



# Post-Separation Contact and Domestic Violence: our 7-Point Plan for Safe[r] Contact for Children

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## Abstract

The impact of living with domestic violence and abuse has been recognised in policy and law in many jurisdictions as reaching the threshold of ‘significant harm’, with children’s exposure included in definitions of abuse and neglect that require mandatory reporting, alongside an emerging recognition of coercive control as central to both the perpetration of domestic violence and abuse, and how children experience it. Far from separation providing an end to this exposure, over two decades of research on child contact arrangements highlights how it can provide legitimate opportunities for abuse to continue. While the empirical evidence demonstrates that using violence against a partner impacts on men’s ability to parent their children pre-separation, and a burgeoning knowledge base and improved professional acumen appreciates the risk to children and mothers of ongoing and escalating abuse post-separation, the international practice of the presumption of contact continues to trump this empirical evidence in the overwhelming majority of cases. This not only fails to consider the risk that domestic violence and abuse poses to child safety, but serves further to marginalise children’s safety. Motivated by our collective experience across the domains of research, policy and practice, this commentary poses some difficult questions, challenging a conversation about both the risks and benefits of contact in the context of a history of domestic violence and abuse. In no particular order, this paper outlines our seven-point plan, which, based on the evidence, we believe could make a significant difference to safe(r) post-separation contact for children.

**Keywords** Domestic violence · Domestic abuse · Child contact · Safe contact · Evidence-based decisions

## Introduction

Domestic violence and abuse of children commonly co-occur; as well as the emotional abuse of witnessing the abuse of their mothers, children are frequently directly physically or sexually abused (Holt et al. 2008; Kimball 2016). The impact of living with domestic violence and abuse (DVA) has been recognised in policy and law in many jurisdictions as reaching the threshold of ‘significant harm’, with children’s exposure included in definitions of abuse and neglect that require mandatory reporting (Morgan and Coombes 2016). Also emerging

is a recognition of coercive control as central to both the perpetration of DVA, and how children experience it (Callaghan et al. 2018). With the intention of ‘controlling, intimidating, humiliating, degrading, exploiting and isolating an intimate partner’ (Katz 2019: 1831), coercive control creates an atmosphere of fear, where free expression may be dangerous and with negative impacts on the mother-child relationship. Furthermore, the empirical evidence identifies the significant role that positive mother-child relationships play in supporting children’s recovery from living with DVA and indeed the role that responsive mothering plays in promoting children’s resilience (Fong et al. 2019). However, research also highlights how abusive men purposefully manipulate, undermine and attack the relationship between the mother and child (Humphreys et al. 2006; Thiara 2010; Heward-Belle 2017).

Far from separation providing what Jaffe et al. (2003: 29) termed a ‘vaccine against domestic violence’, Morrison (2015: 275) asserts that the risk of ongoing abuse of women and children continues post-separation. With children considered the ‘tie that binds parents together long after they cease to be partners’

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(Elizabeth 2017: 186), child contact arrangements can provide court authorised opportunities for abuse to continue (Khaw et al. 2018). Indeed it may intensify after separation where mothers are no longer able to attempt to ‘run interference’ as they did when everyone lived together. Over two decades of research on child contact in the aftermath of DVA consistently identifies the hand-over of children as a time when women and children are at further risk of violence, threats and harassment, leading many women to seek to do this through third parties (Hester and Radford 1996; Thiara 2010); and contact as a route to continue manipulation of children (Holt 2011; Thiara and Gill 2012), with children who do not have contact with abusive fathers reporting feeling safer and more secure (Holt 2018). Research further highlights the at best inadequate parenting skills of some domestic abuse perpetrators, with children’s basic welfare and comfort needs neglected during contact visits (Harrison 2008; Holt 2011). Few violent fathers are found to understand that their violence against mothers is emotionally abusive to their children, with Hame (2011) concluding from her research, that perpetrator declarations of love for their children reflected a view of children as a form of ‘property’ existing for their benefit rather than expressions of a genuine commitment to the child’s wellbeing.

While we know from research and practice that using violence against a partner impacts on men’s parenting capacity (Hame 2011), an enduring distinction remains in legal and social work thinking between violent men and good (enough) fathers (Hester and Hame 1996). This separation of men’s violence from their parenting capacity has been referred to as ‘childcare on different planets’ (Hester 2011). While on the domestic violence ‘planet’, women and children’s safety is prioritised and abusive men are held accountable for their actions, on ‘planet’ child contact, the emphasis is on ‘good enough fathering’ and contact with children (Hester 2011). In child contact proceedings, these contradictory discourses collide. Women engaged in contact disputes with abusive ex-partners are required to be ‘good’ mothers who protect their child(ren), yet also good mothers who do not exclude fathers from the lives of their children (Eriksson 2009). Despite research evidence and improved professional acumen regarding the risk to children and mothers of ongoing and escalating abuse post-separation, the international practice of the presumption of contact continues to trump this empirical evidence in the overwhelming majority of cases (Hunter et al. 2018). Adhering to ‘deeply embedded ideologies’ (MacDonald 2016: 847) regarding the role of fathers in children’s lives, not only fails to consider the risk that DVA poses to child safety, but serves further to marginalise children’s safety (Callaghan et al. 2018).

Cognisant of the complexity of the concerns raised above, this commentary has been motivated by our collective experience across the domains of research, policy and practice. Our starting point in this regard begins with Morrison’s (2015: 275) conclusion that the available evidence poses difficult

questions about both the risks and benefits of contact in the context of a history of DVA. Responding to Morrison’s conclusion, the focus of this commentary questions what needs to change? In no particular order, this commentary outlines our seven-point plan, which, based on the evidence we believe could make a significant difference to safe(r) post-separation contact for children.

## A Note on Terminology and Methodology

Throughout this article, the term ‘domestic violence and abuse’ (DVA) is used interchangeably with ‘coercive control’, not only reflecting survivor’s lived experience but also challenging the idea that the two are distinct phenomena. We draw largely upon literature from English speaking countries whose Family Court systems are roughly in alignment. Our seven-point plan may have some applicability in other jurisdictions, but context does matter, and it should not be assumed that this will work everywhere.

Moreover, we are addressing the most common type of case to be found in the Family Courts in these jurisdictions, namely heterosexual parents where the mother has been the primary care giver and the parent seeking contact is the abusive father (Johnson 2006). Other variants of this do appear within the Family Court system but these are the exceptions to the norm.

## The Emphasis Must Be on Safe and Meaningful Contact

While we take as our starting point that post-separation parenting arrangements work best when they can be informally arranged between two parents who are committed to cooperating in the best interests of their children (Haugen 2010), this is not always possible, with the contentious and often conflictual nature of the separation process demanding formal and legal regulation (Radford and Hester 2015). Focusing specifically on the safety of children, the fact that at least 50% of those cases involve domestic violence and abuse (Hunter et al. 2018: 404), demands that all parties to the case, including children and young people, should be routinely asked about DVA. Despite this prevalence and confirmation of the effects of DVA on women and children, evidence from the court processes in England and Wales (Hunter et al. 2018: 404) and other jurisdictions (Morgan and Coombes 2016), suggests that professionals virtually ignore the issue of DVA when considering contact or residence applications. Rather, as stated before, an overriding assumption conflating ongoing contact with children’s best interests, views father involvement as inevitable, despite evidence of past father abusive behaviour or indeed lack of evidence of fathering capacity (Thompson-Walsh et al. 2018). Hunter et al. (2018) also reflect on the practice of only considering

serious physical violence as a relevant consideration to a decision on child contact, with Hunter and Barnett's earlier (2013) research with Judges and lawyers highlighting a widely held belief amongst those participants that violent men could be 'good enough' fathers. Concurring with Humphreys and Bradbury-Jones (2015: 233) that this lack of attention to ongoing harm to children post-separation represents a 'profound shortcoming of the safeguarding responses', we also echo their assertion that a meaningful father-child relationship is not attainable in the context of ongoing abuse.

Turning our attention now to the importance of 'meaningful' father-child relationships, we recall Kaganas and Day Slater's (2004: 5) description of the legal system as 'a clumsy tool for managing complex family problems', with a limited capacity to influence the quality of the contact experience and the post-separation parent-child relationship. As such, while the law can adjudicate on the logistics of contact arrangements, its ability to influence the quality or regulate the appropriateness of that contact is considerably more constrained – the subtle but crucial difference between making contact 'work' as opposed to merely ensuring that it takes place (Trinder et al. 2006). Returning briefly to the conflation of father involvement and children's best interests, the evidence attests that the significant factor affecting child well-being and predicting child adjustment is the quality of parent involvement, not the extent of such contact (Holt 2015). Holt (2015, 2016a, b) concludes that the frequency of contact is a poor substitute for relationship quality, and that a narrow numeric focus on contact activity ignores the qualitative and relational aspects of the contact experience. Trinder et al. (2006) earlier asserted that quality and meaningful contact requires more than the absence of problems, and indeed the legal regulation of family relationships.

To conclude this first point in our seven-point plan for safe(r) contact for children, we suggest that despite a growing understanding of and urgency in dealing with DVA across the criminal justice sector, including the introduction of the new offence of coercive control in many jurisdictions, an embedded culture internationally of a presumption of contact remains, compromising child safety and welfare (Hunter et al. 2018). At the very least, this demands that all parties involved in the decision making process, receive specialist training on all aspects of domestic abuse but particularly coercive and controlling behaviour, challenging the myth that it is possible to be an abusive husband and a good father; this we believe simply is not true. We therefore concur with Humphreys and Bradbury-Jones' (2015: 233) assertion that children have a right to end an abusive relationship', a right that can only be realised when the nature and impact of post-separation abuse on children, their mothers and the mother-child bond is understood. This is the focus of the second of our seven-point plan.

## Be Aware that DVA Is a Specific and Deliberate Attack on the Mother-Child Bond and Interventions Need to Therefore Repair this, Not Damage it Further

Reflective of Humphreys and Bradbury-Jones' (2015: 232) assertion that DVA needs to be understood as an attack on the mother-child relationship, Heward-Belle (2017: 375) suggests that this 'assault' on mothering involves many diverse tactics that are intended to control women's experience as mothers, from the point of pregnancy, during childbirth and afterwards. Lapierre et al.'s (2017) research with children and young people's experience of DVA and their relationships with their mothers, found that these tactics may serve to alienate children from their mother, who may be the one protective relationship the child has. In this way, DVA can be understood not just as an assault on the mother, but as equally damaging to any children in the household. In a UK context, this is why new legislation will recognise children as equal victims to their mothers.<sup>1</sup>

Initiation of contact proceedings is often a tactic used by abusers to continue harassment and control over women and children (Galantai et al. 2019; Harrison 2008; Thiara and Gill 2012) and to continue even in their absence, to undermine and damage the mother-child relationship by casting a shadow over that relationship (Thiara and Humphreys 2017). For example, Katz (2015: 159) described how the emotional and/or physically abuse of children through unsafe contact resulted in 'behavioural problems in children and tensions in mother – child relationships'. In many cases, rigorous pursuit of contact through the family courts by some perpetrators is followed by a failure to turn up for visits or in cases of indirect contact, to send letters or make telephone calls (Holt 2011). This calls into question the extent to which genuine interest in a relationship with their children is really these abusers' motivation when applying for contact (Thiara 2010). In recent years there has been increasing pressure to finalise contact arrangements by agreement rather than asking the judge to make a decision at a final hearing (Kaye et al. 2003). Even where this is not possible, such is the culture of disbelief when women talk about abuse, that many women report being advised by their solicitor to not disclose DVA to avoid being labelled 'implacably hostile' (Harrison 2008). Research also shows that mothers' views and fears for both their own wellbeing and that of their children often have little impact on outcomes (Thiara and Gill 2012). When allegations about fathering capacity are raised, Saunders (2017) suggested that these will most likely be considered false and not requiring investigation, with Morgan and Coombes (2016) finding that a typical response to mothers concerns for their children's

<sup>1</sup> <https://victimscommissioner.org.uk/news/recognition-of-children-as-victims-of-domestic-abuse-and-improved-protections-for-victims-in-family-courts-announced/>

safety include counter allegations of ‘parental alienation’ by professionals. Holt (2017: 2051) observes that having being held responsible and indeed blamed for the exposure of their children to domestic abuse while the family was intact, mothers may find themselves resisting post-separation child contact and again engendering blame for daring to interfere with the father–child relationship—the same relationship they were charged with protecting their children from. Laing (2017: 1316) suggests that these inappropriate responses of victim-blaming can be understood as a form of ‘secondary victimization’, where women encounter difficulty being heard about their abusive experiences and instead report feeling ‘blamed, disbelieved, or dismissed’. Children’s wishes are similarly subject to a ‘selective bias’; taken into account if they say they want contact but disregarded if they do not (Holt 2011: 328). And all of this happens within a context of risk and safety rarely being adequately assessed when violent men are granted contact (Humphreys and Thiara 2003).

The attack on the mother-child relationship through the facility of post-separation contact is found however, to compromise children’s recovery from living with DVA, as this recovery requires a positive and secure relationship with the non-abusing relationship (Jeffries 2016). While Katz (2015) asserts that children’s resilience can be promoted in a context of emotional regulation and effective parenting, poor maternal mental health arising from living in a climate of ongoing fear, can compromise children’s recovery. The cessation of abusive contact is also found to promote better outcomes for both mothers and children (Katz 2015).

To conclude this section, Humphreys and Bradbury-Jones (2015: 232) describe the simultaneous attention to strengthening mother-child relationships and keeping children safe as ‘a careful balancing act’, one however that is a critical part of practice. This balancing act Holt (2017) suggests is very difficult to achieve when the child protection surveillance lens has switched from viewing her ex-partner as abusive and dangerous for her children to one that holds the father–child relationship in high esteem (Rhoades 2002). A crucial part of practice for anyone involved in that balancing act therefore, concerns a rigorous challenge of the motives for seeking contact, including a robust questioning of fathers knowledge of their children. This has the added advantage of children and young people also being included in the process, supporting a re-framing of children’s voices not as polluted / the mouthpiece of the resident parent but as active agents in their own lives. All too often in the Family Court system, children’s views are translated rather than transmitted. Some questions are provided below for assessing the quality of contact, but these can be supplemented with even less pertinent enquiries about a father’s knowledge of his child: What is their child’s favourite meal? The name of their best friend? Least favourite school subject? Latest new skill? And so on. Experience in London Ontario suggests few abusive fathers can answer such

basic knowledge questions about their child(ren).<sup>2</sup> The next section addresses this.

### Question Parental Knowledge of and Genuine Interest in their Children

Responding to Rakil’s (2006: 198) poignant question ‘are abusive men good enough fathers?’, this section addresses two separate yet related issues – firstly are domestically abusive fathers genuinely interested in maintaining contact with their children or is their motivation for contact rooted in a desire to maintain coercive control over the family; and secondly, what do we know about the quality of the father-child relationship as a determining factor influencing the contact experience for children.

In answering the first question, there is a wealth of evidence attesting to concerning fathering practices both pre and post separation (Heward-Belle 2017; Holt 2015; Harne 2011), which as the previous sections have illuminated, only serve to undermine the recovery of mothers and children by legitimising fathers continual abusive presence, even in their absence (Thiara and Humphreys 2017). Indeed a common theme throughout the literature on post-separation contact is a concern with applications for child contact being made by fathers, who it is asserted, demonstrated little parenting capacity, expressed questionable interest in or had involvement with their children’s upbringing on a day to day lives prior to separation (Elizabeth 2017). Harne (2011), Holt (2015) and Heward-Belle’s (2017) respective research projects in the UK, Ireland and Australia, share common themes of abusive parenting practices, concerning parenting capacity and post-contact motivations that were fuelled by instrumental approaches to parenting. Contact arrangements were highlighted to simultaneously reflect the fathers need for control and a marked absence of reciprocity in the father-child relationship and an absence of the nurturance that Peled (2000) referred to.

Concurring with Thompson-Walsh et al.’s (2018) call for more robust and meaningful assessment of both the prevalence, patterns and severity of past violence alongside fathering insight into the impact of this behaviour on his children and his capacity for personal change, we question how fathering capacity can be concluded in the absence of an assessment of same. This assessment we argue should clearly address the risks that the presence of abusive fathers presents in children’s lives and not just the perceived risks for child outcomes that father absence can incur.

Leading nicely into the second question we opened this section with, we also however assert that the quality of parent involvement is the significant factor affecting child well-being and predicting child adjustment, not the extent of such contact

<sup>2</sup> Personal communication with the Founder, Tim Kelly: <https://caringdads.org/about-caring-dads-1>



(Holt 2015; Pruett et al. 2012) or indeed the absence of fathers from children's lives. In fact the evidence base clearly links children's post-divorce adjustment to the quality of those post-divorce relationships (Ganong et al. 2012). Amato and Gilbreth (1999) state emphatically that fathers are a positive asset to their children's well-being *only* if strong emotional ties exist or are supported to develop between them and if fathers play an active role in their children's lives, with authoritative parenting another important feature of parent-child relationship quality (Trinder 2009).

Coined by Baumrind (1968), the term 'authoritative parenting' refers to a parenting practice where parents are open to their child's views, are actively concerned with and involved in their children's education and activities, provide appropriate praise and autonomy alongside consistent and age-appropriate discipline. This dimension of parenting practice is positively correlated with child outcomes (Simons et al. 1999). Simons et al. (1999) developed a scale entitled 'quality of fathers' parenting', involving fourteen parenting behaviours<sup>3</sup> that can occur independently of the parent-child residency arrangements. This fourteen parenting practices was administered to 207 young adolescent children regarding the parenting practices of their non-resident parent – the father in all cases. The focus of the fourteen practices concerned communication and consistency in the parent-child relationship. These include talking with the child about school, friends, issues or problems, both parents being supportive of each other's parenting and being consistent with rules, rewards and punishments. This study found that the parenting practices of non-resident fathers had a greater influence on positive or negative outcomes for both boys and girls, than the frequency of contact. This was also reflected in Holt's (2015) findings where young participants coined the concept of a 'proper Dad' who was 'there for them' without necessarily having to take them places or buy them things, but one who was reliable and emotionally available to them.

<sup>3</sup> 1. How often does your dad talk with you about what is going on in your life? 2. When your dad tells you to stop doing something and you don't stop, how often does he punish you? 3. How often does your dad punish you for something at one time and then at other times not punish you for the same thing? (reverse coded) 4. When your dad is punishing you, how much does the kind of punishment depend on his mood? (reverse coded) 5. How often does your dad disagree with your mom about how or when to punish you? (reverse coded) 6. How often do the same problems seem to come up again and again with your dad and never seem to get resolved. (reverse coded) 7. When you and your dad have a problem, how often can the two of you figure out how to deal with it? 8. How often do you talk to your dad about things that bother you? 9. How often does your dad ask what you think before deciding on family matters that involve you? 10. How often does your dad give you reasons for his decisions? 11. How often does your dad ask you what you think before making a decision that involves you? 12. When you don't understand why your dad makes a rule for you to follow, how often does he explain the reason? 13. How often does your dad discipline you by reasoning, explaining, or talking to you? 14. When you do something your dad likes or approves of, how often does he let you know he is pleased about it?

Similar to Simons et al.'s (1999) scale, a distinctive feature of the evaluation of Caring Dads (called Caring Dads: Safer Children – or CDSC) delivered by the NSPCC across five sites located in England, Northern Ireland and Wales between 2010 and 2014, was the focus on the impact the programme had on partners and children. The majority of participating children reflected on positive improvements in their father's behaviour after his completion of the programme, including improved communication, fewer arguments and more child-centred parenting. For example and reflecting Simons et al.'s (1999) scale, children reported that their father was more interested in their school work, was more attentive and played with them more (McConnell et al. 2016). While the evaluation concludes by highlighting evidence of sustained parenting behavioural change among participating fathers, it also cautions that some fathers who do complete the programme may require ongoing monitoring. This further reinforces the need not only for children and young people to be involved before decisions are made but to also be consulted about the impacts of those decisions to ensure that they are not being endangered.

Concurring with this note of caution and returning to the emphasis on parental knowledge and genuine interest, Humphreys and Bradbury-Jones (2015: 233) assert that a 'meaningful relationship is not possible when abuse to either the child or the child's mother continues'. Acknowledging that children may need to know their father, Lessard et al. (2010) nonetheless argue that the child's attachment (both current and desired) to their father needs to be a critical part of any child contact assessment. Safe(r) contact is therefore not only about building opportunities and capacity for positive father engagement but also keeping a constant and critical eye to the risks that some fathers can also simultaneously pose (Burgess and Osborn 2013). A significant step towards creating the conditions for safe(r) contact for children and making the right decisions for this individual child in question, concerns the space we allow for each individual child, the efforts we make to engage with them in order to understand them whilst simultaneously respecting the significance of their personal histories and circumstances. The fourth point in our seven point plan explores this further.

### **Recognise that Children Are Active Agents in their Lives: Reports Should Not Be Written about them without their Input; Decisions about Contact Should Be Informed by children's Voices**

Over the last thirty years increasing attention has been paid to the inclusion of children's voices in practice, policy and research, with many countries ratifying the United Nations Convention on the Rights of the Child (UNCRC). Article 12 and 13 of the UNCRC clearly states that children should be informed, involved and consulted on all decisions which

concern their lives – this right extends to decisions about post-separation child contact. Underpinning the UNCRC is an appreciation of children as competent social actors whose thoughts and opinions are worthy of consideration (Bosisio 2012), reflecting also an awareness that this involvement is not only a right, but also acknowledges children as ‘experts’ in their own lives (Kjorholt 2002: 64). However, despite legal obligations under the UNCRC and an evolving consensus that recognises children as rights holders, adults can struggle to translate this rhetoric into meaningful practice reality (Skjorten 2013). Acknowledging that listening to children is more complicated than simply obtaining their views (Schofield 1998), a number of assumptions about best interest and capacity can influence adult actions and ability and can result for children in the difference between being listened to and actually being heard.

Mindful of Schofield’s (1998) caution above, the evidence nonetheless raises concerns both about selective attention to children’s wishes and questions about children’s capacity—they are listened to if they want contact and overruled if they don’t on the grounds of age, capacity and maturity (Holt 2018). Indeed MacDonald (2016) found that children’s disclosures about DVA were not responded to as child welfare concerns; rather the emphasis in child contact decisions seemed to prioritise the maintenance of the father-child relationship. Selective attention to children’s wishes and prioritising ongoing father involvement have been underpinned by a presumption that ongoing contact is in the child’s best interest. In the absence of actually engaging directly with children to ascertain their wishes and feelings, this Morrison (2015) asserts, supports an assumption of what might be in the child’s best interest rather an objective and rigorous assessment of whether for this child, at this point in time, contact actually is in their individual best interests.

Related to the assumption of best interests, Callaghan et al. (2018) draw attention to what they consider to be problematic conceptualisations of children as passive witnesses as opposed to both victims and active beings in the family experience of DVA. In the context of a discussion about listening to children and positioning them as central to a debate which is after all about them, Callaghan et al.’s (2018: 1572) argument is important. Recognising children as ‘equal victims’ in the context of DVA, demands not only that we are attentive to children’s experiences, but also that we open up what the authors’ describe as a ‘discursive space in which the child is recognised as being as important as the adult antagonists in our response to domestic violence and abuse’. A potential inhibitor to the opening up of this ‘discursive space’ however, concerns another powerful assumption: that involvement of children in the decision-making process or ‘hearing their voice’ in this context, is not in their best interest (Radford et al. 2017) as it may further harm and distress them. However, the evidence would suggest that when children are given the opportunity to

participate in meaningful and child-friendly ways, their competence to participate in the discussion about their past and current experiences and their desire to be part of decisions about their future is evident (Callaghan et al. 2018; Holt 2018). In recent years, ways of including children and young people have increased substantially extending beyond simply asking for their views but also involving them in systems change work (see for example, Yello!<sup>4</sup> and Everyday Heroes<sup>5</sup>) and reflecting on the impact of decisions made about them (see for example Lamb 2018).

Experts would argue that talking about their experiences of violence can be both reparative and empowering for children, where ‘naming’ those experiences makes visible what was private and invisible (Radford et al. 2017) and supports our (adult) understandings of what it is like to be a child and live with violence. Recognising the paramountcy of the child’s welfare demands the child’s right to be heard and involved in matters that concern them. In emotionally charged adult centric contexts such as family courts however, we risk children’s best interests becoming buried in the rhetoric of parents’ statements and positions. This can result in little specific information about the individual children in each case and therefore insufficient regard to the true circumstances and needs of the children in these situations.

This we believe could helpfully be avoided by practitioners, policy makers and researchers framing the child’s right to be heard not as a matter of choice, but rather, a right which needs to be recognised and upheld through child-centred practice. Achieving this however requires adult capacity to engage children in discussions about their wishes and feelings, adequate training in the areas of DVA and risk assessment processes, and clear policies and practices that place the child at the centre of all decisions and practices (Holt 2016a, b). In the absence of these, Khaw et al. (2018) caution that children may be left to navigate unsafe and risky contact arrangements. The role of court processes in prioritising or compromising child safety is the focus of our fifth point.

## Improved Processes in the Family Courts

DVA cases now represent a ‘substantial and increasing proportion of all cases processed by criminal and civil state courts’ (Jaffe et al. 2018: 497), with Hunter et al. (2018) further asserting that at least 50% of contact cases in England and Wales take place against the backdrop of a history of DVA. Despite this prevalence, the issue of domestic abuse is practically ignored in many jurisdictions, with an extensive literature critiquing the processes and practices in the Family Courts regarding child contact cases and outcomes for women

<sup>4</sup> <https://womensaid.scot/wp-content/uploads/2019/12/Yello-Response-to-Children-Scotland-Bill-call-for-views.pdf>

<sup>5</sup> <https://womensaid.scot/project/everyday-heroes/>

and children (see for example Hunter et al. 2018). In this section we selectively refer to consistently recurring themes across those jurisdictions.

Reflecting on development in the Scottish legal system, Mackay (2018) highlighted the availability of legal aid as one of the four features that supports positive outcomes and prioritises child safety in child contact cases that go before the court. Shrinking budgets however, not only in Scotland but in many other countries, has led to what Hunter et al. (2018: 413) describe as a ‘significant increase in litigants in person in the family courts’, providing opportunities for perpetrators to continue their abuse of mothers through cross-examination and continuing to exercise power, control and fear (Burton 2018). Birchall and Choudhry’s (2018) survey highlighted the practice of cross examination by the perpetrator in 24% of child contact cases, a practice that was found to impact negatively on the woman’s ability to give clear evidence regarding their children’s safety needs. Also highlighted in the Birchall and Choudhry’s (2018) study and as commented on by Burton (2018) was a lack of attention to and availability of special measures, including a separate entrance and exit times, use of screens in court or video links, contributing to re-victimisations and re-traumatisation for women.

Specialist Domestic Violence Courts (SDVC’s) (Burton 2018) which deal exclusively with DVA cases or Integrated Domestic Violence Courts (IDV) (Koshan 2018: 515), where both criminal matters and family and civil matters are heard at the same time in ‘a one judge-one family model that is intended to provide a more holistic approach to cases involving domestic violence issues’, have developed in a number of jurisdictions. For Koshan (2018) however, the jury (so to speak) is still out on the impact of IDV on domestic violence cases, particularly given the continued injury and murder of women and children in the context of child contact. Burton (2018) however highlights one significant benefit of the SDVC was the availability and presence of a lay advocate of IDVA (Independent Domestic Violence Advisor) as a source of support and information. Such provision could be extended to Family Courts especially since James-Hanman’s recent (2017) evaluation of a volunteer befriending project supporting survivors of domestic abuse, also found that the support the clients received with respect to attending Family Court Proceedings was one of the most valued services.

Judicial failure to understand the dynamics of DVA and in particular the constancy of coercive control, Hunter et al. (2018) surmise has led to women’s accounts of abuse not being understood or believed, considered exaggerated at best or fabricated at worst. This ‘erroneous assumption’ that allegations from mothers are most likely without any credible basis (Saunders 2017: 10), may also lead to an accusation that mothers are guilty of ‘Parental Alienation Syndrome’ or PAS (Gardner 1987). Despite this ‘syndrome’ being discredited under the weight of research evidence, PAS nonetheless

appears to remain ingrained in practice, with resistance to contact on behalf of the resident parent subsequently deemed ‘implacable hostility’. Conceptualisations of domestic abuse as a mutual problem in the parent’s relationship (MacDonald 2016); as only relevant to the issue of contact if it has involved direct physical abuse of children (Barnett 2014); as belonging to a past history and not a future concern (Holt 2017), have all rendered current and future risks invisible and resulted in contact orders that are essentially unsafe. While the importance of judicial training is advocated by Jaffe et al. (2018) as resulting in more thoughtful and informed judicial decisions, Mackay (2018) highlights how better decisions are made in respect of safe contact for children when specialist children’s workers engage directly with the child. Such roles are not panaceas and would need to be constructed to maintain a focus on safe, quality contact arrangements. Indeed, whilst all professionals should receive specialist (and gendered) training enabling them to perform their roles to the highest standards, training alone is unlikely to result in sustained and significant change and will need to be supported with monitoring, coaching and other systemic changes.

### **Understand that Past Physical Assaults Are Not a Good Indicator of Future Risk**

It is important that we integrate a robust understanding in practice, that DVA involves emotional/psychological, financial, physical, and sexual abuse where the abuse and violence occur repeatedly, and as part of a pattern of ongoing abusive behaviours. The evidence emphatically states that physical violence is only one of many possible abusive tactics used by perpetrators, many of whom in fact never use physical violence (Jeffries 2016). Indeed the evidence from research and practice with victims also suggests that the impact of non-physical forms of coercive abuse can be more deleterious than isolated physical attacks (Williamson 2010). Beck and Raghavan (2010: 562) similarly caution that using a moment in time ‘snapshot’ of physical abuse, without serious consideration of coercive control may inadequately inform an assessment of both severe and less severe forms of abuse.

Despite this clear evidence that risk cannot be reliably calculated by a physical incident-focused approach to assessment, the emergence and recognition of the concept of coercive control as central to the phenomena of domestic abuse has only been established in policy and legislation in the past decade or so (Robinson et al. 2018). However, it should be noted that the centrality of power and control to the experience of DVA was fundamental to feminist-advocate understanding of DVA since the 1970’s (Dobash and Dobash 1979; Schechter 1982). Perhaps one of the most influential contributions to the evolving debate on coercive control, Stark’s (2007: 12) publication recognized coercive and controlling behaviours as ‘ongoing rather than episodic’, and the effects

as ‘cumulative rather than incident-specific’. Robinson et al. (2018: 18) argue that factors correlating with coercive control, controlling, stalking and sexually coercive behaviour, in addition to victim experiences of isolation and fear, formed the most constant and dangerous pattern of abuse.

Therefore, we need to emphasise that coercive control is a much better indicator of future risk - this means also understanding that it is not just the mother but also the children who are being coercively controlled. Asking questions about what children have been prevented from doing is where enquiries might start to try to document this (eg not allowed friends round or to do any messy activities, engaging freedom of expression or watch their programmes on TV when Dad is at home etc. – see for example Callaghan et al. 2018). The deleterious impact of coercive control is not reserved for the mother, with research highlighting the impact of coercively controlling behaviour on children’s development (Katz 2016) and emotional and behavioural regulation (Jouriles and McDonald 2015), which can continue and intensify post-separation through abusive and unregulated contact (Holt 2020).

Notwithstanding the available evidence as touched on above, and the significant developments in legislation and policy in some jurisdictions (Ireland; England & Wales; Scotland), coercive control as a recognisable, assessable and critical concept however, has remained stubbornly challenging to operationalise (Pitman 2017: 143). Robinson et al. (2018) also remind us that overviews of Domestic Homicide Reviews have highlighted a poor professional appreciation of the power and control dynamics in abusive relationships, while Barlow et al.’ (2020) research highlighted concerning issues with poor police recording of coercive control. So what needs to change?

At the risk of adopting a rather reductionist stance to what is an increasingly complex issue, we nonetheless argue that the notion and mind-set that physical abuse ‘counts’ more than control needs to be challenged. When we can integrate this appreciation into our practice responses to women and children experiencing DVA, our risk assessments become more accurate and it becomes much clearer why the end of the relationship does not automatically mean the end of abuse. This would go a long way to joining the dots between historical evidence of DVA and further risk of harm, challenging the all too common assumption that the DVA is in the past and child contact arrangements are about the future. It would also support a more accurate understanding of the period of separation as one of heightened risk for serious and lethal assault (Humphreys and Bradbury-Jones 2015). It also demands a robust engagement with the empirical evidence, as our final point discusses.

### **Making Evidence Informed Decisions**

It is generally accepted that if outcomes for service users are to be optimised, then policy, protocols, procedures, assessment,

intervention and evaluation must be informed by sound evidence about the impact of social and psychological factors on the lives of children and families. Undoubtedly, there is considerable debate about the quality of research evidence, including questions about what constitutes robustness, validity, generalisability and reliability for example, and challenges to the assumption that research makes a genuinely valuable contribution to child welfare (Pelton 2008). Nutley et al. (2007) nonetheless conclude that the absence of any strong evidence, in general, linking research to improved outcomes reflects more on an absence of evidence than on the evidence of absence. In this paper however, we dispute the absence of evidence and question rather if the decisions made about PSC are grounded in the evidence base, arguing at the same time for this robust foundation to these important decisions.

Highlighting the risk of significant harm to children and mothers facilitated through post-separation agreements, points one through six of this commentary provide unequivocal evidence to support our demand for a refocus on the reality of contact with abusive fathers rather than the rhetoric of idealised post-separation family life. Engaging meaningfully with the child’s right to be heard requires firstly that we challenge the assumption that contact is inevitably in the child’s best interests. Essentially, our final point in this seven point plan argues for the competent and professional use of the available evidence in the decisions that are made about and for children who have lived with DVA. This is not simply about achieving optimum outcomes for children and families but more that engaging in evidence informed practice safeguards against any propensity for human bias and error when constructing opinion about risk, need and best interests.

The evidence emerging from both practice wisdom and decades of research on child contact in the context of a prior history of DVA has consistently identified a number of recurring themes. Firstly, the abuse of women and children can not only continue post-separation but may also escalate dangerously. With contact providing a legitimised route for the ongoing manipulation and abuse of children (Holt 2011; Thiara and Gill 2012), the research simultaneously finds that children who do not have contact with abusive fathers report feeling safer and more secure (Holt 2018). Secondly, the research evidence has highlighted concerns about the parenting capacity of domestic abuse perpetrators and their lack of empathetic ability to understand that their violence against mothers is emotionally abusive to their children (Hame 2011). Thirdly, the evidence points to the quality of parent involvement as the critical factor impacting child well-being and not the extent of such contact, with frequency of contact considered a poor substitute for relationship quality (Holt 2016a, b). Taken together, these emerging themes highlight the complexity of children’s contact with domestically abusive fathers, which raises obvious but difficult questions about both risks associated with such contact and how quality contact can be



achieved. We conclude this final seventh point with an evidence informed caution against the presumption that contact is automatically and always in the child's best interest, a presumption we argue, that can be directly traced to the patriarchal history of women and children as property. The privileging of men's access to children over children's best interest is an outdated notion with no place in the twenty-first century.

## Conclusion

We have chosen the above seven points as steps towards ensuring safe[r] post-separation contact for children where DVA has been a feature of the parental relationship, not least because they are grounded in robust research evidence but also because we believe that they are eminently achievable in practice without significant additional resources. This is not to argue against the considerable benefits - cognitive, social, emotional, and developmental - afforded children where fathers can achieve and maintain a positive presence in their lives. Evidence from Domestic Abuse Perpetrator Programmes shows that some men are willing to do the hard work necessary to reach safe and acceptable standards of parenting, even in the absence of not having done so at an earlier stage (Meyer 2018). Feelings of intense loss can accompany the breakdown of a relationship, especially those with children, and this, coupled with an awareness of the impact of their abuse on their children are widely acknowledged by Perpetrator Programme workers to be amongst the most powerful motivators for abusers to change - and to maintain those changes.

Focusing primarily on the issue of evidence, we conclude this commentary firstly by asserting that making evidence informed decisions is not only about what practitioners can do, but also what researchers and policy makers can do to contribute to the creation of what Professor Liz Kelly calls 'a conducive context' (Kelly 2013) in which better decisions are made. That 'conductive context' however, needs to consider the risk that DVA poses to children's safety and welfare, a risk that does not of its own accord vanish or become inconsequential post-separation. That conducive context also needs to contain appropriately and with the child in focus, the paradox at the heart of this challenging issue: that children remain the tie that binds parents together when their parental relationship demands that they stay apart. Rebalancing the needs, rights and indeed best interests of children relative to their parents is critical in achieving this conducive context. The current systemic failure to recognise the risk that DVA presents for child safety has been extensively reported (Hunter et al. 2018).

Our second concluding point is grounded in a rights based approach that demands that we engage with and listen (not necessarily the same thing) to the views and experiences of

children and young people, recognising children as 'experts' in their own lives, respecting both their right and competence to hold and express an opinion; to have that opinion taken seriously; to be consulted in all matters that affect them; and to participate in decisions that impact on their individual lives. Grounded in universal principles including the paramountcy of child welfare, the use of evidence to inform practice, the rights of children and the fullest possible participation of children in the decision making process, our commentary challenges those involved in policy, research and practice to acknowledge the humanity of others, leading to an emotional as well as to an intellectual understanding of the challenges faced by children and families who are living with DVA.

Finally, returning briefly to Kelly's 'conductive context', we are mindful that we can all always achieve more - and faster - when we enact the principles on which we state good services should be based - empowering service users to be heard, believing in human rights, social justice and the power and possibility of change. As professionals, whether our focus is on research, policy or practice, when we are working together with a common agreed purpose and understanding of best interests, our collective power is greater than the sum of our individual interests. As such we believe in the overarching need for stronger linkages and relationships between research, policy and practice, which Holt et al. (2018) argue is critical, demanding awareness of the need to effectively use knowledge to improve policy and for greater collaboration across the three fields of research, policy and practice.

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