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Domestic abuse and child contact in Scotland: the perspectives of family law practitioners

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ABSTRACT
It is now well-established that children are adversely affected by domestic abuse, and that domestic abuse does not always cease following parental separation. However, the issue of post-separation child contact in the context of domestic abuse remains contentious, with some commentators arguing that contact may not always be in the 'best interests' of the child. In Scotland, the nature and extent of child contact applications remain under-researched, and little is known about the processes of argument and adjudication in contact decisions. This article draws on a survey of family law practitioners in Scotland undertaken to examine how, if at all, developments in domestic abuse proceedings and changing definitions in the context of criminal law in Scotland, inform the handling of child contact cases in the civil courts. The findings reveal that, whilst most respondents were of the view that information about domestic abuse strengthens the position of the party against child contact, there is a clear absence of systematic ways to gather and make available information about domestic abuse where it has occurred (or is still occurring) in cases involving child contact. The practice and policy implications of this for determining the 'best interests' of the child are discussed.

KEYWORDS
Child contact; domestic abuse; Scotland; family law

Introduction

For some considerable time, Scotland has been engaged in an ambitious strategy to tackle domestic abuse. There have been some significant developments: the early adoption of a policy definition that focuses on 'abuse' rather than violence (Scottish Executive 2000, 2003); a gendered understanding of domestic abuse as a cause and consequence of gender inequalities (Scottish Executive 2000), and; the implementation of a raft of policy and practice responses (Brooks-Hay *et al.* 2018), including the introduction of specialist domestic abuse courts (Reid Howie Associates 2007) and specialist guidance and training for prosecutors. Improving the police response to domestic abuse is a strategic priority for Police Scotland, leading to the establishment of a National Task Force, a National Co-ordination Unit with specialist Units in every local policing division, and police-led

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Multi-Agency Tasking and Coordination Groups set up to target serious and serial perpetrators of domestic abuse. The current Government strategy *Equally Safe* sets out priorities to ensure the safety of women and girls, with an emphasis on criminal justice interventions and a more 'robust' response to perpetrators (Scottish Government 2018) reflecting the growing commitment to a vigorous legal approach.

Most recently, the Domestic Abuse (Scotland) Act 2018 (DA(S)A), which gained Royal Assent in April 2019 introduced a statutory offence of domestic abuse aimed at properly reflecting the experience of victims of long-term abuse and ensuring more effective investigation and prosecution (Cairns 2017, Burman and Brooks-Hay 2018, Scott 2018). In its criminalisation of a course of violent, threatening or intimidating behaviour that is abusive towards a partner or ex-partner, DA(S)A recognises, for the first time, that domestic abuse is experienced as a continuum rather than a discrete incident.

Introduced following a high-profile Government consultation, DA(S)A has been afforded considerable media attention (Brooks-Hay *et al.* 2018), and has attracted substantial support from the women's sector, victim's advocates, survivor groups and the Crown Office Procurator Fiscal Service (COPFS) (Scott 2018). Seen as a radical attempt to align the criminal justice response with a contemporary feminist conceptual understanding of domestic abuse (Burman and Brooks-Hay 2018, Stark and Hester 2019), DA (S)A has been heralded as a 'gold standard' in domestic abuse legislation (Scott 2018, Scott and Ritch 2021) in its attempt to reflect what women and children say about their experiences of abuse.

Police Scotland recorded 65,251 incidents of domestic abuse in 2020–21, an increase of four percent compared to the previous year, constituting the fifth year in a row that this figure has shown an increase (Scottish Government 2021). The proportion of domestic abuse cases with a decision to proceed to court has also increased in recent years. Of 32,776 charges reported to COPFS with a domestic abuse identifier in 2021–22, 93% proceeded to court (COPFS 2022). There is little doubt that domestic abuse cases are now a mainstream of policing and criminal court business.

The international research evidence is clear that domestic abuse is harmful to children and that the harm is not limited to situations where children 'witness' domestic abuse but rather that they actively experience domestic abuse with the non-abusing parent (Hester 2000, Mullender 2004, Radford *et al.* 2013, Campo 2015, Katz 2016). There is also recognition in Scotland that domestic abuse adversely affects children (Callaghan *et al.* 2018) and DA(S)A introduced a sentencing aggravator where abusive behaviour is directed towards a child, is witnessed by a child, involves a child in the commission of the offence or is likely to adversely affect a child. This is the only UK legislation with a statutory aggravator to reflect the harm that can be caused to children growing up in an environment where domestic abuse takes place. DA(S)A also stipulated that courts would impose Non-Harassment Orders (NHOs) unless the court could explain why victims – including children – would be safe without them.

Scotland has also seen considerable reform in the context of child law, family law and children's rights, with evidence of an ambitious and innovative strategy in pursuit of a civil law framework suitable for contemporary families. Domestic abuse was first addressed within family law by the introduction of statutory occupancy rights in the matrimonial or family home (Matrimonial Homes (Family Protection)

(Scotland) Act 1981) and, more recently, highlighted within the context of child law, including ongoing contact between parents and children (Children (Scotland) Act 1995, as amended). The issue of child contact with the non-resident parent has gained policy prominence in Scotland in recent years, amidst debates about whether, in the context of domestic abuse, contact with an abusive parent is in the 'best interests' of the child.

Concern about how the family justice system responds to children having contact with fathers who have abused their mothers is not new. Research internationally shows that many abusive men manipulate the relationship between mothers and their children and child contact provides further opportunities for the perpetrator to continue their abuse of both the child and the non-abusing parent (see, e.g. Mullender *et al.* 2002, Humphreys *et al.* 2006, Thiara 2010, Coy *et al.* 2012). Specialist women's support services have long highlighted that it is problematic to presume that the relationship between a child and abusive parent is unaffected by domestic abuse, and that contact proceedings are frequently invoked by perpetrators as a means of seeking to continue to manipulate and control women and children (Coy *et al.* 2015).

Among concerns identified by a Scottish Executive (2004) consultation, *Family Matters: Improving Family Law in Scotland*, was a need to strengthen protection against domestic abuse. During the passage of the Family Law (Scotland) Bill, a statutory presumption against contact in cases involving domestic abuse was initially proposed, but then opposed on the basis that it added little to the existing legislated 'welfare test'. Following an intervention by Scottish Women's Aid that domestic abuse was not being considered in child contact cases, section 24 of the Family Law (Scotland) 2006 amended the Children (Scotland) Act 1995, introducing new 'abuse provisions' directing the court, in assessing whether or not to make an order for contact, to have regard to particular matters concerned with the need to protect the child from domestic abuse.

The Scottish Government (2019a) consultation on the 1995 Act highlighted that, in practice, domestic abuse continued to be disregarded in court decisions relating to contact and the welfare of the child. The Family Justice Modernisation Strategy (Scottish Government 2019b) set out a commitment to introduce new measures for domestic abuse victims, including ensuring civil courts are provided with information on domestic abuse and improving interaction between criminal and civil courts, in the context of domestic abuse. More recently, the Scottish Women's Rights Centre (SWRC) began offering approved Domestic Abuse Training for Solicitors, which provides a comprehensive introduction to domestic abuse legislation in Scotland as well as good practice when working with those who have been subjected to domestic abuse.

The provisions of the 1995 Act, as inserted by the Family Law (Scotland) 2006, provide the legislative basis for defining domestic abuse in contact cases in Scotland. While a significant reform, they have attracted relatively little attention in published judgments (Morrison 2014) and limited academic comment (Whitecross 2017). With some exceptions (Wilson and Laing 2010, Mackay 2012, Morrison 2014) little is known about the nature of child contact applications or how child contact proceedings work in practice. The low volume of child contact cases which proceed to proof in Scotland means that there are few reported judgments on which to base analysis of how domestic abuse is understood by the civil courts. Nothing is known of the extent to which the treatment of domestic abuse in the civil courts reflects criminal practice, or of the ways in which individual child contact cases may (or may not) interact with criminal justice proceedings.

The significance of the interaction of the criminal and the civil, in the context of domestic abuse and child contact, was clearly identified by the Scottish Government in the commissioning of a scoping project: Contact Applications Involving Allegations of Domestic Abuse: Feasibility Study (McGuckin and McGuckin 2004) but the planned Phase 2 did not follow. Much of the research evidence we have on this specific issue in Scots family law derives from two doctoral theses (Mackay 2012, Morrison 2014). Overall, there is limited research evidence on the operation of family law in child contact cases, and whether and how the interpretation and application of the civil law statutory provisions are informed by contemporary understandings of domestic abuse and changing definitions or practices in the criminal law. In this article we draw on findings from an online survey of family law and criminal law practitioners in Scotland undertaken to determine their understandings of domestic abuse and how these inform their handling of child contact cases, and to obtain their views and experiences of the interrelationship between the investigation and prosecution of domestic abuse in criminal justice and parallel child contact proceedings in civil justice. The survey was conducted as part of a wider research study which examined the relationship between civil and criminal law in child contact proceedings, where there were allegations of domestic abuse (Burman *et al.* 2023). Before discussing the research and the findings in more detail, we briefly set out the legislative framework for child contact in Scotland.

Child welfare hearings and child contact orders

The Children (Scotland) Act 1995 represented a major reform of the law relating to parents and children, establishing the foundational framework of parental responsibilities and rights (PR&R), and providing the statutory basis for regulation of private law relationships between children, parents and other relevant adults. Child contact is understood in Scots law within the context of these PR&R. Section 1(1) provides that: 'a parent has in relation to his child the responsibility – [...] (c) If the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis;' and in terms of section 2(1)(c), the parent has a 'right' to do so. Norrie (2013, ch.7, para. 17) describes the approach to contact as follows:

> The responsibility and right of contact is based on the assumption that it is a benefit to the child that he or she maintain links with both parents, though that assumption does not amount to a presumption in favour of making a contact order: it is more in the nature of a 'working principle born of human experience', or a 'point of reference based on the common conception of what will, generally speaking, be in the interests of children.

For families who require the intervention of the civil courts to resolve parental conflict, section 11 of the 1995 Act provides the legislative framework under which civil court orders can be applied for and judicial decisions reached to regulate arrangements. It sets out orders which may be sought in respect of PR&R, including contact orders, and the principles on which decisions should be made. Whilst the court may make any order regulating PR&R as it sees fit, section 11(2) establishes eight court orders referred to collectively as 'section 11 orders'. Amongst them is a contact order (section 11(2)(d)) 'regulating the arrangements for maintaining personal relationships and direct contact between a child under the age of 16 and a person with whom the child is not, or will not be, living'.

When considering whether or not to make an order for contact, the court must apply 'the welfare test', in terms of section 11(7) of the 1995 Act and specifically: '(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and (b) taking account of the child's age and maturity, shall so far as practicable (i) give him an opportunity to indicate whether he wishes to express his views; (ii) if he does so wish, give him an opportunity to express them; and (iii) have regard to such views as he may express'.

A Child Welfare Hearing (CWH) is the key mechanism for dealing with civil actions concerned with the welfare of a child under section 11 of the 1995 Act. Viewed as an 'innovative measure' requiring sheriffs and practitioners 'to adopt new ways of approaching the resolution of child-related disputes' (Mays and Christie 2001, p. 161), CWH's are central to understanding how domestic abuse is considered in the context of child contact. A CWH is the first hearing that parents in all defended contact actions will attend. The court will have the parties' written pleadings (initial writ and defences) that set out their respective statements of the facts and has considerable discretion in terms of future steps. It is open to the court to make or vary an interim order for contact at the first or any subsequent CWH if satisfied that the statutory welfare test has been met. The court can, at any CWH, determine that the matters in dispute are such that it is appropriate to fix a procedure for Proof in order to assess oral and documentary evidence on material matters relevant to the welfare of a child and make a judicial determination as to the facts and the key question of contact. Where it is considered to be in the best interests of the child, the court may direct that a Child Welfare Reporter (CWR) be appointed to undertake enquiries and/or seek the views of the child and to report these to the court.

The CWH, in theory, allows for a process which is focused on resolution, reflecting well the relational nature of families and family law, but tensions identified in an early review of CWHs (Mays and Christie 2001) have come to the fore. While the 'cautious process' of the CWH has been welcomed (Mackay 2018, p. 483), it can also lead to protracted actions, with NJDB v JEG [2012] UKSC 21, an extreme example. With fears about lengthy delays and the harm they may cause to child welfare generally, and specifically in the context of domestic abuse, effective case management has become the key method for minimising abuse of process (Whitecross 2017). But there remains a balance to be achieved and in recent guidance from the Sheriff Appeal Court it was acknowledged that there can be a 'clash between two competing issues: (a) procedure (and its policy)', which in respect of child contact and CWHs was a move 'towards expedition and the avoidance of delay' and '(b) the need for flexibility when dealing with the interests of a child' (LRK v AG 2021 SLT (Sh Ct) 107, [14]).

The study

As stated, the online survey of legal practitioners was part of a larger study, funded by the Scottish Government, which investigated whether and how interpretation and application of the civil law statutory provisions regarding child contact in the context of domestic abuse are informed by contemporary understandings of domestic abuse and changing definitions or practices in Scots criminal law (Burman *et al.* 2023).

The survey aimed to determine how legal practitioners' understandings of domestic abuse inform their handling of child contact cases and sought their views and experiences of the interrelationship between the investigation and prosecution of domestic abuse in criminal justice and parallel child contact proceedings in civil justice. Formal ethical approval for the research was received from the University of Glasgow and Edinburgh Napier University.

The survey was designed to collect both quantitative and qualitative 'free text' data and administered using the online platform Qualtrics. The survey comprised (36) questions, arranged in five sections:

(A) Child contact matters where there are allegations of domestic abuse, including a subsidiary section about interaction with criminal processes
(B) Protective Orders
(C) Criminal Cases
(D) Open Question (where participants were offered the opportunity to elaborate on their answers)
(E) About the respondent.

The survey was advertised through social media and relevant legal newsletters including Scottish Legal News and the Clan Childlaw network bulletin; requests were also made to key organisations such as the Family Law Association to share the survey through their networks.

Discussion here is based on 38 full responses to the survey. All but one of the 38 respondents had experience of child contact work. Almost all (n = 33) had experience in protective orders in the context of domestic abuse, and half (n = 20) had represented clients in criminal proceeding in domestic abuse cases. Respondents' experience of legal practice ranged from one year to over 40 years, although over half of the respondents had at least 10 years' experience of legal practice. While the number of survey responses is too small to be considered representative, there were respondents from all six sheriffdoms in Scotland. All but five of the respondents stated they were female. Given the small number of respondents, all findings are presented for the whole population of survey respondents.

In what follows we present key findings from the online survey under four headings, followed by a note on the scarcity of data on child contact cases in the Scottish courts.

How information about domestic abuse reaches the child contact process

The majority of respondents (n = 30) reported that, in most child contact cases, they do not routinely enquire about domestic abuse as a factor and are not made aware of domestic abuse from any external source. Rather, they are heavily reliant on their client informing them that they have been subjected to domestic abuse, or that their ex-partner is alleging/has alleged domestic abuse. Where their client is the alleged perpetrator, then this was less likely to be divulged to them. Two respondents reported cases in which the court had become aware of domestic abuse from ongoing or recently completed criminal proceedings and two recalled referrals for legal advice from a Women's Aid branch or a similar organisation which alerted them to the presence of domestic abuse, but by and large this information will be conveyed by the non-abusing parent, who is almost always the female partner. While this is largely unsurprising, in the context of civil work, where a solicitor takes instructions from their individual client, it is notable in its distinction from the development of practice and policy within the criminal justice approach to domestic abuse.

Where information flow about domestic abuse is dependent on the client, then there is a risk of partial or inaccurate information being conveyed. Not having the full picture can potentially lead to delays in case preparation and the progress of civil proceedings, as well as affect decision-making in child contact. Importantly, lack of awareness of domestic abuse and the outcome of any associated criminal proceedings may compromise the safety of the child and the non-abusive parent.

These findings echo those of McGuckin and McGuckin (2004) who found that there was no systematic recording of domestic abuse in court data and 'the likelihood of knowing if domestic abuse is an issue is lessened when the perpetrator and pursuer may well be the same person' (McGuckin and McGuckin 2004, p. 2). Almost 20 years on, this appears to remain the case. The lack of mechanisms to convey information about domestic abuse suggests that the commitment of the Family Justice Modernisation Strategy to ensure that civil courts are provided with information on domestic abuse, and the provisions of the Children (Scotland) Act 1995 requiring domestic abuse to be considered in child contact cases, do not always read through into practice.

The importance of domestic abuse as a consideration in child contact deliberation

Whilst most respondents said that they would inform the court if they were made aware of domestic abuse, there were some key differences in approach. Whereas some were strongly of the view that domestic abuse is a significant factor and should be '*brought to the court's attention as soon as possible as it is a key consideration in whether a child should have contact with the other parent*', others believed this depended on whether there were specific allegations in relation to the child, or whether the abuse posed a risk to their client. A small number of respondents noted that there were potential risks to their client and to the child following disclosure of abuse and flagged the need to consider safety measures.

There were varying views concerning the risk of harm posed to children by domestic abuse, with some respondents stating that children may not always be at risk of or impacted by domestic abuse, and that this was dependent on context. Generally, domestic abuse was only considered relevant to child contact if the child specifically witnessed domestic abuse or was the victim of abuse, as highlighted in the following response: '*In my view domestic abuse is relevant to such cases where there is a risk to the child through the perpetrator's behaviour or there has been an impact on the child because of such behaviour*'.

This is somewhat at odds with the widely held view in the research and practice literature that the potential harm to children is not limited to situations where children 'witness' domestic abuse (Hester 2000, Mullender 2004, Radford *et al.* 2013, Campo 2015, Katz 2016, Callaghan *et al.* 2018) and in some contrast to the provisions of DA(S)A which specifically recognise the 'adverse impact' on children of experiencing domestic abuse, without the need for them to specifically witness it. As previously stated, the Act recognises the impact of domestic abuse on children by providing a statutory aggravator where the perpetrator's abusive behaviours would be likely to adversely affect a child, such as by controlling the victim's movements.

Most respondents were of the view that the courts do pay sufficient attention to the child's views (n = 24), the child's age and stage of development (n = 27), the child's right to a relationship with both parents (n = 22) and parents' rights (n = 20) in making decisions about contact. However, there were differing views concerning the level of attention paid by the court to the impact of domestic abuse on the child's safety and wellbeing, with a greater number (n = 18) stating that, in their opinion, this was insufficient, compared to others (n = 15) who thought the court got this about right. One respondent specifically raised concerns that a sense of the long-term welfare of the child was lacking from the court's consideration: '*I think more focus needs to be given to the long-term welfare of the child. It is not just the here and now*'.

A wide range of studies have shown that decisions about contact arrangements which fail to take safety into account may endanger both women and children physically and emotionally (see, e.g. Mullender *et al.* 2002, Harrison 2008, Thiara 2010, Thiara and Gill 2012, Radford *et al.* 1997). Yet, on the whole, there was limited framing by survey respondents of the ways in which domestic abuse can impact on a child. Just a small number specified the importance of securing the child's safety. Here, risk of harm was framed primarily in terms of handover arrangements, the extent to which these were supervised and where these took place, however the focus was specifically on the risk posed to the non-abusing parent, as summed up by the following: '*I don't necessarily raise the issue [of domestic abuse] at a Child Welfare Hearing unless protective issues arise regarding safety of client at handover of child for contact*'. There also appeared to be a lack of recognition of the ongoing risks to the non-abusing parent, beyond at handovers, suggesting a rather narrow view of the impact of domestic abuse post-separation in relation to the adult as well as the child.

In response to questions about how information about domestic abuse is used in contact proceedings, over two thirds of respondents (n = 26) were of the view that where such information is presented as a contextual factor, it can strengthen the position of a party who is opposing contact. However, most of the remaining respondents (n = 10) believed that this information makes no difference; one thought it made the position of a party opposing contact weaker. There were mixed views about the implications of disclosing domestic abuse, and the motivations of the party raising it, with a very small number of respondents suggesting that domestic abuse can be '*weaponised*' in the court process by the alleged victim as the '*easiest way to thwart contact*'.

Internationally, there has been a trend towards a pro-contact philosophy based on the presumption that this serves the 'best interests' of children (Anderson 1997, Aris and Harrison 2007, Harrison 2008, Thiara and Gill 2012, Barnett 2015). While in Scotland there is no formal, legal presumption in favour of contact (Sanderson v McManus 1997 SLT 629; White v White 2001 SLT 485), it has been observed that there is a general presumption 'in favour of contact as being in a child's best interests' (Wasoff 2007, p. 2). The pro-contact philosophy is particularly damaging where there is, or has been, domestic abuse where this may be seen as less relevant to the question of contact than maintaining existing contact. Whilst the views of the judiciary are not captured in this research and there is a marked lack of data on contact decisions, there is little doubt that legal practitioners appearing in family courts consider that pro-contact continues to be a dominant philosophy in Scottish courts: an approach reflecting the framework of the Children (Scotland) Act 1995 which constructs it as such.

The interface between child contact and criminal proceedings for domestic abuse

The survey included a set of questions about respondents' experience of working on child contact matters where there were also ongoing or recently completed criminal proceedings. Most respondents reported working across both criminal and civil systems; over four fifths (n = 30) had represented clients in CWHs where there were also criminal proceedings, or vice versa. Around a third (n = 11) reported that, in their experience, information would not routinely be shared between or across the criminal and the child welfare processes. Others described information-sharing as occurring only because the same sheriff happened to deal with both matters, or because one or both parties mentioned that a parallel criminal process was ongoing or recently completed. As one summarised the situation: '*the sharing of information between processes is complicated and far from straightforward*'.

That said, most respondents were of the view that the criminal and the civil cases impacted on each other, in terms of timing of the process (n = 18) and/or in terms of outcomes (n = 20). Again, however, the views on exactly how these processes impacted on each other showed variation, with some respondents suggesting that the timing of civil processes would be impacted by criminal proceedings, with final or interim decisions about child contact being delayed until criminal outcomes were known. One respondent described such a delay as potentially having '*a long-term detrimental effect upon the relationship between parents and children*'. Whilst several respondents considered that a conviction for domestic abuse would be viewed as '*significant*' or would have an impact on the level or form of contact, others raised the possibility that the impact might also go the other way, that is, a not guilty verdict in a criminal court '*can in some cases have more of an impact and lead to domestic abuse matters being pushed aside*'.

In direct contrast however, other respondents suggested that there was little or no relationship between the timing of the criminal and civil processes: '*Neither takes account of the other and instead hearings appear to be rigidly fixed according to the court timetable rather than the interests of the parties*'. One respondent noted that it was '*very dependent on what judge you have*' in terms of whether or how a criminal outcome had an impact, with another stating: '*The interaction between domestic abuse and child contact cases can, all too often, come down to the importance placed on it by each individual sheriff. Much to the frustration of all parties*'. This highlights both the significance of judicial discretion and the possibility of variation.

Where information was conveyed, albeit sporadically and inconsistently, most respondents suggested that the flow of information went more from criminal proceedings to civil proceedings rather than in the other direction. Just under half of respondents thought that civil processes would inform arguments in the criminal case around bail decisions (n = 18) with fewer thinking that the civil case would inform arguments about Non-Harassment Orders (n = 10) or mitigation (n = 8) in the criminal case.

Most respondents believe that decisions made in criminal processes which take in arguments around child contact, particularly in relation to bail conditions and non-harassment orders, can have a direct impact on child contact decisions and family experiences. Yet, information about criminal proceedings or outcomes is not consistently conveyed to the civil system and, because only one party in civil proceedings has representation in criminal proceedings (the accused) then the court may not be being provided with full information in order to make decisions.

Respondents were asked for their views on who would be best placed to aid information-sharing between criminal and civil processes in the context of child contact processes. Responses varied from: '*None. All are subject to limitations*' to proposals that there should be clear requirements placed on both the defence agent and the procurator fiscal (prosecutor) appearing in the criminal cases to share information with those involved in the civil process. Around half (17) of the respondents suggested that Child Welfare Reporters were best placed to share information, but there were also concerns raised about variable skills of Reporters or difficulties that Reporters may have in obtaining the relevant information.

Data on the volume and nature of child contact cases in the Scottish courts

In conducting the wider research study of which the online survey was a part, we were severely inhibited by the absence of clear and transparent civil justice data on child contact. Despite some improvements in civil justice statistics in Scotland, the collation and availability of relevant data remains a significant issue. Almost 20 years ago, McGuckin & McGuckin found that 'little is known about the nature and extent of contact applications … how many have been awarded and what proportion … involve allegations of domestic abuse' (McGuckin and McGuckin 2004, p. 10). By extrapolation from a sample of three sheriff courts, they estimated there were 2,000 applications for contact annually across Scotland, with allegations of domestic abuse against the pursuer in 310 of those applications. Mackay (2013) suggested that around half of all Scottish child contact cases involved domestic abuse; research in England and Wales has put this higher (CAFCASS/Women's Aid 2017).

The Scottish Government (2021) Civil Justice Statistics (2019–20) provide some insights into the context of family actions. Family cases made up 16% of principal craves (legal remedy sought) in civil actions. Cases recorded under family law cover a broad range of matters: divorce and dissolution and PR&R account for 93% of cases. Family law cases may include interdicts preventing a party from making contact or coming into close proximity to another, and exclusion orders that suspend the rights of an individual to live in the family home.

It remains difficult, however, to draw significant conclusions from these statistics which are categorised on the basis of the principal crave, in light of the findings (McGuckin and McGuckin 2004, p. 1) that 'applications for contact were found across a range' of family actions and that contact 'was not the first crave in the majority of contact applications'. We asked survey respondents to estimate, based on their experience, the proportion of contact cases that involve allegations of domestic abuse and the majority (n = 30) speculated that this was '*about a half*'. We also asked them to estimate what proportion of child contact matters that they worked on went on to a CWH.

Estimates ranged from '*about a half*'(n = 16) to 'about three quarters' (n = 8). By their own admission, practitioners do not have a clear sense of the numbers. The lack of clear and transparent court data is not only a problem for research but it may also impact on legal practice. Without clear information of the volume of contested child contact matters, the prevalence of domestic abuse in child contact cases or the frequency and patterns of contact being ordered or refused, it is difficult for legal practitioners to advise clients effectively.

Discussion

The survey, whilst small-scale, provides valuable baseline information on legal practitioners' experience and handling of child contact cases and goes some way to address the knowledge gap in this area. Significantly, the survey findings provide insights into practitioners' views and experiences of the interrelationship between the investigation and prosecution of domestic abuse in criminal justice and parallel child contact proceedings. Although there has been substantial work on improving the criminal response to domestic abuse in Scotland, our findings suggest that this does not appear to have permeated, fully, or consistently, into the civil justice system, despite the high profile currently afforded domestic abuse in Police and Government policy and guidelines.

It is vital that the issue of domestic abuse is brought to the attention of the family lawyers and the court as soon as possible. Yet, it is evident that legal practitioners acting in child contact cases are heavily reliant on obtaining information about the occurrence of domestic abuse from their clients, and they gain this information primarily from the party opposing contact. For those acting for the party seeking contact, this information is rarely provided. There is no formal mechanism by which practitioners are informed of criminal proceedings in relation to domestic abuse. Nor do most routinely enquire about domestic abuse as a factor when taking on a child contact case, although this may emerge as a case proceeds. Where such information flow is wholly dependent on the client, then there is a risk of partial or inaccurate information being conveyed or miscommunicated. Importantly, lack of awareness of the occurrence of domestic abuse and the outcome of any associated criminal proceedings may compromise the safety of the child and the non-abusive parent.

In the light of these findings, it seems evident to us as researchers that consideration needs to be given to the development of robust mechanisms which ensure the early identification of any prior or ongoing action or concerns relating to domestic abuse in child contact cases, alongside the setting out of the responsibilities of all key professionals in that system to appropriately convey that information. One might add to that an overhaul of existing family court databases to make it possible that cases involving allegations of domestic abuse and those where there have been previous or ongoing criminal proceedings for domestic abuse can be flagged. The disarticulation between criminal and civil systems in cases involving domestic abuse cases can only be effectively addressed through political will and collaborative action by criminal and civil justice agencies and relevant statutory organisations. It is unclear however whether there is appetite for this, despite the much-heralded developments in criminal justice to tackle domestic abuse, and the commitment to ensure the safety and 'best interests' of the child.

Another key finding concerns the disparate views amongst practitioners as to the importance of domestic abuse as a significant consideration in child contact deliberations. Key differences of opinion were evident in the views provided about the relevance of domestic abuse to the safety and wellbeing of the child, ranging from it being extremely important to being of limited importance. This suggests a likelihood that the risks to the child are being underplayed, because the nature and impact of abuse on children continues to be misunderstood. Moreover, it is concerning that there remains a prevailing understanding of domestic abuse as primarily an 'adult matter' and that, for the most part, child contact proceedings are conceptualised within the context of two opposing parties with domestic abuse considered as a point of contention between parties, and not as a (gendered) crime characterised by the imposition of power and control. This suggests that further work and training is required to ensure family law practitioners, as well as sheriffs in the family courts are supported to develop a more informed understanding of domestic abuse and coercive control and its impact on children's lives. Notably, the research revealed limited consideration given to how the safety of the child or the non-abusing parent or indeed other factors relating to the best interests of the child might be balanced in terms of child contact. There remains a distinctively pro-contact philosophy in Scotland which can potentially exclude effective consideration of the risks to children arising from domestic abuse. Evidence of domestic abuse and its effects is not consistently considered in terms of potential safety risks and it appears therefore that a high level of risk needs to be established before contact is considered harmful. Taken together, our findings suggest that a more coordinated and integrated approach to ensure safety from domestic abuse is required, which extends across civil and criminal justice systems where the same family is involved. If realised, this could potentially improve the experiences of, and outcomes for, children in child contact proceedings.

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