

Allegations of domestic abuse in child contact cases

Joint research by Cafcass
and Women's Aid

Foreword by Katie Ghose, Chief Executive Women's Aid and Anthony Douglas, Chief Executive Cafcass



We are pleased to introduce this research, which is the product of a unique collaboration between our two organisations.

We are working together because, although Women's Aid and Cafcass touch children's and parents' lives in different ways, it remains a fact that we both see the devastating impact of domestic abuse on a daily basis. The reports published by Women's Aid on the tragic and untimely deaths of children following parental disputes over child contact where domestic abuse was a feature of the relationship were a key driver for this research. Our research marks the first time Cafcass data has been used with the voluntary sector to produce a joint report.

By using Cafcass data we have been able to build a picture of the prevalence of domestic abuse allegations in contact applications in the family court; the links between domestic abuse and other safeguarding risks; and the legal outcome of proceedings. The data highlights patterns, and brings to life what children and young people experiencing domestic abuse face when going through family proceedings. We are pleased to see progress being made, through legislation outlined in the Queen's speech, to protect vulnerable people within family court proceedings.

This research illustrates the complexity of responding to domestic abuse allegations in the family courts. In publishing we are seeking to inform rather than criticise the work of those in the family justice system. We hope that the research findings are a platform from which we and others can further understand and define the issues. The goal must be that victims of domestic abuse are safe and not subjected to further harm following any court proceedings. We encourage others to follow the collaborative spirit in which this research was produced: it is vital if we are to achieve this goal.

A handwritten signature in black ink that reads "Katie Ghose".

Chief Executive, Women's Aid

A handwritten signature in black ink that reads "Anthony Douglas".

Chief Executive, Cafcass

Executive summary

This report sets out the findings of a small-scale study undertaken by Cafcass, with Women's Aid, looking at domestic abuse allegations in 216 child contact cases. The purpose of the study was to look at the types of allegations present in family law court proceedings, including safeguarding concerns other than domestic abuse, and what happened within the proceedings. It did not seek to make findings on the allegations. Quantitative and qualitative data was collected, with the qualitative data exploring the impact of domestic abuse on children.

The main finding was that domestic abuse was alleged in almost two-thirds of cases (62%), with fathers more likely to be the subject of allegations than mothers. The sample cases provided a complex picture of domestic abuse within family proceedings and it was uncommon for domestic abuse allegations to feature in isolation from other safeguarding concerns. This demonstrates the substantial challenge for courts in determining which cases can safely proceed to contact with the child.

Where the order at the final hearing was known, it was less common for unsupervised contact to be ordered in cases featuring allegations of abuse (39%) than cases without (48%). Cases featuring allegations of abuse were more likely to conclude with an order for no direct contact (19%) than cases without (11%), and this was the same for contact that was supervised or monitored in some way (11% and 6% respectively). In the cases where domestic abuse was alleged and unsupervised contact was ordered, unsupervised contact had been taking place between the applicant and the child either at the time of the application to court (67%) or within the six months prior to the application to court (33%). Where known, orders at the first and final hearings were made with the consent of the parties in 89% and 86% of cases respectively. Women's Aid and Cafcass caution that contact taking place before proceedings and consent may not always equate to an 'agreement' about contact and may instead be indicative of a context of coercion or fear.

The qualitative work highlighted the impact for children of experiencing domestic abuse and other harmful parental behaviours such as excessive drinking or violence. Younger children were receiving support at school to improve their attendance and help with socialisation, while older children were receiving more specialist support, such as counselling. In some cases featuring multiple risks, the local authority was working with the children either as 'children in need' or more formally under a child protection plan. Children who had experienced domestic abuse had strong views about contact, particularly older children who were less likely to want to have contact with a parent who had been physically violent towards them or a member of the family.

Background

Cafcass and Women's Aid agreed to undertake a small-scale mixed methods study looking at whether there were allegations of domestic abuse within a sample of family court cases where the application was for contact with a child.

The term 'contact' no longer features in legislation (Children Act, 1989) having been replaced by a child arrangements order for a child to 'spend time with' someone (commonly a parent). However we have used the term 'contact' in this study for ease of explanation.

Aims

The quantitative study aimed to report on the following:

- Who was/were the alleged victim(s) of the domestic abuse?
- How was the concern raised within proceedings and what further information (e.g. police or medical data etc.) was recorded?
- Was the alleged perpetrator referred to a Domestic Violence Perpetrator Programme?
- Were any other safeguarding concerns raised within proceedings?
- Was supervised or supported contact ordered during the case?
- What type of order was recommended by Cafcass, and ordered by the court?

The qualitative study sought to describe the nature of domestic abuse, in particular looking at:

- The nature of the abuse
- Adult relationships, including the significance of any other adults such as family members or new partners
- The history of contact, the views of the parents, and how contact was addressed within proceedings
- The court process and how the abuse was assessed and reported
- The impact on the child including any wishes and feelings work completed and how the abuse affected the child

Methodology

There were two elements to this study: a quantitative analysis of 216 cases and a qualitative analysis of 40 of those cases, with data derived from the Cafcass electronic case management system. The data is dependent upon the recording within the Cafcass case files only, which are not the same in content as the full bundle of papers available at the court hearing.

Quantitative research

The sample was drawn from cases that closed to Cafcass between April 2015 and March 2016, with data collected June-July 2016.¹ Cases were eligible for inclusion in the survey sample if they were an application under s8 of the Children Act 1989 (specifically a child arrangements order application to spend time with a child), and the primary parties to the case were the parents. From the total sample of 15,160 cases, 216 were chosen at random to form the sample to be studied.

The sample included cases in which Cafcass' involvement ended at the first hearing (work to first hearing (WTFH) cases) and continued after the first hearing (work after first hearing (WAFH) cases). The benefit of including both types was that it gave a more accurate representation of the prevalence of domestic abuse allegations in applications for child contact. Cases were reviewed to identify those featuring allegations of domestic abuse and those that did not to determine the prevalence of domestic abuse within the sample.

Data was collected by members of Cafcass' policy team and a National Improvement Service manager. A questionnaire for the analysts (see Appendix C for the full survey) made use of the 'skip question' function to differentiate between those cases that featured domestic abuse and those that did not.

A pilot of 20 cases tested the methodology. Sixteen of these cases were included in the final sample, with four cases excluded either because a non-parent was listed as a party (this was a learning point from the pilot and we replaced cases with non-parents as parties in the full survey), or the case was not appropriate because the issues centred on a parent moving to a different country. This left us with a sample of 216 cases.

Qualitative research

Of the 216 cases, 133 (62%) featured an allegation of domestic abuse. The qualitative sample of 40 cases was taken from these 133 cases. The 40 cases were divided into WTFH and WAFH sub-samples, to reflect the almost equal split between these two case types in the larger sample (67 and 66 cases respectively). Different criteria were applied to the WTFH and WAFH samples to ensure the sample represented a broad range of case types and outcomes. This is shown in the tables below.

Work to first hearing sample

There were 67 cases that closed to Cafcass at the first hearing and featured allegations of domestic abuse. The criteria applied within the WTFH sample was whether the order at the first hearing was made by consent.²

Was the order made by consent?	Target number of cases to include	Number of cases included
Yes (34 cases)	8-10	9
No (3 cases)	1-3	2
Don't know (8 cases)	2-4	3
	5-7	6

¹ There have been changes in legislation and developments in practice since this time, such as the introduction of Cafcass' [domestic abuse practice pathway](#), which provides Family Court Advisers (FCAs) with a structured, focused and stepped framework for assessing cases where domestic abuse is a predominant feature.

² Information regarding whether both parties had consented was taken from the court order, for example if both parties had consented the court order would simply read 'the following order is made by consent'. No further information regarding consent was gathered for this research.

Not answered (22 cases³)		
Total	20	20

Work after first hearing sample

Cafcass' involvement continued after the first hearing in 66 cases that featured allegations of domestic abuse. The criteria in the WAFH sample was Cafcass' advice to the court in the final report. Five cases were removed from the sample, either because the Family Court Adviser's (FCA's) report did not feature recommendations about contact (three cases) or the application was withdrawn before a report was completed (two cases).

What was the FCA's advice to the court?	Target number of cases to include	Number of cases included
Unsupervised (25 cases)	7-9	8
Supported/supervised (16 cases)	4-6	5
Indirect/no contact⁴ (17 cases)	4-6	5
No order (3 cases)	1-3	2
Total	20	20

Findings

The following section reports the findings from both the quantitative and qualitative studies. Quantitative data is provided in respect of all 216 cases in the sample. The qualitative data, which looked at 40 of the 133 cases where domestic abuse was alleged, is included to add context or further insight into particular findings from the quantitative work.

General case information

- Of the 216 cases included in the sample, the applicant was male in 195 cases and female in 21 cases.
- Cafcass' involvement ended at the first hearing in 58% (125) of cases, and continued after the first hearing in 42% (91).

The impact on children of domestic abuse

One of the primary areas of consideration within the qualitative study was the impact of domestic abuse, and court proceedings, on children. There was evidence in the qualitative sample of children having experienced domestic abuse and other harmful parental behaviour

³ In the 22 cases where the question was not answered, this was generally because Cafcass did not have a copy of the order on the case file, as there is no expectation for the court to provide a copy of the order to Cafcass if no further work has been ordered. These cases remained in the sample to provide data on the full range of case types.

⁴ An order for no contact is different to an order of 'no order' because an order for no contact is where the court has ordered that there will be no contact between a child and parent. An order of 'no order', or the no order principle, is where the court has decided to not make an order. To do this the court will consult s1(5) of the Children Act 1989 which states that the court should not make an order unless it considers that doing so would be better for the child than making no order at all.

such as excessive drinking or violence. In their parents' relationship, children had experienced physical and verbal abuse, with some children being injured. For some children this had continued in parents' subsequent relationships.

The most apparent example of other harmful parental behaviour, which co-existed with domestic abuse, was excessive drinking. One child had been on a child protection plan for emotional harm due to the impact of their parent's extreme behaviour when drinking; the child reported being "frightened" and did not want contact with the parent. Another child had been bullied as a result of their parent's behaviour when drunk, and was receiving counselling.

Children in the sample presented a wide range of responses to the abuse they had experienced. Some children were receiving specialist support at school or nursery, or from a family support worker. The purpose of counselling or other support varied depending on the age and experiences of the children. Younger children were receiving support at school to improve their attendance or help with their socialisation. Older children were receiving more formal support, such as counselling, after experiencing domestic abuse. Children were described in the case files as being "confused and upset", of a "low mood", and being "very uncomfortable" at school when other children are loud. In some cases featuring multiple risks the local authority was working with the children, who had been identified as 'children in need' or were on a child protection plan under the category of emotional harm.

For some children in the sample, this was their third or fourth set of proceedings, either because their parents had previously reconciled, or a parent wanted to vary or enforce existing contact. The abuse alleged in these cases included post-separation abuse in the parents' relationship, and concerns about physical violence in the mother's new relationship. The alleged post-separation abuse included assault and harassment by text message, perpetrated by mothers and fathers, generally in relationships where controlling behaviour had been alleged. Where parties reconciled, the FCA in one case stated to the court that this "could indicate a failure to fully protect the children".

Some of the children described above, and others within the sample, had strong views about contact, with older children less likely to want to have contact with a parent who had been physically violent towards them or another member of the family. One family, in extreme circumstances, were living in a refuge during proceedings and the children were reported to display "fear" and "strongly hostile views" towards the perpetrator. Where there had been no physical violence, children held less negative views of the perpetrator, having not knowingly experienced the abuse.

Children who had been 'in the middle' of parental disagreements around their care were conflicted, having had to act as communicators between their parents, to make contact arrangements. Concerns were raised by professionals about the impact on the children of such situations, with one FCA feeling that the children did not want to spend time with a parent because this made things 'easier' for them. The views of older children seemed to be afforded greater weight during proceedings. In one case the oldest child did not want to have contact with the mother, but there was scope for future mediation to support contact. In another, it was 'left open' for the older children to make their own choices.

Were concerns raised about domestic abuse between the applicant and respondent?

Domestic abuse was alleged in 62% (133) of cases, in which 166 individuals were alleged victims, as in some cases this was alleged by both parties. The alleged victims comprised 126 females and 40 males. Eleven individuals were recorded as both an alleged victim and perpetrator (eight males and three females).

This data includes all records of domestic abuse within the Cafcass case file, including any allegations, with data collected on whether the concern was raised in respect of the applicant or respondent, or both. The term 'allegations of domestic abuse' (or just 'allegations') is used throughout this report, with reference to 'alleged victims' and 'alleged perpetrators', and also includes concerns raised by professionals such as local authorities and police. The study did not set out to record 'evidence' of domestic abuse, though in some cases there will have been civil or criminal court findings of abuse.

The qualitative study - of 40 cases featuring allegations of domestic abuse - found that some parents made reference to 'past' domestic abuse incidents and agreed contact arrangements, and others did not raise the issue, with information regarding risk instead coming from professionals. When post-separation abuse was alleged, this was sometimes 'new' (that is, no abuse was alleged prior to the separation) or sometimes a continuation of the abuse that had taken place before the separation. In our discussions, Women's Aid highlighted their experience, backed up by their Femicide Census report, of the post-separation period being a dangerous time for victims. In the qualitative sample, abuse generally involved harassment, including breaches of non-molestation orders. This could be because one parent was not accepting that the relationship had ended, was in conflict with a new partner of the other parent, or was seeking to continue to influence and control the relationship. Research shows that victims of domestic abuse report that child contact proceedings can be used by their former partner as a form of post-separation abuse.⁵ Where the abuse was reported to be new behaviour, this could involve extended family members intimidating or threatening the alleged victim.

Case example: both parents accepted that a single incident of physical abuse, in the child's presence, caused the end of the relationship. The father accepted a caution for hitting the mother in the face, and a non-molestation order. The mother was supported by the local authority to relocate. After attending mediation, the parents could not agree on whether a contact centre was needed to reintroduce the child to the father after a period of no contact. The court ordered contact at a centre.

Case example: previous proceedings had found that the father had an extensive offending history including domestic abuse. The child was clear in their wishes not to have contact, and the final order was for no contact.

Case example: unsupervised contact had stopped following violence in the presence of the child, in which both parents were physically violent and the father was charged with assault.

⁵ Coy, M., Perks, K., Scott, E. and Tweedale, R. (2015). *'It's like going through the abuse again': domestic violence and women and children's (un)safety in private law contact proceedings*. Journal of Social Welfare and Family Law, pp.53-69.

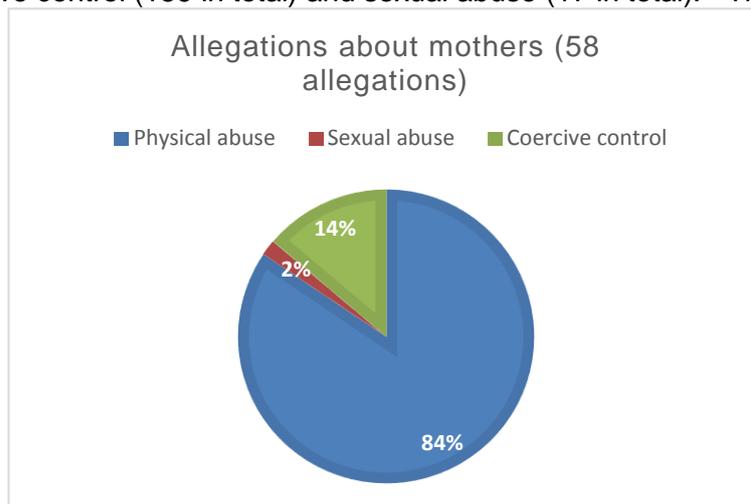
At the point of application, a maternal family member was supervising contact and this continued, with a plan to return to unsupervised contact.

What type of abuse was recorded in the case file?

The survey considered three categories of domestic abuse - physical abuse, sexual abuse and coercive control.⁶ The categories are not mutually exclusive and data was collected from the following sources:

- Allegations made by a parent
- Local authority information
- Police information – this included records from the Police National Computer (convictions, cautions, reprimands, final warnings), and locally held police information (police call outs)
- Medical evidence
- Exemption from a Mediation Information and Assessment Meeting (MIAM)⁷
- Domestic Violence Perpetrator Programme (DVPP) referral
- Finding of fact hearing ordered by the court⁸
- Domestic abuse related order (for example a non-molestation order).

Physical abuse was recorded most often within the sample (262 records in total).⁹ This was followed by coercive control (159 in total) and sexual abuse (17 in total).¹⁰ The full



⁶ Coercive control encompassed both controlling and coercive behaviour. Practice Direction 12J defines 'Controlling behaviour' as an act or pattern 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 defined as an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.

⁷ To reduce the number of family related applications going to court, the Children and Families Act 2014 included a new section (10(1)) which stated that '*before making a relevant family application, a person must attend a Mediation Information and Assessment Meeting*', to attempt to resolve disputes outside of court. However parties are exempt from attending the MIAM if there are concerns about safety (such as domestic abuse).

⁸ The data did not record if the finding of fact hearing took place, or what (if any) findings were made.

⁹ A case could feature multiple records of alleged abuse, and all would be recorded.

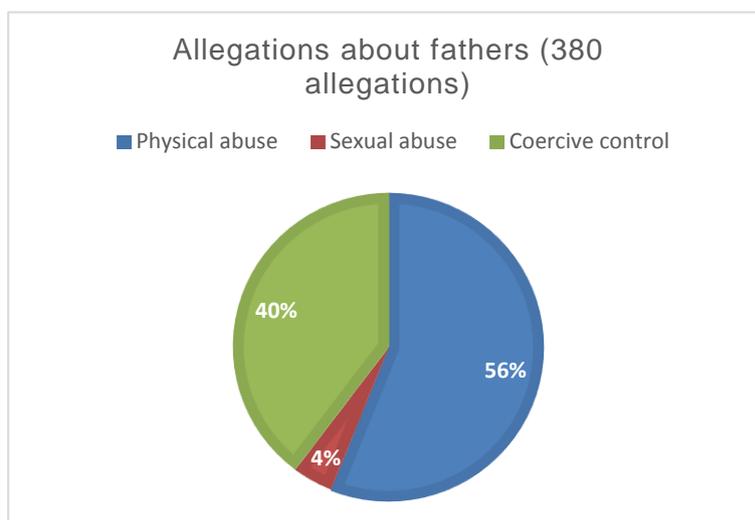
¹⁰ In discussions, Women's Aid raised the importance of noting the reluctance of victims to report sexual abuse, and therefore the likelihood that this number may be higher than recorded.

breakdown of domestic abuse allegations by category and gender can be found in Appendix A.

Data was collected on each record of domestic abuse present in the case file. This was collected separately for all three categories of abuse (physical, sexual, and coercive control), against the source of the record (such as police or local authority information).

Findings showed:

- The local authority was the source of information regarding 63 records of domestic abuse. Of these, 42 were records of physical abuse, 20 were records of coercive control and there was one record of sexual abuse.
- Police data was the source of information regarding 104 records of domestic abuse, which comprised 66 records of physical abuse, 35 records of coercive control and three records of sexual abuse.
- There were 14 MIAM exemptions claimed on the grounds of domestic abuse, with this information taken from the c100 court application form, or the safeguarding letter.



- Cafcass made five referrals to a domestic violence perpetrator programme.
- Five fact finding hearings were ordered by the court regarding domestic abuse allegations about fathers.
- There were 33 domestic abuse related orders.
- No medical evidence of domestic abuse was recorded during data collection.

The qualitative work highlights the difficulties in establishing the facts when domestic abuse is alleged. 'Evidence' can be limited and information recorded by safeguarding agencies may show 'no further action' taken, or may not accurately reflect the domestic abuse. Data suggests that victims are likely to experience multiple incidents before contacting the police¹¹ and it is possible that an act of self-defence by a victim of domestic abuse may be the only incident recorded.

The qualitative study found evidence from local authority records of mothers and children relocating to refuges, and of mothers and fathers having confidential addresses following harassment by the other parent.

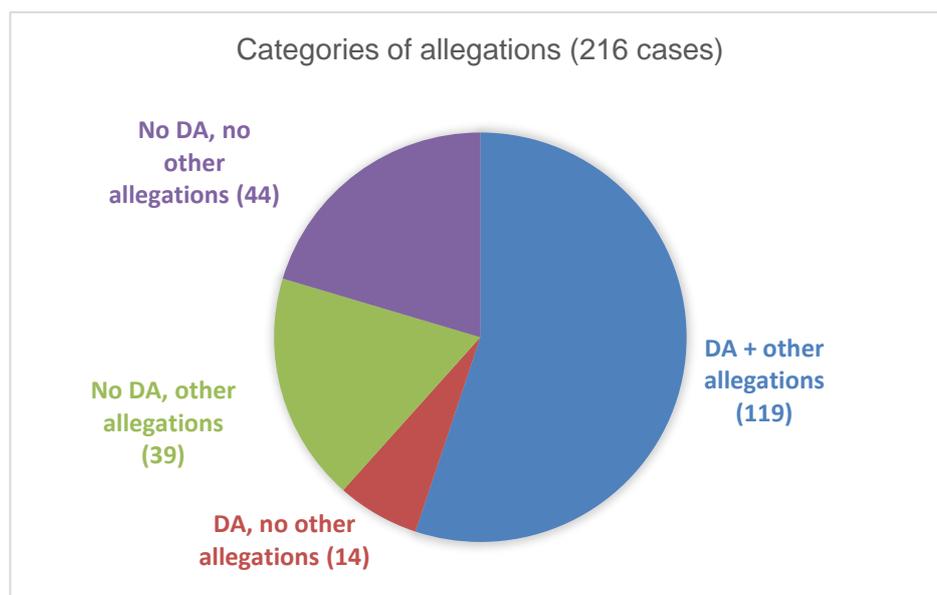
Case example: in a case that concluded at the first hearing, the mother said she separated from the father due to domestic abuse. Both parents alleged that the other was physically abusing the children, exposing them to adult issues, and coaching them to make allegations about the other parent. The children disclosed to the local authority that the mother was physically abusive towards them, and older children did not want contact. The children received counselling during proceedings and there was scope for future mediation to support contact with the mother.

Were allegations other than domestic abuse recorded in the case file?

Data was recorded on a range of allegations present on the case file, additional to domestic abuse, to look at other concerns raised within private law cases. Allegations other than domestic abuse were recorded in 73% (158) of all cases in the sample. The most common were parental substance misuse, parental mental health, and emotional abuse of the child.

The chart below shows this data grouped according to whether the case featured: domestic abuse with no other allegations (6%); domestic abuse plus other allegations (55%); no domestic abuse but other allegations (18%); or no domestic abuse and no other allegations (20%).

¹¹ Sources include: Yearnshaw, 1997 (cited at http://www.cps.gov.uk/news/articles/domestic_violence_-_the_facts_the_issues_the_future) and Home Office, 2002 (cited at <http://www.refuge.org.uk/get-help-now/what-is-domestic-violence/domestic-violence-the-facts/>)



The qualitative study found a wide range of reasons provided for why contact was not taking place. Generally, domestic abuse was not reported to be the primary factor. Concerns cited by the 'resident' parent included the other parent's use of drugs or alcohol or – exclusively in respect of fathers – not being a consistent, safe carer.

Where domestic abuse was the primary factor in the case, there may have been previous court proceedings. Some of the children in the sample were in their third or fourth set of proceedings, either because parents had reconciled and separated again, repeat applications related to breaches of existing orders, or new concerns such as harassment.

Cases featuring allegations of domestic abuse plus other allegations

In this sub-sample of 119 cases, the most common additional concerns raised were the same as across all cases, being parental substance abuse (90; 59 about fathers and 31 about mothers); parental mental health (74; 36 about fathers and 38 about mothers) and emotional child abuse (71; 44 about fathers and 27 about mothers).

The table below sets out the 588 individual concerns recorded, in respect of the 119 cases that featured both an allegation of domestic abuse and additional allegations.

Domestic abuse + other allegations (119 cases)	Allegations about mothers	Allegations about fathers	Total
Domestic abuse	40	126	166
Parental substance abuse	31	59	90
Parental mental health	38	36	74
Child abuse - emotional	27	44	71
History of violence other than domestic abuse	16	35	51
Child abuse - physical	13	25	38
Child abuse - neglect	16	16	32
Highly conflicted parents	16	13	29

Implacable hostility ¹²	9	3	12
Child abduction	3	8	11
Child abuse - sexual	2	7	9
Child exploitation	2	1	3
Parental learning difficulties	1	1	2
Total	214	374	588

Case example: the fourth set of proceedings for a child receiving pastoral support from school, in which both parents alleged the other exposes the child to emotional harm. The mother reported no abusive incidents since previous proceedings, but father alleged that mother had sent abusive texts and physically assaulted him.

Case example: a complex case in which the father's use of drugs was the primary concern. The mother alleged verbal, emotional and physical abuse, and acknowledged she had been physically violent. The father agreed there was verbal abuse but denied physical violence. Information from the police and local authority reported verbal disputes, and there was an expired non-molestation order against the father. The child wanted contact and the parents agreed, with the mother wanting safeguards in place in respect of father's drug use. Following positive drugs tests during proceedings, the court ordered supervised contact until the father could evidence three consecutive months without drugs.

Cases featuring no allegation of domestic abuse, but other allegations

There were 39 cases that featured 'other' allegations, but no domestic abuse. In these cases, the most common concerns were that the parents were highly conflicted (21), parental mental health (15), and parental substance abuse (9). The table below sets out the 78 individual concerns recorded, in respect of 39 cases.

Other allegations but no domestic abuse (39 cases)	Allegations about mothers	Allegations about fathers	Total
Highly conflicted parents	11	10	21
Parental mental health	7	8	15
Parental substance abuse	2	7	9
Child abuse - emotional	6	2	8
Child abduction	3	2	5
Child abuse – neglect	3	2	5
Implacable hostility	4	0	4
Child abuse - physical	1	2	3
History of violence other than domestic abuse	0	3	3
Child abuse - sexual	0	2	2

¹² The definition Cafcass used to record implacable hostility was an allegation that the parent who lives with the child is unreasonably preventing the child from spending time with the other parent. In discussions, Women's Aid raised concerns about the research base surrounding implacable hostility and parental alienation. We agree the research is limited. Women's Aid cite research showing that the majority of mothers who have experienced domestic abuse try to promote contact where they feel it is safe and in the child's best interests (Hunt and McLeod 2008; Thiara and Gill 2012; Morrison 2015), and 'implacably hostile' mothers are involved in only a minority of enforcement cases, most of which arise because of irrevocable parental conflict, serious welfare concerns, or children's own wishes (Trinder 2013).

Parental learning difficulties	1	1	2
Child exploitation	1	0	1
Domestic abuse	0	0	0
Total	39	39	78

Cases featuring allegations of domestic abuse, but no other allegations

It is rare for cases to be concerned with a single issue. There were 14 cases in the sample that featured an allegation of domestic abuse, but no other allegations were recorded. In all 14 cases the applicant was the father. Domestic abuse was alleged by the father in three of the cases, and this was always an allegation of physical abuse. The mother alleged domestic abuse in 13 of the 14 cases.

Case example: the case closed to Cafcass as neither parent attended hearings nor spoke to the FCA. The FCA raised concerns with the court about the welfare of the children as the parents had reconciled, following a charge of serious assault and a non-molestation order to protect the mother.

What contact was ordered by the court at the first hearing?

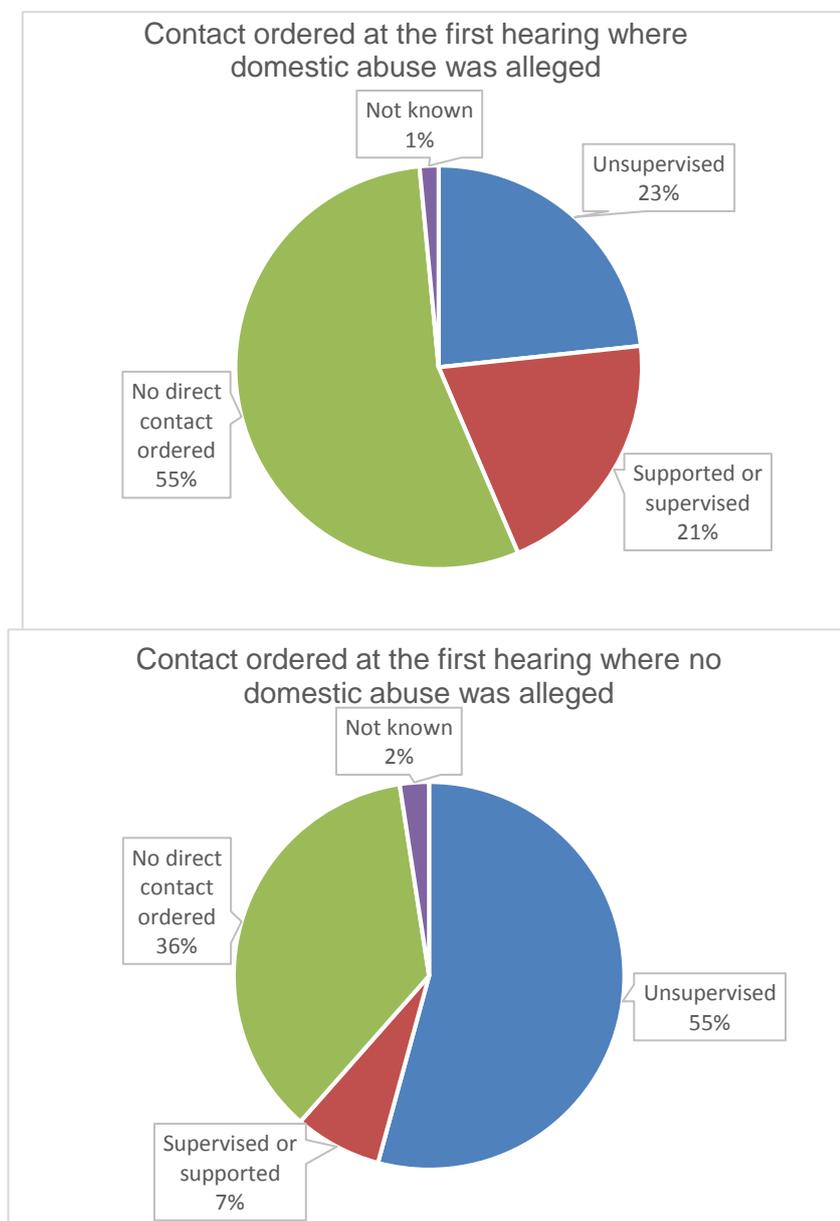
Unsupervised contact was most commonly ordered at the first hearing in cases where domestic abuse was not alleged (45/83 cases, 55%). Where domestic abuse was alleged, the court was most likely to make 'no order' about contact at the first hearing (42%, 56), with unsupervised contact ordered in 23% (31) of cases.¹³ In the cases where domestic abuse was alleged and unsupervised contact was ordered, unsupervised contact had been taking place between the applicant and the child either at the time of the application to court (67%) or within the six months prior to the application to court (33%). In discussions, Women's Aid cautioned that this may not always equate to an 'agreement' about contact arrangements, and may be indicative of a context of coercion.

In this small sample of cases, it was less likely for unsupervised contact to be ordered at the first hearing when domestic violence was alleged, than it was in cases without an allegation, and more likely for no contact, or contact with a condition, to be ordered.

Contact ordered by the court at the first hearing	Domestic abuse alleged	No domestic abuse alleged	Total
Unsupervised contact	31 (23%)	45 (55%)	76 (35%)
Supervised contact	18 (14%)	4 (5%)	22 (10%)
Supported contact	9 (7%)	2 (2%)	11 (5%)
Indirect contact	8 (6%)	2 (2%)	10 (5%)
No contact	9 (7%)	3 (4%)	12 (6%)

¹³ An order of 'no order' generally means that the court requires further information, usually regarding risk, before it is possible to make an order concerning contact.

No order was made about contact	56 (42%)	25 (30%)	81 (37%)
Not known¹⁴	2 (1%)	2 (2%)	4 (2%)
Total	133	83	216

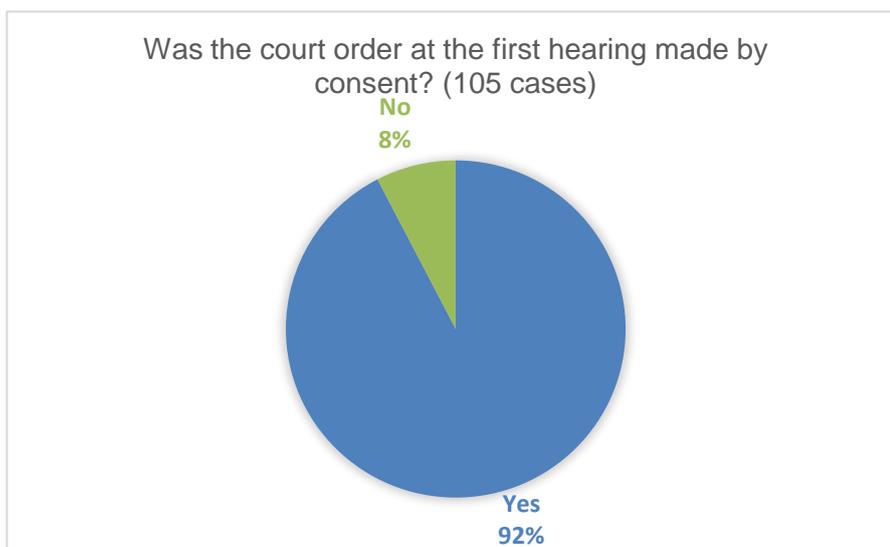


Was the order at the first hearing made by consent?

In 105 of the cases, there was information on the case file about whether the order at the first hearing was made by consent. In the remaining 111 cases the information was not

¹⁴ In the 'not known' cases there was no court order or information on the case file regarding the contact ordered by the court at the first hearing.

recorded in the order (26), or the order was not available (85). Where data was available, the order was made by consent in 92% (97) of cases.



In the 63 cases where domestic abuse was alleged, and where the consent of the parents was known, in 89% (56) of cases the order at the first hearing was made by consent.

Was there any supported or supervised contact during the case?

Supervised or supported contact was more likely to be ordered in cases where domestic abuse was alleged, with 78% (43/55) of all recorded supported or supervised contact taking place in such cases.

Case example: during proceedings the father was having supervised contact, but the FCA applied for the court to dismiss the application due to his lack of commitment. Agencies reported concerns regarding abuse to the mother and non-subject children, and the mother cited father's lack of commitment and "short fuse". The subject children wanted contact. The case ended with no order.

Case example: neither parent alleged domestic abuse, but local authority records showed referrals during the relationship, with both parents the alleged perpetrators. Professionals were concerned about the isolation of the child, leading to emotional abuse. The court ordered contact to be supported by the mother.

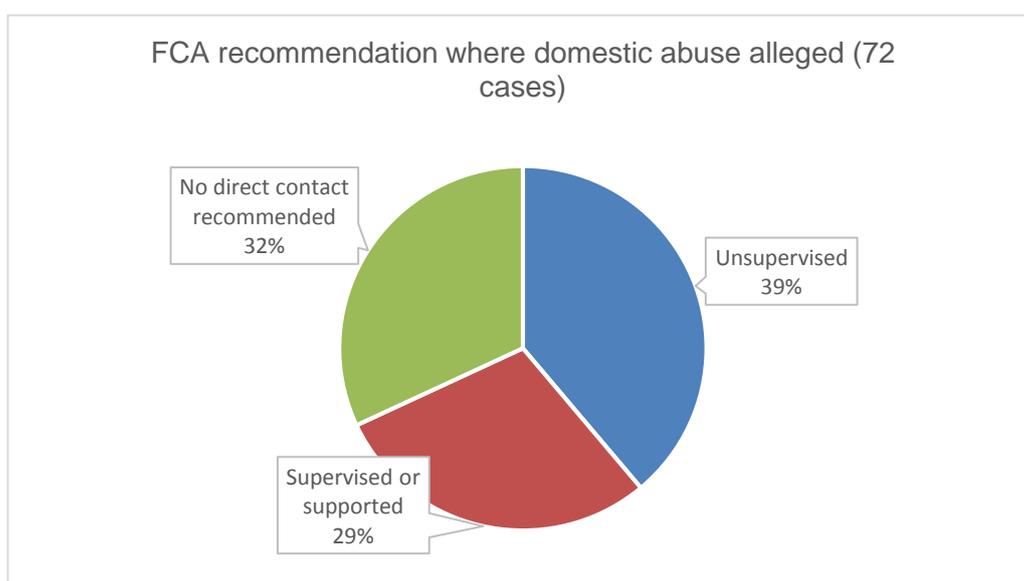
What was the FCA's advice to the court in the final report?

The role of the FCA is to make a recommendation to the court as to what would be in the best interests of the child. In making this recommendation, FCAs consider information provided by safeguarding agencies and the parents, as well as any further enquiries they think are necessary. It is the court that determines the weight to be given to any evidence, and it can order a finding of fact hearing to look at matters disputed by the parties.

In this sample, it was rare for a finding of fact hearing to be ordered and the qualitative work found that the information provided by other agencies did not always provide insight into

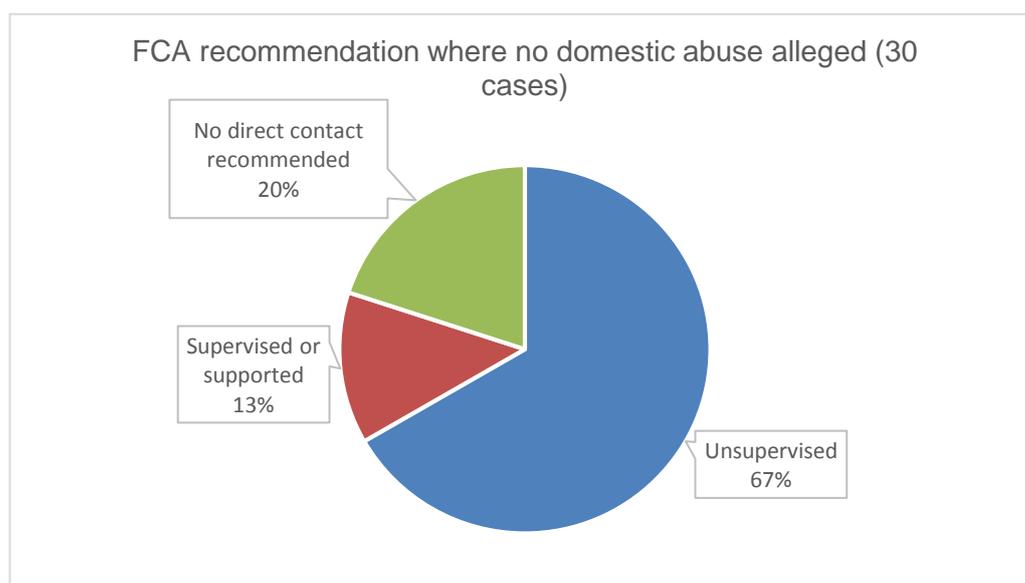
what had happened. We cannot 'measure' the fact finding data against a wider sample of cases as Cafcass does not record data on this, and it may be that 'fact finding' took place within an existing hearing. Generally, finding of fact hearings can be ordered when an allegation is disputed by a party and this allegation is relevant to the matters before the court.

The charts below concern the 102 cases in which advice was given by the FCA in a report to court. For the first hearing FCAs provide a safeguarding letter to the court which reports risk screening information and generally does not provide advice about contact. For work after the first hearing, generally the FCA will make recommendations about contact in their report to court. In this sample the FCA did not provide recommendations to court in 114 cases, either because the only report completed was the safeguarding letter, and therefore contained no advice about contact, (109) or there was a later report where the FCA made recommendations not relating to contact (5).¹⁵ This data therefore largely concerns advice given to the court after the first hearing, meaning more detailed assessments had been undertaken.



¹⁵ The reasons listed in the five cases for why the FCA did not make recommendations about contact in a later report were:

- The FCA recommended the court make the child a party to proceedings.
- The FCA recommended a s37 investigation take place by the local authority.
- The FCA was waiting for information from the local authority, who had considerable involvement with the family. The updated letter to the court gave information from the LA but did not advise on contact.
- The FCA concluded that there was entrenched conflict between the parents which the children were caught up in.
- The application was withdrawn.



The types of contact recommended have been grouped in the charts above: 'unsupervised' contact includes any direct contact, including overnight, without a condition attached:¹⁶ 'supervised or supported' contact includes any direct contact with a formal condition attached; 'no direct contact recommended' includes recommendations for indirect contact, recommendations of 'no order' and recommendations for 'no contact'. The table below provides these more detailed breakdowns for the 102 cases.

FCA recommendations (102 cases)	Domestic abuse alleged	No domestic abuse alleged	Total
Unsupervised contact	28 (39%)	20 (67%)	48 (47%)
Supervised contact	11 (15%)	4 (13%)	15 (15%)
Supported contact	10 (14%)	0	10 (10%)
Indirect contact	10 (14%)	3 (10%)	13 (12%)
No contact	10 (14%)	2 (7%)	12 (12%)
No order to be made about contact	3 (4%)	1 (3%)	4 (4%)
Total	72	30	102

In the 72 cases featuring allegations of domestic abuse where the FCA made recommendations about contact, the court ordered unsupervised contact in 31 cases, no direct contact in 20 cases, and supervised or supported contact in eight. In 13 cases the final court order was not known.

¹⁶ The type of contact recommended by the FCA was recorded as 'unsupervised' if the contact took place without supervision or any other safety condition attached. The specifics of the unsupervised contact were not recorded.

Case example: the parents met online and separated before the birth of the child, with both alleging that the other was abusive and controlling. The father sought supervised contact to establish a relationship with the child, which the mother opposed, citing a lack of commitment. The FCA recommended a child contact intervention but the case closed without an order as the father was in custody (not related to domestic abuse).

What was the final court order?

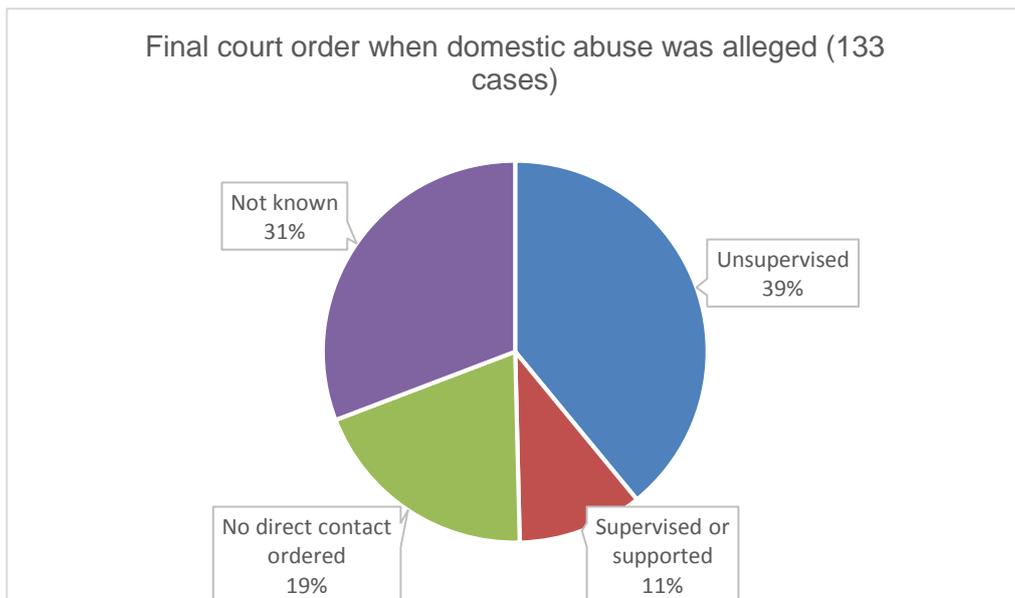
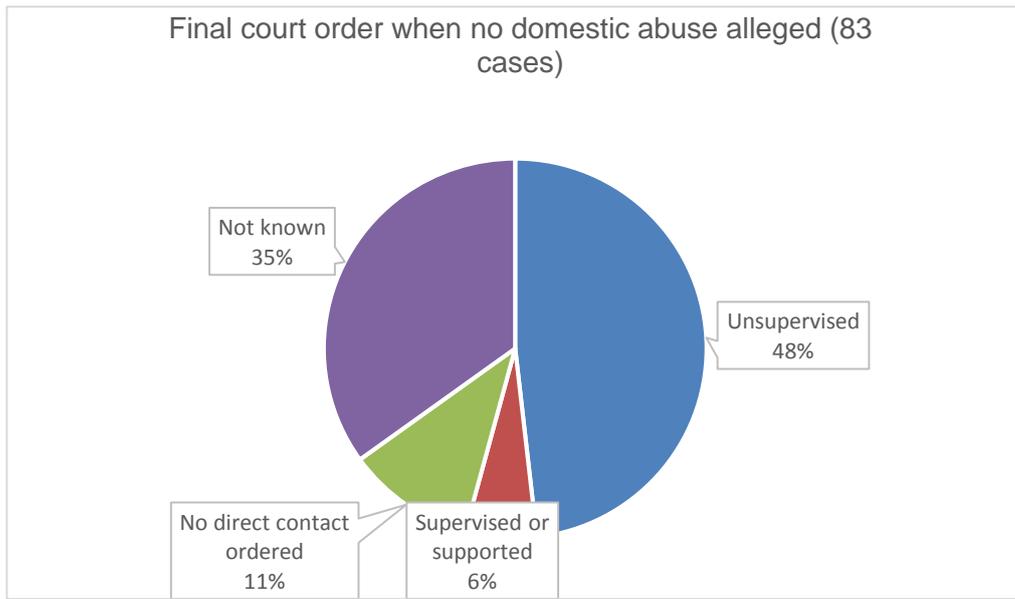
In this small sample, unsupervised contact was more likely to be ordered in cases without allegations of domestic abuse (48%) than it was in cases where abuse was alleged (39%). Contact with a 'condition' attached – that is, supported or supervised contact – was also more likely in cases where domestic abuse was alleged, as was an outcome of indirect or no contact.

In some cases no advice was given and/or no final order was made because the application was withdrawn. Within the qualitative sample, applications were withdrawn because the father: was in custody; had not engaged with proceedings or the DVPP; was admitted to rehabilitation; and withdrew after the FCA recommended indirect contact only.

In 85% of the 52 cases where domestic abuse was alleged and unsupervised contact was ordered by the court, unsupervised contact had taken place prior to the application being made to court. Where there had been no contact prior to the application, reasons for this included alcohol abuse; one parent relocating; and disagreements between parents about how to manage contact.

Cafcass' National Improvement Service (NIS)¹⁷ reviewed the 52 cases where domestic abuse was alleged and unsupervised contact was ordered by the court. NIS found four cases where they had concerns about contact related to the domestic abuse allegations, the recording not being detailed enough or a lack of robust assessment around substance abuse. These cases were referred back to the local area for learning.

¹⁷ NIS is a department of Cafcass responsible for auditing, training and commissioned improvement work. It consists of highly experienced social work managers that the organisation relies upon to drive forward practice improvements and monitor practice through the application of our quality assurance and impact framework.



Case example: the local authority was working with the family due to multiple incidents of harassment leading to a non-molestation order for the father. The father denied all allegations and alleged the mother was physically abusive. The FCA recommended a DVPP but the application was dismissed by the court as the father did not engage with proceedings or the DVPP, and had not made use of the agreed indirect contact.

Contact ordered ¹⁸ (216 cases)	Domestic abuse alleged	No domestic abuse alleged	Total
Unsupervised contact	52 (39%)	40 (48%)	92 (43%)
Supervised contact	9 (7%)	5 (6%)	14 (6%)
Supported contact	5 (4%)	0	5 (2%)
Indirect contact	7 (5%)	1 (1%)	8 (4%)
No contact	3 (2%)	1 (1%)	4 (2%)
No order was made about contact¹⁹	16 (12%)	7 (9%)	23 (11%)
Not known²⁰	41 (31%)	29 (35%)	70 (32%)
Total	133	83	216

Use of Practice Direction 12J

The following findings are in relation to the 141 cases where Cafcass had a copy of the final order or knew the outcome of the case. In the remaining 75 cases either the final order made by the court was not known or the application had been withdrawn.

Practice Direction 12J (PD 12J) was first published in 2008, with revisions made in 2014 to revise the definition of domestic abuse, set out expectations in relation to findings of fact, and make tighter provisions around interim contact arrangements.

The President of the Family Division recently commissioned a review of the practice direction by Mr Justice Cobb who made a number of recommendations.²¹²² This included: the presumption that contact with both parents is in the best interests of the child should not apply if it would put the child or other parent at risk of suffering harm; courts to consider waiting arrangements for victims of domestic abuse; and the court is to obtain a safety and risk assessment conducted by a specialist domestic abuse practitioner where domestic abuse is proved. These are now being considered as a matter of urgency by the Family Procedure Rule Committee.

¹⁸ When recording this data, generally the final contact of the order was recorded by the team e.g. if the final order directed for supported contact to take place for two sessions and then unsupervised contact, unsupervised contact was recorded as the final order of the court.

¹⁹ 'No order was made about contact' included five cases that were withdrawn at the final hearing.

²⁰ See Appendix B for a breakdown of the final court orders in the 41 cases where the final court order was not known, but the case contained allegations of domestic abuse. These were obtained from the courts directly. These outcomes are not recorded within the main findings as Cafcass was no longer involved in the case when the order was made.

²¹ Mr Justice Cobb's full report can be found here <https://www.judiciary.gov.uk/wp-content/uploads/2017/01/PD12J-child-arrangement-domestic-violence-and-harm-report-and-revision.pdf>

²² The view from the President's Chambers which addresses Mr Justice Cobb's proposed changes to PD 12J (2014) can be found here: <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/view-from-the-president-of-family-division-16-jan-17.pdf>

In planning this study, we identified three aspects of PD 12J to consider, in response to assertions that PD 12J is frequently ignored within court proceedings.²³ These were:

- Had safeguarding checks been completed on both parents?
- Were both parents present in court when the final order was made?
- Had the FCA spoken to both parents?

Within this sample, key aspects of PD 12J are taking place in the majority of cases, particularly regarding safeguarding checks and the FCA speaking to both parents.

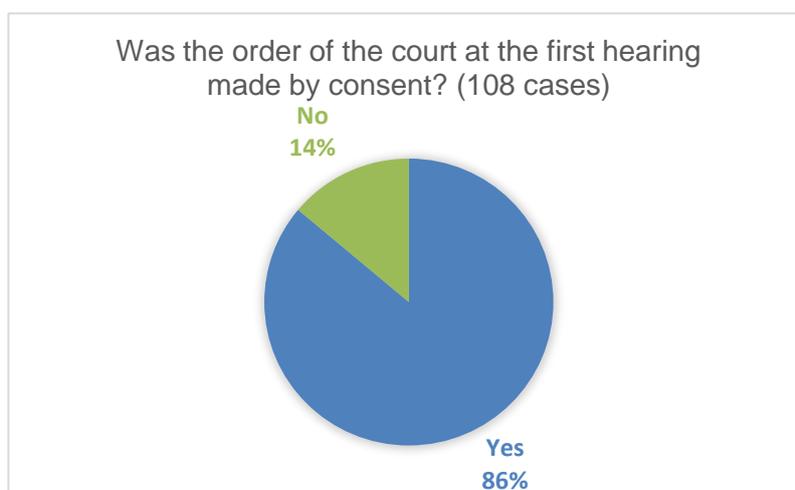
In 17 cases, the final order was made in the absence of one or both parents, generally the applicant. Domestic abuse was alleged in 14 of these cases. In some cases the applicant was in custody or a rehabilitation centre. The following are examples of court outcomes when domestic abuse was alleged and the applicant did not attend:

- The court ordered the application to be withdrawn with no order made about contact.
- The judge made an order regarding the contact between the child and the respondent (in all of these cases the respondent was the 'resident' parent). No order was made about the contact between the applicant parent and the child.
- The alleged victim did not attend the hearing, but a legal representative attended and agreed to the final order.

PD 12J (142 cases)	Yes	No	Don't know
Were both parents present in court?	115	17	9
Were safeguarding checks completed on both parents?	137	3	1
Had the FCA spoken to both parents?	137	3	1

Was the final order made by consent?

Data was collected in 108 cases where a final order and consent had been recorded. Of these the final order was made by consent in 86% (93) of cases.



²³ <https://www.womensaid.org.uk/launch-of-nineteen-child-homicides-report-child-first-campaign/>

Discussion

This was a small-scale study into child contact cases, looking at allegations of domestic abuse, and the conclusions we draw from it are necessarily cautious. The study did not aim to find out the extent to which domestic abuse is 'evident' within child contact cases, and it did not aim to assess the extent of any risk.

The conclusions can be divided into two types: those that relate to the cases; and those that relate to the legal output.

Conclusions about the cases:

- There was evidence within the qualitative study of children being adversely affected by their experiences of domestic abuse. Children presented a wide range of responses to the abuse they had experienced, from getting specialist support at school or nursery through to receiving counselling. Older children were less likely to want to have contact with a parent who had been physically violent towards them or another member of the family.
- Domestic abuse was a common feature within the sample, alleged in nearly two-thirds (62%) of the cases. Other studies have found that domestic abuse allegations in contact applications varied between 49% and 90% of cases.²⁴
- One of the challenges for courts and Cafcass FCAs, who conduct assessments of risk and child welfare, is that domestic abuse can take many different forms and patterns. Every case is unique, requiring professionals and the court to weigh risk against the benefit of the child having contact with the alleged perpetrator.
- Fathers were more likely to be the subject of allegations than mothers across a number of measures. More than three times as many cases featured an allegation against a man than featured an allegation against a woman.
- Allegations other than domestic abuse were associated more commonly with fathers, particularly in relation to substance abuse and a history of violence (other than domestic abuse).
- Women were alleged to have perpetrated domestic abuse in a minority of cases. It was rare for the mother to be the sole alleged perpetrator in a case. In 35 cases the mother was alleged to be a perpetrator together with the father. As stated above, this study did not aim to find out the 'truth' of allegations or to look at the detail of alleged events.
- Cases featured allegations, counter-allegations and disputed matters. It was rare for a finding of fact hearing to be ordered and the qualitative work found that the information provided by other agencies did not necessarily provide much insight in determining what had happened. This is not a criticism of any agency but shows that the purpose for which an agency makes a record may not align with the needs of the court. For example, a police record of an alleged assault with no further action may not contain the details a court would need to make a finding. The complicated and disputed nature of cases represents

²⁴ Sources include: 60-70% Home affairs committee, 2008; 70-90% HMICA, 2005 and 63% Aris and Harrison 2007, cited at <https://www2.warwick.ac.uk/study/cll/research/swell/ourwork/final-safe-not-sorry-for-web-jan-2016.pdf>, 49% Harding and Newnham 2015 cited at <http://www.nuffieldfoundation.org/sites/default/files/files/Full%20report.pdf> 50% Hunt and Macleod 2008 cited at <http://dera.ioe.ac.uk/9145/1/outcomes-applications-contact-orders.pdf>

a substantial challenge for courts in determining which of these cases can safely proceed to contact of the child with the alleged perpetrator, and which cannot.

- It is interesting that domestic abuse data was raised in some cases from external sources (police, local authority) but not by either party. From the qualitative work we know that arrangements that would not have been recommended by professionals were taking place prior to the application for contact. This could be attributed to neither party feeling there was any current risk to victim or child or, as Women's Aid has identified, it could be demonstrative of a context of fear and controlling behaviour. Agreeing to unsupervised contact in this context does not therefore necessarily mean that both parties feel this contact is safe.
- It was uncommon for domestic abuse allegations to feature in isolation from other allegations. Of the 133 cases that featured domestic abuse allegations, 14 of these did not also contain other allegations.
- Allegations other than domestic abuse were found in 73% of cases. Allegations of substance abuse and parental mental health problems featured, as did the maltreatment of children in a smaller number of cases. In some cases domestic abuse was not the main concern. The fact that domestic abuse is (rightly) a high-profile issue should not take away from the fact that family proceedings have to deal with a wide range of social/health factors, often as well as domestic abuse.

Conclusions about legal outputs:

- It was more common for unsupervised contact to be ordered at the first hearing (55% of cases) where no domestic abuse was alleged than where such an allegation had been made (23%). This was also the case at the final hearing where unsupervised contact was ordered in 48% of cases that did not feature domestic abuse allegations and in 39% of cases that did. In the majority of cases that featured domestic abuse allegations, unsupervised contact had been taking place within the year before the application was made to court.
- Supervised or supported contact was more likely to be ordered at the first and final hearing where a domestic abuse allegation was made, as was indirect or no contact.
- Likewise, FCAs were more likely to recommend supervised contact in the domestic abuse cases than those that contained no such allegation. Further, FCAs recommended either indirect or no contact in nearly a quarter of the domestic abuse cases.
- The terms of Practice Direction 12J relating to both parents being present in court; safeguarding checks being completed; and the FCA having spoken to both parents, were met in the majority of cases.

Appendix A: frequency of domestic abuse allegations on case file by gender

Type of alleged abuse	Allegations made by females/males	Allegation	LA	Police level 1	Police level 2	Medical evidence	MIAM exemption	DVPP referral	Finding of Fact	DA related orders	Total
Physical	F	89	37	35	20	0	9	5	4	14	213
	M	33	5	2	9	0	0	0	0	0	49
Sexual	F	10	1	1	2	0	1	0	0	1	16
	M	1	0	0	0	0	0	0	0	0	1
Coercive control	F	74	20	13	21	0	4	0	1	18	151
	M	7	0	0	1	0	0	0	0	0	8
Total		214	63	51	53	0	14	5	5	33	438

Appendix B: cases with an unknown legal output on the Cafcass case file

In 41 of the 133 cases where domestic abuse was alleged, Cafcass did not have a copy of the final order on the case file. In the majority of cases, this is because Cafcass' involvement ended prior to the final hearing. Copies of these outstanding court orders were requested directly from the courts, and 34 were provided. In six cases the applications were either withdrawn or dismissed ('No order was made about contact').

Contact ordered (41 cases)	Number and percentage of outputs
Direct unsupervised	25 (62%)
Direct supervised	0
Direct supported	1 (2%)
Indirect	1 (2%)
No contact	1 (2%)
No order was made about contact	6 (15%)
Not known	7 (17%)
Total	41

Appendix C: full survey

1. ECMS number and case name
2. Type of case
 - a. WTFH
 - b. WAFH
3. Applicant
 - a. Male
 - b. Female
4. Respondent
 - a. Male
 - b. Female
5. Were concerns raised in the case about domestic abuse between the applicant and respondent?
 - a. Yes
 - b. No SKIP TO 10
6. Did the applicant allege that they were the victim of domestic abuse perpetrated by the respondent?
 - a. Yes
 - b. No SKIP TO 8
 - c. Reciprocal
7. What type of abuse was alleged/evidenced and what corroboration was recorded in the case file? (Please tick all that applies).

	Allegation	LA data	Police data - level 1 PNC data e.g. convictions, cautions, reprimands, warnings	Police data - level 2 'soft data' e.g. all police call outs	Medical evidence	Exemption from MIAM	Perpetrator referred to a DVPP	Finding of Fact	DA-related orders
Physical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Controlling/coercive behaviours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other (please specify)

8. Did the respondent allege that they were the victim of domestic abuse perpetrated by the applicant?
 - a. Yes
 - b. No SKIP TO 10
 - c. Reciprocal
9. What type of abuse was alleged/evidenced and what corroboration was recorded in the case file? (Please tick all that applies).

	Allegation	LA data	Police data - level 1 PNC data e.g. convictions, cautions, reprimands, warnings	Police data - level 2 'soft data' e.g. all police call outs	Medical evidence	Exemption from MIAM	Perpetrator referred to a DVPP	Finding of Fact	DA-related orders
Physical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Controlling/coercive behaviours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other (please specify)

10. Was there a record of allegations of domestic abuse in either of the parties' previous or current relationships?

- a. Yes
- b. None known **SKIP TO 12**

11. Please specify who was the victim and who was the perpetrator of the alleged domestic abuse in the parties' previous or current relationships. (Tick all that apply.)

- a. Applicant previous victim
- b. Applicant previous perpetrator
- c. Applicant current victim
- d. Applicant current perpetrator
- e. Respondent previous victim
- f. Respondent previous perpetrator
- g. Respondent current victim
- h. Respondent current perpetrator

Any other comments?

12. Were there other allegations within the case file? (E.g. child abuse, child abduction, parental mental illness, parental mental health, entrenched parental conflict/implacable hostility etc.)

- a. Yes
- b. No **SKIP TO 14**

13. Please tick all allegations that apply.

- a. Child abuse - neglect Applicant and/or respondent
- b. Child abuse - physical Applicant and/or respondent
- c. Child abuse - sexual Applicant and/or respondent
- d. Child abuse - emotional Applicant and/or respondent
- e. Child abduction Applicant and/or respondent
- f. Child exploitation (radicalisation, CSE, trafficking, FGM) Applicant and/or respondent
- g. Parental mental health Applicant and/or respondent
- h. Parental substance abuse Applicant and/or respondent
- i. Implacable hostility Applicant and/or respondent

- j. Highly conflicted parents
Applicant and/or respondent
- k. History of violence other than domestic abuse
Applicant and/or respondent
- l. Parental learning difficulties
Applicant and/or respondent
- m. Other (free text)
14. What contact was ordered by the court at the first hearing?
- Direct unsupervised
 - Direct supervised
 - Direct supported
 - Indirect
 - No contact
 - No order was made about contact **SKIP TO 16**
15. Was the order made by consent?
- Yes
 - No
 - Don't know
16. Was there any supervised or supported contact during the case?
- Yes
 - No
 - Don't know
17. What was the Cafcass practitioner's advice to the court in their final report?
- Direct unsupervised
 - Direct supervised
 - Direct supported
 - Indirect
 - No contact
 - No order
 - WTFH Safeguarding Letter with no advice about contact
18. What was the final court order?
- Direct unsupervised
 - Direct supervised
 - Direct supported
 - Indirect
 - No contact
 - No order
 - Not known
19. When the final child arrangements order was made did the following apply:

	Yes	No	Don't know
Were both parties present in court?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were safeguarding checks completed on both parties?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Had the Cafcass practitioner spoken to both parties separately? e.g. when compiling the safeguarding letter, the section 7, in court etc.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

20. Was the order made by consent?

- a. Yes
- b. No
- c. Don't know

21. Any other comments?