

Women in the Justice System – A Strategic Approach
Response from academics on the 'Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings' project

1. This short response focuses on whether the Scottish Justice System may not be meeting the needs of or upholding the rights of women affected by domestic abuse in terms of their experiences of civil justice, in particular around child contact. This response draws on the knowledge of the project team behind 'Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings', funded by Scottish Government. This project is at an early stage and therefore we are unable to provide findings at this point; the project is due to report in spring 2022 while the work of the expert panel is ongoing and we would welcome the opportunity to support the work of the panel more substantively at an appropriate time.
2. Thinking about the needs and rights of women affected by domestic abuse is an important consideration in terms of the Scottish Justice System meeting the needs of women as a whole. Domestic abuse is a gendered crime that is predominantly perpetrated by men against women, for example Police Scotland data reports that 80% of domestic abuse incidents involve a male perpetrator and a female victim, where gender is known; where the relationship between the perpetrator and victim is known, almost half (49%) of incidents involve ex-partners (Scottish Government, 2021). The Crown Office and Procurator Fiscal Service (2021) reported 33,425 charges with a domestic abuse identifier in 2020-21, a 9% increase on the previous year and the second year of an increasing volume of charges. Domestic abuse is therefore an important area for the Scottish Justice System to get right overall, and particularly for women.
3. Civil justice, in particular systems and processes around child contact, is an important part of the Scottish Justice System for women affected by domestic abuse. Child contact and the civil processes around it has been identified as an area that may enable perpetrators of domestic abuse in a variety of ways (Wilson Smith et al 2019; Morrison 2015). The Scotland in Lockdown report (Armstrong et al, 2021) found that perpetrators' use of child contact to manipulate and control women had worsened during the pandemic. Research that reviewed court papers in Scotland a decade ago found that domestic abuse was alleged in half of child contact court actions (Mackay, 2012); more recent research in other jurisdictions may suggest this proportion would now be higher (for example CAFCASS/Women's Aid (2017) review of case files found allegations of domestic abuse in 62% of child contact proceedings).
4. The relationship between the civil and criminal systems appears to cause particular issues for women subjected to domestic abuse, for police responding to domestic abuse and for support organisations seeking to support women. Police officers interviewed about the implementation of the Domestic Abuse (Scotland) Act 2018 for the EU-funded IMPRODOVA project raised concerns about the limits of the new legislation, and in particular manipulation of child contact not being able to be seen as part of a course of conduct of coercive control. Participants in the 'Justice Journeys' research (Brooks-Hay et al 2019) reported confusion about the relationship between criminal justice processes and child contact cases, and highlighted the lengthy time taken between the outcome of

criminal proceedings and the civil case. Women engaging in child contact court processes report being advised by solicitors not to mention domestic abuse, for reasons such as it being considered an attempt to manipulate the processes (Whitecross, 2017); such advice may affect their confidence in domestic abuse being treated seriously as a crime as well as their confidence in legislative provisions requiring abuse to be considered in civil decision-making. Part of the motivation for our current research project, Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings, is to provide more robust, Scotland wide evidence in this area.

5. We would also highlight the importance of considering as part of the Scottish Justice System not only the civil court processes but also the decision-making that takes place outwith the courts themselves. Not all child contact matters are resolved through court processes, many may be agreed informally or through solicitors e.g. in the form of a Minute of Agreement. Morrison (2015) found that informal contact arrangements facilitated by women were common in the period immediately following separation in her study of families experiencing domestic abuse, parental separation and contact. There is no current data available in Scotland that allows us to establish the volume of child contact matters that are resolved outwith formal court processes. The 2007 Child Contact Survey found that 3% of parents had used the courts to resolve child contact arrangements, in line with more recent data from other jurisdictions (e.g. the Australian Institute for Family Studies (2019) reports that only 3% of parents resolve parenting arrangements through the courts (16% use family dispute resolution services or lawyers)). It is likely therefore that the bulk of child contact matters are resolved without recourse to the courts but these still constitute part of women's experiences of civil justice.
6. We would argue therefore that civil justice, both specifically the court processes but also the wider landscape, must be an important part of consideration of the extent to which women's needs are being met by the Scottish Justice System. We note that the suggested framing of further work around three issues (criminalisation of women, victimisation of women and women as actors (professionals/staff/ leadership)) has the potential to exclude women's experiences around civil justice, as these categories do not appear to encompass women accessing civil justice.
7. Our ability to understand how civil court processes are or are not providing for the needs or upholding the rights of women is hampered by the lack of robust, gender disaggregated, data on civil court processes and experiences. While the Scottish Crime and Justice Survey provides some information broken down by gender, we lack for example regularly published information about the gender of pursuers and defenders in relation to initiation and disposal of cases or on civil legal aid for child contact by gender. We note that other key information currently unavailable in Scotland (but available in other UK jurisdictions such as England and Wales (Ministry of Justice 2021) and Northern Ireland (Northern Ireland Courts and Tribunals Service, 2021)), such as the timeliness of cases or the age of children involved in child contact processes, is relevant to the experience of women but also to the requirement to review operation of children's rights to participate set out in the Children (Scotland) Act 2020. Proposals for further developing data publications around civil justice in Scotland could therefore helpfully consider these issues together (Mackay, 2018, notes that children's contact with alleged

perpetrators of domestic abuse was more likely where children were younger and their views were not sought). We would recommend therefore that further work around a strategic approach to women in the Scottish Justice System includes women's experiences of civil justice and that priorities for robust, gender disaggregated data collection and publication around civil justice are identified and taken forward.

Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings

This project aims to examine the processes of child contact proceedings, particularly child welfare hearings, and their interaction with criminal proceedings in the context of domestic abuse. The Principal Investigator is Professor Jane Mair, University of Glasgow, and the project team comprises Professor Michele Burman and Dr Ruth Friskney, University of Glasgow, and Professor Richard Whitecross, Edinburgh Napier University. The project is funded by Scottish Government. Further information about the project is available at the Scottish Civil Justice Hub website (www.scjh.org.uk).

IMPRODOVA (Improving Frontline Responses to High Impact Domestic Violence)

This project, involving 16 partners from eight European countries, is designed to provide solutions for an integrated response to domestic violence. IMPRODOVA was funded under the EU's Horizon 2020 Research and Innovation programme under Grant Agreement No. 787054. Further information about the project is available at: <https://www.improdova.eu/>

References

Armstrong, S. et al. (2020) *Left out and locked down: impacts of COVID-19 for marginalised groups in Scotland*. Project Report. University of Glasgow.
https://scotlandinlockdown.files.wordpress.com/2020/12/scotlock_project_report_full_dec2020-2.pdf

Australian Institute for Family Studies (2019) Parenting arrangements after separation – Research Summary. <https://aifs.gov.au/publications/parenting-arrangements-after-separation>

Brooks-Hay, O., Burman, M. and Bradley, L. (2019) Justice Journeys: Informing policy and practice through lived experience of victim-survivors of rape and sexual assault. The Scottish Centre for Crime and Justice Research Report 4/2019. https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report_Aug-2019_FINAL.pdf

CAFCASS & Women's Aid (2017) Allegations of domestic abuse in child contact cases. <https://www.cafcass.gov.uk/wp-content/uploads/2017/12/Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf>

Crown Office & Procurator Fiscal Service (2021) Domestic abuse and stalking charges in Scotland 2020 –21. <https://www.copfs.gov.uk/images/Documents/Publications/Statistics%20-%20Domestic%20Abuse/Domestic%20Abuse%20and%20Stalking%20Charges%20in%20Scotland%202020-21.pdf>

Mackay, K. (2018) The approach in Scotland to child contact disputes involving allegations of domestic abuse. *Journal of Social Welfare and Family Law*, 40(4), 477-495.
doi.org/10.1080/09649069.2018.1519654

Mackay, K., (2012) *The Child's Voice in Contact Disputes: Genuine Participation in Private Law Court Actions*. Lambert Academic Publishing. Saarbrucken, Germany.

Ministry of Justice (2021) Family Court Statistics Quarterly: April to June 2021.
<https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2021/family-court-statistics-quarterly-april-to-june-2021>

Morrison, F. (2015) 'All Over Now?' The Ongoing Relational Consequences of Domestic Abuse through Children's Contact Arrangements. *Child Abuse Review*, 24 (4), 274-284.
doi.org/10.1002/car.2409

Northern Ireland Courts and Tribunals Service (2021) Children Order Bulletin July to September 2021. Research and Statistical Bulletin Provisional Figures. <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/children-order-bulletin-july-to-september-2021.pdf>

Scottish Government (2021) Domestic abuse recorded by the police in Scotland, 2020-21.
<https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2020-21/>

Scottish Government (2008) 2007 Scottish Child Contact Survey.
<https://www.webarchive.org.uk/wayback/archive/20150219222800/http://www.gov.scot/Publications/2008/03/12145638/8>

Whitecross, R. W. (2017). Section 11 Orders and the "Abuse" Provisions: Family Lawyers' Experience and Understanding of Section 11(7A)-(7E). *Edinburgh Law Review*, 269-275.
10.3366/elr.2017.0419

Wilson Smith, E., Skellington Orr, K. and Barry, M. (2019) Understanding Experiences of Child Contact Disputes. Final Report. Wellside Research Ltd/ Scottish Legal Aid Board.
<https://www.slab.org.uk/app/uploads/2019/03/Child-Contact-Dispute-Findings-Report.pdf>