Domestic Violence and Private Family Court Proceedings: promoting child welfare or promoting contact?

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Introduction

- Paper based on PhD research (ESRC & Cafcass, 2010)

- Documentary analysis of Cafcass S7 (Children Act 1989) welfare reports: domestic violence & children’s voices

- Background to research interests:
  - Impacts of DV on children
  - DV and child contact
  - Challenges & contradictions in practice

- Research: methodology, key findings, conclusions
Is there perhaps something which the victims of domestic violence have in common — some clue as to why they are abused?

Yes. The one element consistently present in all the cases we studied was a violent partner.
DV and children

Research has demonstrated:

• Significant links between DV and child abuse (e.g. Bowker et al., 1988, Farmer and Owen, 1995; Hester and Pearson, 1998; Stark and Flitcraft, 1988).

• Detrimental impacts on children of witnessing/being exposed to DV (e.g. Abrahams, 1994; Edleson, 1999; Harold and Howarth, 2004; Holden et. al., 1998; Jaffe et al., 1990; Wolfe et al. 2003).
Policy responses

- Adoption and Children Act 2002 – S120 amends the definition of ‘significant harm’ as defined in Section 31 Children Act 1989 to include: ‘impairment suffered from seeing or hearing the ill-treatment of another’.
- Came into force in England and Wales in 2005.
- Has resulted in an increase of police notifications of DV to social services departments (Stanley et al., 2010).
IF THERE’S VIOLENCE IN THE HOME, THE KIDS GET THE PICTURE.

DOMESTIC VIOLENCE IT IS YOUR BUSINESS.
Child Contact: what we know

• Violence often escalates post parental separation (Abrahams, 1994; Hester and Radford, 1996; Humphreys and Thiara, 2003; Wilson and Daly, 2002).

• Child contact can be used to continue the abuse of women/children (Walby and Allen, 2004; Radford and Hester, 2006; Howarth et al., 2009).

• Contact can put women/children at serious risk of harm (Richards, 2003; Saunders, 2004).
Child Contact: what happens

- Child contact/residence issues – private family law proceedings (s8 Children Act 1989).
- In cases where resolution cannot be agreed, the court may order a welfare report, usually undertaken by Cafcass (s7 report, Children Act 1989).
- Growing recognition of risks associated with DV has resulted in policy developments - case law and guidance state DV must be taken into account.
- But legal presumption of contact is strong – contact nearly always ordered (less than 1% cases no contact ordered; yet number of cases involving DV is high).
Challenges and contradictions

Hester’s “three planets” model:
Fragmentation caused by fundamentally different approaches across three main areas of work with families experiencing domestic violence.

- Domestic violence planet – specialist (mostly vol. sector) support for (mainly female) victim/survivors; criminal & civil justice responses to (mainly male) perpetrators.
- Child protection planet – social services; focus on safeguarding children (public law); mothers as protectors.
- Child contact planet – family courts (private law); contact promoted; parents; focus on the future.

(Hester, 2011)
Research aims

- To examine how and to what extent issues of domestic violence and children’s perspectives are included and considered in s7 reports where there are allegations of domestic violence (how do these considerations impact on report recommendations?).
- To examine other ‘professional’ discourses that may interact with and impact on considerations of domestic violence and children’s perspectives.
Methodology

- Documentary Analysis of 70 Section 7 Reports (2006-2007):
  - Content Analysis (case profile information)
  - Critical Discourse Analysis (qualitative, in-depth)
Profile of cases: DV ‘descriptions’

- Reports sampled on basis of containing issues of DV.
- Detail and the way that DV was described, or presented, in reports varied.
- In a small number of reports, the primary concern presented was not DV (e.g. child abuse, mental health).
- In remaining reports, some commonalities identified in the way information about DV was presented.
- As a result, a number of ‘categorisations’ of how DV was presented were created.
DV ‘categorisations’

- “Mutual DV” (nearly 33%)
- “Historic or Uncorroborated DV” (27%)
- “Classic DV” (17%)
- Other categories included ‘Other Partner DV’, ‘Insufficient Information’.
The importance of language

“Their relationship as a couple appears to have been very intense and volatile”

“...a number of violent incidents”

“There are mutual allegations of domestic violence”

Mainly focussed on the relationship as the site of concern, rather than the behaviour of perpetrators
Profile of cases: applications

- Almost 75% of applications made were by fathers (mostly in respect of contact).
- Most allegations of DV made against fathers.
- Mothers’ applications mainly concerned with formalising arrangements or varying existing orders.
- Six reports referred to fathers’ applications to enforce contact, where contact had been stopped due to child’s wishes or child’s distress around contact.
Criminal justice involvement

- 60% of reports provided some detail regarding CJS involvement as a result of DV.
- A significant minority of reports provided details of prolific and serious CJS involvement with families due to DV (e.g. attempted murder of mother, convictions for assaults, repeated police notifications, injunction breaches...).
- 12 fathers had convictions for violence – 9 of these were seeking contact.
Social services involvement

- Nearly two thirds of reports referred to social services involvement with the family.

- There was an overlap of CJS and SSD involvement in 44% of reports.

- Nearly ¼ of reports identified child abuse, past and present, as an issue. Fathers alone were more likely to be identified as the perpetrator of abuse against a child than anyone else.
Profile of cases: children

- Reports sampled where there was at least one child who was eight years or older.
- Sample of 147 children across 70 reports who were subject to proceedings.
- The vast majority of children were interviewed at least once by Cafcass (90%).
- Over 50% were interviewed more than once.
- Most children interviewed alone (and given the choice over location and who was present).
Children’s perspectives

- Children were routinely asked to share their wishes and feelings regarding residence/contact.
- These views appeared to be taken into consideration on the whole (often key determinants for older children) – but used to support contact or viewed as obstructions to contact.
- Also, children’s views regarding DV often not present in reports or were not explored in depth.
Report recommendations

- Recommendations of No Contact were rare – (in only two reports).
- A third of reports in which direct contact was recommended also included information regarding both police and social services involvement due to DV.
- Indirect contact was more likely to be recommended than supervised contact.
- Almost all recommendations for indirect contact were linked to children’s views/behaviour, but included a strong focus on ‘rebuilding father/child relationships’ and re-establishing direct contact.
CDA: ‘classic DV’ reports

- Violence frequently viewed through a neutral, de-gendered lens (impartiality).
- Women and children’s accounts of violence effectively ‘discounted’.
- Neutrality affected by external evidence of the perpetrator’s violence, to some extent.
- However, a strong sense of preserving family relationships, looking to the future (‘time heals’) and getting parents to agree, meant that contact was overridingly viewed as desirable and inevitable, despite potential risks/welfare concerns.
CDA: children’s perspectives on violence


- Children’s wishes and feelings regarding contact more likely to be determinant factors in relation to contact recommendations than children’s voiced (but ‘invalidated’) experiences of violence.

- Children’s disclosures of violence regularly disappeared from recommendations to court.
CDA: recommendations

- Issues of domestic violence and children’s perspectives on violence were regularly absent from the report summary and the recommendations made to court.

- Children’s strength of feelings about contact generally respected, but with proviso that contact be pursued in the future and without adequate consideration of risk factors associated with DV.
“Professional” discourses

- Impartiality (unchallenged impartiality = neutrality = dilution or obscuring of nature/impacts of violence)

- Family preservation - the importance of fathers and shared parenting

- Agreement-seeking
Summary of findings

- Domestic violence and children’s perspectives included (although children’s views on violence were often missing or minimal);
- But, DV and children’s perspectives on violence did not impact strongly or consistently upon child contact recommendations;
- Other ‘professional discourses’ (e.g. ‘impartiality’, ‘agreement-seeking’, ‘the importance fathers and shared parenting’) appeared to be more influential overall.
Discussion

- It appears that Cafcass is aware of and taking on board the messages regarding issues of DV and child welfare and children’s participation in decision-making processes.

- But it also appears that Cafcass is unsure of what to do with these messages in a judicial (and social) climate that continues to promote contact as the paramount goal.
References

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