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**Fact-Finding Hearings and the Implementation  
of the President's Practice Direction:  
Residence and Contact Orders: Domestic  
Violence and Harm**

**A Report to the Family Justice Council**

**January 2013**

**Rosemary Hunter and Adrienne Barnett  
on behalf of the FJC Domestic Abuse Committee**

## Table of Contents

About the Authors	4
Acknowledgements	4
Executive Summary	5
1. Background	9
2. Research Questions and Methods	11
3. Survey Methodology and Responses	13
4. The Domestic Violence Practice Direction	16
5. Training about Domestic Violence	19
5.1 Formal training provision	19
5.2 Informal training and knowledge acquisition	20
5.3 Particular gaps	20
6. The Incidence of Domestic Violence Allegations and Fact-Finding Hearings	22
6.1 Reasons for not holding a fact-finding hearing	22
6.2 Impact of the Domestic Violence Practice Direction and the President's Guidance on Split Hearings	22
6.3 Opinions on the frequency of fact-finding hearings	24
7. The Initiation of Fact-Finding Hearings	33
7.1 Raising the issue of domestic violence	33
7.2 The C1A form	35
7.3 Who requests fact-finding hearings?	37
8. Interim Orders	39
9. The Process of Fact-Finding Hearings	40
9.1 Limitation of allegations	40
9.2 Duration of fact-finding hearings	41
9.3 Impact of fact-finding hearings on the time taken to finalise the case	41
9.4 Impact of fact-finding hearings on other cases in the list	43
10. Outcomes of Fact-Finding Hearings	45
10.1 Admissions and proof of allegations	45
10.2 Risk assessment and referrals to perpetrator programmes and other services	46
10.3 Final orders	54
11. Consent Orders	58
12. Concerns about Unrepresented Litigants	60

	3
13. Systematic Differences in Experience	62
13.1 Differences between County Courts and Family Proceedings Courts	62
13.2 Differences between welfare and legal professionals	64
13.3 Differences between London and the rest of the country	64
13.4 Other regional differences	65
14. Suggestions for Improvement	67
15. Conclusions and Recommendations	72
15.1 Is the Practice Direction operating as intended?	72
15.2 What problems are being experienced with its implementation?	72
15.3 What steps may be necessary to overcome such problems?	73
Appendix 1 – Survey Questionnaire	77
Appendix 2 – Glossary of Terms and Abbreviations	89

## About the Authors

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## Executive Summary

This report presents the results of a national survey of judicial officers and practitioners on the implementation of the President's Practice Direction: Residence and Contact: Domestic Violence and Harm (2008/9). There is currently no systematically-collected data on the incidence or outcomes of fact-finding hearings in private law cases in which allegations of domestic violence are made, but anecdotally, concerns have been expressed both that fact-finding hearings are being held too often with a detrimental effect on the court system, and that they are not being held often enough, with a detrimental effect on children and adult victims of violence. The aim of the survey was to contribute to our understanding of:

- whether the Practice Direction is operating in the way it was intended; and if not
- what problems are being experienced with its implementation; and
- what steps may be necessary to overcome any such problems.

The survey was conducted online during October-December 2011 and received 623 usable responses spread across all of the HMCTS regions. The survey sample cannot be described as representative for the purposes of quantitative statistical analysis, however it provides rich data from a large group of relevant professionals from which clear themes and patterns of response can be identified.

The Domestic Violence Practice Direction was issued following a call by the Family Justice Council for a 'cultural shift' in the approach of legal and child welfare professionals, so that rather than pursuing contact at any cost, they should promote and facilitate contact only when it was 'safe and positive for the child'. The underlying premise of the Domestic Violence Practice Direction is that the harmful effects of domestic violence on children must be taken seriously in residence and contact proceedings. It is clear, however, that the 'cultural shift' remains incomplete, and as a result, there remains a broad spectrum of views among the judicial and practitioner community on the relative importance of contact and safety. This, in turn, affects the interpretation of the Practice Direction, on issues such as whether a fact-finding hearing should be held, the forms of domestic violence considered relevant, the nature of the causal link between domestic violence and harm, and the consequences of findings of fact.

Three quarters of respondents said that they felt they had sufficient training about domestic violence. It was notable that while judicial and Cafcass officers receive regular training on domestic violence, lawyers do not. Solicitors and barristers who responded tended to indicate that they had learnt about domestic violence 'on the job', or had derived their knowledge of domestic violence from their own research and/or from involvement with local domestic violence services. Concerns expressed by respondents about the adequacy of their own or others' training related particularly to the difference between a 'legalistic' understanding of domestic violence, focused on physical violence, incidents and corroborative evidence, and the social science understanding of the power and control dynamics of domestic abuse.

The majority of respondents said that fact-finding hearings are held in only 0-25% of cases in which domestic violence is raised as an issue, with the largest group (42%) estimating that fact-finding hearings are held in fewer than 10% of such cases. Responses suggest that the decision not to hold a fact-finding hearing is very often based on a view that disputed allegations may be disregarded. Where allegations are considered relevant, they may instead be dealt with as part of the substantive hearing. Respondents overall did not perceive much of a change in the proportion of fact-finding hearings over time; however the majority considered the current level of fact-finding hearings to be appropriate. By contrast, 72% of Cafcass officers responding to the survey thought that fact-finding hearings were not

held often enough. Those who thought that fact finding hearings were now held as often as needed generally considered that the correct balance had been struck between the pros and cons of such hearings – with a clear emphasis on the cons (that is, with a preference for not holding a fact-finding hearing). It appears that in at least some courts, the scope of the Practice Direction may be being excessively curtailed, with allegations being sidelined if they are considered not sufficiently recent or not sufficiently serious.

Respondents reported that domestic violence was most often raised as an issue in private law proceedings by the alleged victim of violence, but was also reasonably often raised by Cafcass. Lawyers were asked whether they would ever advise a client in private law residence or contact proceedings *not* to raise the issue of domestic violence. The majority said they would never do so, while most of the remainder said they might occasionally do so. Nevertheless, some who said they would never advise a client not to raise domestic violence qualified their answers by saying that they would at the same time not necessarily advise the client to pursue a finding of fact hearing (for various reasons); or would advise that the allegations would not necessarily affect the outcome of the case or prevent a contact order being made, despite their seriousness. Respondents reported that fact-finding hearings are most often listed at the request or initiative of the alleged victim of violence (or their lawyer), followed some way behind by Cafcass and then by the court of its own motion.

Around three quarters of respondents had experience with the new C1A form, but one quarter had not – a surprisingly high proportion. Of those who had such experience, the majority said they found the new form somewhat or very useful, although 35% said they found it to be of limited use. Some specific suggestions were made for improving the form.

The most commonly reported interim orders pending a fact-finding hearing were orders for supervised, indirect or supported contact. Courts appear reluctant to order no contact at the interim stage, although in some cases they may not make an order while expecting there to be no contact (perhaps reflecting a status quo).

Respondents indicated that the allegations to be tested in a fact-finding hearing are frequently limited by the court. Some went further to suggest a standard limit to the number and type of allegations that would or should be entertained. Fact-finding hearings tend to run for up to 2 days on average, and are mostly heard continuously, though a significant minority may be adjourned part-heard. Respondents were generally of the view that a fact-finding hearing was likely to prolong the finalisation of the case. Delays were identified both in getting to the fact-finding hearing (listing, obtaining police records/disclosure, etc), and then in concluding the case following the fact-finding hearing (post-hearing assessments and interventions and multiple contact reviews). Conversely, some respondents suggested that cases could finalise more quickly following a fact-finding hearing, while a few considered that the delay involved in listing a fact-finding hearing was justified in cost-benefit terms. Judicial respondents were divided in their views on the impact of fact-finding hearings on other cases in the list, with some (mainly in County Courts) considering fact-finding hearings to consume time that could have been devoted to other cases, while others (mainly in Family Proceedings Courts) did not see this as such an issue. Some courts successfully balanced fact-finding hearings with other cases by means of listing practices or the commitment of additional resources, but in other courts, the main management tool appeared to be to try to avoid fact-finding hearings as far as possible.

When allegations of domestic violence are raised, respondents considered it most likely that either none or some of the allegations will be admitted. If the allegations are contested and a fact-finding hearing is held, the most likely outcome is that at least some of the allegations will be found proven. Slightly under half of respondents reported that a perpetrator is likely to be referred for an expert risk assessment or to an anger management programme following admissions or a positive finding of fact, despite the fact that anger management programmes

are not generally appropriate as a means of addressing domestic abuse. At the same time, respondents reported widespread problems with the availability of and access to Contact Activity Domestic Violence Perpetrator Programmes, and other services for both perpetrators and victims of domestic violence. The inability of existing DVPPs to meet the level of demand results in long waiting lists and inevitable losses of momentum. Nevertheless, practitioners and judicial officers were not always aware of the local services available, and there appears to be a need for more structured and systematic means of conveying and updating information about local service provision.

The majority of respondents thought that a fact-finding hearing does make a material difference to the outcome of the case, although perceptions on this question tended to vary according to general attitudes to fact-finding hearings. Reported outcomes following admissions or findings of fact tended towards the medium-to-high risk end of the scale of contact arrangements, however further questions arise as to the practicability and sustainability of such arrangements. How long supervised and supported contact arrangements remain in place, on what basis they are 'progressed', and how this relates to ongoing levels of risk of harm to children and resident parents remain unknown.

Respondents were asked whether they thought courts adequately scrutinised proposed consent orders in line with the Practice Direction. Two-thirds reported that courts did so very often or always, however judicial officers were more likely to say that they always exercised adequate scrutiny of consent orders, while Cafcass officers, solicitors and barristers were more likely to say that courts never or only occasionally did so. Some respondents identified difficulties in adequately scrutinising consent orders as a result of pressure of work, or the limited information available to judges. Other judges described a practice of bringing parties to court for further investigation if necessary, or never making consent orders without the presence of the parties.

In further comments, a number of respondents expressed concerns about the impact on fact-finding hearings of increasing numbers of unrepresented litigants in the family courts, and particular apprehension about the likely effects in this regard of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Respondents were concerned about the ability to implement all aspects of the Practice Direction without both parties having legal representation.

Statistical analysis of responses suggested some differences in experience and practice in relation to fact-finding hearings between the County Courts and the Family Proceedings Courts. It appears that the County Courts deal with more complex/'serious' cases and more cases in which domestic violence is raised as an issue, experienced a greater increase in the number of fact-finding hearings following the Domestic Violence Practice Direction, and continue to hold fact-finding hearings in a higher proportion of cases. Perhaps as a consequence, the court is more likely to limit the allegations to be tested in a fact-finding hearing. Nevertheless, fact-finding hearings tend to be of longer average duration and are consequently more likely to be adjourned part-heard. They are considered more likely to prolong the finalisation of the case and more likely to cause delays to other cases in the list. More fact-finding hearings result in none of the allegations being proved, resulting in more orders for unrestricted contact or shared residence. By comparison, it appears that Family Proceedings Courts deal with less contentious cases, and cases which are more likely to involve prior proof of domestic violence in some other proceedings, some admissions by the perpetrator and/or positive findings of fact.

Responses from Cafcass Family Court Advisers and the small group of domestic violence advocates, children's guardians and expert witnesses who replied to the survey contrasted in important respects with those of the legal professional majority. Those with disciplinary backgrounds in social work, psychology and/or children's services tend to see violence in

broader terms of power and control, and hence see this form of violence being raised very often in private law children's cases coming before the family courts, and are concerned at the courts' tendency to minimise violence and its effects. By contrast, those from a legal disciplinary background tend to take a narrower, more incident-focused view of violence, and so see a lower incidence of violence and less need for fact-finding hearings.

There were also systematic differences between the reported experience of respondents from London and of those from the rest of the country. It appears that the London courts are under particular pressure in relation to fact-finding hearings and responding to allegations and findings of domestic abuse. Some judicial comments on the difficulties created for the courts by fact-finding hearings may thus reflect local experience rather than being representative of the national picture. Some other differences in relation to the impact of fact-finding hearings appeared amongst the regions, although these were less clear and systematic. The general trend was for respondents from the South East to report a greater impact of fact-finding hearings, while those from the Midlands, Wales, the South West and the North reported a lesser impact.

Respondents were finally invited to suggest any improvements they might wish to see to the current system for dealing with allegations of domestic violence in private law residence and contact proceedings. A common theme running throughout the responses to this question was the need to avoid delay and to speed up proceedings both before and after a fact-finding hearing. The most frequent call was for more court time and judicial resources to enable fact-finding hearings to be listed more speedily. Respondents further identified a need for the availability and use of more associated services alongside fact-finding hearings, including risk assessments, services for perpetrators, victims and children, and supervised contact services. Judicial officers in particular urged the need for continuing, competent legal representation for both parties. A number of practitioners and District Judges recommended greater rigour in the lead-up to a fact-finding hearing, including early evidence gathering and identification of issues, tight case management, and careful preparation of documents. Some practitioners' suggestions concerned the more fundamental issue of determining whether a fact-finding hearing should be held at all. Several respondents identified a need for more training on domestic violence, particularly for the judiciary.

In conclusion, the survey results suggest that the Domestic Violence Practice Direction is not operating as intended. The problems with implementation are both cultural and material. The survey responses clearly indicate that the 'cultural shift' called for by the Family Justice Council before the Practice Direction was issued remains incomplete, and the implementation of the Practice Direction is hampered by severe resource limitations. It must be acknowledged, however, that in the current climate of austerity and cutbacks, more resources are extremely unlikely to materialise. It is important, then, to have a system which operates as effectively as possible within resource constraints, rather than one which adapts dysfunctionally to resource limitations by attempting to minimise the relevance of domestic violence. Cultural issues may be addressed by means of training and revision of the Practice Direction, and there are also a number of practical suggestions which may assist in streamlining the process. In addition, in cases in which one or both parties are unrepresented, it may make more sense to proceed directly to a welfare hearing and to consider allegations of domestic violence in that context rather than to hold a split hearing.

## 1. Background

In 2000 the Children Act Sub-Committee of the Advisory Board on Family Law (CASC), chaired by (the then) Wall J issued a report 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 (as both witnesses and victims of violence) 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.<sup>1</sup> The 'good practice' guidelines issued by CASC in relation to such cases included the suggestion that where the issue of violence was raised as a reason for limiting or refusing contact, the court should make findings of fact on the allegations at the earliest opportunity, and decide on the effect of those findings on the question of contact. This aspect of the guidelines in particular was endorsed by the Court of Appeal in the leading case of *Re L (A Child) (Contact: Domestic Violence)* [2001] Fam 260, which held that courts should consider the nature and effect of the alleged violence at the earliest opportunity and investigate such allegations so that findings of fact could be made.

In the years following *Re L*, however, concerns were raised that the Court of Appeal's decision and the CASC guidelines were not being followed in practice, and that issues of domestic violence in residence and contact cases continued to be sidelined, or ignored in the process of arriving at consent orders. In 2006 the Family Justice Council reviewed the implementation of *Re L* and the CASC guidelines and found that the guidelines relating to allegations of domestic violence were more honoured in the breach than in the observance, that victims of domestic violence were being pressured to agree to contact, and contact agreements were being made without proper consideration of the child's or the resident parent's safety.<sup>2</sup> Similarly, in empirical research on court files in contact cases, Perry and Rainey found that despite serious allegations of violence being raised in a substantial proportion of the files reviewed, factual hearings were held in only a tiny minority of cases, while the majority ended up with orders for unsupervised direct contact with the allegedly violent non-resident parent.<sup>3</sup>

In order to remedy this situation, the FJC called for a cultural shift in the approach of legal and child welfare professionals, so that rather than pursuing contact at all costs, they should promote and facilitate contact only when it was "safe and positive for the child".<sup>4</sup> Courts should ensure that safety was the paramount consideration when determining whether contact was in the child's best interests, and should also undertake a risk assessment before making consent orders for contact.

The FJC report called for a Practice Direction to embody the decision in *Re L*, suitably updated to reflect current best practice, to incorporate the CASC guidelines, and to clarify what should happen in cases where there had been allegations of domestic violence but the court was requested to make a consent order for contact.<sup>5</sup> The then President of the Family

<sup>1</sup> Lord Chancellor's Advisory Board on Family Law, Children Act Sub-Committee, *A Report to the Lord Chancellor on Contact between Children and Violent Parents* (London, TSO, 2000). See also *Re D (Contact: Reasons for Refusal)* [1997] 2 FLR 48 per Hale J; *In re H (Contact: Domestic Violence)* [1998] 2 FLR 42 per Wall J; *Re M (Contact: Violent Parent)* [1999] 2 FLR 321 per Wall J.

<sup>2</sup> Family Justice Council, *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* (January 2007) – [www.family-justice-council.org.uk/docs/Reportoncontact.pdf](http://www.family-justice-council.org.uk/docs/Reportoncontact.pdf).

<sup>3</sup> A. Perry and B. Rainey, 'Supervised, Supported and Indirect Contact Orders: Research Findings' (2007) 21 *International Journal of Law, Policy and the Family* 21-47.

<sup>4</sup> Above n 2, p 27.

<sup>5</sup> *Ibid*, pp 11-12.

Division issued the Practice Direction: Residence and Contact Orders: Domestic Violence and Harm on 9 May 2008, subsequently revised on 14 January 2009.

Anecdotal evidence suggested that since the issue of the Practice Direction, there had been a significant increase in the number of fact-finding hearings held, with the possibility that the pendulum may have swung too far in the opposite direction. Discussions of the issue by the FJC's Domestic Abuse Committee included judicial complaints that fact-finding hearings were now clogging up the lists, that domestic violence was being raised in 75% of private law cases, and that judges were being extra cautious and scheduling fact-finding hearings without any inquiry as to whether they were strictly necessary. In the case of *SS v KS*, Hedley J listed a number of factors contributing to problems of delay in the London family courts, including an increase in requests and directions for fact-finding hearings.<sup>6</sup> In *Re C (Children)*, Thorpe LJ referred to the "burdens" that had been imposed on County Court judges by the cases of *Re L* and *Re B*, and reiterated that whether or not to order a fact-finding hearing must remain a matter of judicial discretion.<sup>7</sup> In May 2010 the new President of the Family Division issued 'The President's Guidance in Relation to Split Hearings', which reiterated the bases upon which a separate fact-finding hearing should and should not be held, and cautioned against their overuse.

At the same time, it appeared that other aspects of the Practice Direction were not being fully implemented by the courts. Anecdotal evidence suggested that even where findings of domestic violence were made, direct contact might be ordered despite concerns expressed by Children and Family Reporters, and that consent orders were not fully scrutinised. These concerns were supported by initial interviews undertaken by one of the researchers in the context of her PhD research, which involved a small-scale qualitative study of the implementation of the Practice Direction.

There is no systematic data available on the incidence of fact-finding hearings. Information about fact-finding hearings is not captured by FamilyMan;<sup>8</sup> nor does the Legal Services Commission record data on the types of hearings undertaken as part of a case in which parties are legally aided.<sup>9</sup>

In light of the concerns brought to its attention, the FJC's Domestic Abuse Committee resolved that its Work Plan for 2010-11 should include monitoring the impact of the Domestic Violence Practice Direction. A research proposal was developed by two members of the Committee, Professor Rosemary Hunter and Adrienne Barnett. This proposal was ultimately approved by the FJC Executive in December 2010.

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<sup>6</sup> [2009] EWCH 1575 (Fam) at [3].

<sup>7</sup> [2009] EWCA Civ 994 at [13]-[16].

<sup>8</sup> Communication from Mavis Maclean, Academic Advisor to the Ministry of Justice.

<sup>9</sup> Communication from Terence Davies, Policy Developer, Commissioning and Operational Policy, Legal Services Commission, 30/9/10.

## 2. Research Questions and Methods

The broad aims of the research were to determine:

- whether the Practice Direction is operating in the way it was intended to do; and if not
- what problems are being experienced with its implementation; and
- what steps may be necessary to overcome any such problems.

In order to determine whether the Practice Direction is operating as intended, the following specific questions were formulated:

1. What is the number and proportion of private law residence and contact cases in which (a) domestic violence is raised as an issue, (b) the allegations are contested and (c) fact-finding hearings are held?
2. Has there been any change in the incidence of allegations or fact-finding hearings (a) as a result of the Practice Direction, (b) as a result of the President's Guidance on Split Hearings, and/or (c) as a result of the Revised Private Law Programme?
3. How is domestic violence identified as an issue in private law residence and contact proceedings, and to what extent is initial screening information made available to the court by Cafcass (Practice Direction paras 7, 8, 10; see also Revised Private Law Programme paras 3.9, 5.1)?
4. At whose request or initiative are fact-finding hearings listed (one of the parties, Cafcass, the court itself, other)?
5. Do courts always record reasons where they determine that a fact-finding hearing is not necessary (Practice Direction para 13)? What kinds of reasons are given?
6. Are fact-finding hearings held appropriately, too often, or not often enough?
7. How often does the court direct a Cafcass report ahead of a fact-finding hearing, and what are Cafcass officers asked to report on for this purpose (Practice Direction para 16)?
8. What kinds of interim orders are made pending a fact-finding hearing, and how is the safety of the child secured (Practice Direction paras 18-20)?
9. What is the average duration of fact-finding hearings?
10. What is the impact of fact-finding hearings on the case in hand and other cases in the list?
11. What kinds of findings are made following fact-finding hearings?
12. If positive findings are made against a party (or allegations admitted), how often are those parties directed to attend a perpetrator programme (Practice Direction para 25)? Are there any problems with availability of programmes or compliance with directions?
13. If a final hearing is held following a fact-finding hearing, is it always heard by the same judge or the same chairperson of justices (Practice Direction paras 15, 23)?

14. If positive findings of fact (or admissions) are made, how do they influence the final decision on residence or contact (Practice Direction para 30)?
15. What kinds of final orders are made following positive findings of fact or admissions (Practice Direction paras 28-29)?
16. Are consent orders always scrutinised to ensure there is no risk of harm to the child? (Practice Direction para 4; see also Revised Private Law Programme para 5.3)? With what effect?
17. What suggested improvements to the current system might be made in response to the findings above?

Many of these questions are factual, while others (such as whether fact-finding hearings are held appropriately, too often, or not often enough) are matters of opinion. Many could be determined by an examination of court files, but some information (such as at whose request or initiative fact-finding hearings are listed, the impact of fact-finding hearings on other cases in the list, and whether consent orders are always scrutinised) would not be evident from a reading of the files. File analysis also raises difficult issues of sampling, time and cost.

Ultimately, it was decided to use a mix of research methods in a two-stage process. Initially, we proposed to conduct a survey of judicial officers, lawyers and Cafcass officers. The advantages of a survey are that it is easier to gain a national picture; it can provide information not available from court files; it is relatively easy and less costly to gather and compile data; responses can be anonymous, raising fewer ethical issues; and it provides quicker results. The disadvantages are that it gathers self-reported experiences and impressions which may not be fully reliable; it does not allow for probing of responses and thus affords less in-depth, qualitative data than interviews; it asks busy people to give some of their scarce time; and there is accordingly the risk of a low response rate, which may limit the extent to which data can be generalised or cross-tabulated.

Following the survey, we proposed to review court files in a sample of courts. The survey would thus provide baseline data and hypotheses and further questions to test for the purposes of the file review.

This report presents the results of the national survey of judges, lawyers and Cafcass officers. Since the survey was conducted, the family justice system has undergone a reorganisation, and the Family Justice Council now has the role of providing independent expert advice from an interdisciplinary perspective to the new Family Justice Board. The Family Justice Council's standing committees, including the Domestic Abuse Committee, have been abolished and replaced by time-limited Working Groups to take new projects forward. It will be a matter for the Working Group on Litigants in Person and Safety to determine whether to proceed with the proposed file review in relation to fact-finding hearings.

### 3. Survey Methodology and Responses

The survey was targeted at Circuit judges, family District judges, family Magistrates, Magistrates' clerks and legal advisers, family barristers and solicitors and Cafcass Family Court Advisers. The questions were devised, circulated for feedback, revised in light of the feedback, and then piloted and further refined. The questions were a mix of closed options and open-ended invitations for further comment, thus generating both quantitative and qualitative data. The qualitative responses helpfully explained and elaborated upon the quantitative data and are extensively quoted throughout the report. A copy of the survey questionnaire is provided at Appendix 1.

The survey was administered via the internet, using Bristol Online Survey software. Potential participants were contacted by email and invited to click on a hyperlink which would take them to the survey site. The invitation email included the logo of the FJC and was signed by Alison Russell QC, Chair of the Domestic Abuse Committee. The survey was hosted on a secure server and all responses were encrypted. The survey was completed anonymously, with participants asked to provide categorical information such as their role within the family justice system and the region in which they worked, but no names or other information that might tend to identify a respondent were requested or recorded.

Ethical clearance for the survey was obtained from Kent Law School's Research Ethics Committee, and from the Cafcass Research Governance Committee.

Potential participants were contacted in their professional capacity via relevant email lists. In sum, the invitation to complete the survey was distributed via:

- The Family Law Bar Association
- Cafcass (to 500 staff having 5 or more upcoming s 7 reports)
- Designated Family Judges email list
- The Council of Circuit Judges
- The District Judges' Association
- Local Family Justice Councils
- District Judges (Magistrates Courts) email list
- The Magistrates' Association Family Proceedings Committee
- The Justices Clerks' Society
- The Justices Clerk for Family in London
- The Association of Lawyers for Children (to private law practitioners)
- The Law Society Family Law Committee (to committee members and approximately half the members of the Family Law Panel, for whom email addresses were held).

One reminder email was sent where possible to groups with a low response rate, and the closing date was also extended to accommodate groups who were only able to be contacted relatively late in the survey period. Ultimately the survey was open for a total of two months, from 19 October – 20 December 2011.

One of the risks of an online survey, even one distributed to a carefully targeted audience, is that people who were not among the intended recipients will nevertheless gain access to the survey link and complete the survey. Several self-represented litigants did so, but these responses have been excluded from the analysis. Overall the survey received 623 usable responses, broken down as follows:

<b>Role</b>	<b>No of responses</b>	<b>% of all responses</b>
Circuit judges	37	5.9
District judges	121	19.4
Family magistrates	141	22.6
Magistrates' court legal advisers/justices' clerks	23	3.7
Cafcass officers	56	9.0
Solicitors	121	19.4
Barristers	111	17.8
Others	13	2.1
<b>TOTAL</b>	<b>623</b>	<b>100.0</b>

The 'other' category included domestic violence advocates (7), children's guardians (2) and expert witnesses (3).

As well as completing the survey, a small number of respondents contacted Professor Hunter by email to express views in connection with the survey and the issues raised.

The majority of respondents (55%) had over 10 years' experience in their current role, and for the majority (60%), private law residence and contact cases made up between 10% and 50% of their work. Circuit judges generally undertook less work in private law (25% of cases or less for 76% of these respondents), while Cafcass officers generally undertook more private law work (76-100% of their work for 52% of these respondents).

The majority of respondents (53%) had dealt with between one and four fact-finding hearings in private law proceedings in the last 12 months. Circuit judges, District judges and barristers were more likely than average to have dealt with between five and nine fact-finding hearings in the last 12 months, and barristers were also overrepresented in the group who had dealt with 10+ fact-finding hearings in that period. By contrast, family Magistrates, Magistrates' Court legal advisers and solicitors were more likely than average to have dealt with no fact-finding hearings in the last 12 months.

The regional breakdown of respondents was as follows:

<b>Region</b>	<b>No of responses</b>	<b>% of all responses</b>
London	116	18.6
Midlands	57	15.6
Wales	28	4.5
South East	142	22.8
South West	82	13.2
North East	71	11.4
North West	87	14.0

The survey thus achieved a reasonable spread of responses from different regions, making it possible to test in relevant instances for any regional differences in responses.

As noted in the previous section, the survey methodology had both strengths and weaknesses. The advantages of the survey were that it was relatively easy and inexpensive to administer; it provided relatively quick results; it enabled us to gain a national picture; and it provided some information (for instance about training in domestic violence, opinions on the frequency of fact-finding hearings and the C1A form, lawyers' practices in relation to raising issues of violence, the availability of post-hearing programmes and services and the scrutiny of consent orders) that would not have been available from court files. Further, it enabled survey respondents to raise issues in addition to those that were the subject of

specific questions, such as concerns about litigants in person; and it enabled comparisons between the perspectives of different actors in the system. At the same time, it must be acknowledged that self-reported experiences and impressions are not 'objective' evidence, and thus some of the findings (particularly the more quantitative ones concerning how often particular outcomes are said to occur) must be treated with some caution. Nevertheless, the fact that there was a coalescence of views from otherwise different perspectives on some points lends weight to those points. In addition, because it was not possible to construct a sampling frame for the survey population (that is, it was impossible to determine the total number of people to whom the survey was directed) it is not possible to calculate the response rate or to determine the 'representativeness' of the responses. Accordingly, this report does not claim that the survey results accurately represent the views of all family judges, magistrates, lawyers and Cafcass officers. The data gathered is, however, strongly indicative of the range of views held by these groups, and it is also possible to determine clear patterns of variability among the responses. These will be highlighted in the following discussion.

## 4. The Domestic Violence Practice Direction

The underlying premise of the Domestic Violence Practice Direction, as noted above, is that the harmful effects of domestic violence on children must be taken seriously in residence and contact proceedings. Children should not be exposed to the risk of harm, or further harm, arising from contact with an abusive parent. The way in which the Practice Direction tries to achieve this objective is to ensure that (a) any issue of domestic violence which may affect the outcome of the case is raised at the earliest opportunity, and (b) in line with the guidelines in *Re L*, where allegations of violence are disputed, they are investigated and their veracity determined, in order to enable the court to proceed on the basis of an accurate assessment of the extent to which children have been exposed to and harmed by domestic violence, and the extent to which their welfare requires contact with the abusive parent to be restricted, managed or denied in future. Singling out domestic violence allegations from other factors which may impact on the court's decision on residence and contact in this way ensures that the issue is given due weight and consideration rather than being marginalised or brushed aside.

The mandate to hold a fact-finding hearing where allegations of domestic violence are disputed, however, does create some conceptual difficulties, and is not a procedure that has been adopted in other jurisdictions – it is unique to the UK. One conceptual difficulty concerns the adversarial nature of a fact-finding hearing, which may appear as an unwelcome intrusion in a system with a strong inquisitorial and conciliatory ethos. This tends to produce a resistance to holding fact-finding hearings so as not to disrupt the possibilities for agreement, regardless of what the terms of that agreement might be.

A second conceptual difficulty concerns the definition of domestic violence. The Practice Direction defines 'domestic violence' to include "physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may have caused harm to the other party or to the child or which may give rise to the risk of harm" (para 2). This definition, which was endorsed by the Supreme Court in *Yemshaw v London Borough of Hounslow*,<sup>10</sup> owes much to the social science understanding of domestic violence as a pattern of abusive behaviour designed to exert coercive control over the victim, and which operates to deprive her of agency and to put her in a constant state of anxiety and justified fear for her own and her children's safety. The behaviour involved can include physical violence and intimidation, but also verbal, emotional and economic abuse, isolation, sexual jealousy, exercising male privilege, and using the children to manipulate the victim. Such coercive control may have its spectacular moments, but it is also woven into the minutiae of everyday life.<sup>11</sup> The requirement that courts 'find facts' about domestic violence, however, strongly encourages a focus on 'incidents'. It is much easier for a complaining party to provide evidence and for the court to 'find' that on the evening of 30 October Mr X punched Mrs X in the face, causing a broken nose and bruising, than it is to prove and find that Mr X kept Mrs X constantly short of money, continually denigrated her and undermined her sense of competence and self-worth, and repeatedly threatened to remove the children from her. It is entirely understandable that courts should seek to manage the process of fact-finding hearings by requiring the particularisation of allegations, the production of Scott schedules, the provision of corroborative evidence and so forth, but arguably, such hearings are apt to find facts about a limited range of abuse and conversely, apt to miss the full picture of abuse in many cases. This, in turn, results in underestimates both of the extent and severity of domestic violence and of its impacts.

<sup>10</sup> *Yemshaw v London Borough of Hounslow* [2011] UKSC 3, per Lady Hale at para 28.

<sup>11</sup> See e.g. M. Coy et al., *Picking Up the Pieces: Domestic Violence and Child Contact* (Rights of Women and CWASU, 2012) pp 22-23, 51.

A third conceptual difficulty relates to the issue of causation. The Practice Direction specifies that:

At the fact-finding hearing the court should, wherever practicable, make findings of fact as to the nature and degree of any domestic violence which is established and its effect on the child, the child's parents and any relevant person... (para 21); and

...where relevant findings of domestic violence have been made, the court should in every case consider any harm which the child has suffered as a consequence of that violence and any harm which the child is at risk of suffering if an order for residence or contact is made... (para 26)

The definition of domestic violence also suggests the need for a causal link to be found between each incident of violence or abuse and harm or a risk of harm to the other party or the child. By contrast, the social science literature on the harm caused to women and children by domestic violence tends not to assume such a linear relationship between particular incidents and specific harms. The harm arises from the totality of the perpetrator's behaviour rather than necessarily being identifiable from specific events.

This more contextual approach makes a difference, for example, where there are allegations of 'mutual' violence. Regarding these simply as 'incidents' may lead to a conclusion that both parties are equally culpable and have produced equal harm to their children, whereas regarding the actions of each party in the broader context of the power dynamics within the relationship may lead to a rather different conclusion. Similarly, 'old' or 'historic' allegations of violence are apt to be disregarded as creating no ongoing risk of harm to the child,<sup>12</sup> whereas understanding them in the context of a pattern of controlling behaviour, in which such 'old' incidents have a continuing terrorizing effect, might not see them so readily dismissed.

The final conceptual difficulty concerns the consequences of findings of fact. There are in fact two sub-issues here. First, the ultimate issue in a contact or residence application is a forward-looking one: what does the child's welfare require in the future? It is easy, therefore, to see the question asked in a fact-finding hearing – did the alleged behaviour occur and what effects did it have on the child? – backward-looking, criminal and public law-type questions – as tangential to the main issue, and possibly a waste of time. Secondly, the question is begged as to when any domestic violence admitted or found to have occurred will be considered "relevant in deciding whether to make an order about residence or contact and, if so, in what terms" (para 3). The Practice Direction, following *Re L* (and unlike the case in some other jurisdictions), does not specify any particular consequence of a finding that domestic violence has occurred. Rather, the nature and extent of the violence proved or admitted must simply be weighed up alongside the other factors in the welfare checklist. In this respect, the "cultural shift" called for by the FJC in 2007 remains incomplete, resulting in a spectrum of views on this question. At one end of the spectrum, the existence of domestic violence should *always* be considered relevant and reflected in the court's ultimate orders on residence or contact. At the other end, the value of ongoing contact between a child and his or her non-resident parent is considered to be of such overriding importance that past domestic violence should have very little effect on the court's ultimate orders. These differences of views on how the child's welfare should be determined in turn inevitably give rise to differences of views as to whether fact-finding hearings are held too often (since they

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<sup>12</sup> See e.g. *Re C (Children)* [2009] EWCA Civ 994, in which the Court of Appeal upheld the trial judge's exercise of discretion to refuse to hold a fact-finding hearing in respect of allegations of violence that were deemed to be 'too old' and hence irrelevant to the question of how contact should be progressed.

should rarely affect the ultimate outcome) or not often enough (since they should do so much more frequently) – as reflected in the discussion below.

## 5. Training about Domestic Violence

Three quarters of respondents said that they felt they had sufficient training about domestic violence and knowledge about the provision of domestic violence services. Respondents from the South East professed themselves to be most satisfied in this regard, with respondents from Wales being least satisfied.

Qualitative responses indicated some difference between the two parts of the question, however, with respondents more likely to express satisfaction with their state of training about domestic violence but to have some concerns about lack of knowledge about available local services. The issue of the availability and knowledge of local services is discussed below.

In relation to training, it was notable that while judicial and Cafcass officers receive regular training on domestic violence, lawyers do not.<sup>13</sup> Some District Judges and Family Magistrates, mentioned training in connection with Specialist Domestic Violence Courts as well as in connection with family law.

### 5.1 Formal training provision

In general Circuit Judges considered Judicial Studies Board (JSB)/Judicial College training to be sufficient:

This is always carried out in some depth on Judicial College courses, both induction and refresher courses. (CJ478, London)

These days more than enough with the JSB training for judges and the availability of latest training materials on the JSB website and regional Family Law training every year. (CJ536, NW)

However, some judges considered the regularity of training to be insufficient:

I'm not convinced all judges are as aware as they should be. JSB/Judicial College training is minimal. A presentation once every 2 or 3 years is neither here nor there. ... It means a day a year devoted to the issues of DV, with smaller group discussions etc. etc. (CJ258, NW)

Regular lectures – not necessarily annually but on a fairly frequent basis. (DJ588, SE)

We do not have enough refresher training to update our knowledge and skills once initial training has been given. (DJ613, London)

Family Magistrates referred to regular, locally provided training programmes, and also to the value of multi-agency training events. Again, though, some FMs considered there to be a need for more regular updates, with one suggesting the possibility of “online continuous training” (FM320, London), and another observing that:

About DV and its effects I have made the effort to keep abreast but am aware that colleagues are often not as up to speed as I would have expected. (FM356, Midlands).

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<sup>13</sup> While lawyers are required to complete a specified number of CPD points a year, this does not specifically need to include domestic violence awareness training.

A Cafcass officer, while considering the training provided to be sufficient, expressed concern that:

the quality and frequency of training in the public sector is deteriorating. Whilst solicitors and the judiciary may be able to attend conferences at £350 a day, this is more than the budget for training for one Cafcass officer for the whole year! (FCA214, NW)

## 5.2 Informal training and knowledge acquisition

Solicitors and barristers who responded tended to indicate that they had learnt about domestic violence ‘on the job’, or had derived their knowledge of domestic violence from their own research and/or from involvement with local domestic violence services, although a couple of solicitors mentioned training from Resolution.<sup>14</sup> Some District Judges also mentioned their extensive experience specialising in domestic violence issues in practice. One barrister expressed a strikingly limited view of the need for training:

As a barrister, a read of *Re L* is a starting point and then keeping up to date with reported authorities and sharing knowledge with colleagues means you are well ahead of others. (B86, London)

A solicitor, however, considered that “[t]raining for all potential family lawyers is essential and should be encouraged at an early stage of career development” (S457, NW).

## 5.3 Particular gaps

A number of respondents mentioned particular areas in which they felt their training and knowledge was lacking or could be improved. These included:

- The effect of domestic violence on the victim; how it affects their ability to parent and co-parent (DJ513, SE)
- The complexity of family dynamics in domestic violence cases (DJ588, SE)
- Dealing with allegations felt to be false (FCA85, London)
- Risk assessment and management and how to advise clients about safety planning for themselves (B514, SE)

And according to one District Judge:

I think some training looking at some individual cases and how DV impacted on those families and what was most serious and what is less worrying would be helpful for us all. (DJ600, Midlands)

Finally, several practitioners expressed concerns about what they perceived to be training and knowledge deficits on the part of the judiciary.

I feel that the courts are not trained as to the consequences and presentation of domestic abuse. (S453, SW)

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<sup>14</sup> Similarly, among lawyers responding to a recent Rights of Women survey, only half (49%) said they had attended training on domestic violence, and in the majority of cases (63% of those who attended training) this had focused on the law in relation to child contact and domestic violence rather than the dynamics of domestic violence: Coy et al., above n 11, p 89.

Judges should know more about the impact of domestic violence and how it impacts on the behaviour of victims and why, therefore, there is frequently no corroborative evidence and no reporting of incidents. (B56, London)

Women's fears following domestic abuse, particularly the emotional, controlling aspects of abuse, are not always sufficiently taken into account. (Other235, SE)

Strikingly, a cluster of these complaints came from lawyers located in the North of England:

It can still be quite difficult to persuade the DJ to list [fact-finding] hearings. To be fair some have greater awareness of the issues than others but it is an ongoing training issue. (S381, NE)

Better training of judges as to the harmful effects of DV. (S427, NE)

Despite years of banging on about this issue I do not think the majority of the judiciary really understand the corrosive effect of DV and a reluctant victim is still seen as at fault if she will not allow contact. (B198, NE)

There are still training issues among the judiciary and Cafcass when it comes to DA. I struggle to get a significant number of tribunals to consider anything less than direct repeated violence as being relevant. (Barrister, Northern Circuit, email communication).

Better training for...judges. Some judges do not appear to acknowledge that DV occurs notwithstanding that there have been no reports to the police. (S253, NW)

A number of courts minimize allegations of domestic violence. (S423, NW)

One District Judge from the North West made a similar comment:

Dealing with the issues promptly requires DJs, Legal Advisers and Magistrates who understand the issues and are not 'beyond all reasonable doubt' fixated. It is frightening how many of all the above do not recognise that domestic abuse is not just physical abuse resulting in obvious injuries. (DJ500)

These responses from northern practitioners may indicate some concerns about local judicial culture, although there was little in the quantitative data to bear this out. More generally, concerns expressed about the adequacy of training related particularly to the difference between a 'legalistic' understanding of domestic violence, focused on physical violence, incidents and corroborative evidence, and the social science understanding of the power and control dynamics of domestic abuse.

## 6. The Incidence of Domestic Violence Allegations and Fact-Finding Hearings

Respondents were asked a series of questions about the incidence of domestic violence and fact-finding hearings in private law residence and contact proceedings. In order to answer these questions, five categorical options were presented: 'fewer than 10%', '10-25%', '26-50%', '51-75%' and '76-100%'. The majority of respondents said that fact-finding hearings are held in only 0-25% of cases in which domestic violence is raised as an issue, with the largest group (42%) estimating that fact-finding hearings are held in fewer than 10% of such cases. This does not suggest an over-use of fact-finding hearings, rather the opposite.

### 6.1 Reasons for not holding a fact-finding hearing

The most commonly cited reasons as to why a fact-finding hearing might not be held in a case in which domestic violence was raised as an issue (reasons that were said to apply 'quite often', 'very often' or 'always') were:

- the allegations are not considered relevant to the court's decision concerning residence and/or contact (67%)
- the allegations are 'old' (61%), and
- the allegations would more appropriately be determined as part of the substantive hearing (50%).

By contrast, only 26% of respondents said that a fact-finding hearing was often not held because the allegations were not contested, while 33% said that a fact-finding hearing was often not held because the allegations had been previously proven in some other proceedings.

These responses suggest that the decision not to hold a fact-finding hearing is very often based not on the fact that allegations of domestic violence are not disputed or disputable, but on a view that disputed allegations may be disregarded.<sup>15</sup> In some cases, it appears that the court decides that a single hearing rather than a split hearing is preferable, although whether that single hearing actually occurs is, of course, unknown. If a fact-finding hearing is not held, the outcome may be an agreed compromise between the parties rather than a welfare determination by the court, and the research evidence demonstrates that in such cases, perpetrators of abuse are likely to get the contact they seek.<sup>16</sup>

### 6.2 Impact of the Domestic Violence Practice Direction and the President's Guidance on Split Hearings

Given the background to and the aim of the Domestic Violence Practice Direction, one would have expected respondents to observe a clear increase in fact-finding hearings after it was issued. However, only a small majority of respondents thought there had been an increase in the proportion of private law cases in which a fact-finding hearing was held following the advent of the Practice Direction, while over one quarter thought there had been no change.

Neither did it clearly emerge that there may have been an increase in fact-finding hearings following the Practice Direction but a subsequent decrease following the President's Guidance on Split Hearings. 40% of respondents thought there had been a decrease in the proportion of private law proceedings involving a fact-finding hearing after the Guidance was

<sup>15</sup> Lawyers reported the same to Coy et al.: above n 11, p 50.

<sup>16</sup> J. Hunt, and A. Macleod, *Outcomes of Applications for Contact Orders After Parental Separation or Divorce* (Oxford: Oxford Centre for Family Law and Policy and Ministry of Justice, 2008).

issued, but 42% thought there had been no change. Qualitative responses, however, tended to be given by those who thought there had been a reduction in the number of fact-finding hearings following the Guidance, with the majority of respondents (mostly judicial officers) approving of this change:

Split hearings were a great and unnecessary industry. ... The pendulum has swung away from split hearings and necessarily so. (CJ245, SE)

Fact-finding hearings were going to swamp the procedure if the President had not issued his [Guidance]. (DJ545, SW)

I prefer the present practice where one discourages split hearings. (DJ502, NE)

Following the President's guidance on split hearings I am able to be more robust with the parties and Cafcass/court reporter in saying that a fact finding hearing is not needed, either because the allegations are old and no longer relevant or because they will impede the progress of contact or cause a deterioration in the parents' relationship with each other to the detriment of the child. (DJ613, London).

I think the [guidance] has been very helpful. There has been too much of a tendency in the past for advocates to press for fact finding hearings on DV allegations without thinking the matter through in sufficient depth. If courts ask themselves the question 'would the finding make a difference to the determination we are likely to make in this case?' then very often the answer is 'No'. (FM274, Midlands)

According to one District Judge:

The President's Guidance gave momentum to a process that was happening anyway. There used to be far too many fact finding hearings. A combination of bitter experience, changes in Cafcass practice and case law all contributed to a substantial reduction over time. The balance is now realistic. (DJ481, London)

A Circuit Judge observed some initial overreaction to the President's Guidance:

I feel that the 2010 guidance may have led for a time to too big a move by DJs away from finding of fact hearings, but that that imbalance has now been corrected. (CJ258, NW)

A few respondents, however, considered that the Guidance had had a detrimental effect:

I am concerned that the move away from fact findings is too far, in that there is some pressure not to pursue allegations or limit them, with the consequence that they are often minimised at the assessment stage. (B143, Midlands)

There is a tension between the President's guidance, which one suspects is driven by operational considerations, and s.1 Children Act. How can Cafcass produce a meaningful report with the facts up in the air? How can a perpetrator address issues which are still unproven? (DJ525, SE)

Overall, neither the quantitative nor the qualitative responses suggest an over-use of fact-finding hearings.<sup>17</sup> This may be a result of retrenchment following the President's Guidance on Split Hearings, or simply a relatively limited impact of the Practice Direction in the first

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<sup>17</sup> The recent study by Coy et al. made a similar finding: above n 11, p 48.

place. Some of the quotations above suggest that fact-finding hearings may in fact be being limited beyond even the terms of the 2010 Guidance.

In this context, it is notable that Hunt and Macleod's research into the outcomes of contact applications prior to the promulgation of the Practice Direction found that half the cases in their sample (154 of 308) involved allegations of domestic violence, but only 24 fact finding hearings were listed, of which 12 did not take place,<sup>18</sup> - i.e. fact-finding hearings were held in only 8% of the cases in which domestic violence was raised as an issue. If the largest group of survey respondents were of the view that fact-finding hearings are now held in fewer than 10% of cases in which domestic violence is raised as an issue, this reinforces the suggestion that the Practice Direction as currently implemented has had little or no impact on the incidence of fact-finding hearings.

### 6.3 Opinions on the frequency of fact-finding hearings

Respondents overall seemed satisfied with the current level of fact-finding hearings: 60% thought they were held as often as necessary, with 20% thinking they were held too often, and 20% thinking they were not held often enough. Magistrates (80%) and Magistrates Court Legal Advisors (82%) were most likely to consider that fact-finding hearings were held as often as necessary. Circuit Judges (36%) and barristers (37%) were most likely to say that fact-finding hearings were held too often, while by stark contrast, 72% of Cafcass officers and Others thought that fact-finding hearings were not held often enough.<sup>19</sup>

Qualitative responses to this question tended to raise the general pros and cons of fact-finding hearings. Respondents who thought that fact-finding hearings were held too often were more likely to emphasise the negative aspects of such hearings, while those who thought they were not held often enough were more likely to emphasise their positive aspects. Alternatively, respondents sometimes raised the same aspect of fact-finding hearings but evaluated it positively (as a valuable discipline) or negatively (as a problem). The major arguments put forward as to why fact-finding hearings are not and/or should not be held were as follows.

*Fact-finding hearings are 'not helpful'*  
*Many allegations are old and no longer relevant*

There is often too much time spent on historic matters which do not help. (DJ521, NE)

The courts are being clogged by unnecessary and time consuming hearings which often are an opportunity to repeat old arguments, particularly where contact has occurred successfully after the last alleged incident but has broken down for other reasons. (B50, Wales)

By contrast, some respondents considered that the courts were too ready to dismiss allegations of domestic violence and tended to underestimate its effects:

I am concerned that some judges underestimate the importance and impact of domestic violence, particularly if the parents have been separated for some time. In these circumstances there will be no 'new' allegations only 'old' ones. In my opinion, these 'old' ones remain relevant. (B56, London)

<sup>18</sup> Hunt and Macleod, above n 16.

<sup>19</sup> Of course, the survey provides only the perspectives of professionals, not of those affected by violence, for which see Coy et al., above n 11, pp 48-50 (emphasising the importance for women victim-survivors of being given the opportunity to prove their allegations).

Judges are still not taking some aspects of dv seriously or understanding the long term impacts on victims and children and how it might affect the behaviour of a parent. (B168, London)

*Fact-finding hearings do not or will not affect the outcome of the case, since contact is still likely to be awarded*

[There should be] less fact-finding hearings – case law is quite clear that it would be very unusual to refuse contact notwithstanding there is a history of DV (MCLA 60, SE).

I have had quite a few fact-finding hearings where the judge has concluded by saying that although the allegations are proven, they are not sufficient to prevent contact. (B01, SW)

These comments assume that the only possible purpose of a fact-finding hearing is to determine whether contact should cease altogether, as opposed to considering what kind of contact might be safe. This point is also reflected in the views of some respondents who saw the courts' pro-contact culture as a reason why fact-finding hearings were not held often enough:

The assumption seems to be contact will take place and so a fact find will not help – let's just get on with it. (S427, NE)

There appears to be a presumption by the Court that there would be contact regardless of the Fact Finding hearing. (FCA75, Midlands)

By contrast, according to one District Judge:

Where there is a substantial dispute as to significant contact (e.g. overnight staying contact) or residence/shared residence it is easy to underestimate the effect that domestic violence, if proven, not only might have but should have upon the ultimate order of the court. Where the parties disagree substantially over contact/residence then it seems to me that any serious factual dispute over domestic violence should indeed be resolved prior to taking the ultimate decision. (DJ612, NW)

And a solicitor noted:

I find the attitude of the judiciary so different in public and private law when faced with the same facts and the same parties. In one – contact will occur and mother is seen as obstructive if she does not agree and in public law contact is supervised and mother is praised for protecting the children. (S427, NE)

*Fact-finding hearings cause delay, with prejudicial effects for children and their non-resident parents*

The delay in particular in hearing finding of fact cases can result in the absent parent and child's relationship being seriously damaged. There is a lack of resources locally to sustain supervised contact and cases are taking up to a year to deal with the finding of fact. (S460, NE)

We have gone from woefully inadequate consideration of DV to far too much delay occasioned by DV allegations that either don't end up being substantial enough to

warrant a fact finding hearing or which do but not at the expense of interim safe contact. (B43, London)

*Fact-finding hearings are costly for parties*

This point was made by several solicitors and barristers:

Very few privately funded clients can afford a fund a fact-finding, possibly a risk assessment and then a 'welfare' hearing. (B01, SW)

Privately funded fathers often cannot afford proceedings which become drawn out. Most give up. (S402, Midlands)

*Fact-finding hearings promote acrimony between the parties*

This concern was raised particularly by District Judges:

Just raises the temperature when we need to focus on the children, not the parents' anger with each other. (DJ134, London)

We try to avoid them wherever possible because of the acrimony and delay they engender between the parents. (DJ260, Midlands)

*Fact-finding hearings polarise the parties and damage their ongoing relationship*

The adversarial process which is engaged in 'proving' the facts militates against finding an agreed solution to contact with innocent children. (DJ574, SE)

Fact finding is a blunt tool which always causes some damage, for example by re-polarising the parents who may have put in place vestigial contact arrangements. (DJ602, London)

*Fact-finding hearings are adult-focused rather than being in children's best interests*

Determining what happened in the past between the adults so often does not help in deciding what is to happen for the children (who are not saddled with the same emotional baggage as the adults) in the future. (CJ608, Wales).

Quite often the bigger picture is lost and the focus which should be on the children becomes clouded, i.e. the court engages in apportioning blame and findings of fact which merely serve to encourage bad feeling and a sense of punishing the perpetrator by not seeing the children. (DJ574, SE)

If we are trying to scheme war then so be it – that is not in the best interests of the children. We need more child focused judges to direct parties to put the past behind them and move forward positively. (B40, SE)

*Fact-finding hearings are discouraged due to limited resources and time pressure on the courts*

This concern was raised mainly by practitioners:

They are a relatively expensive and time consuming process in a court system which is struggling to manage on existing resources. (B25, NW)

If the courts had more time, I think there might be more fact finding hearings. (FCA302, SW)

Lack of judicial court time is 99% of the reason that findings of fact hearings do not take place. (FCA74, NW)

Fact finding hearings are becoming rarer and will continue to decline as courts become more impatient with parents and look to achieve the likely end result sooner, to save resources. (S428, NE)

But it was also acknowledged by some judicial officers:

...we ourselves try to avoid them if there is any other way of making progress. With the cuts in numbers of Legal Advisors and in court room availability, court time has become more scarce and we have become increasingly reluctant to commit to fact-finding hearings unless they are unavoidable. (FM597, SW)

Courts have pressure on time and these are difficult cases and are short circuited in ways which leave essential matters unresolved. (DJ569, SW)

A handful of respondents summarised the various reasons given above in expressing their view as to why fact-finding hearings are held too often and/or should be kept to a minimum:

If allegations are recent and can be tried shortly and swiftly, then a fact find can be useful. But if they are stale and repetitive there is no point, and if in the judge's view (not Cafcass view) they would make no difference to the outcome, then they are a waste of resources. (CJ483, SE)

In my view, because of their toxic effect on relationships between the parents and the delay they introduce into the relevant proceedings they are to be discouraged/avoided wherever possible. (DJ602, London)

Too many very minor and historic allegations are brought up which have no relevance to future arrangements, thus wasting Court time and causing delay in contact between the applicant and the children which is not in their best interests. (B261, NW)

In addition, some judges and barristers expressed a preference for dealing with the allegations in one hearing together with the other issues in the case, rather than holding a split hearing:

There is no reason why the determination of facts and welfare issues ought not to be determined together in most cases. (CJ295, SE)

Although they seem a logical approach I am no longer a fan. They take time to set up and are often historical by the time they are heard. My preference is to hear the case and not to get too sidetracked from issues concerning the child. (DJ471, NE)

Fewer fact-findings and earlier final hearings. The allegations are almost always part of a more complex situation and to deal with them in isolation is not realistic and not in children's interests. ... Most involve findings as to credit and context that would be best dealt with in a full final hearing. (DJ568, SE)

And finally, some noted that a fact-finding hearing is unnecessary if admissions are made or the facts clear.

As an example last week I refused to entertain a two days hearing listed by a previous bench. The Scott schedule listed 10 allegations, the perpetrator had admitted four, including two that had resulted in custodial sentences for DV on his ex-partner. There was no point spending another two days on this although counsel argued strongly for this. Following our insistence on not being prepared to have a two days contest the perpetrator then agreed another serious assault and we progressed on the basis of an agreed Scott schedule. All done and dusted in less than half a day. (FM274, Midlands)

The main arguments put forward as to why fact-finding hearings ought to be held (more often) were as follows:

*Fact-finding hearings are necessary to ensure the child's and their resident parent's safety*

While I understand the pressure that finding of fact hearings put upon the already scarce availability of family court listing, I see the alternative (fudging allegations of violence and, basically, taking a broad view as to how bad it all sounds, then thinking that it might be true and somehow trying to factor the 'might be' chance into a contact order) as likely to expose many children to the risk of physical and emotional harm due to exposure to angry, violent, abusive parents. (DJ612, NW)

Findings in respect of domestic abuse are needed to enable the FCA/Guardian to plan effectively to safeguard the child/parent. (FCA88, SE)

I think that the court should not be so dismissive of DV allegations. So often, they are brushed off as irrelevant, even when the victim is clearly frightened. This ignorance of real concerns makes the victim feel even more fragile, and makes them lose faith that the court truly provides their children with the protection they need. (S465, SE)

I feel that, quite often, allegations made by victims are not given sufficient weight or consideration and are, often, ignored or brushed under the carpet by the DJ with the result that interim arrangements are made, which often 'implode', leaving the family unit much worse off in terms of its ability to function effectively in the future for the benefit of the children. (S446, NE)

*Fact-finding hearings are necessary in order to provide a factual basis on which the case can proceed.*

Allegations need to be established and set the scene and before this is done anything else is premature. (S433, Wales)

On occasions I have been instructed in a matter where a fact finding hearing has previously been aborted only to find it cannot progress at a later date as experts have said they are unable to reach a conclusion without findings being made. (B129, Midlands)

Unfortunately it seems that the Courts want to avoid finding of fact hearings, which can make it difficult to assess the risks to the child or children concerned. (FCA337, London)

There are cases where the issues should have been determined by the court but the court has instead directed 16a risk assessment. This causes the FCA a problem in that they are commenting on alleged rather than determined facts for their risk assessment. This in turn can lead to contested hearings and defacto fact finding

hearings/more lengthy set of directions hearing and further reports. Quick determination of issues may actually resolve issues better and more robustly (FCA91, NE).

These comments by Cafcass Family Court Advisors raise the issue of Cafcass's role in insisting on the need for a fact-finding hearing as a basis for further assessment. This was observed by a number of respondents, but evaluated in different ways. FCAs, and some others, saw this as a logical and reasonable requirement:

Greater use of Fact Finding Hearings would be useful early on in proceedings. This would help to inform the FCA undertaking S7 reports. It is difficult where an FCA makes a further recommendation for a Fact Finding on completion of a report, as this leads to further delay. (FCA141, SE)

Sometimes it can feel as if the court wants Cafcass to determine whether the issues are serious enough to influence the decision about contact, rather than hearing evidence and making a judgment. (FCA341, SW)

...any Cafcass reports or assessments can and frequently do come to the wrong conclusion where based on allegations that are untrue, or dismiss allegations later found to be proved. Such reports must be based on facts that are established. (CJ533, London)

However other judges and practitioners considered that fact-finding hearings were held too often because where any allegations of domestic violence were raised (regardless of their 'seriousness' or 'relevance') Cafcass insisted on such a hearing before providing a s 7 report. These respondents sometimes imputed more selfish motives to Cafcass:

It is my perception that when any allegation of domestic violence is raised the automatic reaction from Cafcass is to decline to report until a fact finding hearing has been held. It is difficult to resist the conclusion that Cafcass simply wish to defer or avoid the work of preparing a s7 report for operational reasons or that in the current climate they would rather 'pass the buck' than make any recommendation at all against a background of alleged domestic violence whatever its level of seriousness. (DJ543, Midlands)

*Fact-finding hearings are necessary to move the parties and the case on*

The finding of fact usually clears the path for a contact application – it seems to clear the air. (FM290, Midlands)

Cases where there are DV allegations not determined hang over the conduct of future contact even where findings would not actually result in a restrictive form of contact or one any different from that ordered. It is the inability of the parties to move on which can then in turn emotionally affect the child as the contact continues and one parent's sense of injustice continues to simmer. Yet to have a hearing and make findings will make no difference to the order made. (DJ512, NE)

There can be a reluctance to face difficult past issues, and look to the future but often without facing and dealing with these issues it is impossible to move forward. (S381, NE)

Whilst evidence is sometimes a problem, unresolved allegations between parents fester and colour all the subsequent decisions on contact. The 'perpetrator' feels that they haven't had a chance to 'clear their name' and the 'victim' feels that they haven't

been listened to and that they are being asked to put their children at risk. An atmosphere of suspicion/distrust on one side and anxiety on the other is created which sours any ongoing relationship. (B514, SE).

*Issues will continue to resurface and impede resolution if they remain unaddressed*

...sometimes the issues resurface later and you wish you had grasped the nettle and dealt with the allegations at a fact-finding hearing at an earlier stage. (DJ260, Midlands)

When a fact finding has not taken place and then final orders made sadly a number of matters simply return to court with fresh applications being made. (S277, Midlands)

On occasions Courts' too literal interpretation of the provisions can result in problems later which if settled by way of finding of fact hearings earlier would not have delayed decisions later on and might also have avoided further domestic violence incidents. (S571, SW)

Those (the overall majority) who thought that fact finding hearings were now held as often as needed generally considered that the correct balance had been struck between the pros and cons of such hearings – with a clear emphasis on the cons (that is, with a preference for not holding a fact-finding hearing). The touchstone set out in the President's Guidance on Split Hearings was generally seen as helping to achieve that balance, for example:

Fact finding hearings are useful in appropriate cases, and we are probably getting better at identifying what are – and are not – the appropriate cases... It is always necessary to ask oneself and the parties and their representatives to consider the actual relevance of the allegations they wish to raise to the questions of contact/residence. (CJ156, SW)

Several respondents noted that the correct balance was maintained by means of "robust judicial case management" (CJ535, SW), although a few considered that "there is an alarming lack of rigour by the bench (actively encouraged by the bar) to the application of the applicable test i.e. whether the facts, if found, would make a difference to the outcome" (B116, London), and hence more robust judicial case management is needed.

A handful of respondents expressed less confidence in their ability to get the balance right:

Despite the 2010 guidance it is not always easy to decide whether or not a hearing is required on any given facts. So much depends on judicial instinct and experience, and I have found that 'picking the brains' of colleagues and talking through the issues can be particularly helpful. (CJ258, NW)

I am concerned that sometimes there is a tension between not wanting to have a separate hearing and the need to determine allegations in order to have a clear factual basis to proceed with the case in particular where risk assessment is required. (B08, London)

There remains a considerable unease about what is 'right' in these cases as the expectation is generally to avoid a fact-finding and further, that even if findings are made, the outcome will not change regardless... (B135, London)

Others indicated rules of thumb, expressed in numerical terms or in terms of the type of violence that would need to be alleged in order to justify a fact-finding hearing. In numerical terms, respondents variously thought that fact-finding hearings should be held:

- in rare cases (CJ295, DJ519)
- in a (very) small minority of cases (DJ602, B114)
- as the exception, not the rule (DJ507) (also observed by FCA91)
- occasionally (DJ358)

In terms of the types of violence considered to provide grounds for a fact-finding hearing, respondents referred to:

- where allegations are extremely serious and a bar to contact itself (B23)
- serious domestic violence (DJ509)
- real violence cases (CJ536)
- “there is a misconception that DV is only present where there are allegations of physical violence” (FCA337)<sup>20</sup>
- where the alleged perpetrator is dangerous and manipulative (CJ245)
- where the allegations involve violence to the children themselves (DJ135, DJ574, DJ175, FM192)
- where the children have suffered significant emotional harm (DJ134)
- where the behaviour has been observed by the children (DJ175, B42)

By contrast, some respondents indicated a much lower threshold:

I think there should always be such a hearing if there are allegations which are denied or which may be exaggerated by the other party. (FM365)

All allegations have to be investigated. (FM173)

Two points may be drawn from these comments. First, few of the limitations suggested are supported by either the Practice Direction or the President’s Guidance on Split Hearings. The Guidance does say that “In my judgment it will be a rare case in which a separate fact finding hearing is necessary” (para 7). However, there is no justification for limiting fact-finding hearings to particular types of violence. Moreover, the Guidance provides that where there is no fact-finding hearing, allegations of violence should be fully dealt with alongside the other issues raised as part of the welfare determination. It does not say that where the court decides not to hold a fact-finding hearing it can disregard disputed allegations of violence.

Secondly, it seems clear that there is indeed a wide variation of views among judges and practitioners as to when allegations of violence are likely to affect the outcome of the case, and when a fact-finding hearing ought to be held. Some respondents in fact commented on this variation, noting that different judges and courts were more or less likely to order fact-finding hearings.<sup>21</sup> For example:

The practice of holding fact finds does seem to vary geographically. From talking to those who practice on Teesside or Leeds fact finding hearings are much more prevalent and indeed almost always held where there are allegations. This is not our experience in Newcastle or Sunderland where at DJ level certain judges do not consider that a fact find will serve any useful purpose. (S427, NE)

<sup>20</sup> See also Coy et al., above n 11, pp 51-53.

<sup>21</sup> See also *ibid.*, p 53.

The difficulty is that each court/Judge/tribunal has their own, idiosyncratic approach. Until there is a uniform agreement across the board as to the approach the PD and Private Law Programme are promoting, inconsistency will continue. (B135, London)

[There is a need for greater] consistency in applying the Practice Direction. Different Courts have different approaches. There is the appearance of a post code lottery. (B62, Midlands)

In particular, respondents suggested that Magistrates were more likely to order fact-finding hearings than District or Circuit Judges (although the quantitative data did not clearly support this view). As might be expected from the foregoing discussion, some saw Magistrates as holding fact-finding hearings when they were unnecessary, while others saw family judges as being too ready to dismiss the need for a fact-finding hearing.

In summary, respondents suggested that fact-finding hearings occur in only a small proportion of cases in which the issue of domestic violence is raised. In the majority of such cases, allegations of domestic violence are likely to be considered irrelevant. Where they are considered relevant, they may instead be dealt with as part of the substantive hearing. Respondents overall did not perceive much of a change in the proportion of fact-finding hearings over time, however the majority considered the current level of fact-finding hearings to be appropriate. Opinions expressed by those who thought fact-finding hearings are held too often or not often enough revealed a list of positive and negative aspects of fact-finding hearings, which received varying emphases. The apparent consensus that the courts have struck the 'right' balance in holding fact-finding hearings may also mask a considerable variety of views as to where exactly that balance ought to lie. Although it is difficult to posit an objectively desirable level of fact-finding hearings, the low proportion of cases in which they do appear to occur, combined with some of the qualitative comments suggesting unjustified restrictions on when they should be held, suggests that in at least some courts, the scope of the Practice Direction may be being excessively curtailed, and allegations considered not sufficiently recent or not sufficiently serious continue to be "swept under the carpet".<sup>22</sup>

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<sup>22</sup> For a recent reported example of this, see *Re B (A Child)* [2012] EWCA Civ 858, in which a trial judge made negative findings about the mother's hostility to contact, and ordered a transfer of residence to the paternal grandmother, without allowing the mother's counsel to explore the allegations of violence on which her resistance to contact was based. The Court of Appeal (Thorpe LJ) overturned the decision and ordered a retrial to enable a "more balanced assessment" to be made.

## 7. The Initiation of Fact-Finding Hearings

### 7.1 Raising the issue of domestic violence

Respondents reported that domestic violence was most often raised as an issue in private law proceedings by the alleged victim of violence, but was also reasonably often raised by Cafcass. The majority of respondents said that the results of Cafcass safeguarding checks were available at the FHDRA 'very often' (38.5%) or 'quite often' (23.4%). Respondents from the South East and the Midlands were more likely to say that the results of safeguarding checks were available 'very often', while those from the North East were more likely to say that they were never or only occasionally available. Although safeguarding checks are undertaken centrally at the Coventry office of Cafcass, these differences in responses may suggest different levels of response to enquiries from the local police or social services, or differential levels of communication and efficiency among local Cafcass offices.

No clear overall pattern emerged as to what would typically occur if the results of safeguarding checks were not available at the FHDRA. Circuit Judges and Family Magistrates were more likely to say that they would 'occasionally' conduct the FHDRA without them, while District Judges were more likely to say that they would do so 'quite often', 'very often' or 'always'. Conversely, District Judges were more likely to say that they would only 'occasionally' adjourn the FHDRA, while Circuit Judges were more likely to say that they would do so 'very often'. Respondents from the South East reported a lower likelihood of the matter being adjourned if safeguarding checks were not available, while those from the North West reported a greater likelihood of this occurring.

Several District Judges made further comments about this issue, calling for safeguarding checks to be performed by Cafcass with greater efficiency and more dedicated resources. A couple thought that centralisation had been detrimental to the speed and adequacy of safeguarding checks and considered that this function should be returned to local areas. One of the Cafcass respondents also suggested that:

If the information is not available advance notice [should be provided] to the court so that time is given to adjourn without the fear that parties incur expensive legal bills by turning up, only to find the report hasn't been completed. Under these circumstances Judges may feel reticent about adjourning off and go on to make orders which may prove unsafe. (FCA307, Midlands)

Lawyers were asked whether they would ever advise a client in private law residence or contact proceedings *not* to raise the issue of domestic violence. The majority (59%) said they would never do so, while most of the remainder (37%) said they might occasionally do so. Those who said they would never advise a client not to raise the issue generally explained that they did not consider that allegations should ever be ignored, or that it was strategically important to flag up domestic violence even if contact was not opposed, in case it turned out to be necessary to raise the issue at a later stage, in which case it would assist the client's credibility if she had mentioned it at the outset. One solicitor stated:

I do not believe it is appropriate to ever ignore an allegation since some years ago I allowed a client to persuade me not to raise the issue only for her and her young daughter to be shot dead by the abuser – a salutary lesson and one I'll never forget. (S571)

Nevertheless, some who said they would never advise a client not to raise domestic violence qualified their answers by saying that they would at the same time not necessarily advise the client to pursue a finding of fact hearing (for various reasons); or would advise that the

allegations would not necessarily affect the outcome of the case or prevent a contact order being made, despite their seriousness; or would advise the client of the consequences and potential risks of making allegations of domestic violence, particularly if they were subsequently held to be unfounded.

Those who said they would occasionally advise a client not to raise the issue of domestic violence specified the following circumstances in which they might give such advice:

- if the allegations were 'old' or 'historic'
- if the allegations were 'not serious', 'trivial', or 'comparatively minor'
- if the alleged violence had 'occurred in a context', such as only at the point of separation
- where there had been a volatile relationship in which both parties had behaved badly
- if there was no or only limited supporting evidence available
- if the parties had resumed their relationship or continue to live together for a substantial period after the alleged incident
- if raising the alleged incidents would only serve to inflame the situation and make matters worse for the child/ren in the long run
- if raising the alleged incidents would affect the client's credibility, for example where domestic violence was raised as an issue some way into proceedings for an apparently collateral reason
- if contact had been allowed and taken place successfully for some period of time since the alleged incident
- if the alleged violence did not affect the client in agreeing contact arrangements or the client did not have concerns about harm to the child
- if the allegations would not be relevant to the issue before the court, or the court would not consider them to be relevant.

As summarised by one solicitor:

Given my knowledge of how judges in my local court seem so anxious not to deal with DV allegations, if the violence was a long time ago, or could be said by a judge to be an understandable reaction in a stressful situation, I will explain the possible disadvantages of pursuing the allegations, as sometimes this can do the client's credibility damage. (S465, SE)

It is notable that this list of reasons indicates a number of possibly erroneous assumptions by lawyers as well as judges as to when domestic violence may affect a child's safety. The blanket dismissal of supposedly 'old' or 'historic' allegations has already been discussed. The fact that violence occurred only at the point of separation does not render it harmless – indeed 'separation assault' has been identified as a particularly dangerous form of domestic violence indicative of the perpetrator's attempts to retain power and control and to prevent separation from occurring.<sup>23</sup> The lack of supporting evidence is entirely characteristic of abuse that occurs 'behind closed doors' and is by no means a reliable indicator that it may be either exaggerated or non-existent.<sup>24</sup>

The continuation or resumption of the relationship after the occurrence of violence likewise does not indicate its lack of seriousness. It may indicate very serious issues of coercion, intimidation, threats or enforced dependency. It is notable that in public law proceedings, the

<sup>23</sup> See, e.g., M.R. Mahoney, 'Legal Images of Battered Women: Redefining the Issue of Separation' (1991) 90 *Michigan Law Review* 1-94.

<sup>24</sup> For an excellent discussion of the legitimate reasons why corroborating evidence from a GP or the police may be absent, see *Re A (Contact: Risk of Violence)* [2006] 1 FLR 283, per Black J at para 13.

continuation or resumption of a parental relationship after domestic violence has occurred is frequently a matter of concern for local authorities. It is very well observed that separating from an abusive relationship is a difficult process, often involves several attempts to leave, and is highly dependent on the availability of alternative material and emotional sources of support for the victim and her children which may be limited or unavailable, or deliberately blocked by the abuser.<sup>25</sup> Similarly, if contact has been 'permitted' following the alleged incidents, it cannot be inferred that there are no concerns about harm to the child. As one respondent acknowledged, "if contact has been taking place, I would want to know why... – is it because the victim is threatened/intimidated, etc.?" (B52).

A number of respondents raised concerns that allegations of domestic violence were sometimes made for ulterior motives, including in response to an ex-spouse repartnering; as a bargaining chip in relation to money issues; as a means of obtaining legal aid; or, most frequently, as a delaying tactic and a means of disrupting the other party's relationship with the children:

All too often one party is claiming DV with no proof other than their claim and it would seem that the claims of DV are being made as a delay tactic when the case has progressed through a few hearings and there had been no mention of DV until other delaying tactics had failed. (FM270, SW)

Used as way of preventing contact whilst awaiting hearing during which time the resident parent puts pressure on the children and they then say they don't want to see the other parent anyway. (S466, SE)

Several of the respondents making these comments asserted that this occurred 'often', 'generally' or 'in many cases'. Notably, however, none of the Cafcass respondents raised this as a concern. Given their safeguarding role, and their general view in the survey that fact-finding hearings are not held sufficiently often, it would seem that Cafcass Family Court Advisers do not consider that their or the courts' time is routinely being wasted by false or strategic allegations. The spectre of false allegations is a recurrent trope in all discussions of domestic violence, but whenever objective efforts are made at quantification, the proportion of unfounded allegations turns out to be very small.<sup>26</sup>

## 7.2 The C1A form

Form C1A is the form used in residence or contact proceedings to bring allegations of domestic violence to the attention of the court. During 2009-10 the C1A form was extensively re-designed with the aim of making it more user-friendly for litigants, removing constraints on the type of allegations that might be made (e.g. accommodating a course of action or pattern of behaviour rather than asking only about 'incidents') and encouraging litigants to describe the alleged effects of the violence and to specify potential sources of independent evidence. The survey therefore asked whether respondents had experience of using the new C1A form, and if so, whether they found it helpful.

<sup>25</sup> Again, see Black J's discussion in *Re A*, *ibid* at paras 37-38. See also Coy et al., above n 11, pp 26-27.

<sup>26</sup> For a very recent study, see D.W. Allen and M. Brinig, 'Do Joint Parenting Laws Make Any Difference?' (2011) 8 *Journal of Empirical Legal Studies* 304 at 320-321. This study found not only that 'false' allegations in divorce proceedings (overinclusively defined as cases in which an application for a protective order did not result in the order being made) constituted only a very small proportion of domestic violence claims, but that the ratio of men to women making false claims was 4:1.

Around three quarters of those who responded to this question had experience with the new C1A form, but one quarter had not – a surprisingly high proportion. Of those who had such experience, the majority said they found the new form somewhat or very useful (60%), although 35% said they found it to be of limited use. Respondents from the North West were most likely to report familiarity with the new C1A form, while Circuit Judges, Family Magistrates and Welsh respondents were the groups least likely to be familiar with it, with two-thirds of the Magistrates responding saying they had not encountered the new form. Solicitors were the group most likely to say the new form was of no or limited use (52%) – perhaps reflecting some frustration or annoyance at having to change their practices and comply with the new requirements.

Those who said they found the new form somewhat or very useful identified a range of benefits for different stakeholders. For the court, the form was said to be useful in: flagging up issues of domestic violence at the earliest opportunity; providing some basic information before the FHDRA which could then be the subject of more detailed enquiries; helping to identify areas of agreement and disagreement between the parties, and hence providing a framework for subsequent directions and case management; and providing a useful safety net. For the parties, the form was said to be useful in clarifying what was being alleged; and in helping to focus the client on what the court would need to know in order to determine whether the behaviour would have an impact on the orders the court could make. For Cafcass, one respondent commented that:

It provides clear information regarding direct allegations which can then be put to the other party during interview. Therefore, it saves time as I do not have to find out this information myself. (FCA303)

A handful of judges and barristers also commented on the forensic value of the C1A form, in providing an initial version against which subsequent accounts could be compared for consistency.

Perhaps unsurprisingly, although those who said they found the form to be of limited use were in the minority overall, they were more likely to provide additional comments explaining their objections, resulting in quite a long list of criticisms and concerns. These concerns included the following:

- the form encourages parties to make allegations, which has a detrimental, polarising effect. In the words of one barrister:

I think it is counterproductive. The client feels inclined to fill all boxes in the landscaped page. It is a recipe for disaster. At the end of the day where does it get us? The effect is that it ups the anti which makes our job as family lawyers very difficult, when we are constantly trying to calm volatile situations. (B40)

- litigants in person, in particular, find the form difficult and either do not complete it properly or fill it with “mundane incidents”
- the information provided is never sufficiently detailed [to form the basis for a fact-finding hearing]
- conversely, the form requires a level of detail to be provided which is rarely available at the time it is completed (e.g. “It presumes that people who have been subjected to abuse have precise dates and other precise information to hand. The world is not like that” (S453))

- only one side (the alleged victim) completes it fully; the alleged perpetrator either doesn't respond fully or at all, or if an applicant, either doesn't acknowledge their violence or often blames the victim by alleging they are a risk to the children's emotional wellbeing
- it is unfair and unrealistic to expect alleged victims always to disclose domestic violence at the outset of proceedings
- courts do not always take notice of the contents of the form
- the form is too long, repetitive (the same information is required in different sections), not easy to read quickly, not user friendly, could be a lot clearer and simpler
- information required on the form can often be found elsewhere, e.g.:

In many of my cases an application for residence where harm is alleged will be made on an urgent ex parte basis with a statement in support which covers the information required – the C1A is then unnecessary. (DJ145)

The vast majority of such cases come about through the victim having sought an injunction. They will therefore have produced a statement in support which sets out the allegations. The table in the C1A is therefore unnecessary duplication which frankly I don't use (in the form I respectfully refer the court to the statement). (S386)

Several of these criticisms are inherent in the nature of forms. It is inevitable that the existence of a form might encourage some parties to make trivial allegations, but the only remedy would be to have no form, which would be to throw the baby out with the bathwater. Likewise, it would be difficult to design a form that would always be perfectly completed by lawyers and unrepresented litigants, applicants and respondents alike. In cost-benefit terms, it is probably preferable in this area to be over- rather than under-inclusive. It should not be expected that the level of detail provided on the C1A form should be such as to preclude the need for any further enquiries. If this does occur, it is a bonus. If not, as commented by those who found the form useful, there is basic information available which can form the basis for further enquiries. At the same time, the C1A form should not be seen as the first and last opportunity to raise domestic violence, and allegations raised subsequently should not be regarded with suspicion if there are plausible reasons for failing to disclose earlier.

Specific suggestions made by respondents for improving the form included:

- avoiding the need for repetition
- adding a column to the table, requiring the party to specify how each allegation is relevant to the issue/s the court is being asked to decide [although clearly this would be even more of a challenge for unrepresented litigants]
- incorporate the CAADA domestic abuse checklist or similar into the C1A form so that all potential forms of domestic violence and harm are identified.

The Ministry of Justice has indicated its intention to conduct its own review of the new C1A form. The above findings from the survey might usefully be incorporated into that review.

### **7.3 Who requests fact-finding hearings?**

Respondents reported that fact-finding hearings are most often listed at the request or initiative of the alleged victim of violence (or their lawyer), followed some way behind by Cafcass and then by the court of its own motion. As noted earlier, some of those who explained why they considered fact-finding hearings to be held too often were of the view

that fact-finding hearings were unnecessarily listed at the insistence of Cafcass, who they felt were “passing the buck” to avoid making recommendations. Conversely, Cafcass respondents tended to feel that courts did not give sufficient priority to the need for a factual basis on which they could proceed to make recommendations. The quantitative responses indicate that Cafcass requests for a fact-finding hearing where the matter is not raised by the alleged victim represent a fairly minor source of such hearings.

## 8. Interim Orders

Respondents were given a range of possible interim orders that might be made pending a fact-finding hearing and asked how often in their experience each kind of order was made. The orders that appeared to be made most frequently were orders for:

- supervised contact (64% 'quite often' or 'very often')
- indirect contact (58% 'quite often' or 'very often')
- supported contact (47% 'quite often' or 'very often')

By contrast, less than one quarter of respondents said that orders for no contact were made 'quite often' or 'very often', although 37% said that no order with the expectation of no interim contact would be made 'quite often' or 'very often'. This indicates courts' reluctance to order no contact at the interim stage, and to prefer to order some form of restricted contact or, in some cases, not to make an order while expecting there to be no contact (perhaps reflecting a status quo). A handful of lawyers and one District Judge raised concerns about the limited availability of supervision for interim contact (in the South East and the Midlands) and the delay occasioned by fact-finding hearings resulting in significant periods of time during which the alleged perpetrator was unable to have contact with his children, but these appear to be isolated comments which do not reflect the general experience.

## 9. The Process of Fact-Finding Hearings

### 9.1 Limitation of allegations

Respondents were asked how often in their experience the allegations to be tested in a fact-finding hearing were limited by the court. The majority (68%) thought this happened 'quite often' or 'very often'.

Several respondents made further comments referring either to a practice of or the need for a pre-hearing review or directions appointment prior to the fact-finding hearing in order to ensure that the hearing remains tightly focused. For example:

We list a pre-hearing review once the evidence is filed to see if there are sufficient admissions or at least to narrow the allegations to those that are relevant and necessary and where there is enough evidence to enable the court to make findings if the evidence is accepted. (DJ260, Midlands)

Courts should be much more vigilant about listing a pre-hearing review before the trial judge, for the trial judge to consider which, if any of the allegations should be proceeded with. All too often this does not happen. (B218, SE)

Some respondents went further and indicated a standard limit to the number and type of allegations that should or would be entertained. Examples included the following:

Too often cases reach me that are virtually untriable as the allegations are unmanageable in quantity or scope. The last case involved 38 allegations spread over 7 years – to be heard in one day! I direct advocates to pick the best 10 and focus on recent events but by then it is too late – reams of statements produced etc. When fact-finding is ordered, the judge should be very prescriptive in ensuring that a reasonable and representative list is put together. (CJ614, NE)

More robust case management should limit the number of issues to be tried (12 is our maximum) which limits hearings to one day. (CJ563, London)

Courts should, as a matter of routine, agree with parties a limited list of allegations – which may be dealt with in one day hearings. HMCTS Wales has published extremely helpful guidance to Legal Advisers about this. (FCA137, Wales)

A limit of 12-15 allegations should be adequate to inform the court and to create a platform from which future risk to a child can be assessed. A framework which is structured around the first incident, the last incident and the worst incident, and thereafter a maximum of 12 more to illustrate depth and breadth would provide tighter, more efficient hearings. (B30, NE)

As discussed earlier, the very concept of fact-finding hearings makes this kind of response logical and understandable. If domestic violence is about 'incidents', then it is entirely reasonable to limit the hearing to 'representative' or 'recent' incidents rather than to trawl through the whole history of the relationship, and if there is pressure on the court's time, then the number of 'incidents' considered should be reduced to fit within a one-day hearing. The potential consequence, however, as observed by one respondent, is decontextualisation resulting in a tendency to minimise the extent of abuse:

I am concerned that the move away from fact findings is too far, in that there is some pressure not to pursue allegations or limit them, with the consequence that they are

then minimised at the assessment stage. It is difficult for those raising allegations to show the significance of them, if they are cut to 4 or 5 examples and then if found are regarded as the only incidents by those preparing s7 reports. (B143, Midlands)

## 9.2 Duration of fact-finding hearings

Three quarters of respondents reported the average duration of their last five fact-finding hearings to be between ½ and 2 days (41% 1-2 days; 34% ½-1 day).

Respondents were also asked whether any of their last five fact-finding hearings had been adjourned part-heard. The majority (55%) said no, but 40% said that one or two of those hearings had been adjourned part-heard. Respondents from the South East were most likely to say that none of their last five fact-finding hearings had been adjourned part-heard.

There were very few qualitative comments made on either the length of fact-finding hearings or the issue of adjourning part-heard, although the few comments tended to be in the form of horror stories:

The most frustrating occurrence is insufficient court time being allocated to hearings which are then adjourned part heard. I have just completed a fact finding hearing in October which was adjourned part heard from March. A colleague recently concluded a fact finding hearing that commenced in July 2010 and had four part heard hearings over the course of 12 months. Often when counsel is instructed the time estimate has been set and it is too late to alter. (B50, Wales)

## 9.3 Impact of fact-finding hearings on the time taken to finalise the case

The majority of respondents (60%) said that a fact-finding hearing 'always' or 'very often' resulted in the case taking longer to finalise. A further 25% thought this happened 'quite often'.

Delays were identified both in getting to the fact-finding hearing, and then in concluding the case following the fact-finding hearing. The main causes of delay in getting to the fact-finding hearing were said to be delays in listing in the context of limited judicial resources/court time, and delays in obtaining police records/disclosure, followed by delays in obtaining other medical records and occasional delays caused by the need for an expert witness. Many comments were made about delays in listing, which were described by one District Judge as "appalling and damaging" (DJ548, SE). Respondents in both London and the North West referred to a six-month wait to list a two-day fact-finding hearing. Others commented:

Listing is so tight – to have to list a fact finding hearing requires a pre-trial review, the 2 day hearing, then another directions hearing before the final hearing. It is costly and causes inordinate delay. (B40, SE)

This shows the importance of limiting the issues to be heard so that time estimates can be reduced and listings can be given at earlier dates. The longer the hearing, the longer it will be before the case can be listed, and the longer it will take to finalise the whole thing. (DJ301, Wales)

These matters compete for a place in congested lists and go on as quickly as possible. Decisions have to be taken as to priorities and these applications fall behind child protection work, thus slowing down decided contact. (DJ605, SE)

Only one respondent indicated no problem with listing fact-finding hearings:

This court can currently accommodate a day's hearing in three weeks or less.  
(DJ262, Midlands)

In terms of post-hearing delays, some respondents referred to delays in delivering judgment, but most who commented on this aspect referred to delays occasioned by the need for post-hearing assessments and interventions and multiple contact reviews:

Often the very nature of the allegations means that, if they are proved, there will be a long delay before the case is concluded. For example, there might thereafter be the need for psychological assessment, and/or the court may have to retain control for a very long time, with repeated contact reviews/Cafcass addenda, as necessitated by the findings and perhaps the need to reintroduce contact slowly and safely, or wrestle with the possibility of no contact. That rarely happens immediately. (CJ258, NW)

If findings are made either risk assessments follow and/or attendance on some sort of Domestic Violence Intervention Project. This can take many months to complete before contact can be considered. (DJ505, SE)

Conversely, some respondents suggested that cases could finalise more quickly following a fact-finding hearing, for example where:

- as result of the findings, the perpetrator realises that contact is unlikely to be ordered and withdraws his application;
- the allegations are not made out and the court is able to make final orders more quickly rather than waiting for a Cafcass report;
- the parties accept the findings and are able to settle without a final hearing;
- the fact-finding hearing gives a clear indication of how the matter should be resolved and the case can be listed for a shorter final hearing.

Some respondents pointed to a trade-off in this respect, with the fact-finding hearing creating short-term delay for a longer-term benefit. Others highlighted the counterfactual, that is, if a fact-finding hearing had not been held, the case would have taken as long if not longer:

...it is not so much the fact-finding question that takes time as the underlying issues – DV, anger management, drugs/alcohol abuse etc. – which need to be addressed whether or not there is to be a fact-finding hearing. (DJ260, Midlands)

A finding of fact can often in disputed and contested hearings give a definite view that cannot then be subject to further attention or investigation, e.g. one case that had been in and out of court for 3 years; a finding of fact was finally agreed by the court that determined the issue and the parties have now agreed contact and the matter has not returned to court for nearly 2 years. (FCA91, NE)

Finally, a handful of respondents (interestingly concentrated in the North West) simply asserted that delay was not the most important issue:

It is the quality of outcome which is improved, not the speed of outcome... (B25, NW)

While delay is a real problem, there is no point resolving children cases quickly if we do not also do so accurately. (DJ612, NW)

It doesn't matter if it takes longer if we make a better decision because of the finding of fact. (FM556, NW)

They may delay matters, but are helpful to Cafcass officers completing Section 7 reports and risk assessments, and therefore should be in the children's interest in respect to their wellbeing. (FCA75, Midlands)

One source of delay that appeared to be particularly annoying, however, was the situation where a fact-finding hearing was listed but not proceeded with on the day – a complaint made by barristers in particular:

Quite often by the time the fact-finding hearing is listed either the allegations are withdrawn or it is realised they are no longer relevant or for some other reason the whole exercise is shortened or abandoned, but in any event delay is caused. (CJ608, Wales)

They actually seem to go ahead as often as they should but too many are listed at great delay and then don't proceed on the day of trial. (B43, London)

It is astonishing how frequently fact-finding hearings are listed without a judge giving proper consideration to the need for one based on a Scott schedule. It is frequently the case that the courts adjourn the finding of fact hearing on the day as being unnecessary; although I usually agree with the judge's decision on the day it is an appalling waste of public funds that these hearings were listed in the first instance. (B234, NE)

In such cases, clearly, there is no redeeming value to be gained from the delay, other than perhaps the avoidance of yet more delay.

#### **9.4 Impact of fact-finding hearings on other cases in the list**

Judicial officers were also asked about the impact of fact-finding hearings on other cases in the list. Here there was a fairly even split, with just over half of respondents saying that such hearings resulted in delays to other cases 'quite often', 'very often' or 'always', while just under half said delays to other cases resulted only 'occasionally' or 'never'. Those who thought that fact-finding hearings caused delays to other cases mostly referred to the opportunity cost of listing a fact-finding hearing, meaning that other cases would inevitably be displaced. In the words of one Magistrate:

With the present financial cut backs in the court system, double listing of cases, shortage of Legal Advisers and court room space, when a fact finding hearing is required this raises difficulties in getting all the above together, without delaying other cases. (FM173, SW)

Others described fact-finding hearings as "a burden on heavily stretched lists" (DJ481, London) and taking up a disproportionate amount of time. Some mentioned that since children's cases were given priority, civil listings suffered, although one District Judge stated:

I am not aware of any policy requiring fact finding hearings to be prioritised for hearing above other cases. (DJ604, London)

Displacement to a different court level was also mentioned:

...many cases have been declined [by the FPC] and kept at County due to lack of clerks to cover these and the many other cases. (FM312, SE)

Some respondents noted various strategies to minimise or avoid having an impact on other cases. These included rigorous case management to reduce the number of fact-finding hearings to the absolute minimum, juggling lists, listing patterns and the provision of additional resources. For example:

Usually we can juggle lists because we are a large court and somehow we manage it. In a small court there isn't that flexibility. (DJ500, NW)

We normally list Private Law cases within listing patterns. This involves listing at least 3 hearings on issue and 3 final hearings before the same judge on the same day on the basis that many will settle as they progress, to minimise delay. Alteration in the timetable because of a fact-find in any individual case will therefore normally not affect other children cases. (DJ545, SW)

If I require time to hear a fact finding hearing my Court manager will give me a very quick date and bring in a Deputy to cover my existing list. (DJ515, NW)

The impact on other cases also appeared to be perceived as less of a problem by Family Magistrates than by Circuit and District Judges. In particular, Magistrates from the Midlands and the South noted the scheduling of extra court time for fact-finding hearings, the ability to deal with cases out of order, the fact that time estimates for fact-finding hearings were often overstated, enabling the court to reach other cases more quickly, and the general capacity of 'listings' to balance the court's caseload.<sup>27</sup>

In summary, it appears that the allegations to be tested in a fact-finding hearing are frequently limited by the court. Fact-finding hearings tend to run for up to 2 days on average, and are mostly heard continuously, though a significant minority may be adjourned part-heard. Respondents were generally of the view that a fact-finding hearing was likely to prolong the finalisation of the case, although some considered that the delay involved in listing a fact-finding hearing was justified in cost-benefit terms. Judicial respondents were divided in their views on the impact of fact-finding hearings on other cases in the list, with some (mainly in County Courts) considering fact-finding hearings to consume time that could have been devoted to other cases, while others (mainly in Family Proceedings Courts) did not see this as such an issue. Some courts successfully balanced fact-finding hearings with other cases by means of listing practices or the commitment of additional resources, but in other courts, the main management tool (as suggested earlier) appeared to be to try to avoid fact-finding hearings as far as possible.

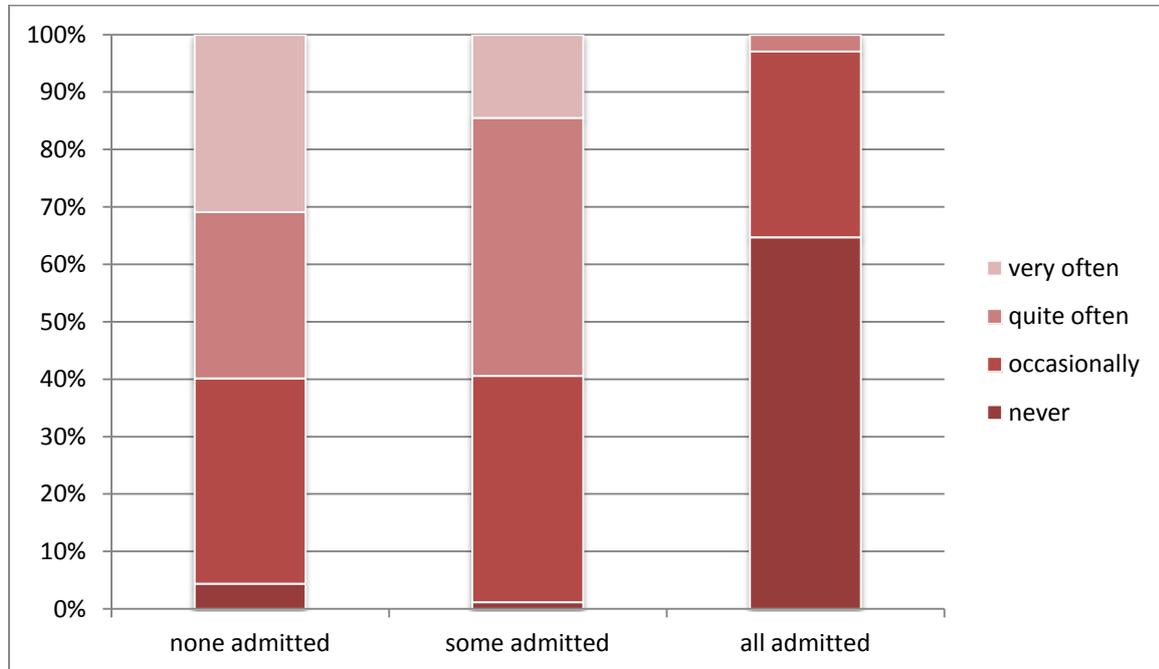
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<sup>27</sup> It has been suggested that Family Proceedings Courts may have a greater ability to accommodate fact-finding hearings in family law matters due to the general decline in the criminal workload of the Magistrates Courts. See 'Criminal justice statistics' at <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics>.

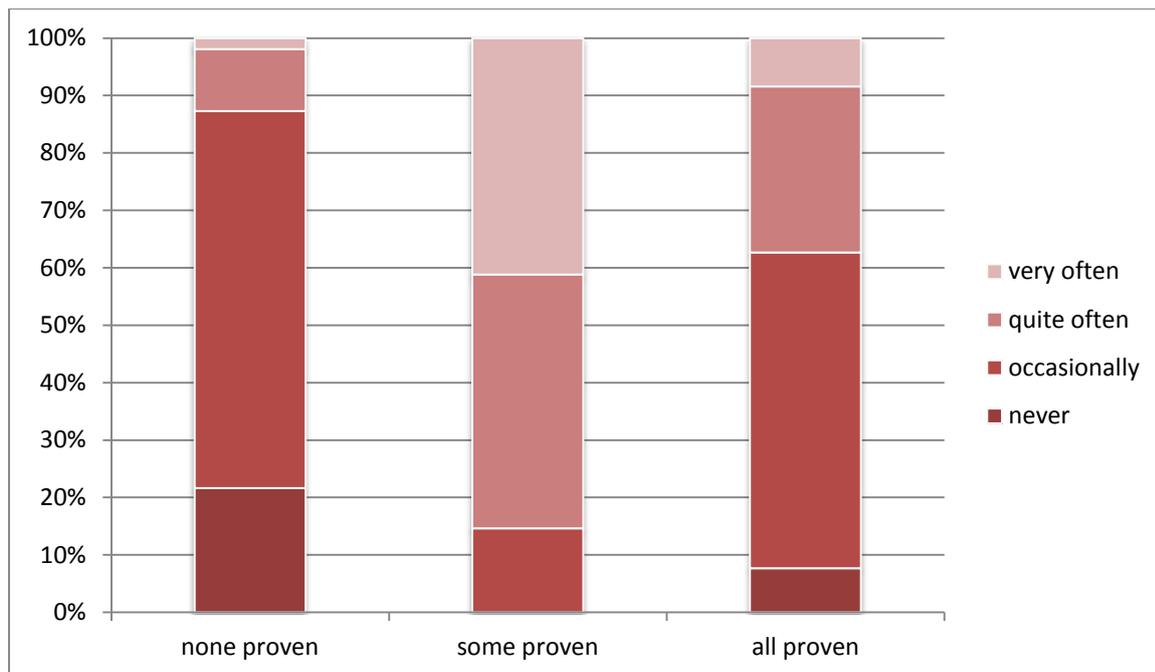
## 10. Outcomes of Fact-Finding Hearings

### 10.1 Admissions and proof of allegations

Respondents were asked in their experience how often none, some or all of the allegations of domestic violence were admitted, and how often none, some or all of the contested allegations were found proven.



Almost all respondents agreed that it was rare for all of the allegations to be admitted. It was more often the case that some of the allegations would be admitted, although just as often, none of the allegations might be admitted.



Similarly, the majority of respondents agreed that some of the contested allegations of domestic violence would quite often or very often be found proven. Occasionally, none or all of the allegations would be found proven, and some considered that all of the allegations would quite often be found proven.

## 10.2 Risk assessment and referrals to perpetrator programmes and other services

Where allegations of domestic violence are admitted or found proven, it is necessary to assess the level of risk posed by the perpetrator, and to consider what steps may be taken to manage and ideally reduce that risk within the specific family context. The importance of the risk assessment stage has recently been underlined by Black LJ in the case of *Re W (Children)*.<sup>28</sup> In that case, following a fact-finding hearing, the trial judge refused to order either a s 7 Cafcass welfare report or a psychological assessment of the father. Rather, the judge professed himself satisfied that while the father had been ill in the past, he was now a great deal better, and ordered a variation of the interim contact order from supervised to unsupervised contact for two hours per fortnight. On the mother's appeal, Black LJ held that the judge had failed to implement paras 16, 26 and 27 of the Domestic Violence Practice Direction. She noted that the evidence given in a fact-finding hearing primarily enables the judge to determine factually what happened in the past, rather than focusing on how the events affected the mother and children. Yet para 27 of the Practice Direction requires the court to consider the effect of the established domestic violence on the child and on the parent with whom the child is living "in every case". Here, then, it was necessary for the judge to hear further evidence from both parents (about the effects of the violence, and the father's response to the findings of fact) and to obtain a s 7 report or other risk assessment, before making any decisions to vary contact arrangements.<sup>29</sup>

Further, as Respect has noted:

Domestic violence risk assessments should not restrict their focus to predicting the likelihood of discrete incidents of physical violence or abuse. Assessments need to

<sup>28</sup> *Re W (Children)* [2012] EWCA Civ 528.

<sup>29</sup> *Ibid* at paras 18-19.

take into account the full range of behaviours which fit within current definitions of domestic abuse (e.g. physical, psychological, emotional abuse) to identify whether these form a pattern of abuse and domination.<sup>30</sup>

Criminal convictions or findings of fact may have established that certain incidents took place, or that a relationship was characterised by abuse. However a primary task of a domestic violence risk assessment will be a detailed exploration of the nature and dynamics of the abuse across the whole relationship.<sup>31</sup>

In other words, while fact-finding has a tendency to decontextualise incidents of violence from the fabric of the relationship, risk assessment needs to recontextualise those incidents admitted or found to have occurred in order to gain a full understanding of the risks to children and to the other party of the perpetrator's behaviour.

Risk assessment may be undertaken by Cafcass in less complex cases, but in more complex cases should be undertaken by an expert. The question of what level of expertise is required in order to undertake an expert risk assessment for domestic violence has been a matter of debate,<sup>32</sup> and is complicated by funding issues, in that the level of funding for risk assessments available from the Legal Services Commission tends to attract less qualified and trained practitioners and to exclude those with more extensive and appropriate training and qualifications.<sup>33</sup>

Risk assessment may result in recommendations for behaviour change interventions such as domestic violence perpetrator programmes, and/or a wide range of other treatments and services. The further potential complication here is the availability and accessibility of such programmes, even if they are recommended.

Survey respondents were asked, where admissions or findings of fact were made, how often perpetrators were referred to expert risk assessment, Contact Activity Domestic Violence Perpetrator Programmes, Anger Management Programmes, and other programmes and services. The results are set out in the following table:

<b>How often is the perpetrator referred to:</b>	<b>Never/ Occasionally</b>	<b>Quite Often/ Very Often</b>
Expert Risk Assessment	51.1%	46.7%
Contact Activity Domestic Violence Perpetrator Programme	61.2%	35.0%
Anger Management Programme	49.3%	49.1%
Other	77.6%	20.6%

It can be seen that referrals to expert risk assessment and anger management programmes were reported as the most likely dispositions, while referral to a perpetrator programme was reportedly less likely to occur, with referrals to other programmes and services reportedly occurring only occasionally.

There were some regional differences in responses, with

<sup>30</sup> C. Newman, 'Expert Domestic Violence Risk Assessments in the Family Courts' (Respect, April 2010), p 1.

<sup>31</sup> *Ibid*, p 7.

<sup>32</sup> *Ibid*.

<sup>33</sup> It is particularly problematic that, currently, the Legal Services Commission does not recognise DVIP risk assessments as warranting the funding applicable to expert risk assessment, despite the DVIP having considerably greater expertise in risk assessment in this area than many 'experts'.

- respondents from the North East most likely to say that perpetrators were never or only occasionally referred for expert risk assessments
- respondents from the South West most likely to report referrals for expert risk assessments
- respondents from the Midlands and Wales most likely to say that respondents were never or only occasionally referred to CADVPPs
- respondents from the North East and North West most likely to say that perpetrators were quite often or always referred to CADVPPs
- respondents from the South East most likely to report that referrals to anger management programmes were never or only occasionally made

Respondents elaborated on their answers to these questions with extensive qualitative comments.

### ***Expert Risk Assessments***

Although these attracted relatively little comment, some respondents, particularly in London and the South East, observed recent problems with the funding of risk assessments, making it difficult to progress cases after fact-finding:

There has been lacuna in the funding of the risk assessment...which can prevent people gaining access to the programme unless they are able to fund a risk assessment privately. (MCLA611, London)

Funding is a problem with regard to the risk assessment if a person is not publicly funded and it is then impossible to progress the case without the assistance of a guardian and access to public funding. (DJ505, SE)

On the other hand, one respondent considered that expert risk assessments were being over-used and would be better undertaken by Cafcass in many cases:

Experts are being used to provide risk assessments which then determine the whole direction of the contact application, rather than a Cafcass report being ordered, when very often Cafcass would be more appropriate. The reason being that the expert is available and paid by legal aid whereas Cafcass is short of funds and staff. A Cafcass report is generally better when the 'whole picture' is required. Experts are very expensive but focus on the narrow area of their expertise. They seem to be wheeled out to justify contact orders to high risk fathers. A Cafcass report might take a more rounded view and look at the pressure on the mother. The system seems obsessed with permitting some form of contact at all costs. (S402, Midlands)

It is notable that in the case of *Re W* discussed above, one of the trial judge's reasons for refusing to order a s 7 report was that it would take too long (14-16 weeks) to produce. While Black LJ sympathised with the judge's concern about delay, she nevertheless observed that the issue of risk was not a matter within the judge's own area of expertise, and it was therefore necessary either to obtain a s 7 report or alternatively to get the relevant information by means of a psychological assessment.<sup>34</sup>

### ***Anger Management Programmes***

Anger management is rarely an appropriate intervention to reduce the risk of domestic abuse since in many cases, anger does not signify 'loss of control', but rather is the

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<sup>34</sup> *Re W (Children)* [2012] EWCA Civ 528 at para 19.

mechanism (or one mechanism) used by an abuser to exercise control by physically assaulting, threatening or intimidating the victim.<sup>35</sup> As noted by some respondents:

Anger Management is used to satisfy the Courts, but this is not sufficiently effective in changing perpetrators' attitudes to domestic violence and protecting their future victims. (FCA330, NW)

It is not recommended that perpetrators of DA should go onto Anger Management Programmes as this has been shown to add to the controlling behaviour. (FM173, SW)

Nevertheless, perpetrators of domestic violence appear to be referred to anger management programmes more often than any other intervention. This seems to be a function of availability rather than efficacy. Although some respondents in the north of England said that anger management programmes were not available, they generally seem to be more available than domestic violence perpetrator programmes. Thus, perpetrators seem to be referred on the principle that 'something is better than nothing'. It is unclear, however, whether this is true in many cases.

### ***Domestic Violence Perpetrator Programmes***

Respondents were specifically asked whether there were problems with access to Contact Activity Domestic Violence Perpetrator Programmes in their area and almost two thirds responded that there were problems. The availability of and access to such programmes is clearly a major problem in all regions of the country, and helps to explain the apparently low rate of referral to such programmes. In the words of one solicitor:

The court appears very reluctant to order these and it seems will do anything to avoid them. This appears to be because of funding issues and/or the availability or otherwise of Cafcass officers to organise these. (S465, SE)

Respondents repeatedly reported that

- no domestic violence perpetrator programme was available in their area;
- there were no or very few accredited, publicly-funded programmes available as Contact Activities;
- accredited programmes had only very recently become available;
- limited availability (of both programmes and places) meant long waiting lists for the existing services, and consequently long delays in starting a programme, e.g. "current waiting time is estimated 5-9 months" (Other, Midlands);
- withdrawal of funding from some programmes, e.g.

There has been no effective access to DVIP in London for at least 18 months. There were severe funding problems with DVIP plus a long waiting list. (DJ507, London)

There was a break of some 6/9 months earlier this year following the collapse of the providers. (S571, SW)

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<sup>35</sup> In *Re Z (Children)* [2009] EWCA Civ 430 [35], Wall LJ noted that anger management has been discredited in many circles as a resource for domestic violence perpetrators.

There isn't one at the moment due to funding. It closed in April and nothing has replaced it. (B234, NE)

Best local programme in Cheshire (NSPCC) has closed. (DJ617, FCA303, NW)

Further issues of availability identified in particular areas included:

- Languages other than English not catered for; lack of funding for interpreters (London);
- The only available programme is IDAP, via a criminal conviction and probation (Midlands, SE, NW);
- Problems of availability in rural areas (Wales, SW), e.g.

In the more rural areas (Wiltshire/Gloucestershire/Somerset) where I practice, there aren't many courses and clients often have to travel a long distance. (B01, SW)

- frequent changes of providers - "sporadic and not always local" (SE).

Respondents also commented on the lack of practical accessibility of programmes due to:

- the long distances required to travel to them, and associated unaffordable public transport costs (SE, NE, NW);
- the cost of the programmes themselves. If a programme is not accredited as a Contact Activity, or if the perpetrator is not publicly funded, he is required to self-fund the programme, which is often impossible (noted especially in London and the SE, but also in the Midlands, Wales, the SW and NW), e.g.:

On several occasions recently Cafcass have recommended a programme...and the perpetrator has professed (usually him)self willing, but has not had the funds to pay for it. (FM618, SE)

Not currently aware of any DVPP course that can be accessed by contact activity order as usually the client has to pay which again causes them not to be able to access due to finances and the LSC will not fund such a course. (S249, NW)

Apart from these problems of availability and access, respondents commented on two further features of domestic violence perpetrator programmes which they appeared to find problematic: the length of programmes, and programme eligibility requirements.

A cluster of respondents in the South East expressed the view that DVPPs took 'too long' to complete, and hence were not a practical option:

The only Cafcass-funded course takes 26 to 32 weeks (only recently made available) but this is subject to active discussions between Cafcass and the judiciary as it is thought by some of the judges to be too long. (CJ165, SE)

They are also very, very long programmes and some fathers do not understand why contact should be put off for all this time. (CJ483, SE)

Cafcass approved programme is too long – 12 months which does not fit into the child's timetable. (MCLA461, SE)

A handful of District Judges from London and the NW expressed similar views.<sup>36</sup> These responses appear to adopt the perpetrator's perspective on the DVPP – that it is a hurdle for them to jump before contact can be fully restored, and that the hurdle is too high. However, DVPPs have been carefully developed and validated at their current length, and cannot readily be curtailed. If the perpetrator has been genuinely assessed as posing a risk to the child and a DVPP recommended, limited contact arrangements during the period of the programme are safer for the child than either lifting the restrictions or terminating the programme earlier, remembering that the goal, as set out in the Practice Direction, is not contact at any cost, but the physical and emotional safety of the child and the parent with whom the child is living (para 26).

In relation to eligibility requirements, a number of respondents observed a further 'problem' of access in that a perpetrator who did not accept the court's findings of fact or acknowledge concerns about his behaviour would not be accepted onto the DVPP:

The Contact Activity Direction with DVIP never worked as a Contact Activity Direction – everyone was rejected. (DJ490, London)

The DVIP won't accept perpetrators who do not admit all or almost all of the allegations. Result: stalemate. (B17, London)

If the perpetrator does not accept the findings of the court or more often needs time to come to terms with the findings – then he is not accepted on the programme – so more delay and access denied throughout. (B55, SE)

Most perpetrators do not accept their violence and are therefore deemed not suitable for the programme. (FCA309, SW)

These comments are perhaps understandable in the context of very limited availability of any kind of appropriate services. However, they do seem to reflect an unrealistic expectation that DVPPs should 'cure' perpetrators (and thus render unrestricted contact safe as quickly as possible.) As with the length of DVPPs, however, so too with the eligibility requirements. The programmes have been designed and validated to work with perpetrators who accept and want to address their violence. They make no claims to be able to effect a transformation of those who continue to deny or justify their behaviour. The unfortunate fact is that with these perpetrators, the risk of harm to children cannot be reduced by means of behaviour change, and orders protecting the children and the other parent from the continuing high level of risk must be made accordingly. It is the perpetrator's failure to acknowledge and address his violence, not the DVPP that impedes contact.<sup>37</sup>

Respondents were also specifically asked whether they had experienced problems concerning compliance with referrals to perpetrator programmes, and a large minority (40%) replied in the affirmative. The main problems mentioned were failure of the perpetrator to attend or to complete the programme. A handful attributed such failures to the perpetrator's "addiction problems" or "chaotic lifestyle" meaning they were unable to keep appointments. Most, however, attributed these problems to the lengthy waiting time before joining the

<sup>36</sup> See also *Re C (Children)* [2009] EWCA Civ 994, in which Thorpe LJ expressed the view that referral of the father to the 32-week programme run by the DVIP would be a significant cost to the public purse.

<sup>37</sup> There is one consultancy in Bristol – Resolutions – which offers risk assessments and a programme for perpetrators who do not acknowledge their abuse, however no systematic data is available on the 'success' of this intervention.

programme and the length of the programme itself, and expressed some sympathy for perpetrators in this situation:

[Compliance problems] due to the length of time for referrals to be accepted and for the time taken to complete said course (usually about 32 weeks). (S120, London)

Takes weeks and often perpetrator loses interest/motivation and fails to attend. (DJ473, SE)

There is only one provider in the County and the course it offers is over 26 weeks which is an unsustainable length for most individuals. (DJ244, SE)

Clients often find the courses too long and too much of a commitment over 39 weeks, for example the NSPCC No Excuses programme and there is a high dropout rate. (S393, NW)

One Cafcass respondent, however, presented the issue in a different light:

Programmes are usually testing and some perpetrators find they are not up to it – this usually brings proceedings to a close... (FCA83, NW)

Respondents gave varying accounts of what would happen if the perpetrator failed to attend the DVPP as directed, ranging from the case going into limbo (“contact cannot move forward for the children”) to the perpetrator abandoning his contact application; suspension of contact; bringing the perpetrator back to court and threatening sanctions if he does not attend; dismissal of the application; or an order for no contact.

Against these rather disappointing outcomes, a couple of respondents had more successful stories of compliance to tell:

...in fairness compliance and engagement appears generally quite strong in all areas. (DJ612, NW)

It goes with the territory does it not? Having said that I’ve had one client who did brilliantly and came out with glowing colours. (B117, SE)

Finally, some respondents suggested that DVPPs are being used as a ‘one-size-fits-all’ option which are not appropriate or necessary in all cases. In the context of a limited range of domestic violence services overall, this may well be the case. Ideally, the interventions recommended should match the level of risk, but this may not be possible if there is a very limited range of interventions available from which to choose. The next section sets out the other types of services respondents identified as being used on occasions following admissions or findings of domestic violence. At the same time, however, contact arrangements pending the completion of the relevant course or programme should also reflect the level of risk. Thus, even if there is a mismatch between the level of risk and the only available form of intervention that does not mean there has to be a mismatch between the level of risk and the level of contact during the intervention. Some of the concerns expressed by survey respondents seem to indicate either that contact may be limited to an unnecessary degree while the perpetrator undertakes a DVPP, or that there is an inappropriate focus on moving to unrestricted contact as soon as possible which ignores the risk assessment and downplays safety concerns.

### ***Other programmes and services***

The 'other' programmes to which respondents said that perpetrators of domestic violence might occasionally be referred included:

- ADAPT and other DVIP programmes requiring self-referral (as opposed to contact activities)
- Caring Dads programme.
- Drug and alcohol treatment/rehabilitation
- Psychiatric or psychological assessment or therapy/counselling/cognitive behaviour therapy
- PIPs
- Other parenting skills courses
- Other local courses run by e.g. NSPCC, police

Again, the qualitative responses suggested both limited availability of programmes which might be appropriate to different kinds and levels of risk, and the use of whatever is available (such as PIPs, which are not specifically designed to address domestic violence) in the absence of a more appropriate range of options. This area of service provision is clearly one that is inadequate, and poses dilemmas for courts and those making recommendations to them following findings of domestic violence.

### ***Knowledge of local services***

The Practice Direction provides that the court should take steps to obtain information about the facilities available locally to assist any party or a child in cases where domestic violence has occurred (para 24). However, even if services are available, it is possible that stakeholders in the family justice system may be unaware of them. For example a number of Family Magistrates in the South East and the South West, in response to the question about the availability of DVPPs, said that they had not been made aware whether such programmes were available or not.

A further issue in this context, therefore, is the level of knowledge of local services held by practitioners and judicial officers. As mentioned earlier, respondents were asked whether they felt they had sufficient knowledge about the provision of domestic violence services, and many expressed reservations on this point. A number of respondents in all categories said they had no knowledge and had received no training on the provision of domestic violence services. Many respondents expressed a desire for regular training and updates on which services were available locally, largely due to frequent changes:

Local providers come and go because of lack of funding and there is a general lack of publicity about what is, or is not, available. (DJ494, SE)

...the domestic violence services/providers available seem to change all the time and it is very difficult ever to feel confident that one is up-to-date. (DJ612, NW)

Services change frequently and regular updates would be helpful. (FM363, London)

I have to find out myself what services are available. Cafcass and the court tend to have no idea (or indeed social workers). It changes all the time. (B44, NE)

Respondents particularly said they would like more information about the availability, funding and content of domestic violence perpetrator programmes, but other kinds of services were also mentioned:

All judges, practitioners and others need ongoing training on a regular basis about available resources for assessment in relation to domestic violence issues and for assistance for those identified as perpetrators. (CJ252, NW)

I would welcome accurate, up to date information on the availability of DVPPs and other domestic violence services. Cafcass officers do not seem to have this information. (DJ507, London)

I would welcome more detail about the content of e.g. Contact Activity Programmes (DJ479, Wales)

I would like to know more about services available to clients – there are lots of exciting courses which are not widely known about or available and so recommendations are usually restricted only to those things we know about! (B53, SE)

Only one respondent expressed themselves satisfied that they were thoroughly up to date in this respect:

[I receive] locally provided training every few weeks on provision of courses for perpetrators and their relative success. (CJ536, NW)

Others suggested ways in which knowledge of services could be improved by means of a local, regional or national directory of (accredited) domestic violence services; a list of local services published by Cafcass on the court notice board; or online information concerning resources, which could be regularly updated.

### 10.3 Final orders

If a matter proceeds from a fact-finding hearing to a final hearing on the issue of residence or contact, both *Re L* and the Practice Direction make it clear that the court must consider the domestic violence found to have occurred, the harm the child has suffered as a consequence of that violence, and the risk of harm to the child from future contact with the abuser, alongside other factors in the welfare checklist in order to arrive at a conclusion as to what arrangements will be in the child's best interests. As the foregoing discussion suggests, there is likely to be considerable variation of views amongst judicial officers as to how domestic violence, harm and risk should be weighed in this calculus. In the words of one Cafcass respondent to the survey:

There is wide variation on how Judges view perpetrators of domestic violence. The variation lies in the level of risk placed by judges of the likelihood that the perpetrator will commit further offences and the way the perpetrator is perceived to be the victim of exaggerated incidents of domestic violence. The effects on victims and children of violent incidents reported to the Court are perceived in very different ways by different Judges as to the level of psychological harm caused. (FCA330, NW)

In light of this potential variation, respondents were asked how often they thought a fact-finding hearing actually did make a material difference to the outcome of the case. Sixty per

cent of respondents thought that it did so quite often or very often, while 33% said fact-finding hearings only occasionally made a material difference to the outcome of the case. But these responses, too, turned out to be a matter of perception. Notably, there was a statistically significant correlation between opinions on the frequency of fact-finding hearings and responses to this question.<sup>38</sup> Those who thought that fact-finding hearings were not held often enough were most likely to say that fact-finding hearings very often made a material difference to the outcome of the case. Those who thought that fact-finding hearings were held as often as necessary were most likely to say that they always made a difference. Those who thought that fact-finding hearings were held too often, on the other hand, were most likely to say that they never or only occasionally made a material difference to the outcome.

It is clear, too, that what constitutes a 'material difference' might receive different interpretations. For example, some respondents suggested that findings of fact could be effectively ignored:

I am concerned that after many fact finding hearings where findings are made, no action is taken and contact proceeds as if no findings were made. (B56, London)

Even in those cases where findings are made, or admissions are forthcoming, quite often, the judge who made the findings then dismisses them as being of little account as they are either old, occurred during the stressful period while the relationship was breaking down, or simply does not let these make any difference to the outcome. The victim is left wondering whether it was worth putting themselves through the incredible stress of making the allegations, making a statement, being cross examined on their evidence, and in the end, feeling very let down. A great deal of time and money has been spent on a wasted exercise. (S465, SE)

But others appeared to think that anything short of the complete cessation of contact was not a difference worth mentioning:

It always seems a waste of time to me as I have never experienced a no contact order when DV findings are made. (B13, London)

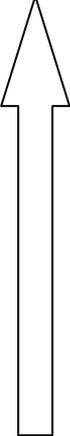
I have had quite a few fact-finding hearings where the judge has concluded by saying that although the allegations are proven, they are not sufficient to prevent contact. (B01, SW)

The literature on contact arrangements where domestic violence has occurred in fact suggests different contact arrangements depending on the level of ongoing risk.<sup>39</sup>

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<sup>38</sup> Chi-square = 64.185, df = 8, p = 0.000, n = 407

<sup>39</sup> The following table is taken from Newman, above n 30.

Level of risk	Parenting arrangement	Description	Indicators
	No contact	No direct contact, sometimes with the option of indirect contact	No meaningful relationship possible with high risk parent
	Supervised contact	Safe contact with high risk parent	Child has something to gain from safe contact with a high risk parent
	Supported contact	Supervised transfer of children between parents	Each parent contributes positively but parents need a buffer for transition
	Parallel parenting	Minimal contact between parents under detailed and highly structured plan	Each parent contributes positively but parents have an acrimonious relationship
	Co-parenting	Parents cooperate closely	Requires mutual trust and communication

Respondents were asked how often a potential list of final outcomes occurred (whether by consent or judicial determination) following admission of allegations of violence or positive findings of fact in private law residence and contact proceedings. The outcomes reported to occur most frequently were orders for:

- supervised contact (70% 'quite often' or 'very often')
- indirect contact (59% 'quite often' or 'very often')
- supported contact (58% 'quite often' or 'very often')

Almost three quarters of respondents (73%) said that orders for no contact were made 'occasionally, while almost half (49%) said that orders for unrestricted contact were also made occasionally, and 43% said the same of shared residence orders. The outcomes reportedly occurring most often were identical to the interim orders reported to be most frequently made, although higher proportions of respondents reported both supervised and supported contact orders being made quite often or very often as final orders as compared to interim orders.

These responses indicate relatively high levels of ongoing risk in that (small) proportion of cases in which violence is established. This is perhaps not surprising, although it is problematic in that supervised and supported contact cannot be maintained indefinitely. At some point it must be envisaged that contact will 'move on' to unsupervised. Indeed, as observed by one respondent:

There are two rules of thumb – a father will generally get direct contact apart from in exceptional cases – and contact cannot stay supervised. A fact finding hearing appears to be a necessary evil in determining how and whether it should progress. Without acknowledgment it could not safely progress. Without a fact finding hearing you cannot measure acknowledgment. (B114, London)

Some respondents, however, particularly in London, expressed concern at the limited resources available for supervised and supported contact, the cost of services, and the resulting unsatisfactory case outcomes:

...the expectation is generally...that even if findings are made; the outcome will not change regardless as there are too few options available regarding the eventual

contact arrangements – usually because of resource and practical limitations rather than because risk has been ruled out/found not to exist. (B135, London)

Once there have been findings, if contact is to proceed, it is usually deemed right for it to be supervised or at least supported. The victim may well even want that contact to proceed and therefore all appear to be ad idem. Yet the venues that offer this are now prohibitively expensive, especially when one considers that the type of person who is ordered to use these centres is often unemployed. I have tried to use FAOs many times recently to get round this, i.e. social services to supply the provision. They have refused in all but two cases. (B117, SE)

[There is a need for] better contact facilities which will diminish further with the closure of Children's Centres. (S480, NE)

Sometimes there are quite serious findings, but not serious enough to lead to a refusal of contact. Contact then starts as supervised, moves on to supported and then unsupported without any professional intervention and often on the basis of inadequate s 7 reports, all due to lack of resources. On more than one occasion I have wondered why we have bothered to go through the process. (B123, London)

This, then, is another area where courts and parties appear compelled to wrestle with limited options which may compromise the ability to deliver outcomes that are in children's best interests.

In summary, when allegations of domestic violence are raised, respondents considered it most likely that either none or some of the allegations will be admitted. If the allegations are contested and a fact-finding hearing is held, the most likely outcome is that some of the allegations will be found proven, and sometimes all will be found. Slightly under half of respondents reported that a perpetrator is likely to be referred for an expert risk assessment or to an anger management programme following admissions or a positive finding of fact. This might raise some concerns about the potential over-use of anger management programmes, which are not generally appropriate as a means of addressing domestic abuse. On the other hand, it seems clear that there are widespread problems with the availability of and access to Contact Activity Domestic Violence Perpetrator Programmes, and indeed to other services for both perpetrators and victims of domestic violence, which might help to explain the over-use of anger management programmes, as well as the inability of existing DVPPs to meet the level of demand, which results in long waiting lists and inevitable losses of momentum. At the same time, however, practitioners and judicial officers were not always aware of the local services available, and there appears to be a need for more structured and systematic means of conveying information and keeping up to date.

The majority of respondents thought that a fact-finding hearing does make a material difference to the outcome of the case, although perceptions on this question, and on the issue of what might constitute a 'material' difference, tended to vary according to general attitudes to fact-finding hearings. Reported outcomes following admissions or findings of fact tended towards the medium-to-high risk end of the scale of contact arrangements. This indicates that findings of domestic violence are taken relatively seriously, however further questions arise as to the practicability and particularly the sustainability of such arrangements. What remains unknown is for how long supervised and supported contact arrangements remain in place, on what basis they are 'progressed', and how this relates to ongoing levels of risk of harm to children and resident parents.

## 11. Consent Orders

Since the majority of matters in which proceedings are issued are settled by consent, even in cases involving allegations of domestic violence, the Practice Direction addresses itself to the making of consent orders as well as adjudication. It requires that any proposed residence or contact order must be scrutinised by the court to ensure that it accords with s 1(1) of the Children Act 1989 (para 4). Further, the court must not make a consent order for residence or contact unless the parties are present in court, unless it is satisfied that there is no risk of harm to the child in so doing (para 4). In considering whether there is any risk of harm to the child, the court should consider all the information and evidence available, including directing a s 7 report before making its determination (para 5).

Respondents were accordingly asked whether they thought courts adequately scrutinised proposed consent orders in line with the Practice Direction. Two-thirds reported that courts did so very often (24%) or always (43%). However, there was a perhaps predictable split between judicial officers and practitioners in answer to this question, with the former more likely to say that they always exercised adequate scrutiny of consent orders, while Cafcass officers, solicitors and barristers were more likely to say that courts never or only occasionally scrutinised proposed consent orders adequately, and were much less likely to say that they always did so. In further comments, some judicial officers also noted their experience of seeing orders made by other courts which appeared questionable, or their awareness of other judges “who take the view that if it is agreed then that is the end of the matter” (DJ500, NW).

Some respondents identified difficulties in fully implementing the Practice Direction as a result of pressure of work, or the limited information available to judges. Pressure of work was identified by both judges and barristers as a reason why proposed consent orders might not be scrutinised so carefully:

The risk comes where matters are not drawn to the Judge’s attention in a heavy list and there is insufficient time to read everything. (CJ535, SW)

At FPC level there is enormous pressure on lists. I try to scrutinise, but sometimes may not do so as thoroughly as I would wish. (DJ358, London)

Because of overlisting we often leave consent orders at the desk for the judge to approve later. Judges are often relieved to reduce the size of their lists. I have never had such an order refused. (B40, SE)

The judges are under huge pressure of case load. They trust the lawyers not to deceive them. They rely on us to convey the truth to them about risks. They may have only read case summaries and Cafcass reports. (B44, NE)

Again, both judges and practitioners expressed some concern about the sometimes inadequate information on which scrutiny might be exercised:

Scrutiny is always applied but often with limited information. (DJ33, London)

I am uncomfortable with this – I am not aware there is any sound evidence base for saying that there is no risk of harm to a child because Cafcass’s checks have not disclosed anything obvious. (DJ513, SE)

In the absence of timely Cafcass work, contact could be very badly delayed with detrimental effects to the contact with the child and for the child themselves and

sometimes decisions fall to be made on the evidence available to the court. I would not make a consent order without scrutiny but I often feel that my scrutiny is unsupported and I am limited by what is available to the court. (DJ605, SE)

They do their best but unless the issues are aired the court is not to know the background. (S402, Midlands)

The court simply accepts the word of social worker/Cafcass who invariably has not told the court about the abuse which children have shared with them. (Other215, NW)

Other judges described a practice of bringing parties to court for further investigation if necessary, or never making consent orders without the presence of the parties:

Sometimes the request comes in by post, without attendance of parties – in such cases I do sometimes call them in to investigate further, depending upon matters deposited to. (DJ358, London)

Sometimes when parties are represented they find it hard to understand the need to come to court to explain orders. That is the only way that they can really be scrutinised. All orders are read and the file is examined to see if there are safeguarding issues. (CJ483, SE)

I can only answer for myself but I do not allow any order for consent contact to take place without a hearing at which I expect the parties to be present with legal representatives where instructed. I only ever make orders in their absence where no order is needed. (DJ504, Midlands)

I always require the attendance of the parties before approving a consent order, to ensure that all issues have been addressed. (DJ509, Wales)

As for the results of judicial scrutiny, while B40 above said they had never had a consent order refused, and a Paediatrician respondent noted “some variation in interpretation of ‘no risk of harm’” (Other126, Wales), some respondents maintained that scrutiny of consent orders did make a difference:

On many occasions I have refused an order, or at least delayed one pending investigation, due to safeguarding concerns. (DJ612, NW)

...we almost never make orders in the absence of the parties (except maybe directions). Even if they are present and represented we may refuse to make an order if we are not satisfied that the arrangements are safe. We may order s37 reports from the Local Authority if the parties seem to be agreeing contact in the face of serious risk factors. (DJ260, Midlands)

Our courts are very proactive on the issue sometimes with the result that carefully constructed consent orders can be re-drafted by our more robust Judges in court. (S571, SW)

## 12. Concerns about Unrepresented Litigants

In further comments, a number of respondents expressed concerns about the impact on fact-finding hearings of increasing numbers of unrepresented litigants in the family courts, and particular apprehension about the likely effects in this regard of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which will remove legal aid for all private family law litigation except where a victim of violence is able to produce certain 'independent' evidence of recent violence. In such cases, only the victim will be eligible for legal aid, not the perpetrator. Respondents were concerned about the ability to implement all aspects of the Practice Direction in these circumstances, including:

- whether issues of domestic violence would be raised:

I am also concerned that those who make allegations that are not believed end up as hostile parent, [which] can lead to settlement on limited admissions or withdrawing allegations because of that risk. Good legal advice is essential – and is likely to go given legal aid proposals. (DJ600, Midlands)

- whether fact-finding hearings would continue to be held in all cases in which they were needed:

This may change with the lack of representation now becoming apparent as cases are not well prepared as litigants in person concentrate on matters that may deflect from welfare matters. (DJ545, SW)

...in some cases fact finding hearings are not pursued because parties are unrepresented and either a victim cannot manage unrepresented or cannot cope with an unrepresented abuser. (B227, SW)

- the inability of unrepresented litigants to handle the technicalities of preparing for a fact-finding hearing:

It will be almost impossible to investigate allegations satisfactorily if parties are not represented. (DJ471, NE)

Fact-finding hearings require thorough and focused preparation. Most difficulties arise when parties (particularly unrepresented parties) struggle to provide or respond to schedules of allegations or have to get documents from third parties (typically the police or doctors/hospitals). (CJ156, SW)

Where full police disclosure is required unless the child has been joined as a party then consideration will need to be given to whom should apply for such disclosure pursuant to the police disclosure protocol and issues of confidentiality (particularly where video evidence is relevant) and responsibility for payment of fees arise. Where a finding of fact hearing is appropriate and the child is unrepresented the onus will fall to litigants in person and/or the court to identify the schedule of findings sought. (Solicitor, NW, email communication)

- issues of fairness for both parties when only one or neither is represented:

The lack of equality in terms of legal representation and the decreasing availability of legal aid makes the notion of family law being 'fair' a little ludicrous at times as one party can have access to barristers whilst the other party either has no legal

representation or almost bankrupts themselves arguing their case – this cannot be in the best interests of children. (FCA214, NW)

...the significant cuts to public funding mean that the most complex private law cases are the ones in which people are most likely to represent themselves, to their own disadvantage. (B01, SW)

Ensure that legal aid is available to both parties so that not only can a case be put properly for the victim but the alleged perpetrator can also have a fair trial and be able to put appropriate evidence to the court and have their case argued properly, particularly given the seriousness if findings are made. (B70, NE)

Where the alleged perpetrator is not represented there needs to be some mechanism to protect the victim; the very act of being questioned even when controlled as much as able by the Bench or Legal Advisor often significantly reduces the accuracy of the vulnerable party's evidence. Even more so if they are not represented. (FM356, Midlands)

- the impact on the courts of dealing with unrepresented parties:

There are increasing numbers of litigants in person which can often slow down proceedings. (FM581, London)

In the fact finding hearings themselves at my level I have no doubt that the lack of legal representation is gradually making the courts' job impossible, lengthening hearings and worsening the position between parents. (CJ220, SW)

- the even more limited options available once a fact-finding hearing is held:

Funding difficulties for alleged perpetrators. If findings are made against an unrepresented party very often the case becomes gridlocked. (CJ220, SW)

- and the courts' ability adequately to scrutinise proposed consent orders:

I am concerned that as more and more parties come to Court without legal representation, the issue of potentially unsafe consent orders will escalate. (FCA313)

County Court judges in my experience invariably expect Counsel to flag anything up if needed. I daresay that is usually sufficient but I do wonder what is going to happen with all the LIPs about to flood the Courts – will they go by on the nod too? (B117)

These worries are obviously real, and the new legal aid funding climate is a factor that must be taken into account in considering future strategies in relation to fact-finding hearings and dealing with issues of domestic violence in children's cases more generally. As discussed below, however, there appear be few easy or satisfactory answers to this problem.

## 13. Systematic Differences in Experience

Statistical analysis of the survey responses revealed some significant patterns of difference between different parts of the family justice system, and different geographical areas, in relation to their experience of fact-finding hearings

### 13.1 Differences between County Courts and Family Proceedings Courts

There were systematic similarities in responses between Circuit judges, District judges and barristers on the one hand, and Family Magistrates, solicitors and Cafcass officers on the other hand, suggesting some differences in experience and practice in relation to fact-finding hearings between the County Courts and the Family Proceedings Courts. These included:

- the proportion of private law cases in which domestic violence was raised as an issue: CJs and DJs were more likely to say 26-50%, while FMs and solicitors were more likely to say 0-25%
- the reason(s) for not holding a fact-finding hearing: DJs and barristers were more likely to say that a fact-finding hearing was often not held because the allegations of domestic violence were not considered relevant or were 'old'. By contrast, FMs were more likely to say that a fact-finding hearing was often not held because the allegations had been found proven in other proceedings or were not contested
- the impact of the Domestic Violence Practice Direction: CJs, DJs and barristers were more likely to say there had been a substantial increase in the number of fact-finding hearings following the Practice Direction, while FMs and Cafcass officers were less likely to observe such an increase
- views on the frequency of fact-finding hearings: CJs, DJs and barristers were more likely to say that fact-finding hearing were held too often, while FMs were most likely to say they were held as often as needed, and solicitors and Cafcass officers were more likely to say they were not held often enough
- interim orders: FMs and solicitors identified a lower frequency of interim orders for supported or indirect contact. FMs said they were more likely to make interim orders for supervised contact, while DJs said they were more likely to make interim orders for supported contact
- limitation of allegations by the court: CJs and DJs were more likely to say that the allegations of domestic violence to be tested in a fact-finding hearing were quite often, very often or always limited by the court. By contrast, FMs and solicitors were more likely to say that the allegations to be tested were never or only occasionally limited by the court
- average duration of fact-finding hearings: CJs and barristers gave a longer average duration for their last five fact-finding hearings (more than 1 day), while FMs gave a shorter average duration (less than 1 day)
- adjournment of fact-finding hearings: FMs were more likely to say that none of their last five fact-finding hearings had been adjourned part-heard, while barristers were more likely to say that 2-3 of those hearings had been adjourned

- impact of fact-finding hearings on finalisation of the case: CJs, DJs and barristers were more likely to say that fact-finding hearings resulted in the case taking longer to finalise, while FMs and Cafcass officers were less likely to say this
- impact of fact-finding hearings on other cases: CJs and DJs were more likely to say that fact-finding hearings quite often or very often resulted in delays to other cases, while FMs were more likely to say that delays to other cases occurred only occasionally
- referrals: CJs were more likely to say that they often referred perpetrators of domestic abuse to anger management programmes, while FMs were more likely to say that they never referred perpetrators to such programmes, or for expert risk assessments; Cafcass officers were also more likely to say that perpetrators were never referred to anger management programmes, perhaps reflecting the outcomes of their own recommendations
- final orders: FMs and solicitors were more likely to say that final orders for supported contact were never or only occasionally made in a case with admitted or proven allegations of domestic violence. FMs were also more likely to say that they never made orders for unrestricted contact or shared residence in such cases, and Cafcass officers were also more likely to say that unrestricted contact orders were never made (again, possibly because they were unlikely to have recommended unrestricted contact in their reports). By contrast, CJs and DJs were more likely to say that they occasionally made final orders for unrestricted contact; barristers were more likely to say that such orders were made quite often or very often.

These differences in responses suggest that by comparison with the Family Proceedings Courts, the County Courts deal with more complex/'serious' cases and more cases in which domestic violence is raised as an issue, experienced a greater increase in the number of fact-finding hearings following the Domestic Violence Practice Direction, and continue to hold fact-finding hearings in a higher proportion of cases. Perhaps as a consequence, the court is more likely to limit the allegations to be tested in a fact-finding hearing. Nevertheless, fact-finding hearings tend to be of longer average duration and are consequently more likely to be adjourned part-heard. They are considered more likely to prolong the finalisation of the case and more likely to cause delays to other cases in the list. More fact-finding hearings result in none of the allegations being proved, which may account for the making of more orders for unrestricted contact. Where allegations are admitted or found, however, Circuit judges have more of a tendency to refer perpetrators to anger management programmes than for expert risk assessment or to a Contact Activity Domestic Violence Perpetrator Programme.

Conversely, Family Proceedings Courts deal with less contentious cases, but nevertheless appear somewhat less likely to have the results of Cafcass safeguarding checks available at the FHDR, which often results in adjournment of the case. They are more likely to make interim orders for supervised contact as opposed to indirect or supported contact pending a fact-finding hearing. Cases in the Family Proceedings Courts are more likely to involve prior proof of domestic violence in some other proceedings, some admissions by the perpetrator and/or positive findings of fact, which may account for fewer final orders for unrestricted contact or shared residence. At the same time, Family Proceedings Courts appear to make fewer referrals of perpetrators either to anger management programmes or for expert risk assessment.

### 13.2 Differences between welfare and legal professionals

Responses from Cafcass Family Court Advisers and the small group of 'Others' (domestic violence advocates, children's guardians and expert witnesses) who replied to the survey contrasted in important respects with those of the legal professional majority. These respondents indicated:

- a higher estimate of the proportion of private law residence and contact cases in which domestic violence was raised as an issue;
- greater belief that fact-finding hearings are not held often enough;
- less faith in the chances of allegations of domestic violence being found proven in a fact-finding hearing.

This pattern of difference appears to reflect the difference between social science and legalistic understandings of domestic violence outlined earlier in this report. In other words, those with disciplinary backgrounds in social work, psychology and/or children's services tend to see violence in broader terms of power and control, and hence see this form of violence being raised very often in private law children's cases coming before the family courts, and are concerned at the courts' tendency to minimise violence and its effects.<sup>40</sup> By contrast, those from a legal disciplinary background tend to take a narrower, more incident-focused view of violence, and so see a lower incidence of violence and less need for fact-finding hearings.

### 13.3 Differences between London and the rest of the country

There appears to be a systematic difference between the experience of respondents from London and that of those from the rest of the country. London respondents:

- reported domestic violence as an issue in a much higher proportion of cases
- reported fact-finding hearings in a higher proportion of cases in which domestic violence was raised as an issue
- were most likely to report a substantial increase in the number of fact-finding hearings following the Domestic Violence Practice Direction
- were more likely to say that the results of Cafcass safeguarding checks are never or only occasionally available at the FHDRA
- were less likely to find the new form C1A useful
- reported a greater average duration of fact-finding hearings

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<sup>40</sup> It also seems likely that Cafcass has responded to research published in 2005 which found that practice by FCAs in private law proceedings was driven by the 'presumption of contact', with possibly unsafe consequences for children and resident parents: HM Inspectorate of Court Administration, *Domestic Violence, Safety and Family Proceedings: Thematic Review of the Handling of Domestic Violence Issues by the Children and Family Court Advisory and Support Service (CAFCASS) and the Administration of Family Courts in Her Majesty's Courts Services (HMCS)* (London: HMICA, 2005).

- were more likely to consider that fact-finding hearings resulted in delays to other cases in the list
- were more likely to report referral to a Domestic Violence Perpetrator Programme following admissions of domestic violence or positive findings of fact
- were less likely to say that proposed consent orders were always adequately scrutinised in accordance with the Domestic Violence Practice Direction, and more likely to say that such scrutiny occurred only occasionally or never.

It thus appears that the London courts are under particular pressure in relation to fact-finding hearings and responding to allegations and findings of domestic abuse. Some of the comments in judgments quoted at the beginning of this report evidently reflect such pressure, but at the same time, may not be representative of the national picture. It is possible that London's diverse population adds a level of complexity to cases, which may also take longer because of the need to use interpreters in a number of cases. It may also be that the London courts are serving a larger population and dealing with a higher number of applications than many courts in other parts of the country.<sup>41</sup>

### 13.4 Other regional differences

Some other differences in relation to the impact of fact-finding hearings appeared among the regions, although these were less clear and systematic. The general trend was for respondents from the South East to report a greater impact of fact-finding hearings, while those from the Midlands, Wales, the South West and the North reported a lesser impact:

- Respondents from the South East: were most likely after London respondents to consider that fact-finding hearings resulted in cases taking longer to finalise, and were more likely than others to say that the court would always limit the number of allegations to be tested in a fact-finding hearing.
- Respondents from the Midlands were more likely to report that none of their last five fact-finding hearings had been adjourned, and that fact-finding hearings made no difference to the scheduling of other cases.
- Respondents from Wales were more likely to report no change in the incidence of fact-finding hearings following the Practice Direction, and least likely to think that fact-finding hearings caused delays to other cases in the list.
- Respondents from the South West were most likely to say that fact-finding hearings were held in less than 10% of cases in which domestic violence was raised as an issue, and were least likely to say that holding a fact-finding hearing resulted in the case taking longer to finalise.
- Respondents from the North East were more likely to report a small decrease in fact-finding hearings following the Practice Direction, more likely to say that their last five fact-finding hearings had run for half a day or less, more likely to say that holding a fact-finding hearing made no difference to the time taken to finalise the case, and least likely to say that fact-finding hearings caused delay to other cases in the list.

<sup>41</sup> Judicial and Court Statistics for the period 2007-2008 indicate that London County Courts, including the Principal Registry of the Family Division, received nearly three times the number of private law Children Act applications than other very busy city courts such as Liverpool and Manchester.

- Respondents from the North West were more likely to report no change in the level of fact-finding hearings following the Practice Direction, more likely to say that the allegations to be tested in a fact-finding hearing were never or only occasionally limited by the court, more likely to say that their last five fact-finding hearings had run for half a day or less, and more likely to say that holding a fact-finding hearing made no difference to the time taken to finalise the case.

These differences in responses are, of course, relative rather than absolute. It may also be the case that apparent regional patterns mask significant differences within regions. There does seem to be some intuitive validity, however, in the notion that the large population centres in London and the South East should experience the greatest impact of fact-finding hearings compared to the rest of the country.

## 14. Suggestions for Improvement

Respondents were finally invited to suggest any improvements they might wish to see to the current system for dealing with allegations of domestic violence in private law residence and contact proceedings. Unsurprisingly, this question received multiple responses, concerning all aspects of the system, although a common theme running throughout the responses was the need to avoid delay and speed up proceedings both before and after a fact-finding hearing:

Delay is the biggest problem – anything that can be done to reduce delay would help. (B12, London)

The most frequent call was for more court time and judicial resources to enable fact-finding hearings to be listed more speedily:

Only to reiterate how important it is that judicial time is found to process FFHs. The months that elapse at present are wholly contrary to the child's interests in any event, and sometimes put applicant fathers off. (S386, London)

The ability to have a case listed and to come before a qualified judge who is experienced and can hear the case promptly. Delays in listing are enormous and it is not sufficient to say it shall be listed asap as there are no judges or court rooms available. (DJ599, Wales)

One respondent made a practical suggestion to achieve this result:

HMCTS should set a target of 6 weeks for hearing a fact finder; as it is the hearings have to be pushed down the list to accommodate targeted material such as road traffic accidents. I appreciate that there is an overall target for Children Act work but there can still be extensive delays on fact finding while contact is limited by the provision of para 18 et seq of the PD on DV and contact. (DJ525, SE)

Five respondents considered that more fact-finding hearings should be dealt with at a different court level than at present, however their recommendations were divided. Three (two from London) thought that more fact-finding hearings should be transferred to the FPC because of delays in the County Courts, while two thought that more fact-finding hearings should be held at County Court level because of delays in the FPCs.

In addition to court and judicial resources, a number of respondents called for more Cafcass resources in order to reduce delays in the provision of safeguarding checks and the production of s 7 reports:

That Coventry works faster and gets safeguarding checks done properly, not just reporting that they have been unable to contact alleged perpetrator leading to adjournments and delays. (DJ545, SW)

Cafcass are very slow and have at least a 12 week waiting list for section 7 reports on domestic violence and abuse. These reports form a crucial part of Magistrates' decisions. (FM462, Midlands)

These concerns were well summed up by one Cafcass officer: "Reduce the workload of Cafcass officers and Judges" (FCA214, NW).

Respondents further identified a need for the availability and use of more associated services alongside fact-finding hearings, including risk assessments, services for perpetrators, victims and children, and supervised contact services:<sup>42</sup>

Better child assessments – listening to the child/assessing impact of any DV on the child. (Other127, London)

Resources need to be available to fund programmes for risk assessment and work after fact finding. (B08, London)

Provide more services for victims, perpetrators AND CHILDREN to deal with its effects outside court. 1 in 5 children see domestic violence more than once a month in their families here they tell us – that's the big gap in service – and getting people to change their behaviour and views is the big thing to do, not a court process. (B225, SE)

In this context, one Magistrates Court Legal Advisor called for:

A more joined up approach, perhaps with Cafcass controlling the whole process rather than different bodies and different funding regimes. (MCLA611, London)

At the same time, a Circuit Judge pointed out that elaborate procedures following findings of fact are not always required:

Although fact-finding is a 2 stage process, there are some (albeit few) cases where determining the facts leads to such an unequivocally obvious outcome that courts should not then feel obliged to extend proceedings further for risk assessments or Cafass reports. This ties up scarce resources when the prospects of making an order other than the obvious one are slim. Proportionality should be allowed to play a part at this point. (CJ535, SW)

Some respondents focused on police disclosure as a particular area in need of improvement:

Requirements for the police to provide disclosure within reasonable timescales (up to 6 weeks is not uncommon for simply providing a PNC printout in my local area). (B96, SW)

Better information flow between the agencies. Often criminal proceedings are under way or under consideration and the FPC file is not marked accordingly. An even greater danger with unrepresented parties. (FM275, SW)

Judicial officers in particular urged the need for continuing, competent legal representation for both parties:

An assurance that both parties will have experienced representation. (CJ478, London)

Pay those involved in this area of work an adequate fee so that you have people who know what they are doing!!! (DJ506, SE)

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<sup>42</sup> See also Coy et al., above n 11, p 81, recommending an increase in the number and geographical availability of supervised contact centres.

Ensure legal aid is more readily available in private law – the effort spent in managing Litigants in Person and their at times misguided views of family law detract from the efforts needed in more serious cases. (FCA214, NW)

There are increasing numbers of litigants in person which can often slow down proceedings. It would be helpful if there were some system for them to receive pre-court advice on the procedures in court. (FM581, London)

On the assumption of legal representation, a number of practitioners and District Judges recommended greater rigour in the lead-up to a fact-finding hearing, including early evidence gathering and identification of issues, tight case management, and careful preparation of documents:

... the CAADA DASH assessment tool and/or Sturge and Glaser's should be completed by the Cafcass officer prior to the first appointment if domestic abuse has been alleged and/or there is correlating information from the safeguarding checks. This would assist referrals (if required) to MARAC or similar. It would also provide the Court with a starting point in evaluating the benefits of a FOF. The Court would also then be clear about when a perpetrator is able to attend the CDVP. (FCA303, NW)

I think it is important for solicitors to gather evidence from third parties (i.e. police and local authorities) at an early stage to prevent delay. This will assist the court in assessing the evidence available rather than waiting for several hearings to be able to determine if a separate fact finding hearing is necessary. (B08, London)

This is largely in the court's hands. A strict timetable, a Scott schedule cross referenced to the statements and replied to, then a meeting between the parties' representatives to narrow the issues, followed by a PHR before the allocated judge to identify which issues will have any impact on the children proceedings and make sure the directions have been complied with, followed by a hearing which was fixed at the outset (or vacating the hearing if the allegations when reduced to paper are different from those verbalised at the original hearing, which is not unusual). This process should not take long (about 6 weeks), the delay is probably finding listing time. Following the above timetable means a finding of fact hearing should be completed long before a Cafcass report is commenced. (DJ500, NW)

Guidance to parties on how to draw up a RELEVANT Scott Schedule and complete it properly, including bundle references. (DJ484, London)

Some practitioners' suggestions concerned the more fundamental issue of determining whether a fact-finding hearing should be held at all. As might be expected from the earlier discussion of divided opinions on the frequency of fact-finding hearings, the recommendations here ranged from the need to limit the number of fact-finding hearings, to more neutral calls for greater guidance, to the need to hold more fact-finding hearings:

Better guidance urging judges not to hold finding of fact hearings unless there is a realistic prospect that findings would materially affect the case in a way which could not be dealt with by a different course of action, e.g. where an alleged perpetrator is willing to undergo a course in any event then judges ought to then consider whether a finding of fact is going to make a difference in the case. (B234, NE)

It would be helpful to have some more guidance on what factors of DV the President considers relevant to the questions of contact and/or residence. (B234)

Less emphasis on the practical problems that dealing properly with domestic violence issues cause to the court and more emphasis on the needs of the victim and indeed the perpetrator. (S453, Wales)

One Cafcass officer considered the need for guidance in this regard to be developed jointly by a range of stakeholders:

There needs to be training and a clear practice guidance to all solicitors, magistrates, judges and Cafcass officers on what constitutes a finding of fact hearing and in which cases it might be helpful, rather than a blanket view that it is too costly and is a significant exception. This needs to be determined by a joint-working group of solicitors, FCAs and judges to agree a protocol and guidance. For example, judges often rely on risk assessment as a means to avoid the Fact Finding but in many cases this can prove to be limiting in the ability to move a case forward as the FCA is basing their risk assessment on unproven and often disputed facts, and contested hearings or further reports and directions hearings follow. (FCA91, NE)

At the same time, a group of respondents pointed out that the need for a fact-finding hearing could legitimately be avoided if more work was done to encourage admissions from alleged perpetrators:

If...solicitors told clients to be honest, appreciate the complainant's view and be contrite much progress is the result. (DJ182, SW)

The difficulty is always with what Fathers will acknowledge (I say that because they are generally the perpetrators). If they acknowledged significant concessions they could save themselves considerable delay. As a barrister I will often only get the case once statements have been drafted and the matter set down. In any event, the problem often derives from a failure to acknowledge. It could be open to judges to more forcefully impress upon Fathers that if they were to accept various findings there would be no need for the delay the hearing occasions. (B114, London)

More time allowed on FHDR to engage with the perpetrator and achieve his or her understanding of why there are concerns. Frank admissions are to be encouraged. The court cannot alter the past but a recognition of the problem and the demonstration of insight often helps both parties to move forward, e.g. recognition by say a father than he has been violent can have a cathartic effect on the mother. (DJ187, NW)

Several respondents identified a need for more training on domestic violence, particularly for the judiciary. One District Judge thought that "more training could/should be given re how to deal with applications once findings have been made" (DJ515, NW). However the larger theme in this respect was the need for greater understanding of the seriousness of domestic violence and its impact on children:

I consider the message has to be got out loud and clear that domestic violence is extremely serious both for the victim and if the children witness it...one instance of domestic violence is sufficient to consider the issue of contact very carefully so that the child placement with the non-violent parent is not disrupted. (CJ474, NE)

...in my experience there are many judges and magistrates that require extensive training in DV in order to ensure that this is considered adequately in light of the risks it poses to children in private law cases when making orders. Where judges are aware it is evident in their directions, which are fair, appropriate and place the child's

welfare at the heart of their decisions. Sadly this probably accounts for less than 40 maybe even 35% of judges and magistrates. (FCA337, London)

Another Cafcass officer named two County Court judges as

very good examples of how DV issues within private law matters should be managed. It may be worth considering their knowledge, experience and management of such issues so that it can be shared as a model for other Judges. (FCA337, London)

Some Family Magistrates linked domestic violence training for magistrates with the role of Specialist Domestic Violence Courts and considered the desirability of a more consistent linkage and coordination between FPCs and SDVCs:

I do not think there is sufficient training for JPs on DV particularly those sitting on our specialist domestic violence court. I consider this should be benched primarily by family panel JPs with others with an expressed but unbiased interest. ... It would be helpful if SDVCs and family hearings were brought together as per the drug abuse family courts in London. I fear that JPs on SDVCs who have applications about contact sometimes agree when they should refer such matters to family courts. (FM368, SE)

Family magistrates should spend their time in Adult Courts primarily in the Domestic Violence Court or doing Domestic Violence Trials. (FM338, NW)

Finally, a few respondents argued that fact-finding hearings were an entirely inappropriate way of dealing with domestic violence allegations, and suggested alternatives including

- simply obtaining agreement between the parties, “with sufficient safeguards to protect the vulnerable parties and re-establish contact” (B64, London)
- “more creative and adaptive solutions being made available as to what contact arrangements can be put in place/work programmes that a party can be required to attend” (B135, London)
- Cafcass officers effectively to undertake the necessary fact finding: “to use their professional expertise and judgement to weigh up the evidence from both sides, based on the paper evidence and their face to face meetings”, including interviews with friends and family members, “to decide where the truth lies” and then make recommendations as to what is in the best interest of the child (FM618, SE)
- For domestic violence to be “dealt with by agencies outside the court process and funded by central government”, with supported or supervised contact arrangements to run alongside such referrals (DJ602, London)

Attractive as the idea may be of absolving the courts of responsibility for adjudicating issues of domestic violence, so long as they continue to be responsible for determining questions of residence and contact, contested allegations of domestic violence will continue to arise, and the need to deal with them directly in order to provide a factual basis for risk assessment and to ensure safe arrangements that are in the child’s best interests cannot be wished away.

## **15. Conclusions and Recommendations**

### **15.1 Is the Practice Direction operating as intended?**

The primary research question underpinning this study was whether the Domestic Violence Practice Direction is operating in the way it was intended to do. The survey results suggest that it is not operating as intended. Fact-finding hearings appear not to be held any more often than before the advent of the Practice Direction, and are actively avoided by many courts. There is considerable evidence that the President's Guidance on Split Hearings has had the symbolic effect of sanctioning a narrowing of the boundaries of perceived 'relevance' when it comes to allegations of domestic violence, beyond what the actual terms of the Guidance provide. Thus, rather than avoiding split hearings in favour of consolidating all issues, including the allegations of violence, into the welfare hearing, courts are tending to ignore or disregard allegations of violence which are considered to be 'too old' or 'not sufficiently serious', so that they are not considered at all. The survey responses also suggest that even where a fact-finding hearing is held, in some cases positive findings of fact are not given sufficient weight or fully followed through in the directions and orders made. Moreover, the courts' ability to scrutinise consent orders to ensure they pose no risk of harm to the child may be restricted by time pressures and limited information.

### **15.2 What problems are being experienced in its implementation?**

The problems being experienced with the implementation of the Practice Direction are manifold, as evidenced by the many reasons put forward in survey responses for discouraging fact-finding hearings. The problems may be subsumed, however, under two main headings: cultural and material.

First, the survey responses clearly indicate that the "cultural shift" called for by the Family Justice Council before the Practice Direction was promulgated remains incomplete. Many legal actors continue to adhere to the view that contact should be promoted above all. The difference in views between Cafcass and legal respondents in this regard was striking. It might also be observed that the government's proposed amendments to the Children Act 1989 to promote shared parenting are only likely to exacerbate the situation. Many respondents appear to hold narrow, legalistic views of what constitutes domestic violence, of the effects of domestic violence and the harm resulting from it, and of the risk of future violence. Among other things, such views result in lack of acceptance of DVPP eligibility criteria and the length of DVPPs, and over-use of anger management courses. In light of this 'cultural lag', the Practice Direction and President's Guidance on Split Hearings could specify more clearly when allegations should be considered relevant, when a fact-finding hearing is needed, and what the consequences of positive findings should be. As it stands, the lack of agreement on these issues appears to result in a wide variety of practices in different courts.

Secondly, the implementation of the Practice Direction is hampered by severe resource limitations. Court lists are congested and judicial time is limited, leading to long delays in listing a fact-finding hearing, and the limitation of allegations to be adjudicated in an attempt to keep the hearing within manageable time boundaries. These problems seem particularly to affect the County Courts, and the courts in London and, to a lesser extent, the South East. Across the country there are delays in police disclosure, Cafcass has limited resources for the production of s 7 reports, there are problems with the funding of risk assessments, a lack of availability of supervised and supported contact services, and a severe shortage of an appropriate range of services for domestic violence perpetrators, victims and children, particularly with regard to the availability and accessibility of DVPPs, resulting in serious difficulties and delays for post-fact-finding assessments and interventions. Moreover, the fragmentation of services, funding difficulties and frequent changes in provision make it hard

for everyone to be aware of locally available services and to keep up to date. Limitations in material resources in turn tend to reinforce the legalistic view that fact-finding hearings are more trouble than they are worth – in particular impeding the restoration of contact – and should be avoided as far as possible.

### **15.3 What steps may be necessary to overcome such problems?**

More resources are an obvious answer to the third research question: for courts, Cafcass, legal aid, DVPPs, contact services and other support services. It must be acknowledged, however, that in the current climate of austerity and cutbacks, more resources are extremely unlikely to materialise. It is important, then, to have a system which operates as effectively as possible within resource constraints, rather than one which adapts dysfunctionally to resource limitations by attempting to minimise the relevance of domestic violence. Cultural issues may be more readily addressed, and there are also some practical suggestions which may assist in streamlining the process.

#### ***Training***

The incompleteness of the cultural shift necessary to give proper effect to the Practice Direction can most obviously be addressed by further training on domestic abuse for both judicial officers and legal practitioners. Such training should cover the power and control dynamics of domestic abuse, the effects of domestic violence on children, the social science evidence on when contact will and will not be beneficial to children (as set out, for example, in the Sturge/Glaser Report<sup>43</sup>) and all aspects of the Practice Direction, including examples of best practice.

In relation to the Magistrates Courts in particular, the suggested linkage in personnel between Family Proceedings Courts and Specialist Domestic Violence Courts would be desirable in order to facilitate those Magistrates becoming specialised in domestic violence and applying the relevant knowledge in both forms of proceedings.

#### ***Revision of the Practice Direction***

There may also be merit in revising the Practice Direction so as to expand the definition of domestic violence, appropriately incorporate the guidance on split hearings and clarify points that continue to be subject to varying interpretations. It is noted that the Home Office, following consultation, has announced its forthcoming adoption of a wider definition of 'domestic violence and abuse' which foregrounds the issue of coercive control. According to this new definition, domestic violence and abuse is:

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse:

- psychological
- physical
- sexual
- financial
- emotional

<sup>43</sup> Claire Sturge and Danya Glaser, 'Contact and Domestic Violence: The Experts' Court Report', *Family Law*, September 2000. See also Coy et al., above n 11, p 78, recommending specialist training for all judges, lawyers, Cafcass officers and mediators on domestic violence and its impacts on women's and children's lives.

Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

The incorporation of such a definition into the Practice Direction would both have an educative effect for judges and legal practitioners, and would help to shift the focus of fact-finding hearings away from particular incidents of physical violence to the broader pattern of the perpetrator's behaviour. It could also be specifically noted that all allegations of violence and abuse are relevant in this context, regardless of their age or perceived seriousness.

On the question of when a fact-finding hearing is necessary, a revised Practice Direction could make clear that a fact-finding hearing should be held if it is necessary in order to make an accurate assessment of risk, and/or in order to determine the need for an intervention programme. In relation to directions following positive findings of fact, a revised Practice Direction could also make clear the expectation that effective intervention programmes will take a considerable time to complete. The suggestion that any process of revising the Practice Direction should include interdisciplinary input would also appear to be a valuable one.

### ***Practical steps***

A number of practical steps suggested by survey respondents are worthy of consideration in order to alleviate some of the problems identified. One suggestion, to establish a time target for the completion of fact-finding hearings, while undoubtedly well-intentioned, is probably unrealistic and may have the effect of placing courts under even more pressure, especially in the context of the new timeline for public law cases. Others that might be more readily adopted include:

- Early evidence-gathering by solicitors, together with a more proactive approach to obtaining information about domestic violence from clients;
- Use of the CAADA DASH checklist, either within or as a supplement to the C1A form, or by Cafcass in an interview prior to the FHDRA;
- Notice to the court and the parties in advance if safeguarding checks will not be available for the scheduled FHDRA, to enable an appropriate adjournment without wasting everyone's time or proceeding on the basis of incomplete information;
- Encouragement of admissions where allegations of domestic violence are raised;
- Firm case management in the lead-up to a fact-finding hearing, with judicial continuity wherever possible, in particular to ensure that if a hearing which has been ordered is subsequently considered unnecessary, it is vacated at the earliest possible opportunity rather than on the day of the hearing;
- The establishment of local mechanisms (through the courts or Family Justice Boards) to ensure the availability of up-to-date information on local domestic violence services;
- The requirement that all parties seeking a consent order for residence or contact be present in court.

Aside from these specific suggestions, the process of fact-finding hearings should generally be assisted by the move to a single Family Court. According to Mr Justice Ryder, the effective management of judicial resources within the court will help to reduce delay and improve both listing and judicial continuity by means of better deployment practices. The

management of judicial deployment will be designed to match resources to need, cases will be allocated in accordance with principles providing for judicial continuity, and there will also be an emphasis on robust case management of proceedings.<sup>44</sup>

### ***Unrepresented litigants***

Finally, it seems clear that the Practice Direction and the forensic technicalities of fact-finding hearings are premised very much on the presence of legal representation for both parties. Survey respondents justifiably expressed concerns in relation to the impending increase in the number of unrepresented litigants due to the cutbacks in legal aid for private family law proceedings. In this context, it may be helpful to consider amending the protocol for police disclosure to enable such disclosure to be sought by direction of the court, of its own motion, in cases where neither of the parties is represented and thus the initial request cannot be made by a party's solicitor. It may also be a worthwhile exercise for courts to consider local initiatives to assist litigants in person through the court process, such as the arrangement between Teesside Combined Court and the local women's refuge, by which staff from the refuge project were given guidance from a District Judge on the extent to which they could act as a McKenzie Friend in court for women staying at the refuge.<sup>45</sup> It is noted that Mr Justice Ryder's report on the modernisation of family justice envisages a private law pathway that will include a procedure to help identify safeguarding issues, a more inquisitorial/investigative approach, and the production by the Family Justice Council of advice and materials to assist self-representing litigants.<sup>46</sup>

In addition, there may be very good reasons not to hold a fact-finding hearing in cases in which one or both parties are unrepresented.

Following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, if one of the parties has managed to obtain legal aid on the grounds of domestic violence, then the need for a fact-finding hearing may be obviated by the nature of the evidence required for the grant of legal aid, which may already establish the existence of domestic violence. In this situation, it should be possible to proceed immediately to a risk assessment.

Alternatively, however, the grant of legal aid may not provide clear proof that violence has occurred, or the alleged victim may not have succeeded in obtaining legal aid. The latter should not be taken as an indication that her allegations of domestic violence are unfounded, since the evidence required for a grant of legal aid is likely to exclude many genuine cases.

In any event, where allegations of domestic violence are contested and one or both parties is unrepresented, the unrepresented party or parties will have limited capacity to comply with the technical requirements of a fact-finding hearing. If the alleged perpetrator is unrepresented, there will also be the possibility of abusive cross-examination. Moreover, the existing research evidence suggests that unrepresented litigants are not adept at negotiating settlements, but tend either to be defeated by the process, or to fight to the bitter end.<sup>47</sup> Consequently, the fairest and most efficient course of action in such cases would appear to be to proceed directly to a welfare hearing, taking all factors, including the alleged violence, into account. It may then be necessary to seek a further assessment and recommendations

<sup>44</sup> Mr Justice Ryder, *Judicial Proposals for the Modernisation of Family Justice* (Judiciary of England and Wales, 2012), pp 1, 6, 12.

<sup>45</sup> See HMICA, above n 32.

<sup>46</sup> Mr Justice Ryder, above n 35.

<sup>47</sup> K. Williams, *Litigants in Person: A Literature Review* (Ministry of Justice, Research Summary 2/11, 2011).

following the hearing, but in other cases the orders that will be in the child's best interests may already be clear.

## **Appendix 1 – Survey Questionnaire**

### **Survey on Fact-Finding Hearings and the Implementation of the President’s Practice Direction: Residence and Contact Orders: Domestic Violence and Harm**

#### **Introduction**

This survey asks about your experience of the incidence of domestic violence allegations and fact-finding hearings in private law family proceedings concerning residence and contact. All responses are confidential. The survey does not ask for any information that would enable you or any court users, clients or service users to be personally identified.

The survey is conducted by Professor Rosemary Hunter, University of Kent, and Adrienne Barnett, 1 Pump Court Chambers, on behalf of the Family Justice Council Domestic Abuse Committee. Responses to the survey will be collated and presented in a report to the Family Justice Council, and will be made publicly available.

The survey should take approximately 15-20 minutes of your time. It is possible to stop part-way through and return to complete the survey later.

If you are unable to answer any question, please leave it blank.

Note that once you have clicked on the CONTINUE button at the bottom of each page you can not return to review or amend that page.

**Section 1 – Roles and Locations**

1. Please indicate your role in the family justice system: [choose from drop-down menu]
  - Circuit Judge / District Judge / Family Magistrate / Justices' Clerk / Magistrates Court Legal Adviser / Cafcass officer / solicitor / barrister / Other [specify]
  
2. For how long have you been working in this role?
  - < 1 year
  - 1 – 5 years
  - 6 – 10 years
  - More than 10 years
  
3. In which region do you work?
  - London / Midlands / Wales / South East / South West / North East / North West
  
4. What proportion of your current work is made up of private law residence and contact cases?
  - Less than 10%
  - 10-25%
  - 26-50%
  - 51-75%
  - 76-100%
  
5. Approximately how many fact-finding hearings in private law residence and contact proceedings have you dealt with in the last 12 months?
  - none
  - 1-4
  - 5-9
  - 10 or more

**Section 2 – Incidence**

6. In your experience, in what proportion of private law residence and contact proceedings is domestic violence raised as an issue? [choose one]
- Fewer than 10%
  - 10-25%
  - 26-50%
  - 51-75%
  - 76-100%
7. In your experience, in what proportion of private law residence and contact proceedings in which domestic violence is raised is a fact-finding hearing held? [choose one]
- Fewer than 10%
  - 10-25%
  - 26-50%
  - 51-75%
  - 76-100%
8. In your experience, where allegations of domestic violence are raised in residence and contact cases but a fact-finding hearing is NOT held, how often is it because: [grid question]
- The allegations are not contested
    - Never / Occasionally / Quite Often / Very Often / Always
  - The allegations are not considered relevant to the court's decision concerning residence and/or contact
    - Never / Occasionally / Quite Often / Very Often / Always
  - The allegations are 'old'
    - Never / Occasionally / Quite Often / Very Often / Always
  - The allegations have been found proven in some other proceedings
    - Never / Occasionally / Quite Often / Very Often / Always

- The evidence is not sufficient to enable a finding of fact to be made
  - Never / Occasionally / Quite Often / Very Often / Always
- Holding a fact-finding hearing would impede the possibility of settlement
  - Never / Occasionally / Quite Often / Very Often / Always
- Holding a fact-finding hearing would damage or further damage the relationship between the parties
  - Never / Occasionally / Quite Often / Very Often / Always
- Holding a fact-finding hearing would not be in the child/ren's best interests
  - Never / Occasionally / Quite Often / Very Often / Always
- The allegations would more appropriately be determined as part of the substantive hearing
  - Never / Occasionally / Quite Often / Very Often / Always
- Holding a fact-finding hearing would cause delay
  - Never/ Occasionally/ Quite often/ Very often / Always
- Other reasons [specify]

9. In your experience, following the *President's Practice Direction on Residence and Contact Orders: Domestic Violence and Harm*, issued in 2008, was there any change in the proportion of private law residence and contact proceedings in which fact-finding hearings were held? [choose one]

- Substantial increase
- Small increase
- No change
- Minor decrease
- Substantial decrease

10. In your experience, following the *President's Guidance on Split Hearings* issued in May 2010, was there any change in the proportion of private law residence and contact proceedings in which fact-finding hearings were held? [choose one]

- Substantial increase
- Small increase
- No change
- Minor decrease
- Substantial decrease

11. In your experience, after the *Revised Private Law Programme* came into force (October 2010), has there been any change in the proportion of private law residence and contact proceedings in which fact-finding hearings are held? [choose one]

- Substantial increase
- Small increase
- No change
- Minor decrease
- Substantial decrease

12. In your opinion, are fact-finding hearings held in residence and contact proceedings:  
[choose one]

- Not often enough
- As often as they need to be
- Too often

[+ text box for any comments or explanations]

**Section 3 – Initiation**

13. In your experience, how is domestic violence identified as an issue in private law residence and contact proceedings? [grid question]

- Raised by a party who is alleging violence
  - Never / Occasionally / Quite Often / Very Often / Always
- Raised by the alleged perpetrator
  - Never / Occasionally / Quite Often / Very Often / Always
- Identified by means of Cafcass safeguarding checks
  - Never / Occasionally / Quite Often / Very Often / Always
- Other [specify]

14. In your experience, are the results of Cafcass safeguarding checks available at the FHDRA?

- Never / Occasionally / Quite Often / Very Often / Always / Unable to answer

15. If the results of Cafcass safeguarding checks are not available at the FHDRA, how often does the court:

- Conduct the FHDRA without them?
  - Never / Occasionally / Quite Often / Very Often / Always
- Adjourn the FHDRA?
  - Never / Occasionally / Quite Often / Very Often / Always
- Other [specify]

*[For lawyers only]*

16. Where clients in private law residence or contact proceedings allege domestic violence by the other party, do you ever advise the client NOT to raise the issue in the proceedings?

- Never / Occasionally / Quite Often / Very Often / Always

[+ text box for any comments or explanations]

17. The new C1A form is designed to enable parties to provide information about allegations of harm and domestic violence. Do you have experience of using this new form?

- Yes / No

*[If yes]*

18. How useful do you find this form?

- Not at all useful / Of limited use / Somewhat useful / Very useful  
[+ text box for any comments or explanations]

19. In your experience, at whose request or initiative are fact-finding hearings listed in private law residence and contact proceedings? [grid question]

- Cafcass
  - Never / Occasionally / Quite Often / Very Often / Always
- A party who is alleging violence
  - Never / Occasionally / Quite Often / Very Often / Always
- The alleged perpetrator
  - Never / Occasionally / Quite Often / Very Often / Always
- The court
  - Never / Occasionally / Quite Often / Very Often / Always
- Other [specify]

#### **Section 4 – The Process of Fact-Finding Hearings**

20. In your experience, what kind of interim orders are made pending fact-finding hearings in private law residence and contact proceedings? [grid question]

- No order with the expectation of no interim contact
  - Never / Occasionally / Quite Often / Very Often / Always
- No order with the expectation that parties will agree interim arrangements
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for no contact
  - Never / Occasionally / Quite Often / Very Often / Always

- Order for supervised contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for supported contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for indirect contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order with some other restriction on contact [specify]
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for unrestricted contact
  - Never / Occasionally / Quite Often / Very Often / Always

21. In your experience, how often are the allegations which are to be tested in a fact-finding hearing limited by the court?

- Never / Occasionally / Quite Often / Very Often / Always

22. Thinking of the last five fact-finding hearings in private law proceedings in which you were involved, what was the average duration of those hearings? [choose one]

- ½ day or less
- > ½ to one day
- 1 to < 2 days
- 2 to < 3 days
- 3-5 days
- > 5 days

23. Were any of those five fact-finding hearings adjourned part-heard? [choose one]

- None / 1 / 2 / 3 / 4 / all

24. In your experience, does the holding of a fact-finding hearing in a private law residence or contact case: [grid question]

- Result in the case taking longer to finalise
  - Never / Occasionally / Quite Often / Very Often / Always
- Make no difference to the time taken to finalise the case
  - Never / Occasionally / Quite Often / Very Often / Always
- Result in the case finalising more quickly
  - Never / Occasionally / Quite Often / Very Often / Always

[+ text box for any comments or explanations]

*[Judges, Magistrates and Magistrates Court Legal Advisers only]*

25. In your experience, do fact-finding hearings in private law residence and contact proceedings [grid question]

- Result in delays to other cases in the list
  - Never / Occasionally / Quite Often / Very Often / Always
- Make no difference to the scheduling of other cases
  - Never / Occasionally / Quite Often / Very Often / Always
- Enable other cases to be heard more quickly
  - Never / Occasionally / Quite Often / Very Often / Always

[+ text box for any comments or explanations]

### **Section 5 – Outcomes**

26. In your experience, how often do the following outcomes occur in fact-finding hearings in private law residence and contact proceedings? [grid question]

- None of the allegations are admitted
  - Never / Occasionally / Quite Often / Very Often / Always
- Some of the allegations are admitted
  - Never / Occasionally / Quite Often / Very Often / Always
- All of the allegations are admitted
  - Never / Occasionally / Quite Often / Very Often / Always

- None of the contested allegations are found proven
  - Never / Occasionally / Quite Often / Very Often / Always
- Some of the contested allegations are found proven
  - Never / Occasionally / Quite Often / Very Often / Always
- All of the contested allegations are found proven
  - Never / Occasionally / Quite Often / Very Often / Always

27. In your experience, if allegations of domestic violence are admitted or positive findings of fact are made in private law residence and contact proceedings, how often is the perpetrator referred:

- To a Contact Activity Domestic Violence Perpetrator Programme
  - Never / Occasionally / Quite Often / Very Often / Always
- For an Expert Risk Assessment
  - Never / Occasionally / Quite Often / Very Often / Always
- To an anger management programme
  - Never / Occasionally / Quite Often / Very Often / Always
- To some other programme [specify]

28. Are there any problems with access to Contact Activity Domestic Violence Perpetrator Programmes in your area?

- Yes / No

[+ text box for any comments or explanations]

29. In your experience, have any issues arisen concerning compliance with referrals to perpetrator programmes?

- Yes / No

[+ text box for any comments or explanations]

30. In your experience, how often does a fact-finding hearing in private law residence or contact proceedings make a material difference to the outcome of the case?

- Never / Occasionally / Quite Often / Very Often / Always

31. In your experience, how often do the following final outcomes occur (whether by consent or judicial determination) following admission of allegations of domestic violence or positive findings of fact in private law residence and contact proceedings?

- No order with the expectation of no contact
  - Never / Occasionally / Quite Often / Very Often / Always
- No order with the expectation that parties will agree on child care arrangements
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for no contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for supervised contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for supported contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for indirect contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order with some other restriction on contact [specify]
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for unrestricted contact
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for shared residence
  - Never / Occasionally / Quite Often / Very Often / Always
- Order for residence with the perpetrator
  - Never / Occasionally / Quite Often / Very Often / Always

**Section 7 – Scrutiny of Consent Orders**

32. The President's Practice Direction requires the court to scrutinise all proposed residence and contact orders to ensure that they accord with section 1(1) of the Children Act 1989, and states that the court must not make a consent order for residence or contact in the absence of the parties unless it is satisfied that there is no risk of harm to the child. In your view, do courts adequately scrutinise proposed consent orders in accordance with the Practice Direction?

- Never / Occasionally / Quite Often / Very Often / Always / Unable to answer

[+ text box for any comments or explanations]

**Section 8 – Final Thoughts**

33. Do you feel that you have sufficient training about domestic violence and knowledge about the provision of domestic violence services?

- Yes / No

[+ text box for any comments or explanations]

34. Can you suggest any improvements to the current system for dealing with allegations of domestic violence in private law residence and contact proceedings?

[open text box]

35. Do you wish to make any other comments on the process or outcomes of fact-finding hearings or the implementation of the President's Practice Direction?

[open text box]

Many thanks for your time in answering this survey.

## Appendix 2 – Glossary of Terms and Abbreviations

ADAPT – a self-referral domestic abuse perpetrators programme for men.

CAADA – Coordinated Action Against Domestic Abuse: a national charity.

CAADA DASH Assessment Tool – Domestic Abuse and Sexual Harassment assessment tool developed by CAADA: a checklist administered to victim-survivors of domestic violence to determine the types of abuse they have experienced and consequently, the level of risk posed to them by the perpetrator.

Contact Activity Direction – a direction of the court requiring a party to take part in a specified programme or activity relating to child contact.

DVIP – Domestic Violence Intervention Project: a London-based provider of services related to domestic violence

FamilyMan – the court statistics database for family law matters held by the Ministry of Justice.

FAO – Family Assistance Order: an order made by a court requiring a Cafcass officer or social worker to provide ongoing advice and assistance to anyone named in the order.

FHDRA – First Hearing Dispute Resolution Appointment: the first court appearance in a private law children's matter, at which the court will generally encourage and/or assist the parties to resolve their dispute by agreement, but will also consider the results of Cafcass safeguarding checks and, if the matter is not resolved, determine how to proceed.

HMCTS – Her Majesty's Courts and Tribunals Service: the body within the Ministry of Justice which administers all courts and tribunals in England and Wales

IDAP – Integrated Domestic Abuse Programme: a programme run by the probation service designed to prevent re-offending by men who have committed domestic violence offences.

McKenzie Friend – a non-lawyer who accompanies a litigant in person to court for the purpose of assisting them with such matters as taking notes, organising documents and quietly making suggestions (but who is not permitted to address the court).

MARAC – Multi-Agency Risk Assessment Conference: a meeting at which local agencies share information about high risk domestic abuse victims (those deemed to be at risk of homicide or serious harm) and develop a comprehensive safety plan.

PHR – Pre-Hearing Review: a review prior to a scheduled hearing date to ensure the hearing is still required, that all directions about preparations for the hearing have been complied with, and to refine the issues in dispute, to ensure that the hearing runs according to schedule and as expeditiously as possible.

PIP – Separated Parents Information Programme: a programme designed to assist separated parents with the ongoing co-parenting of their children. Parents engaged in court proceedings may be ordered by the court to attend.

PNC – Police National Computer.

Scott schedule – a detailed list of specific allegations of domestic violence which are to be adjudicated by the court in a fact-finding hearing; required to be produced by the party making the allegations, with responses from the other party usually included to produce a composite schedule.

Section 7 (s 7) report – a report to the court by a Cafcass officer or social worker which collates all available evidence and information about the child's situation and wishes and feelings, and makes recommendations as to what course of action would best promote the child's welfare.

Section 16A risk assessment – a risk assessment required to be undertaken by a Cafcass officer if they have cause to suspect that a child is at risk of harm.

Section 37 (s 37) report – a report to the court by a local authority social worker, which reports the findings of their investigation of the child's circumstances and makes recommendations as to whether it would be appropriate for the court to make a care order or supervision order.

Single Family Court – a new family court structure to be implemented in July 2013, to replace the current three tiers of Family Courts (Family Proceedings Courts, County Courts and the High Court) with a single court having one point of entry and deploying judicial resources more flexibly across the court's caseload.

Specialist Domestic Violence Court (SDVC) – a Magistrates Court which specialises in dealing with domestic violence offences. Magistrates receive specialist training in domestic violence, and the courts also involve a partnership between police, prosecutors, court staff, the probation service and victim support agencies in order to improve the criminal justice process in domestic violence cases.