated. The [24 Hour National Domestic Violence Helpline](#) on 0808 2000 247 (run in partnership with Refuge) and our range of online services, which include the Survivors' Forum, help hundreds of thousands of women and children every year.

5. Further reading and sources

All Party Parliamentary Group on Domestic Violence, [*Domestic Abuse, Child Contact and the Family Courts*](#), April 2016

Women's Aid website

<https://www.womensaid.org.uk/>

Women's Aid, [*Child First - Nineteen Child Homicides*](#), 20 January 2016

Rights of Women website

<http://rightsofwomen.org.uk/about-us/>

Rights of Women, [*Picking up the pieces: domestic violence and child contact*](#), 2012

House of Commons Library Briefing Paper, [*Domestic violence in England and Wales*](#), May 2016

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