

Recommendation 1: The issue of domestic abuse should be brought to the attention of the family lawyers and the court as soon as possible, and not left to the parties.

Consideration should be given to development of robust mechanisms which ensure the early identification of any prior or ongoing action or concerns relating to domestic abuse in child contact cases, and the setting out of the responsibilities of all key professionals in the system to appropriately convey that information.

“We only have that information from the client which is not always accurate. It’s really not on either side because you will have mum saying the police have told me it has been reported to the fiscal and you go, okay that’s fine, what’s happening? [...] I don’t know, I don’t know. Well, if you don’t know I don’t know. I have got no locus to get that information.” (FF3, [p.39](#))

This recommendation aims to ensure that there are mechanisms in place to make legal practitioners involved in child contact cases aware of any considerations around domestic abuse, as early as possible. The findings from [‘Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings’](#) suggested that most practitioners are reliant on one of the parties to inform them about domestic abuse, though parties do not necessarily have accurate and up to date information about the criminal proceedings ([p.24](#), [p.39](#)). The lack of information available to lawyers and the court can cause delays and affect decision-making ([p.51](#)).

The report found that in smaller courts more information may be available due to links between lawyers or the same sheriff hearing both the civil and criminal case ([p.39](#)). In some cases Child Welfare Reporters (CWRs) may provide information to the court about domestic abuse, though this is not without problems ([p.38](#)). Overall, the research did not find any formal or consistent mechanism that ensured legal practitioners could be effectively informed about domestic abuse in child contact proceedings ([p.39](#)). The report raised overarching concerns about the lack of integration between civil and criminal processes and suggested there should be consideration of a centralised specialised service to approach the family’s multiple needs and take broader responsibility for their welfare and safety from domestic abuse (see Recommendation 9).

Questions for discussion

- In your experience, what is the most reliable mechanism you and the courts have for accessing accurate information about domestic abuse relevant to child contact proceedings? What are the main barriers to effective information sharing?
- What else do you think could be put in place to support more integration of civil and criminal processes in relation to child contact?

Recommendation 3: Specialist enhanced training on domestic abuse, coercive control and the impact on children's lives should be made compulsory for all sheriffs, judges and legal practitioners working in the civil system.

"I wouldn't even run that argument [financial, emotional abuse] in front of our sheriffs because I know that that is not something that they would attach weight to. Actually, it would [be] like I was mud-slinging and that does not help." (FF3). [p.35](#).

This recommendation aims to ensure that those involved in child contact cases are aware of the nature and characteristics of domestic abuse and the impact that it can have on children – so it can be fully and consistently considered during child contact proceedings. The findings from the report '[Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings](#)' showed that domestic abuse is not always well understood by all working in civil child contact cases. Yet it is likely that domestic abuse will be a factor in a large number of child contact cases ([p.35](#)).

The report found there could be a misconceptualisation of domestic abuse as being only physical and only relevant to child contact if a child witnessed assault ([p.34-5](#)). The report found that, in some cases, allegations of domestic abuse could be viewed as a tactic used by the non-abusing parent to manipulate the court ([p.24](#)). Furthermore, the findings suggest that a consistent approach is not taken, with variation for example depending on the sheriff hearing the case, and their background or experience ([p.47](#)).

Questions for discussion

- What training in relation to domestic abuse do you think needs to be available for different practitioners in child contact proceedings?
- Are there any barriers which would prevent this training from being taken up?

Recommendation 4: Information about domestic abuse should be included in pleadings, Child Welfare Hearings (CWHs), and proofs in order to allow the court full information about the abuse and sufficient time to be able to consider the impact of domestic abuse on children.

“I always do really detailed pleadings relating to 11(7E) and sometimes it just doesn’t come through though, in a hearing, it just doesn’t. In Child Welfare Hearings, however detailed and forensic your pleadings are, that’s generally not the focus of the hearing [...] so the theory of that law and legislation is great, but I just don’t find that it cuts through to practical decisions.” (FF7).

This recommendation aims to ensure that the court has the appropriate mechanisms to fully consider domestic abuse and its impact on the child during child contact proceedings. The report [‘Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings’](#) found that the court may often be limited in practice in its opportunities to consider domestic abuse as a factor in the child’s best interest, despite this being a requirement of the Children (Scotland) Act 1995 ([p.33](#)).

The report found that the process followed in child contact cases may hinder consideration of domestic abuse. Information about domestic abuse may be contained in pleadings, but these pleadings are not necessarily the focus of Child Welfare Hearings (CWHs) ([p.33](#)). Domestic abuse might be considered at proof, but cases relatively rarely went to proof. Participants in the research also suggested that CWHs of 15-30 minutes did not allow the court to really understand the relevant issues in terms of domestic abuse ([p.34](#)). A Child Welfare Reporter might have more space and time to understand the considerations around domestic abuse in a particular care, but they were not appointed in every case ([p.36](#)).

The report also considered the court’s lack of mechanisms to effectively consider safety risks to children arising from domestic abuse and balance these with other issues in terms of child contact. The report suggested courts should seek risk assessments from individuals or organisations with specialist knowledge around domestic abuse (Recommendation 10).

Questions for discussion

- When and how in child contact proceedings is the court able to most effectively consider domestic abuse?
- Would a process of specialist risk assessment support courts to more effectively consider issues around domestic abuse in terms of child contact?

Recommendation 5: For child contact proceedings to operate in a way that realises children’s rights to participate, greater attention must be paid to facilitating the child’s right to express their views and have those views considered by the court.

“And I think what’s often the thing, when I’m acting for a particular client is I hear everything that client’s saying, I’ll hear a lot of what the other parent’s saying. But there’s very little, if any, information about what the child’s actually saying” (FF5).

This recommendation aims to ensure that children’s rights to express their views and have those views considered by the court are upheld in child contact proceedings.

The findings from the report [‘Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings’](#) suggested that children’s views were regularly heard by the court, but they are often considered as an investigatory tool to test evidence, rather than this being understood in terms of a child’s right to participate ([p.32](#)). The report raised particular concerns around the rights of younger children, whose views might be considered less likely to be useful. Participants also noted that Child Welfare Reporters (CWRs) might be used as the main mechanism to enable a child to express their views but CWRs were not appointed in every case ([p.32](#)).

Questions to consider?

- In your experience, what are the main barriers to children’s rights to participate being realised in child contact proceedings?
- What do you think could be put in place to better support children’s rights to participate in child contact proceedings?