"Totally Invisible"

The experiences of domestic violence and abuse victims/survivors and children engaging with private law family court processes in Northern Ireland.

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LIST OF ABBREVIATIONS

Cafcass	Children and Family Court Advisory and Support Service
CAP	Child Arrangements Programme
CCO	Court Children's Officer
CIR	Child Impact Report
CJINI	Criminal Justice Inspection Northern Ireland
CPIT	Court and Perpetrator Induced Trauma
CVOC	Commissioner for Victims of Crime
CYPAG	Children and Young People's Advisory Group
DASH	Domestic Abuse, Stalking, Harassment and Honour-Based Violence
DVA	Domestic violence and abuse
FCA	Family Court Advisor
FJC	Family Justice Council
IDVA	Independent Domestic Violence Advocate
IDV	Integrated Domestic Violence Courts
IRD	Interagency referral discussion
ISVA	Independent Sexual Violence Advocate
ISW	Independent Social Worker
JII	Joint investigative interview
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LCJ	Lady Chief Justice of Northern Ireland
MARAC	Multi-Agency Risk Assessment Conference
MIAM	Mediation and Information Assessment Meeting
MOJ	Ministry of Justice
NGO	Non-Governmental Organisation
NICHD	National Institute of Child Health and Human Development
PPS	Public Prosecution Service for Northern Ireland
QLR	Qualified Legal Representative
SAY	Social Action Youth
SCIM	Scottish Child Interview Model
TIA	Trauma-informed approaches
UK	United Kingdom
UNCRC	UN Convention on the Rights of the Child
WAFNI	Women's Aid Federation Northern Ireland

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Children and Young People's Advisory Group members (in alphabetical order)

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FOREWORD

Since taking up this post, I regularly hear heart-breaking and often distressing experiences from domestic abuse victims navigating our private law family court system post separation. These experiences paint a troubling picture of a court system that, while intended to be a neutral problem-solving arena, is frequently being used as a tool for ongoing domestic abuse. The adversarial nature of hearings, protracted proceedings, a 'pro-contact' culture, and repeated applications are serving as weapons for perpetrators to exacerbate trauma and undermine the safety and well-being of victims and their children. A recurring theme running through these experiences is of a system where the voices of the children affected are often obscured or minimised, with limited opportunities for meaningful involvement and where victims describe feeling 'totally invisible'.

Central to our family court system is the undisputed principle that decisions must be taken in the best interests of the child. Whilst Northern Ireland does not have a legislative presumption of parental involvement as is the case in England and Wales, this report clearly demonstrates that a similar approach is guiding decision making and contact with both parents is generally understood to benefit the child except where there is strong evidence that it would be harmful to their safety and well-being. In short, the starting point for decision-making is a presumption of contact. In England and Wales, the dangers and drawbacks of this presumption have been recognised and the government has indicated its intention to repeal it.

As our understanding and recognition of domestic abuse has grown it is increasingly clear that children are not mere bystanders within a domestic abuse context but quite often victims themselves, suffering emotional, psychological and physical harm. Exposure to an abusive parent post-separation may further perpetuate that harm, leaving children living with the consequences of contact decisions long after they have been taken in court. It is the voices of those children impacted by such decisions, and their desire to be heard, that has led to this research before you.

The conclusions laid out within the report paint a stark, if perhaps not surprising, picture of the shortcomings of the current private family court system which regulates contact between parents and children.

The findings are derived from a comprehensive analysis of how processes impact on children and non-abusive parents, drawing on evidence from justice, health and legal professionals, support agencies, the judiciary, and perhaps most importantly from the lived experiences of victims and children themselves. The bottom line is that the current system for determining contact arrangements is not conducive to putting the needs of the child first, and risks causing further harm to children through forced contact, lengthy proceedings, minimising the voices of young people and failure to understand that abuse and coercive control affect children directly.

This report is a watershed moment for family justice in Northern Ireland. Children are telling us that they are being harmed by their experience of contact proceedings. We have a duty to listen to what they are telling us and, most importantly, to act. Doing nothing is simply not an option – things need to change and they need to change now.

It is clear that there is significant work required to integrate our improved understanding of the impact of coercive control into risk assessments and family proceedings more broadly.

The adversarial nature of proceedings is enabling acrimony and further abuse to dominate cases over the wishes and needs of the child. There is also a gulf to be overcome between professionals and children themselves as to how and whether they are truly giving children a voice and acting in their best interests.

Children are clear that they want to be informed about the process and understand how decisions are made and how their opinions are factored into that. This can only be attained by doing family court business differently.

We need a new model for contact proceedings, drawing on the good practice developed in other jurisdictions that have already been grappling with the same issues and shortcomings in their own systems. Implementing a child-focused, trauma and risk informed approach which draws on the strengths of our legal system but removes the conditions which are enabling further abuse of adult and child victims of domestic abuse, will ensure Northern Ireland is meeting its obligation to the safety, well-being and best interests of the children who have been impacted by domestic abuse.

The first step on that path for this office will be to seek the formation of a cross-departmental, multi-agency working group to explore what a new private family law system which puts the safety and well-being of domestic abuse victims and children first might look like for Northern Ireland.

I am grateful to the researchers at the Centre for Children's Rights in Queen's University Belfast for delivering this comprehensive study.

Thanks are also due to the stakeholder organisations and agencies, members of the judiciary, and legal professionals, who gave up their time to share their own expertise and professional experience of the system.

Last but by no means least, I would like to personally and sincerely thank every victim and survivor of domestic abuse who shared their experience of the family courts with the research team as well as those who have contacted our office since its inception to share their concerns.

Particular thanks are owed to the young people who contributed to the research, both through sharing their own lived experiences and guiding the research as part of the Children & Young People's Advisory Group (CYPAG).

Those young people who are members of the SAY project supported by Women's Aid Federation NI have been truly courageous in speaking up, sharing their traumatic experiences, and telling us the change they wish to see.

To Alex, Cherry, Jess, Kera, Lara, Niamh, Olivia and Rory, I am eternally grateful to every single one of you for your bravery, your honesty, and your commitment to make things better for the next generation of children and young people who engage with the family courts.

I sincerely hope that this research will provide the catalyst for change that many have long campaigned for and that most importantly victims and children deserve.

Geraldine Hanna

Commissioner Designate for Victims of Crime NI

Chapter 1:
INTRODUCTION

1.1 Introduction to Research

The family court system plays a crucial role in addressing domestic violence and abuse (DVA) cases and making decisions that profoundly impact on the lives of victims/survivors and their children. Concerns about family court processes and their impacts on victims/survivors and their children have been documented in neighbouring jurisdictions (Holt et al., 2025; Gillen, 2017; Hunter et al., 2020) alongside emerging insights into the experiences of victims/survivors in a local context (McLaughlin et al., 2024). Evidence indicates that victims/survivors may feel retraumatised by court proceedings and that experiences of DVA can be overlooked or misunderstood. A Terms of Reference (Corr & McAlister, 2024) commissioned by the Commissioner Designate for Victims of Crime (CVOC) offered a preliminary examination of children's participation in the family courts, identifying a need to further explore children's experiences of having their views collected, the most effective methods of children sharing their views in ways which are empowering, and the extent to which their views are taken into account and have influence. Concerns have been raised that children's participation rights have not been implemented in ways that fulfil the requirements of Article 12 of UNCRC (Morrison et al., 2020) and, thus, examining this through a child's rights lens is warranted.

This research study aimed to better understand the experiences of DVA victims/survivors and children engaging with private law family court processes in Northern Ireland. In doing so, it provided a rapid evidence assessment of the existing literature detailing the experience of DVA victims/survivors in family courts, with a particular focus on children's experiences (Chapter 2). This review also engaged in a comparative analysis of family court practices across jurisdictions to identify best practices for improving the experience and participation of children and adult victims/survivors of DVA (Chapter 3). Chapter 4 offers an account of the methodological approach adopted. Chapters 5 through to 10 present the analysis of data collected with participants who could speak to the experiences of victims/survivors and/or experiences of children's participation in family court processes – victims/survivors, children and young people, judiciary, legal professionals, Court Children's Officers (CCOs), independent social workers (ISWs) and child/victim advocates. Lastly, Chapter 11 presents the conclusions of this study and outlines recommendations for improved practice.

1.2 A Note on Terminology

For clarity and consistency, this report adopts the following terminology. Many of the terms used in this context carry distinct statutory, policy or practice-based meanings.

1.2.1 Domestic Violence and Abuse

Using a clear and inclusive definition of domestic violence and abuse (DVA) ensures that the many forms of abuse that can occur are recognised and that victim/survivors' experiences are appropriately contextualised.

DVA is therefore used to describe any incident or pattern of controlling, coercive, threatening, degrading, or violent behaviour, whether physical, sexual, psychological, or emotional, that occurs between current or former intimate partners or family members. DVA can also include financial abuse, harassment and the use of children/young people as a means of enacting control over the victim/survivor. The use of this definition reflects the current understanding of DVA in both the literature and in statutory guidance and policy in Northern Ireland.

1.2.2 Victim/Survivor

It is imperative that appropriate terminology is used when discussing those who have experienced, are experiencing, or are at risk of experiencing DVA. While the term 'victim' is commonly used in legal contexts, many individuals who have experienced DVA, as well as the organisations that support them, prefer the term 'survivor', as it conveys a sense of empowerment and agency. Ultimately, it is important to follow the lead of the individual who has experienced DVA on their preferred terminology. For the purposes of this report, the dual terminology of 'victim/survivor' is used to acknowledge and respect both terms. Adopting such inclusive terminology acknowledges victim/survivors' diverse preferences, avoids disempowering language and ensures sensitivity in discussing experiences of DVA.

While the authors of this report adopt victim/survivor as their terminology, quotations retain the original language used by participants or as cited in materials and, therefore, some solely use the terms 'victim' or 'survivor'.

1.2.3 Perpetrator

The term 'perpetrator' is used to refer to an individual who engages in violent or abusive behaviour that causes harm, fear or distress. This encompasses the range of abusive actions covered by the DVA definition set out above.

1.2.4 Child and Young Person

The research examines children's experiences of family court processes and, specifically, their experiences of participation. Here, we are referring to the

experiences of children aged under 18. However, we use the terms ‘child/ren’ and ‘young person/people’ interchangeably in the report, acknowledging that some of the older ‘children’ in our study prefer to be viewed as ‘young people’ and that two child/young people participants were aged 18+, and were reflecting on their earlier experiences.

1.2.5 Child/Victim Advocate

The term ‘child/victim advocate’ is used to refer to individuals who provide specialist support, information and safeguarding guidance to children and/or adult victims/survivors of DVA. Most of the participants in the study who fall within this definition worked within a DVA organisation, working in roles specific to supporting women, children, or both.

1.3 Content Warning

This report necessarily engages with potentially distressing material, including details of DVA, its impacts, and the retraumatising effects of contact with family law systems and processes.

Chapter 2:
LITERATURE REVIEW

2.1 Introduction

This literature review provides a rapid evidence assessment of the experience of both adult and child victims/survivors of domestic violence and abuse (DVA) within family law processes, in both Northern Ireland and elsewhere. While there is some overlap between family and criminal law proceedings – for example, through the criminalisation of coercive control and breaches of Non-Molestation Orders (Bates and Hester, 2020) – the primary focus here is on civil proceedings within the family courts. Particular emphasis is placed on private law matters, such as child contact and residence arrangements, rather than on public law interventions like care or supervision orders; however, intersections between these areas are acknowledged where relevant.[1]

2.1.1 Methodology and Search Strategies

The scope of this review is limited primarily to academic publications from the fields of law, social work and related disciplines, published within the past decade. This reflects both the rapidly evolving nature of family court processes and the need to ensure that the material assessed remains directly relevant to the broader ongoing project.

The search strategy prioritised breadth and timeliness over exhaustive coverage. A range of academic databases (e.g. HeinOnline, JSTOR, LexisNexis, Westlaw, Google Scholar) were consulted to identify key publications, including peer-reviewed journal articles and contributions to seminal books. Search terms were employed in various combinations, including '*family court proceedings*', '*domestic abuse'*, '*litigation abuse*', '*coercive control*', '*child participation'* and '*voice of the child*',[2] among others. Grey literature – including Non-Governmental Organisation (NGO) reports, government reviews, and consultation documents – was also incorporated where it provided particularly influential or contemporary insight into reviewing policy and practice in Northern Ireland.

[1] Much consideration has been given to DVA within these other contexts, particularly the criminal justice system, with little to no mention of the family justice system and the various issues that arise there. This is despite, as noted in the Government's response to the Domestic Abuse Commissioner's *Shifting the scales* report, 'not all victims and survivors will interact with the CJS' (Home Office and Ministry of Justice, 2025).

[2] The authors are grateful to the Women's Aid Federation of Northern Ireland (WAFNI), who kindly suggested some additional sources, including Mandel (2024).

2.1.2 Key Findings

Findings from the identified sources were synthesised thematically, with particular attention paid to distinctions between adult and child victims/survivors, as well as to cross-cutting issues such as participation, voice and gendered barriers within the family court process. Taken together, these findings expose persistent barriers to justice for victims/survivors and their children, pointing to the urgent need for trauma-informed, survivor-centred reforms in law, policy and practice.

The literature demonstrates how, at present, some family law processes can both mirror and extend patterns of abuse experienced by victims/survivors. For adults, the minimisation of DVA, post-separation continuation of DVA, and gendered assumptions all contribute to their experiences of disbelief, victim-blaming and re-traumatisation within legal proceedings. For children/young people, their voices are too often marginalised, with disclosures of harm sidelined or framed in line with problematic assumptions about the vulnerabilities of children and the role of parents. Further, comparative analysis (see Chapter 3) underscores that these challenges are not unique to Northern Ireland, or the UK, but reflect broader systemic issues that are evident across many jurisdictions.

2.2 Experiences of Family Court Processes and Proceedings from the Perspectives of Adult DVA Victims/Survivors

'The level of abuse which parents, usually mothers, are expected to tolerate during, and after, separation so that their ex-partner retains direct, unsupervised contact with his children presents a legitimacy problem for the law because it is simply failing to do what it says it will do – ensure that contact is safe for all concerned.'

Walsh, K. (2024) 'The Failure to Recognize Continuing Harm: Post-Separation Domestic Abuse in Child Contact Cases', *Violence Against Women,* 31(8), p.1834.

This section provides insight into adult DVA victims/survivors' experiences navigating the family court process within the existing literature. Despite the reforms and advances of recent years,[3] victims/survivors' accounts across the literature revealed wide-ranging challenges faced before, during, and after family law proceedings

[3] For instance, the Domestic Abuse Act 2021 (England and Wales) and the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 which, amongst other reforms, introduced updated definitions of DVA. This now encompasses a wider range of abusive behaviours, including psychological, sexual, physical, emotional, and coercive control – the latter, now criminalised, can include financial or economic abuse. Importantly, children were also afforded recognition as victims/survivors. In addition to preventing cross-examinations by former partners, several other reforms have since been introduced. These include the Qualified Legal Representative (QLR) scheme and the provision of Independent Domestic Violence Advocates (IDVAs) and Independent Sexual Violence Advocates (ISVAs), which offer support to victims/survivors during proceedings. Additionally, the Pilot of Pathfinder Courts in North Wales and Dorset, in place since 2022, aims to improve information-sharing between agencies (police, local authorities, courts) and to adopt child-centric, problem-solving approaches. For further discussion on Northern Ireland, see McQuigg (2023).

(Bradshaw et al., 2024), and, more rarely, the positive aspects of engaging with the system.

Before turning to the discussion of these findings, it should be noted that the literature reviewed has certain limitations, particularly in relation to intersectionality.[4] Factors such as ethnicity, culture, religious belief, socioeconomic status, disability, neurodiversity, immigration status, gender, or sexual orientation can significantly shape experiences of DVA and family court processes. Yet, these aspects remain underexplored. Much of the existing research relies predominantly on heteronormative, Eurocentric samples, often failing therefore to capture the fullest picture of the extent to which adverse family court experiences may affect individuals – particularly ethnically diverse victims/survivors and those in same-sex relationships or gender-diverse families. The experiences for example, of refugees and minority groups merit further study as do those of relocating parents involved in Hague Convention (child abduction) proceedings, given that these increasingly cite DVA as a key underlying factor in many decisions to flee or relocate (Freeman and Taylor, 2021; Schuz, 2021; Trimmings and Momoh, 2021; Trimmings et al., 2023).[5] These gaps raise important concerns about the generalisability of some findings within existing research.

A further limitation lies in the underrepresentation of men's experiences. While DVA is a highly gendered issue – most often framed in terms of male perpetration and female victimisation (Wild, 2023) – it is important to recognise that male victims/survivors also encounter significant, distinct barriers when navigating family court systems (Hogan et al., 2022; Hine et al., 2025). Although the predominance of female participants within samples is broadly reflective of the wider patterns of DVA and court involvement (Proudman, 2025), this emphasis nonetheless produces an incomplete picture. Studies show that male victims/survivors may struggle to articulate their experiences as DVA, leading to self-doubt, shame, and reduced help-seeking (Walker et al., 2020; Hogan et al., 2022). Such struggles are compounded by various 'masculine norms and expectations' (Hogan et al., 2022: 123),[6] as well as widespread doubt about the ability of support services and the legal system to always respond effectively (Ambrozewicz et al., 2024). A growing body of research has documented the physical and psychological harms male victims/survivors may suffer (Hine et al., 2022; Hine and Douglas, 2023), but there remains a notable gap in terms of feminist criminological engagement with male victims/survivors' perspectives (Westmarland and Burrell, 2023).

[4] On the concept of intersectionality, see further Crenshaw (1989) who used the term to describe how differing aspects of an individual's identity can intersect in ways that are complex, overlapping, and multi-faceted. These intersections can serve to intensify or compound experiences of discrimination and stereotyping.

[5] Schuz (2021) has argued that the Hague Convention is increasingly being relied upon in cases that the drafters might never have envisaged as involving domestic abuse – namely, where mothers are fleeing abuse and perhaps citing this as grounds for claiming asylum within the new state.

[6] Hogan et al. (2022) add that 'hegemonic masculine norms made it difficult for the men to occupy the position of "victim" and increased the men's experience of trauma' (p 137).

Finally, methodological constraints should also be acknowledged. Many studies recruited participants through DVA support organisations. While this is a useful and valued means of prompting access to victims/survivors, it risks excluding the voices of those who, for various reasons, have not engaged with formal support services. Consequently, given these limitations, the existing research base may not always capture the full breadth of lived experiences, particularly among the most marginalised groups. These limitations should be borne in mind when considering the core findings outlined below.

2.2.1 Overview of the Key Themes

The literature highlights persistent shortcomings (and, to a lesser extent, some positive aspects) of the operation of the family law system when victims/survivors of DVA engage with it, regardless of jurisdiction. Court processes can themselves exacerbate the difficulties faced by victims/survivors, with family law proceedings often viewed as reinforcing or perpetuating harmful power imbalances at the systemic level (Stark and Hester, 2019; Gutowski and Goodman, 2020; Reeves et al., 2025). A recurring concern is the inadequate training and lack of trauma-informed awareness among professionals, particularly regarding the complex, long-term dynamics of DVA (Khaw et al., 2021: 4326; Birchall and Choudhry, 2022; Bradshaw et al., 2024; Walsh, 2024).

Victims/survivors described the continuation of abusive and coercive behaviours by perpetrators, sometimes through the family law system itself in the form of litigation abuse. This form of post-separation abuse remains insufficiently recognised within practice. Fear of reprisal from the perpetrator can further discourage victims/survivors from disclosing such ongoing safety concerns (MacDonald, 2016; Holt, 2018; Ayeb-Karlsson, 2024). These challenges were particularly acute for victim/survivor parents navigating hostile family dissolutions, who often found their protective instincts for their children to be at odds with some legal processes that prioritised contact with both parents, even where DVA was present or alleged.

Proceedings themselves were sometimes described as psychologically harmful, especially for those facing additional vulnerabilities such as age, disability, poor health or socio-economic disadvantage. This could generate a ‘silencing effect’ that curtailed disclosure of DVA (Coy et al., 2015; Khaw et al., 2021; Dalgarno et al., 2024a). Victims/survivors’ experiences were also shaped by the gendered nature of much DVA, and the structural barriers that reinforced inequalities and biases within the family court system. Such adverse experiences frequently left victims/survivors feeling disillusioned and betrayed by the very systems intended to protect them, with some experiencing re-traumatisation or secondary victimisation as a result.

Though comparatively rare, some victims/survivors did recount positive experiences within the family law system, especially where professionals were well-trained and empathetic towards their difficulties. The literature, therefore, calls for more therapeutic, problem-solving approaches, suggesting that these could provide victims/survivors with empathetic validation and help ensure that their experiences of DVA are accepted, believed, and understood (Khaw et al., 2021).

2.2.2 A Widespread Lack of Understanding? The Need to be Meaningfully Trauma-Informed

A prominent theme across recent scholarship is the perception that professionals often lack a nuanced understanding of the complex nature of DVA. Research has suggested that persistent shortcomings in both training and awareness among professionals, especially legal practitioners and social services, have contributed to significant failings within the family court system for victims/survivors, both in Northern Ireland (McLaughlin et al., 2024; Corr and McAlister, 2024) and elsewhere (Coy et al., 2015; Mackay, 2018; Burton, 2021; Brandt, 2023; Burman et al., 2023; Cafcass, 2023; Ministry of Justice, 2023; Jacobs, 2023).

2.2.2.1 Lack of Awareness and Understanding

Many studies identified substantial gaps in professionals' awareness across a 'host of settings' in the family law system (Khaw et al., 2021: 4326; Birchall and Choudhry, 2022; Bradshaw et al., 2024; Walsh, 2024), with a troubling lack of empathy and understanding appearing across all professional levels, including amongst the judiciary (Coy et al., 2015; Roberts et al., 2015; Gutowski and Goodman, 2020; Weston et al., 2025).

In the literature reviewed, victims/survivors' perspectives consistently highlighted a pervasive failure of professionals to appreciate the nuances and complexities of abusive relationships (Coy et al., 2015; Campbell, 2017; Laing, 2017; Grey, 2024; McLaughlin et al., 2024). This included misunderstandings about the many challenges faced when attempting to leave an abusive relationship, alongside the associated dangers and trauma (Coy et al., 2015; Burton, 2021; Hay et al., 2023). While it appears professionals are more adept at recognising physical abuse, other forms of DVA – such as coercive control, financial, psychological, or emotional abuse – are often inconsistently understood or addressed within the family court system (Coy et al., 2015; Stark and Hester, 2019; Gutowski and Goodman, 2020; Reeves et al., 2025). The harmful, long-term impacts of DVA upon victims/survivors and their children also frequently appeared to be misunderstood by professionals (Katz, 2019; Douglas and Fell, 2020; Alminde, 2024). The literature further points to a lack of understanding regarding the nature of DVA, which might continue – or indeed worsen – post-separation, as discussed below.

2.2.2.2 Minimising, Discounting or Trivialising DVA

This lack of awareness directly impacts upon how victims/survivors are treated within the processes, with victims/survivors' own accounts indicating that their experiences of abuse often go unheard, leaving them feeling dismissed, minimised, or trivialised within the family law system. The literature suggests that such responses from

professionals reinforce stigma, perpetuate feelings of disempowerment and, in some cases, amount to victim-blaming and secondary victimisation (Gutowski and Goodman, 2020; Douglas and Fell, 2020; Nonomura et al., 2022; Wild et al., 2024; McLaughlin et al., 2024). From victims/survivors' perspectives, such negative interactions contribute to their loss of faith and trust in the family law system, despite a main motive of engaging with the process being to confirm that what happened to them was inherently wrong (McLaughlin et al., 2024).

Legal representatives, in particular, are frequently identified by victims/survivors as lacking adequate awareness and, at times, failing to adopt trauma-informed approaches (Coy et al., 2015; Woodhead et al., 2015; Walsh, 2024; Weston et al., 2025). As a result, victims/survivors recount harsh treatment and judgement from professionals during interactions, including perceived mockery, accusations of lying, or being viewed as bad or unfit mothers (Gutowski and Goodman, 2020). The literature further highlights how this contributes to professionals' misinterpretations of victim/survivor behaviours, given a lack of appreciation of the broader DVA context (Gutowski and Goodman, 2020). This appears particularly pervasive in child arrangement disputes, with child protection workers sometimes assuming that disclosures of DVA are motivated by malice, rather than genuine concern for their children's safety (Saini et al., 2020).

In the context of Northern Ireland, McLaughlin et al. (2024) have argued that this extends beyond a simple lack of understanding, instead reflecting an ingrained victim-blaming culture where victims/survivors are urged to 'keep quiet about the abuse … for fear of being labelled mentally unfit or unstable' (p. 2).

2.2.2.3 The Need to be Meaningfully Trauma-Informed

Encouragingly, though much of the literature emphasises victims/survivors' negative experiences, some research does highlight positive interactions with well-informed legal professionals, which left victims/survivors feeling better equipped to navigate proceedings (Bradshaw et al., 2024). Victims/survivors described instances where professionals had responded to their disclosures of DVA with sensitivity (Gutowski and Goodman, 2020) or acknowledged their behaviour as an 'appropriate reaction' to trauma (Dalgarno et al., 2024: 288), thereby offering validation to their experiences of DVA. The literature further suggests that adopting a 'therapeutic jurisprudence' approach – one that emphasises problem-solving and attends to the psychological dimensions of legal proceedings – could help professionals remain mindful of the long-term and 'far-reaching physical and emotional impacts' of DVA (Khaw et al., 2021: 4326).

As Long and Lynch (2025) argue, dedicated training is essential for professionals in order to develop their capacity to embed trauma-informed approaches ('TIA') to ensure

that ‘survivors of trauma can engage with services’ (p.6).[7] Sustained vigilance among all professionals is critical to maintaining adherence to fully trauma-informed best practices (Bradshaw et al., 2023: 101). For legal professionals, representing victims/survivors’ voices authentically involves recognising that individuals who have experienced cumulative trauma may display a wide range of acute emotional and psychological responses when confronted with memory-triggering situations (Long and Lynch, 2025: 6). More broadly, the literature highlights that professionals can play a vital role in victims/survivors’ post-abuse healing, with the creation of a ‘safe and authentic relational connection’ offering an important step towards recovery whilst navigating family law processes (Herman, 2022).

2.2.3 Power Dynamics: Post-Separation Abuse

Another recurrent, and concerning, theme identified across the literature was the persistent presence of power dynamics within the family law system, which operated in two distinct but interrelated ways. Firstly, perpetrators of DVA can exploit subsequent family law proceedings and processes to enact, continue, or repeat coercive control. Secondly, there is a palpable imbalance of power within the family law system itself.

2.2.3.1 Post-Separation Abuse

Post-separation abuse refers to the continuation, and in some cases the escalation, of patterns of controlling, coercive and abusive behaviours after the relationship has ended. Such abuse may (re-)emerge in the form of financial, social, emotional or psychological harms (Laing, 2017; Kuruppu et al., 2023). Examples include threatening or harassing victims/survivors through social media or via other digital communication technologies (Henry et al., 2020; Romero and Staudenraus, 2024). Notably, the legal process is increasingly recognised in the literature as a key means for perpetrators to maintain power and control over victims/survivors despite their physical separation (Meier and Dickson, 2017; Romero and Staudenraus, 2024). This highlights the importance of recognising across law, policy and professional practice just how family law proceedings might be exploited to harass or intimidate victims/survivors of DVA (Gutowski and Goodman, 2020; Nonomura et al., 2022).

Victims/survivors may experience the family law system as a ‘weapon’ available to perpetrators of DVA to [re]enact such power-dynamics (Dalgarno et al., 2024: 278), not least where the threat of child removal looms large (Rathus et al., 2019). The sharing of key spaces – physical, legal and familial – worsens victims/survivors’ fears of retaliation, acting as a further barrier to disclosing both past and current abusive

[7] Long and Lynch (2025) argue further that an ‘organisational TIA involves a whole system approach,’ citing Bunting et al. (2019). They add that this ‘brings focus to organisational change processes aimed at integrating trauma informed principles across various levels of the system to create environments, policies and workforce practices designed to build collaborative relationships to promote recovery and *prevent re-traumatisation*’ (p. 12, emphasis added).

behaviour (Gutowski and Goodman, 2020). The prospect or reality of being required to face a former abuser in or outside of the courtroom has been described by victims/survivors as particularly harmful, with instances of verbal abuse, being stared down, or being followed by perpetrators (Coy et al., 2015; Gutowski and Goodman, 2020; 2023).

Where the court orders child contact arrangements, methods of post-separation abuse are also reported by victims/survivors. This includes the changing of pre-arrangements; arriving late, early or not at all; unnecessary calls or texts; using contact to glean information from children about victims/survivors' activities; and restricting contact between mother and child (Holt, 2017). For victim/survivor-fathers who remained as the non-resident parent, children were equally seen to be used as 'pawns' or 'weapons' to enact emotional, psychological or financial harm, for instance, through limiting contact or seeking increased child support payments (Hine et al., 2025).

2.2.3.2 Litigation Abuse

Litigation abuse is one of the most pervasive forms of post-separation abuse. It functions as a subtle, yet powerful, tool to initiate, prolong, or resurrect coercive control – commonly through repeatedly delaying proceedings, threatening further litigation, or advancing vexatious claims. In some instances, this may be especially prevalent where it becomes embedded within longer-term patterns of chronic harming. This dynamic may involve efforts to undermine the parenting abilities of non-abusive parents, combined with attempts to influence the views of professionals involved in contact or residence decision-making processes. Likewise, the deliberate prolonging of proceedings to inflict financial strain on the non-abusive parent has also been recognised as a 'weaponising' tactic. As Resolution (2024) recently noted, financial abuse can also take the form of '…withholding funds, hiding assets, delaying, bullying, and breaching court orders… However, it is only following recent developments we have come to understand that these behaviours are post-separation domestic abuse' (p. 3).

The literature frequently identifies systemic features of the family law system as enabling abusive ex-partners to bring or prolong litigation concerning key arrangements for children with relative ease. For example, perpetrators may submit false or irrelevant evidence to portray the victim/survivor as the predominant aggressor (Reeves, 2020), including raising malicious complaints of child abuse (Douglas and Fell, 2020). They might also threaten to lodge repeated applications for court orders which ultimately prove groundless, but nevertheless have the potential to embarrass, intimidate, or humiliate the victim/survivor (Rathus et al., 2019; Burton, 2021). These systemic issues are reflected not only in domestic UK literature, but also across a wide range of international jurisdictions (Campbell, 2017; Douglas and Fell, 2020; Francia et al., 2019; Nonomura et al., 2022; Dalgarno et al., 2024b; Romero and Staudenraus, 2024), (discussed further in the comparative analysis in Chapter 3).

Vigilance is therefore required on the part of family law professionals, especially judges and mediators, regarding the more subtle forms of abusive behaviours that might arise in connection with court proceedings (Campbell, 2017; Douglas, 2018). This is especially important perhaps where some form of familial mediation is mandated – as with, for example, the use of the Mediation and Information Assessment Meeting (MIAM) in England and Wales[8] – or encouraged, via a gentler, practitioner-led emphasis upon the benefits of separating parents trying to reach some sort of agreement themselves.[9]

2.2.3.3 'Parental Alienation' Accusations

A particularly concerning litigation strategy arising in more recent literature is the use of allegations of 'parental alienation' (Birchall and Choudhry, 2022). The term parental alienation is described by the Children and Family Court Advisory and Support Service (Cafcass) (2022) as relating to:

> Circumstances where there is an ongoing pattern of negative attitudes, beliefs and behaviours of one parent (or carer) that have the potential or expressed intent to undermine or obstruct the child's relationship with the other parent (p. 1)

The UK government has repeatedly rejected the existence of the concept of parental alienation,[10] despite Cafcass referring to a not dissimilar, related framework of 'alienating behaviours.' There remains a lack of consensus regarding what a tacit belief in the notion of alienating behaviours might actually entail in terms of practice (Doughty et al., 2020), leading to the development of several 'contradictory and siloed approaches' in response to this problematic issue, elsewhere (Drozd et al., 2016; Saini et al., 2020; Hunter et al., 2020).[11] Calls have been made for a more joined-up, coherent stance across all components of the family law system in England and Wales (Burton, 2023).

Allegations of parental alienation - or alienating behaviours, or 'implacable hostility' - can place DVA victims/survivors at further risk within family law processes: they can serve to not only shift the focus away from the perpetrator's abusive behaviours in some cases, but also to completely sideline the investigation of DVA (Dalgarno et al., 2024). The literature has further shown that the fear of facing counter-allegations of parental alienation can result in some victims/survivors withdrawing altogether from family court processes or perhaps avoiding initiating proceedings in the first place

[8] On MIAMS, see further: Practice Direction 3a https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a

[9] The Department of Justice (2013) set out the steps to be taken during proceedings, whereby parties are encouraged to enter into pre-proceedings correspondence and/or 'consider whether some form of alternative dispute resolution might, in all the circumstances of the case, provide a means of resolving the issues' ([3.1]). On Northern Ireland, see further Cleland and Murphy (2023: 20).

[10] See: Home Office (2022a, 2022b); (Home Office, 2023); *Re C ('Parental Alienation')* [2023] EWHC 345 (Fam).

[11] See further Drozd, Leslie, et al. (2016) and Saini et al (2020).

(Image-Flower, 2023). Gendered issues within the family law system will be more broadly discussed in the next section, but it is worth noting here that the making of parental alienation allegations tends to be highly gendered in both tone and outcome (Hester, 2011), with the literature suggesting that some family courts disproportionately tend to label mothers as 'alienating' (Dalgarno et al., 2024). As Mackenzie (2023) argues, gendered stereotypes that women are more likely to lie and/or be vindictive can find easy expression through many of the narratives on parental alienation (and related behaviours).

As will be discussed further in Chapter 3, a concerning global trend is emerging, particularly within the United States, that the so-termed 'alienating mother' image is one which is frequently accepted by many family court professionals with little question, while the 'alienating/abusive father' figure can go unrecognised (Meier and Dickson, 2017: 332).

2.2.3.4 Recognition of Post-Separation Abuse

As previously noted, concerns have been repeatedly raised within the literature that some professionals lack of awareness of the broader DVA context, which can result in them not recognising post-separation abuse, further exacerbating the risks these pose for victims/survivors navigating family law systems (Gutowski and Goodman, 2020). Notably, some studies highlight victims/survivors' reports that perpetrators had attempted to 'manipulate' professionals (legal, social work, experts) during or prior to court proceedings as a tactic of control. This can contribute to an environment of further or fresh post-separation abuse (Bruno, 2018; Reeves, 2020; Walsh, 2024).[12]

The too-limited understanding of the complex nature of post-separation abuse seemingly has broader repercussions for victims/survivors' experiences in family courts, as Walsh (2024) observed of proceedings in England and Wales. For example, Practice Directions on risk minimisation were not always followed, especially in terms of ensuring victims/survivors' safety during litigation.[13] It has been suggested that professionals require a solid knowledge base to not only consider the historical context

[12] As a step toward enabling the recognition of post-separation abuse, Gutowski and Goodman (2023) developed a psychometrically valid measure of legal abuse which captures victim-mothers' experiences. The quantitative scale allows measure of harm to self/motherhood; including using in-person proceedings to cause distress, attacking custody and care time, threatening children's safety and undermining the victim/survivor's ability as a parent; and harm to finances; including threats and actual attempts to take control of assets and withholding financials (e.g. child support). This scale is applicable to future research on the issue of perpetrators enacting control in family court.

[13] Practice Direction 12J (2008) 'PDJ12' (England and Wales) offers additional guidance when a parent alleges that contact would cause harm to the child or to themselves. Incorporated into the Family Procedure Rules, it emphasises that 'the needs of the parent with whom the child ordinarily lived needed to be considered, as did any allegation of domestic abuse' (Walsh, 2024:1818). PDJ12 was revised in 2014 and 2017 to address concerns that unsupervised contact was often being granted to abusive parents, in a bid to strengthen protections for vulnerable parents. Under the revised framework, separate hearings can be held to address abuse allegations, reiterating the courts' duty to prevent exposure to 'an unmanageable risk of harm,' and broadening the definition of DVA to encompass coercive and controlling behaviour.

of the past relationship but also to recognise 'patterns of behaviour currently on display' when dealing with these cases (Bradshaw et al., 2023: 101).

Again, parental alienation accusations were repeatedly noted as an aspect of post-separation abuse that currently goes under-identified by professionals. Moreover, the lack of understanding or awareness about the often-complex dynamics of abusive relationships and trauma responses in victims/survivors seemingly can lead to victims/survivors' behaviour - grounded in a genuine desire to shield their children from harm - being misconstrued as apparent indicators of deliberate alienation (Birchall and Choudhry, 2022). For instance, victims/survivors in Dalgarno et al.'s (2024) study reported that the more they resisted allegations of alienation and advocated for their children's safety, the more harshly they were treated by certain professionals.

2.2.4 Gender[ed] Issues: A Pro-Contact Presumption?

DVA has long been recognised as a 'highly gendered crime' (Dalgarno et al., 2024). Accordingly, the literature highlights numerous gendered issues arising within family law proceedings where DVA is a factor. It is suggested that the culture and environment of the family court systems can further entrench gender inequalities and reinforce normative constructions of masculinity and femininity that can lie behind abusive behaviours. Mother-victims/survivors are often deemed especially vulnerable post-separation and during dissolution proceedings,[14] particularly in cases involving complex disputes over child contact or residence arrangements (Barnett, 2014; Bates and Hester, 2020; Brandt, 2023). It is therefore crucial that lawyers, judges, and social workers remain mindful of how our 'normative understandings of gender relations and gender-role stereotypes' (Wild, 2023: 1391) within the familial sphere can shape legal responses and influence outcomes. Too often, as Holt (2020a) notes, 'the vulnerability of women and children can continue post separation through the facility of contact' (p. 2063). This is apparent across numerous jurisdictions.

2.2.4.1 Professionals' Gendered Beliefs

Several studies identified gendered views and opinions – akin at times to worrying tropes and myths - which were held by some professionals: victims/survivors often reported that such worrying beliefs worsened their lack of influence over the courts' decision-making processes, especially as compared with perpetrators (MacDonald, 2016; Harwood, 2021). Birchall and Choudry (2022) pointed toward pervasive examples of the stereotypical narratives that frequently arise in the family law context, including the notion of the 'selfish' and 'obstructive' mother versus the 'victimised, exiled' father. Idealised portrayals of non-resident fathers as normatively 'safe, family

[14] For instance, Bradshaw et al (2023) describe how the leaving of abusive relationships can heighten the risk of violence, homelessness, and poverty, enhancing other inherent, inherited, or accumulated vulnerabilities. There are therefore often quite 'significant psychological, physical, social, and economic consequences' even where post-separation court proceedings are not at issue.

men' further contributed to assumptions of amicable post-separation family lives, which often, in reality, completely fail to ensure the safety of victims/survivors and their children.

Such gendered assumptions extend beyond the courtroom itself, with the experiences of mother-victims/survivors in England's social care system being particularly telling in this context. Much of the discourse around child protection work remains deeply gendered, with a persistent tendency amongst professionals to regard mothers as bearing primary responsibility for protecting their children from DVA (Stewart and Arnull, 2022; Wild, 2023). This can form a pattern of victim-blaming, which Wild (2023) refers to as 'responsibility patterning', based upon a 'responsibilisation' of the victim/survivor – a dynamic which can 'intensify adult and child victim-survivors' material harm and hamper child protection work' (p. 1391). When such narratives become normative, they risk diverting attention away from the perpetrator, thereby reducing scrutiny of their actions and limiting their accountability.

The interconnections between private and public law cases involving abusive parents and their vulnerable children are sometimes overlooked. This oversight risks obscuring the fact that 'the main reasons why children and young people go into care are domestic abuse, family dysfunction or neglect' (Weston et al., 2025: 1). As Holt (2020a) emphasises, the social work profession is usually:

> critically positioned to respond to the needs of women experiencing domestic abuse. This, however, demands that social work engages unequivocally with an appreciation that separation is not a 'vaccine' against domestic violence (p. 2062)

2.2.4.2 A Pro-Contact Presumption?

Though it has been very recently announced that the statutory presumption favouring contact between children and abusive parents is set to soon be repealed in England and Wales (the provision in question did not exist within Northern Ireland's legislation), the literature analysing the presumption still merits discussion here. As Shama (2025) has argued, one thing still remains clear: 'repeal of the statutory presumption alone will not suffice.'

In the family court setting generally, many jurisdictions see gendered issues often intertwined with a clear or tacit 'presumption in favour of contact' (Image-Flower, 2023: 56). This was evident within much of the case law in England and Wales, which often suggested that contact between the child and an abusive parent should only be stopped by the court as a measure of last resort.[15] For example, judgments like *C v D* [2021] EWFC B60 serve to highlight the strong presumption that 'involvement of both parents in their children's lives after separation is in their children's best interests

[15] See also *In Re C (A Child) (Suspension of Contact)* [2011] EWCA Civ 521, [2011] 2 FLR 912; *In Re W (a child)* [2012] EWCA 999; *MS v MN* [2017] EWHC 324 (Fam); *Re M (contact: violent parent)* [1999] 2 FLR 321: Paras 35-37 of Practice Direction 12J of the Family Procedure Rules 2010 (England and Wales) were also emphasised.

unless it is contrary to their welfare' (para 86). Moreover, as Wall J noted in *Re M (contact: violent parent)* [1999] 2 FLR 321, even in cases where the court *has* noted that DVA has occurred, this presumption can result in there being:

> too little weight … given to the need for the father to change. It is often said that, notwithstanding the violence, the mother must nonetheless bring up the children with full knowledge in a positive image of their natural father and arrange for the children to be available for contact. Too often it seems to me the courts neglect the other side of that equation, which is that a father ... must demonstrate that he is a fit person to exercise contact; that he is not going to destabilise the family; that he is not going to upset the children and harm them emotionally (para 333).

Mothers and children have been perceived throughout much of the literature as being especially vulnerable when certain processes of 'familialisation and selective repression' occur (Bruno, 2018: 426), such as when parties are perhaps being strongly encouraged by professionals or judges to reach some sort of amicable agreement on child arrangements prior to the court hearing. This suggests that even the most 'egalitarian principles of mediation cannot overtake years of reinforced behavioral patterns' (Campbell, 2017: 41). Numerous judicial decisions on contact, irrespective of jurisdiction, have therefore failed to adequately 'take safety into account, endanger[ing] women and children physically and emotionally' (Coy et al., 2015: 53; Walsh, 2024).

A notable aspect of the pro-contact presumption is that it often 'does not adequately consider the traumatic nature of the abuse suffered by both children and survivors' (Image-Flower, 2023: 56). The overly prescriptive use of such a presumption can similarly see some mothers being unfairly accused of displaying an 'implacable hostility' (often essentially a pseudonym for parental alienation) even where they might simply be trying to protect their children from harmful or dangerous paternal contact (Barnett, 2014). In some jurisdictions, allegations of parental alienation clearly continue to be used as a 'weapon to trap, silence, and pathologize mothers' to such an extent that conceptual frameworks have been developed to describe their effects. One such example is that of the Court and Perpetrator Induced Trauma ('CPIT') seen in Brazil (Dalgarno et al., 2024b). This found that a wide variety of physical and mental health conditions can arise from suffering adverse experiences via family court proceedings. Examples included musculoskeletal, autoimmune, and respiratory disorders, problems associated with maternity, suicidal ideations, and other trauma responses.

Feresin (2020) similarly observed that, in Italian courts, some professionals still endorsed the notion of parental alienation, framing it as a 'feminine problem' and viewing contact-adverse or reluctant children as having been manipulated by their mothers. This perpetuated the widespread myth of fathers as the innocent victims of 'vindictive women who want to keep children to themselves', often overlooking quite violent or abusive male behaviours (p. 61). Likewise, Francia et al.'s (2019) Australian research concluded that familial separations were often framed as individualised

problems, with insufficient attention being given to societal, legal and political factors. This narrow approach fails to recognise or offer voice to the complex experiences of those most affected, given also the nuances of coercive control and the frequently seen socio-economic (e.g. health or housing) impacts of chronic abuse.

On the issue of contact post-separation, much of the research consistently cites the need to refocus 'professional effort on the reality of contact with abusive fathers rather than the rhetoric of idealised post-separation family life' (Holt 2020b: 325).[16] Again, repeated or protracted bouts of litigation in connection with child arrangements may particularly perpetuate abuses, with focus upon the outcome of such cases often serving as 'an important plank' of victim/survivor protection (Choudhry and Herring, 2017: 159; Walsh, 2024). Hay et al. (2023) also point to gendered, dual themes that emerged from their findings on victims/survivors' experiences of co-parenting. The first, 'continuous victimisation,' suggests that post-separation victimisation is often an extension of earlier DVA, with abusive fathers intimidating or threatening former partners through stalking or by monitoring behaviour to undermine the mother-child relationship. The second theme, that of 'systemic challenges,' points to how a normatively 'pro-contact' judicial approach can serve to diminish mothers' allegations of abuse and their accounts of its effects on both them and their children. In light of these findings, Hay et al. (2023) argued for a 'paradigm shift' in both socio-cultural attitudes and awareness about coercive control behaviours, particularly among those who make decisions within family law systems (p. 1292).[17]

In examining these gendered issues, Harwood (2021) concluded that a presumption *against* contact in cases where DVA is present could offer a potential solution.[18] She concedes, however, that such an approach could also be quite problematic given the fact-specific nature of many such cases. Moreover, it seems likely that:

> Any proposal to introduce such a presumption would not find support in practice. This is not, therefore, a problem that will find a solution in the introduction of new or reversed presumptions. What is needed is reform that marks *a sea-change in the way in which domestic abuse is conceptualised and evidenced in proceedings*, and the way in which that evidence shapes court outcomes (p. 139, emphasis added).

Arguably, the notion of 'coercive control' – if used as a sort of 'conceptual device' – might not always be best-suited to improving access to justice (and achieving just

[16] See also Stavrou, Athena (2024) '*It's not like you were beaten*': The horrifying misogyny vulnerable women face from the judge's bench' *The Independent*, on the 'secretive' nature of the UK's family courts (and legal systems) which can serve to 'retraumatise' survivors and victims. https://www.independent.co.uk/news/uk/home-news/family-court-judges-misogyny-domestic-abuse-b2595125.html (accessed 02.04.2025)

[17] The Recommendations of the All-Party Parliamentary Group on Domestic Violence (2016) included a call for the President of the Family Division to 'ensure family court judges never order child contact in supported contact centres where a risk assessment has found that the abusive parent still poses a risk to the child or non-abusive parent' (p. 5).

[18] Harwood (2020:139) framed the proposed Government review (into the operation of the statutory presumption) in England and Wales as 'an important and necessary component of this process.'

outcomes) for DVA victims/survivors. Having itself originated in clinical practice, the concept's use within nuanced, complex legal contexts could present inherent challenges (Walklate et al., 2018). There is significant scope for unintended consequences to arise, such as where:

> …other legal contexts such as family law and intervention order processes may be opportunities for perpetrators to engage in legal systems abuse… victims might experience the legal process as abusive, separate from the behaviour of the perpetrator during proceedings. *The courtroom is an adversarial rather than therapeutic or clinical setting* (p. 123, emphasis added).[19]

Removal of the 'presumption of parental involvement' should help promote a better balance 'between the risk of harm to children and victims, and a child's right to have a relationship with both parents where this is safe.' However, it is acknowledged that 'this is a complex issue, and it is right that any decisions made are rooted firmly in evidence' (MOJ, 2023: 3).

2.2.5 Other Issues and Impacts: Health, Accessing Justice, and Dwindling Resources

The literature highlighted the significant impact that engagement with family law proceedings can have on victims/survivors: the intersections between socio-economic, wellbeing, and justice-related challenges cannot be overstated (Khaw et al., 2021; Dalgarno et al., 2024a). As Roberts et al. (2015) have stressed, DVA is 'a pervasive, significant social and public health issue that often has physical, emotional, social, legal, economic and political ramifications' (p. 599). Victims/survivors may experience poor mental and physical health as a direct result of abuse, including trauma-related conditions such as depression, anxiety and post-traumatic stress disorder (PTSD). These health impacts can be further compounded by insecure housing, financial instability and limited access to supports and resources. Recognising the cumulative effect of these intersecting challenges is critical when considering reforms.

2.2.5.1 Health

DVA is clearly a significant public health issue (Roberts et al., 2015), with victims/survivors often experiencing short and long-term physical and psychological health problems. The literature highlighted some significant links and overlaps between these health problems and the legal process, particularly regarding the often unseen 'intersection of mental health diagnoses and legal proceedings' (Kuruppu, 2023: 1). The Harm Panel found that issues arising from trauma, chronic mental health, and disability can be intensified by going through family court proceedings

[19] See further Hunter et al., 2017.

(Hunter et al., 2020). Facing an abuser in court or recounting traumatic experiences – often in environments lacking privacy or sensitivity – can exact a profound psychological toll on victims/survivors (Gutowski and Goodman, 2020).

Some mother-victims/survivors, fearful of losing their children, reported suicidal ideations and feelings of re-traumatisation (Hester, 2011; Dalgarno et al., 2024b). It seems that heightened symptoms of PTSD and depression can stem from certain harmful judicial responses during court proceedings (Gutowski and Goodman, 2023b). The experiences of victims/survivors with hidden disabilities – such as neurodivergence, learning difficulties, or pre-existing mental illness – and those from minoritised ethnic groups may face additional, under-reported challenges, with corresponding mental health impacts that can be overlooked in some jurisdictions (Moroskoski et al., 2022).

Lack of trauma-informed practice can exacerbate emotional distress: the manner in which professionals might respond to victims/survivors' disclosures of health issues can significantly affect their experience of the process. These effects can impair victims/survivors' ability to recall events accurately and in sequence, potentially leading to a struggle to articulate their experiences, which might be perceived by some professionals as a lack of credibility or honesty (Campbell, 2017: 14; Reeves, 2020). Concerningly too, some victims/survivors described the behaviour of some lawyers as being tantamount to 'dehumanising' and abusive, akin almost to a form of degrading treatment or torture, with the proceedings subjecting them to secondary victimisation – which could echo the original incidents of DVA (Hester, 2011).

Secondary victimisation by the family court system can, at times, cause more harm than the original DVA, essentially creating a collective of professionals who might then be perceived as being aligned against victims/survivors. Inadequate training in both the family law and mental health (forensic and clinical) profession can influence judicial reasoning, including the misinterpretation or misuse of 'social science research, psychological theory, and developmental principles' in determining outcomes (Brandt, 2023: 403; Roberts et al., 2015). As Grey (2023) found, assessment of victim/survivor behaviour (instigated by Cafcass) could lead to their mental health becoming the main focus of the court, with experts unable to recognise trauma responses. This, in turn, could spark misdiagnoses of a range of conditions or determinations that mothers (in particular) are presenting with alienating behaviours: sometimes treatments could be recommended that would be ultimately harmful.

A recent Australian study (Kurrupu et al., 2023) found that general practitioners (GPs) had observed 'legal systems abuse' and the weaponisation of mental health within family courts, with negative perceptions of the court operating on a 'different paradigm to that of general practice' (p. 1). Perpetrators – and at times the court itself – had used victims/survivors' mental health against them, leaving victims/survivors reluctant to seek help or treatment for these issues. The adversarial nature of proceedings also created dilemmas for doctors, who sometimes felt forced to choose between supporting the mother, father, or children (p. 6-7). Other examples of poor practice

included the accessing of medical records without consent, which might in turn pathologize mothers via 'victim-blaming,' or by depicting them as unstable (Hester, 2011). This led to deep feelings of being unsafe. Some victims/survivors described family court professionals as holding even more power over them than their abusers, given their ability to curtail the rights of mothers and children, amounting to a distinct form of psychological abuse.

2.2.5.2 Economics and Austerity

The literature identifies deep structural inequalities across jurisdictions, shaping victims/survivors' access to justice, particularly in relation to legal representation, financial resources, and influence within family law processes. These are frequently compounded by previous financial abuse, which places victims/survivors in a position of systemic disadvantage from the outset of proceedings. Disparities are commonly perceived in the allocation of legal aid and advice, with victims/survivors often reporting less effective support than that available to perpetrators (McLaughlin et al., 2024). For instance, some perpetrators – often with greater financial means – may be better able to secure higher-quality legal representation or to commission expert witnesses. At the same time, victims/survivors may face lower-quality or absent representation (Gutowski and Goodman, 2020). As Campbell (2017) further notes:

> Judges cannot rely on their gut instincts about whether the victim or batterer is more credible. Instead, courts must engage in careful fact-finding to determine if accusations of domestic violence are true. Courts should consider looking to the following resources for further evidence: testimony from other family members or friends, service providers, counsellors, police reports, criminal case records, restraining order records, medical records, and school records (p.47)

In relation to England and Wales, the emphasis upon mediation ties in with the Government's wider agenda of diverting certain cases away from formal proceedings (Hamlyn et al., 2015)[20] where possible, alongside attending a MIAM before initiating proceedings,[21] unless a DVA exemption applies. Mant (2017) argues that this perhaps reflects a broader 'neoliberal shift', with courts in England and Wales - if not also elsewhere - frequently tending to favour privately agreed solutions.

Hunter et al. (2017) argue that this austerity-led change reflected a political shift towards framing such disputes as matters better resolved privately, leaving DVA

[20] Reiterating also that the introduction of LASPO in England and Wales 'largely removed most private law family cases from the scope of legal aid from April 2013. Exceptions to this are that legal aid remains available for obtaining injunctive orders in cases of domestic violence and potentially available for legal advice and representation in court proceedings in cases where there is evidence of domestic violence or child protection issues (subject to certain thresholds).' (Hamlyn et al, 2015: 14).
[21] As the Family Mediation Council (2025) advises: 'The MIAM and mediation sessions …will cost you nothing if you get legal aid. The mediator will help you work out if you can claim legal aid.' DVA may give rise to an exemption from the requirement to attend a MIAM: the abuse must be evidenced in some formal way however e.g. via court order, police report, letter from health professional or domestic abuse charity, etc (see Appendix 1 and s. 20 of Practice Direction 3a).

victims/survivors more vulnerable to further harm. Consequently, there appears to be a political boundary emerging between litigants deemed sufficiently vulnerable, and therefore eligible for legal aid, and those 'encouraged and expected' to resolve things independently (Mant and Wallbank, 2017: 629). As Onafuwa (2024) concludes, a decade of cuts to the legal aid budget has undermined core principles of access to justice, leaving vulnerable victims/survivors effectively 'emasculated' in their ability to pursue protections, whilst simultaneously placing significant strains on the legal profession. These challenges are further exacerbated by the conceptual and procedural overlaps and contradictions between family, criminal and civil law, which professionals may struggle to always navigate effectively. In relation to Northern Ireland, Lagdon et al. (2024: 30) have further observed that:

> The decision to enter the justice system is by no means an easy one, particularly where domestic abuse is concerned. Often this decision is thrust upon a person who is seeking safety, support and reconciliation from harm so that they can move forward with their lives. We therefore have a responsibility to reduce any further burden by bettering our response and service to those in need.[22]

2.2.6 Summary

Overall, the literature suggests that, in a variety of ways, DVA is frequently 'rendered invisible' within aspects of family court practice, grounded in a degree of scepticism of allegations of DVA made during proceedings (Meier, 2020), regardless of jurisdiction. Financial constraints on the system, alongside inadequate training and awareness of the dynamics of DVA, can heighten the risk of unsafe arrangements being made (Harwood, 2019). Gendered dynamics were also frequently noted, with victims/survivors – especially mothers – often disproportionately affected by systemic shortcomings including the family court's system failure to adequately recognise and address DVA.

Some family law professionals, including the judiciary, may not always be fully aware of the impacts of their decisions and how these might serve to perpetuate harms and enable further abuse, particularly in relation to arrangements for child contact and residence (Walker, 2020). As a result, victims/survivors are experiencing secondary victimisation via court processes. Though worryingly stark, Walsh's (2024) conclusions are reflected throughout much of the recent literature concerning adult victims/survivors' experiences of the family law court system, across many jurisdictions:

[22] See further DoJ Oral Statement: Our current eligibility tests are not necessarily ensuring protection for the most vulnerable - for women, children, victims of abuse, those with a disability. Rules governing eligibility are also not easily understood...' DoJ Oral Statement – Enabling Access to Justice (EAJ) Programme – 2 December 2024 https://www.justice-ni.gov.uk/sites/default/files/publications/justice/DoJ%20Oral%20Statement%20-%20EAJ%20Programme%20-%202%20December%202024.pdf

> Any optimism or faith in the ability of the current legal framework to adequately protect women and children from post-separation abuse was misplaced. Only a radical re-evaluation of the current position can lift the sense of despondency and futility which hangs over this area (p. 1817)

There remains a pressing need to address the issue of the perpetrator's lack of accountability, both individually and systemically, given the frequency with which this often goes unacknowledged at present (Wild, 2023). It seems that a broader 'cultural shift' is clearly still needed, to challenge the assumption that familial spaces are always inherently safe havens for the vulnerable and, conversely, to recognise the risks that some of the decisions made by the family courts continue to pose. As Syal (2025) recently summarised (in respect of England and Wales):

> …outdated views on domestic abuse among some legal professionals means physical violence is taken more seriously but coercive and controlling behaviour – which often underpins physical abuse and is an offence in itself – is frequently dismissed. [23]

It seems reasonable to presume that these issues also constrain children and young people's participation rights within the process, as explored in the next part of this review of the literature.

2.3 Children's Experiences of Family Courts in the Context of DVA

Promoting children's welfare by protecting them from involvement in the process is somewhat akin to closing the stable door after the horse has bolted and adds further insult to injury of their invisibility within the domestic abuse domain.

Holt, S. 'A Voice or a Choice? Children's Views on Participating in Decisions About Post-Separation Contact with Domestically Abusive Fathers', *Journal of Social Welfare and Family* Law, 40(4), p. 470

This part now turns to examine recent literature on the experiences of children and young people affected by DVA, with a particular focus on their capacity to participate meaningfully in family court processes. It considers the extent to which children and young people's voices are being heard, listened to, and genuinely taken into account, as well as when and how child victims/survivors may be best able to engage with proceedings, and the extent to which their views can influence outcomes in private law cases. The meaningful participation of children and young people in family court processes remains an important yet emerging area of research (Lapierre et al., 2025).

[23] Syal R (2025) 'Majority of family court cases in England and Wales feature domestic abuse, watchdog says' The Guardian https://www.theguardian.com/society/2025/oct/10/majority-of-family-court-cases-in-england-and-wales-feature-domestic-abuse-watchdog-says?

Although the literature review revealed relatively little scholarship specifically addressing children's participation rights in family court cases where DVA is a central factor, broader rights-based literature on children's participation helps provide a fuller picture of the current debates and challenges.

2.3.1 Key Themes in Brief: The Child's Right to Participate

Across the literature, several themes emerge, the most concerning of which is that children's participation rights are not always fulfilled in practice within family court proceedings. Many child victims/survivors are denied the opportunity to contribute meaningfully, and even when their views are heard, they may not be afforded sufficient weight. A range of factors can influence this, including the practical difficulties of facilitating indirect participation, the challenges of translating children and young people's views into legal decision-making, and the persistence of a pro-contact culture that shapes how children/young people's opposition or resistance to parental contact is perceived.[24]

These concerns give rise to two distinct issues: the *hearing* of the child/young person's views and the *weighing up* of those views. Daly (2018) notes that these two related but separate questions are frequently conflated within the literature, case law, and practice. Courts must first determine whether a child or young person is capable of forming a view and, if so, whether they should then be heard, before secondly considering the extent to which their views may influence the outcome of the final decision. The literature identifies persistent problems across both stages of this process within the context of family law proceedings.

Although the child's right to be heard is now recognised in both international and domestic law and policy, its practical implementation varies both within and across jurisdictions (as is discussed further in Chapter 3). In the UK, procedures are in place to enable children to express their views. Yet, much of the literature suggests that statutory provisions do not necessarily guarantee significant influence on judicial decision-making. This is so, despite the widespread influence and tangible impacts of the Lundy Model of Participation (2007) (examined in more detail in Chapter 7), which looks to the rights enshrined within Article 12 of the UN Convention on the Rights of the Child.[25] Research indicates that many children still do not feel confident or reassured that their views are being fully considered by relevant decision-makers

[24] Article 12 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

[25] In brief, the Lundy Model (2007) identifies four overlapping, interlocking elements that are needed to promote children's meaningful participation within decision-making processes: Space, Voice, Audience, and Influence. The emphasis is on opportunity, accessibility, comfort, being heard, impacts, and - not least - a sense of safety, which is particularly relevant to the context of surviving (and preventing or mitigating) domestic abuse.

(Morrison et al., 2020a; Dimopoulous et al., 2025). Thus, while the rights-based principle of child participation is now widely accepted, questions remain about how and when these rights might best be protected and realised in practice (Parkes et al., 2016).

The complexities of DVA dynamics, particularly those surrounding the nuances of coercive control, can significantly undermine children and young people's ability to meaningfully participate. Children and young people can perhaps face divided loyalties and a range of psychological factors (Callaghan et al., 2017). Further, as noted above, post-separation abuse can quite easily occur, taking the form of further violence, intimidation, surveillance, manipulation, or alternating patterns of caring or 'indulgence' and emotional abuse against children (Katz et al., 2020). Family court proceedings can inadvertently provide a profoundly adversarial forum for such behaviours to persist. As Wall LJ presciently observed over two decades ago:

> a contact application is a means of continuing the power struggle that existed within the family and *the child becomes the ammunition.* (House of Commons Constitutional Affairs Committee, 2005. emphasis added)

The extent to which children are deemed capable of forming their own views – and thus afforded the opportunity to be heard – varies considerably even across the UK. McDonald's (2016; 2017) studies in England suggest a growing judicial commitment to meeting with children and gathering their views in relation to post-separation contact, with 90% of children within a Children and Family Court Advisory and Support Service's (Cafcass) sample having been interviewed at least once in the course of proceedings. By contrast, research and case law in Scotland highlight persistent barriers, including perceptions that courts are still too formal or institutionalised for children's participation to effectively occur (Tisdall, 2016). MacKay (2018) found that even indirect opportunities to state their views were sometimes denied to children and young people on purported welfare grounds, raising concerns that some protection rationales may be too-easily overriding or sidelining children's participation rights.

The Domestic Abuse Commissioner for England and Wales has recently stressed (Jacobs, 2025) that a 'key component' of her reform agenda is the creation of 'a child-centric and abuse-informed Family Court' (p. 185). She draws particular attention to s.3 of the Domestic Abuse Act 2021 (applicable to England and Wales), which recognises children and young people as a potential 'victim of domestic abuse in their own right,'[26] where one parent has committed abuses against the other, whether during the relationship or after separation. The Commissioner also reiterates that victims/survivors frequently report experiences of re-traumatisation – and indeed re-victimisation – during family court proceedings, with the safety of their children perhaps being perceived as having been 'deprioritised as a result of DVA being minimised' (8.5). A child-centric model is therefore required to 'situate the child at the heart of the Family Court' (8.5).

[26] See further Walsh (2024).

Improved understandings of DVA are also central to this. Families that have experienced such abuse 'must first be properly understood in domestic abuse terms before turning to any allegation that relates to a child's reluctance, resistance or refusal to see a parent.' Reluctance on the part of the child to engage in contact may, in many cases, be rooted in their experiences of DVA:

> it is necessary to ascertain the family context at the outset. Attempts to silence or quieten the voice of the child are unacceptable. Yet many children and young people…say that they did not feel listened to when important decisions were being made about contact with family members (8.5).

Nevertheless, where barriers are addressed, the literature further suggests that meaningful participation can yield significant benefits for child victims/survivors. As with adults, it is essential to recognise that children and young people who have experienced DVA are not a homogeneous group; additional barriers potentially arise from cultural norms, immigration status, and wider systemic inequalities. Again, the issue of intersectionality remains a limitation within the existing research, and future studies should aim to better capture the diverse realities of children/young people's experiences (Lapierre et al. 2025). Some progress is visible, with work such as Gregory et al. (2024) examining the unique needs and experiences of children with disabilities, for instance.

Moreover, the literature highlights how children may be rendered vulnerable through different forms of *fathering*, ranging from over-controlling or dangerous parenting to more outwardly 'admirable' styles that nonetheless obscure coercive control (Katz et al., 2020). Yet, there remains a notable gap in scholarship concerning the participation rights of children and young people whose mothers are abusive, representing another important area for future development.

2.3.2 The 'Hearing' of Children's Views

The literature consistently indicates that children and young people want their perspectives heard in relation to judicial decisions that affect them (Dimopoulous et al. 2025). Hearing children's voices is therefore important not only as a fundamental entitlement, but also because it carries inherent value and offers significant benefits for the children and young people themselves, including recognition, validation, and empowerment (Holt, 2018; MacDonald, 2017; Dimopoulous et al., 2025). In the context of DVA, meaningful child participation is particularly crucial: actively listening to and responding to children and young people's accounts of violence and other forms of abuse can ensure that judicial decisions are better informed, thereby more effectively promoting their safety and welfare.

2.3.3 Welfare versus Rights Debate

The literature highlights that a significant difficulty family courts face in hearing children is determining the balance between their right to participate and the pressing need to protect them from harm. The 'welfare versus rights' debate can result in practices that prioritise perceived welfare needs over the child's right to participate and have their views heard. As Holt (2016) notes in her scoping review, this tension is often profound. Participation may be framed quite narrowly, solely in terms of the child's best interests, rather than as part of a broader rights-based framework encompassing agency and autonomy. Children can – and should – be afforded participation rights, which can, in turn, enhance protections for their welfare. As the Lundy Model (2007) outlines, meaningful child participation demands a considerable degree of trauma-informed, pro-active engagement and forward-planning on the part of jurists and decision-makers, to ensure that four essential aspects (space, voice, audience and influence) are all present. Voice alone is insufficient (Lundy, 2007), particularly within the confines and complexities of many family court proceedings (e.g pre-hearing advice-giving, ongoing consultation, follow-up explanation of decisions) and in relation to the various legal processes associated with these. The need for speedy resolutions and efficiencies to protect finite resources can further limit the spaces in which the voice of the child might be heard and listened to.

Likewise, where the safeguarding of children and young people from harm is prioritised, their participation may be restricted – sometimes framed as excluding them from 'adult affairs' to prevent potential re-traumatisation (Holt, 2016; MacKay, 2018). Such an approach assumes that active participation in the family law process is always harmful for children (MacKay, 2018), yet this 'protective' stance may inadvertently be compounding the issue by increasing children's 'invisibility within the domestic abuse domain' and by overlooking the benefits of their being able to participate meaningfully (Holt, 2018: 470). Renewing the emphasis on children's participation rights can counterbalance more archaic and paternalistic attitudes, shifting the perception of children and young people as ever-passive objects of research or service provision to one of valued contributors to the process (Tisdall, 2016).

2.3.3.1 Determining a Child's Capacity to Participate

The literature further indicates that age is a major factor in determining a child's capacity to participate in family law proceedings. However, courts in some jurisdictions do not always appear to apply consistent standards when considering a child's age across cases, nor is the decision always supported by robust assessments of the child's actual maturity or capacity (Morrison et al. 2020a). The reliance on their age alone as a factor is reflected in statutory provisions as well, for example, s11(1) of the Children (Scotland) Act 1995 presumes that children aged 12 or over possess sufficient age and maturity to form an opinion on such matters. This is despite the UNCRC expressly acknowledging that 'children's levels of understanding are not uniformly linked to their biological age' (UNCRC General Comment no.12, 2009: 11).

Empirical research supports the UNCRC's stance that biological age alone may not be the appropriate indicator of whether or not a child should be given the opportunity to have their views and wishes heard. Such studies demonstrate that children as young as 4 can be meaningfully engaged regarding their perspectives (Holt, 2018; Lapierre et al., 2025), and that young children can often competently discuss and articulate their experiences, emotions, and potential strategies (Callaghan et al. 2017; Lamb et al., 2018; Lapierre et al., 2025). When the degree to which children's views are taken seriously is being assessed based upon their understanding of the issues, rather than solely on their age, the literature suggests that young children are often not only capable of expressing their views but are also eager to be consulted with (Lamb et al., 2018). As Lundy (2007) argued, Article 12 (1) - the right to express their views – is essentially a stand-alone entitlement that should not – in theory at least – be subject to the limitations of age or capacity, where possible.

The tendency to rely on age as a determining factor is regarded in the literature as a somewhat concerning practice within the family law system (Parkes et al. 2015; Morrison et al., 2020a). A child rights-based approach to participation emphasises that children should not be excluded solely on the basis of their age (Article 2, UNCRC). However, there were some examples in the literature where children were excluded for being 'too young' (Morrison et al. 2020a). Studies such as MacKay's (2018) suggest that although all children aged 7+ were more likely than not to have their views heard (56%), the likelihood of engagement increased with age (11-12: 77%; 13-14: 92%; 15+: 100%). The result is that older children are more likely to have their views considered, while younger children remain at risk of being entirely excluded from the process.

The effective 'hearing' of such young children's voices is dependent on the promotion and facilitation of their participation. As Hunter et al (2020) concluded, there are often inherent difficulties in ascertaining the wishes and feelings of particularly young children. Nevertheless, given the diversity of children's views and experiences, '…it is essential that the courts still try to understand the views of individual children and tailor arrangements to fit them individually' (p. 68).

2.3.4 Supporting the Child's Right to Participate: Information, Environment, Methods of Participation

Although it is recognised that it may be difficult to ascertain children's views, it is not entirely impossible to do so. There is a broad sentiment across the literature that the primary issue is not, therefore, *whether* children's views should be ascertained, but *how*. Morrison et al. (2020b) suggest that within current practice there remains a 'chasm' in emphasising improvements in supporting children to exercise their right to participate in the family law process (p. 411).

Children's agency is highlighted in the literature as being relational and contextual in nature, demonstrating how structures, environments, and relationships can either facilitate or constrain children's capacity to express their views (Tisdall, 2016).

Practical barriers, including time constraints within family courts and insufficient information or feelings of trust, can further diminish children's agency, with professionals sometimes perceived as actively restricting children's capacity to participate (Tisdall, 2016). Similar issues which were highlighted in respect of adult victims/survivors' negative experiences, such as a lack of adequate training and awareness, were noted here too. As Parkes et al. (2015) argued, 'children cannot have a voice if the professionals concerned are not adequately trained to hear them' (p. 432).

The literature suggests that the presence of DVA exacerbates these issues and challenges. Without sufficient support, children and young people's ability to articulate, communicate, and have their views understood may be significantly reduced. Tisdall (2016) further highlights that children's perspectives can be overlooked or misinterpreted when they seek to challenge the normative views of adults. In response, Daly (2018) has argued for a stronger focus on children's autonomy to achieve meaningful participation. She conceptualises this as involving both processual autonomy – how children engage with proceedings – and outcome autonomy – where their views can influence final decisions. To facilitate this, children should receive 'autonomy support' to ensure they understand proceedings and all their available options.[27]

Against this backdrop, the literature identified three areas in which children's access to participation could be further promoted in family law proceedings: *information*, *environment*, and *methods of participation*. The first two align with the UNCRC's General Comment on Article 12, which identifies them as pre-requisites for children to be meaningfully heard in proceedings (UNCRC General Comment No. 12, 2009). Firstly, children must be given child-appropriate information about the decision in advance to prepare them to contribute their views in an informed way. Secondly, they should be afforded a safe space in which to express those views, free from fear or intimidation. Lundy's model (2007) - analysed in Chapter 7 – similarly emphasised the importance of the safe space, alongside other essential factors: being heard (in the sense of being actively listened-to) and the child's ability to meaningfully influence eventual outcomes in court proceedings. The literature adds what could be described as a further pre-requisite: the use of alternative methods of participation, recognising that the form and extent of children's involvement may vary depending on the individual child, and also reflecting the court's duty to protect their best interests in the wake of DVA.

2.3.4.1 Information

Research strongly suggests that children are more likely to engage meaningfully when they receive essential information about proceedings in a language and format they

[27] Daly (2018) suggests adopting an approach analogous to medical law, whereby autonomy is prioritised except in circumstances where serious harm might otherwise result.

can understand. ‘Important’ information may constitute details about the process, the roles of participants, timing and delays, possible outcomes, and how their views might influence the final decision. In practice, children are frequently given little notice and insufficient information, leaving them unprepared to express their views, particularly on more complex issues (Morrison et al. 2020b).

There is, however, no universal approach to how children should be informed, nor is there a consensus as to whether every child has a right to this information. Some professionals express paternalistic views (Parkes et al., 2015), assuming parents would consult with their children despite evidence that independent communication from professionals is often necessary to convey information (Holt, 2018; Morrison et al. 2020b). Inconsistent mechanisms for informing and supporting children risk leaving them confused about decisions and vulnerable to misinformation, including from parents. Children and young people’s accounts in the literature demonstrate the impact of such information gaps. In Jones’ (2023) study of the Pathfinder pilot in Wales, both older and younger children reported confusion about the process: teenagers questioned the purpose of expressing their views when they felt capable of making their own decisions, while younger children felt unsettled by short notice before meetings to discuss their views (p. 24). Similarly, one child in Morrison et al.’s (2020b) study identified the lack of confidentiality assurances – particularly over who her views would be shared with – as a barrier to her participation (p. 411).

Children’s perspectives within the literature further highlight how they link effective participation with being well-informed: having access to appropriate information alleviates anxiety, reduces confusion, and increases acceptance of final decisions (Dimopoulous et al., 2025). However, too much information – such as details about parental financial or emotional struggles – sometimes produces adverse effects, including feelings of guilt and a sense of responsibility.

Notably, the literature emphasises that information-sharing should continue even after decisions are made (which ties in with Lundy’s model (2007) for enabling and embedding child participation rights. Children value explanations of how their views were considered and how these might have contributed to the final outcome, strengthening their sense of meaningful participation and increasing compliance with court orders (Morrison et al. 2020b). In contrast, children who had felt unheard reported sometimes deliberately resisting court orders (Dimopoulos et al., 2025). Recent policy developments and calls for reform have occurred in this respect, including the *Writing to Children* toolkit (McFarlane, 2025, alongside the Family Justice Young People’s Board) representing a significant step towards supporting judges in communicating their decisions directly to children and young people. However, in practice this approach sometimes appears to be applied rather inconsistently (Parkes et al., 2015), with the Nuffield Family Justice Observatory (2025) recently observing that:

A child's right to participate in proceedings and to have the final decision communicated to them in a way they can understand is enshrined in international and domestic legislation and guidance however *it does not routinely happen* (emphasis added).

2.3.4.2 Environment

The environment also shapes children's effective participation. As Lundy (2007) argued, they should be given safe, accessible, and child-friendly spaces in which to contribute their views. 'Space' can be both physical and social: children see supportive spaces and relationships as crucial to feeling heard (Orr et al., 2024). Consideration should also be given to the issue of who accompanies the child, since this may influence the sense of being pressured which they might experience when expressing particular views (Corr & McAlister, 2024). The perspectives of many children within the literature suggest that the specific nature of this safe space environment may vary from child to child, in terms of what they require: they should be given some choices over how, when, and where to engage with the process.

Dimopoulous et al.'s (2025) study found that children reflected on their experiences more positively when professionals created environments where they felt comfortable and a sense of empathy. Small actions – such as facial expressions, body language, or repeating back what was said – were experienced by children as signs of genuine listening. Others saw notetaking or limited time sessions as signalling indifference, fostering frustration that their views were merely being sought as a 'tick box' exercise and exacerbating feelings of invisibility. This accords with findings from other studies, which show that developing safe, trusting environments is particularly vital for children disclosing experiences of DVA, which they perhaps have been previously discouraged from speaking about elsewhere (Morrison et al. 2020a; Corr & McAlister, 2024).

The literature highlights that physical environments also matter. Courts are often formal, crowded, and intimidating, making them unsuitable for children's participation (Parkes et al. 2015). While some children in England and Scotland have been offered a choice of meeting locations and companions (McDonald, 2017; MacKay, 2018), such practices are inconsistent. In the Welsh Pathfinder pilot, children report having had few conversations about where and how to meet Cafcass Cymru, with parents more commonly informing children how such meetings would take place (Jones, 2023). While some children were indifferent, others saw this lack of choice as undermining, reducing their sense of comfort and willingness to engage with family court process (p. 28).

2.3.4.3 Methods of Participation

Finally, the literature suggests that offering alternative methods of participation can better accommodate children's varied circumstances and communication styles, thereby influencing their ability or willingness to share their views. Effective

participation requires an individualised and flexible approach, particularly where children have experienced DVA and may feel unsafe communicating openly: they may remain fearful of the abusive parent (Lapierre et al. 2025).

Article 13, UNCRC recognises children's right to freedom of expression in diverse forms beyond speech, including play, writing or drawings (Parkes et al., 2015). Play, in particular, has been identified in the literature as an age-appropriate way for young children to better participate. From children's own perspectives, this can allow them to build trust and rapport with professionals, making it easier for them to talk about family issues (Orr et al., 2024). At the same time, standardised methods such as interviewing or completing forms are not always suitable for all children.

For very young children and those unable to communicate verbally, the literature suggests that alternative approaches are needed to capture their voices, for example, through observing behavioural cues or via input from trusted adults like teachers or the non-abusive parent (Gregory et al., 2024). However, relying on second-hand accounts, especially from parents, has been identified elsewhere as problematic, given the potential for bias or for the 'whole story' to not be fully recounted (Corr & McAlister, 2024). In general, though, the literature consistently highlights that tailoring methods to individual children is essential to realising their participation rights in line with the CRC's General Comment on Article 12.

2.3.5 The Influence – or Otherwise - of Children's Voices

Barring certain areas in clear need of urgent reform, the literature broadly suggests that children's voices are increasingly being heard within the family law process. Criticism, however, attaches to the extent to which these expressed views are considered within decision-making. The UNCRC's requirements for child participation acknowledge that *listening* to children is often relatively unchallenging; giving due weight to those views, however, requires substantive changes to ensure children have some level of meaningful influence over the matters most often affecting them. As the scope and wording of Article 12 of the UNCRC would suggest, 'simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming his or her own views' (UNCRC General Comment No 5 2003: 4). Tokenistic inclusion of children's perspectives is therefore counterproductive to the promotion and realisation of their right to participate. It is unsurprising, then, that this issue attracted the most comment within the literature.

Various factors can affect the amount of influence that children's views can have on outcomes. Even where a child's wishes are relayed to the Court, questions can still arise around the weight to be given to their views within decision-making (Daly, 2018; Morrison et al., 2020b; Kaldal, 2023). Several factors are identified as relevant. Children's views are, for example, frequently disregarded, especially in cases where

they express an objection to contact with the non-resident parent (Holt, 2018; Hunter et al, 2020). Intersecting with this are matters relating to the age of the child and whether DVA has occurred. To demonstrate that a child's view has been given weight in the process, courts often are seen to use adjectives such as 'significant', 'modest' or 'little' to denote the weight given to a child's view (Daly, 2018). The assessment of the weight of a child's view gives decision-makers considerable 'discretionary space' where the decision may not align with the child's expressed view (Kaldal, 2023).

2.3.5.1 The Meaning of 'Due Weight'

The notion of giving due weight to children's views is regarded as somewhat vague, contributing to some of the problems around the implementation of children's participation rights (Daly, 2018). Many jurisdictions - including the UK - have structured their legal frameworks so that children's preferences are just one factor which the courts must consider, alongside others. The process of weighing up and balancing the child's views against other factors can at times be unclear and inconsistent. Such vagueness can mean that the Courts can have almost unlimited discretion over the issue of whether or not they should deem a child's views determinative (Daly, 2018). Current practices and common situations in which children's views are overridden could benefit those already holding the most power, including abusive parents.

The weighing exercise of Article 12 does not require the views of children to be determinative of the outcome of proceedings, but it does require them to at least be taken into account. In this context, it has been acknowledged that children's participation should amount to them having a *voice* in proceedings, but not necessarily a *choice* over the final decision. Empirical research involving children is consistent with this argument. Children are observed as wanting to have a say, whilst simultaneously welcoming limits upon their own decision-making. For instance, the majority of children in Holt's (2018) study did not expect – or at times wish for - their views to be determinative. Rather, they just wanted to see that an appropriate degree of weight had been given to them.

2.3.5.2 Transmission v Translation

The overall influence of a child's voice is reliant upon their views reaching the relevant decision-maker, and their subsequent interpretation of them. The CRC's General Comment on Article 12 recommends that wherever possible children should be given the opportunity to be heard directly in proceedings involving them (2009: para 35). Until recently, children's direct involvement in court proceedings was not always actively encouraged by the courts, nor was it very prevalent in practice in various jurisdictions (Morrison et al., 2020a). Concerns about judges' skills in communicating with children – and the issue of whether the practice of judicial interviewing might make children more vulnerable to parental influence - contributed to this infrequency (Morrison et al., 2020b).

In any event, direct contact may not be something every child wishes to avail of. As Jones (2023) found, children can be faced with a conflict between wanting to ensure the court hears their views accurately, whilst also perhaps feeling unable to take up the offer to express their views in person to the Court: they may have felt intimidated by the court environment (p.29). The earlier study by Holt (2018) corroborates this, with children finding participation - to the extent of speaking to a judge – to often be beyond what they would be comfortable with (though they still wanted their views to be considered). Thus, with much children's participation occurring indirectly, greater importance should be placed on the role of professionals in terms of ensuring that the views of children are conveyed to the court accurately. The existing literature suggests this is often far from the case in practice.

The practice of indirect participation appears to mean that rather than children's voices being presented to the court as they would wish, they are interpreted and filtered through a 'professional adult lens' (Holt, 2018). Hence, there are essentially two levels of influence in family court proceedings: the influence that a child's view has in respect of what is presented to the court, and the impact that a child's view has upon the final decision-making undertaken by the Judge (Corr & McAlister, 2024). Children are reliant upon a 'double interpretation' of their views, first through a reporter and then the judge (Morrison et al., 2020a). This raises concerns about the potential for bias and misrepresentation of children's views. Existing empirical research reflects this: children have indicated that their views had not been conveyed accurately by professionals (Dimopoulos et al., 2025). Examples are also given by Jones (2023), where Family Court Advisors did represent children's voice more directly, by verbatim transcription of what the child had actually said. Despite recognition that quoting a child's own words is a powerful way to convey that child's view (p.40), the research does not suggest that this is a broadly adopted practice.

The findings of these studies align with the distinction made in research between transmission – when professionals directly present children's views – and translation, an interpretation of their views in the light of the overall role of protecting children's best interests (Morrison et al., 2020a; 2020b). Morrison et al. (2020a) warns too that courts may not always be well equipped to make this distinction, accepting reports as being the transmitted views of children, when in fact they do not always entirely or accurately reflect the child's wishes. Notably, the interpretation approach appears to contrast sharply with children's own ideas of what 'participation' truly means. In Dimopoulous et al.'s (2025) study, children described participation as having been heard in their own words, and speaking for themselves, rather than having their views mediated via the words of another. The translation of children's perspectives clearly affects the influence that they might have within or upon proceedings.

2.3.5.3 Age

Even when a child is deemed capable of contributing and being heard, an excessive focus on age can have significant implications for the degree of weight which will be

afforded to their views. Studies have shown that the perspectives of younger children are often routinely framed as possessing 'less perceived agency' and are therefore less likely to be meaningfully incorporated into decision-making (MacDonald, 2017: 7).

Older children's views are seen to be more influential in this regard as compared to those of younger children (MacDonald, 2016; Mackay, 2018). The justification for this is often that an older child has the capability to 'vote with their feet.' In other words, they are deemed to be in a position where they can actively choose to not comply with the decision of the court should they disagree with it (MacDonald, 2016). In such cases, welfare concerns regarding DVA featured less prominently, often with more practical considerations over 'what will work' being prioritised over potential risks related to abuse continuing (MacDonald, 2016).

2.3.6 Ideological Assumptions: 'Pro-Contact' and 'Manipulation?'

As was discussed in relation to adult victims/survivors' experiences within the family courts, there are several ideological assumptions which underpin the family law system and appear to be held by a variety of professionals across jurisdictions. These assumptions are viewed in the literature as highly problematic in terms of ensuring children's meaningful participation in family court proceedings, often limiting the practice of deciding what is best for each child or young person on the basis of their individual circumstances (Holt, 2016). Children's participation rights are recognised in legislation and policy: the existence of these assumptions offers insight, however, into how children's rights are conditioned, even if this is not the result of legal barriers (Kaldal, 2023). In this sense, there is a need to focus on attitudes and power dynamics within the process, whereby decision-makers' biases might prevail over or prejudice the statutory rights of the child to participate.

2.3.6.1 'A Child is a Child'

Many of the ideological assumptions affecting children's participation stem from the simple assertion that 'a child is a child' and therefore a child or young person's narrative lacks impact (Kaldal, 2023). This can be seen for example in justifying a child's exclusion from the process because they are too young, too immature, or too easily influenced by others. This narrative has fed into the historical assumptions about the importance of avoiding children's exposure to conflict between separating parents (Laing et al., 2018). Despite the move away from this view, and the growing recognition of the positive impacts of having children participate meaningfully in legal proceedings, broad assumptions about children and childhood do still exist (Alminde, 2024). In particular, the general perception that children are always inherently vulnerable – or indeed too vulnerable - can result in a loss of valuable participation.

Constructions of the 'vulnerable' child in need of protection even from the decision-making process itself, can spark a legal obligation to ascertain (and then represent) the voice of the child. This can mean that their voice will be treated as a sort of 'optional

extra' (Holt, 2016: 144). As Daly (2018) explains, being mindful of children's vulnerability is important, but too-glib stereotypes about children's presumed lack of capacity are unhelpful when it comes to decision-making on many of the matters that most affect them. This is often particularly so where DVA is a factor, given that children's disclosures can often serve to challenge pre-conceived notions of the vulnerable child. Morrison et al. (2020b) explain that this can then result in adults finding it difficult to hear such disclosures from children. There is potentially often an undue or too-pronounced focus on children's difficulties in talking about their experiences of abuse. Instead, the problem may lie with the *listeners'* capacity – or indeed their unwillingness - to hear and then fully consider the child's perspective (Callaghan et al., 2017).

Alminde (2024) argues that some professionals tend to interpret children's views against a provocative backdrop of what they already know about the case, compounded by certain assumptions which they might hold. This further impedes children's participation. Rather than listening to the child's individual perspective, they are searching for ways to mould the children's contributions into a pre-set framework or template. This is of particular concern where the abusive parent has perhaps already been met with beforehand: their narrative, when viewed alongside these assumptions, could set the agenda in terms of what is being aimed for when seeking out the child's views through questions (Corr & McAlister, 2024).

The literature on children's participation within family court proceedings repeatedly identifies two specific pre-conceived assumptions which can act as barriers to children's participation: the pro-contact philosophy and manipulation (Naughton et al., 2015; Woodhead et al., 2015). It has been argued that these assumptions are so strongly held amongst family law professionals that they can outweigh the child's perspective and feelings. This prevails even in the context of DVA.

2.3.6.2 Pro-Contact

Generally, there is awareness that an ongoing relationship with both parents is of benefit to a child's welfare, unless this would run contrary to their best interests. This is recognised internationally as a human right of the child (Article 9, UNCRC), and as a statutory presumption in England and Wales (Children Act 1989, Section 1(2)(a)) (though this presumption is set to be removed there in the near future, as noted above). Whilst Northern Ireland lacks this statutory presumption in favour of parental contact, it may be argued that a 'pro-contact' culture still seems to exist within its family courts. This favours preservation of the relationship between children and both parents following divorce, dissolution, or parental separation (McLaughlin et al. 2024; AgendaNI, 2025).

This pro-contact philosophy is seen particularly clearly within the context of private law contact proceedings, where courts tend to strive towards enabling or preserving contact with the non-resident parent, often echoing the situation in England and Wales

(Jacobs, 2023), in a bid to promote the welfare of the child. The approach of the family courts there has been described as often being too preoccupied with a concern to 'make contact work,' to fully consider what might be best for the individual child (MacDonald, 2017).

From a child rights perspective, an automatic assumption that 'contact is best' can cause problems for those children who express a view which does not align closely with a pro-contact agenda. Empirical evidence, as discussed in greater detail above, overwhelmingly points to the fact that children's views are frequently deemed less influential where they are opposed to contact (MacDonald, 2017; Mackay, 2018). This reflects Alminde's (2024) contention that some professionals' pre-conceived assumptions can hinder children's participation especially where these do not fit well with or confirm the professional's understanding. In other words, when children say something that does not accord with how adults might see things, they are often positioned as having unreliable views, which are less likely to influence the outcome of the case.

This construction of what is in a child's best interests does not necessarily embrace the right of the child to *not* have contact with a parent. What is seen in practice is that children's views and wishes are often outweighed by the presumption that there is value in maintaining a relationship with the non-resident parent, even if the child explicitly does not want that relationship and offers valid reasons for their reluctance or refusal.

Concerningly, the 'pro-contact' assumption has been demonstrated as prevalent in many jurisdictions, even where DVA has occurred. For instance, when 'Claire' in Morrison et al.'s (2020b) study presented her preference for no contact, her views were probed against a backdrop of her presumed 'love' for her father. The strength of the culture around contact with both parents does not appear to lessen in the wake of a child's disclosure of DVA (MacDonald, 2016; Daly, 2018; McLaughlin et al., 2024). As a result, such abuse may be marginalised as a concern, especially in private law proceedings (Birchall & Choudry, 2018). Its presence poses a dilemma, challenging long-established assumptions on the benefits of contact. Likewise, research suggests that some legal professionals can normalise or trivialise the relevance of DVA to child custody and contact proceedings (Naughton et al., 2015). This can include framing it as a circumscribed or acute phenomenon within a relationship, rather than as a chronic or ongoing problem (Naughton et al., 2015). It can also be sidelined on the basis that it is somehow irrelevant to the 'parenting capacity' of the abusive parent (Coy et al., 2015).

There is a suggestion also within the literature that it is perhaps only the views of those children with whom the judge already agrees that are likely to be afforded 'significant' weight. Children's participation is likewise not always subject to the same scrutiny where views in favour of contact are being expressed. In MacDonald's (2016) consideration of Child Welfare Reports in England, those children who wanted contact were often presented as unproblematic: their wishes might well outweigh any welfare

concerns. Their views were routinely used to support recommendations for contact, whereas those children who did not want contact could be perceived and presented as problematic and obstructive. What is evident is that courts have often been generally in favour of contact, at least that which is reintroduced gradually, with the reinstatement of contact sometimes serving as the starting point for future plans (Mackay, 2018).

Empirical evidence has further shown that despite the improvements in knowledge and understanding of DVA - and its impacts upon children - there is still a predominant view amongst professionals: a present father, even one with deficient or harmful behaviours, is still frequently seen as better than an absent one (MacDonald, 2016). This may be reflected in the silencing of children and young people's experiences when disclosed as part of their participation within family court proceedings. MacDonald (2016) demonstrated how Child Welfare Reports presented a 'pervasive sense of optimism' about contact, with no mention of safeguarding concerns - or practical risk management strategies - related to DVA (p.846). Thiara and Harrison (2016) argue that the continued routine granting of contact, even where there *are* concerns about abuse, reveals that there is still a pronounced lack of understanding about its effects upon children. The 'pro-contact' philosophy - and the assumption that contact with a non-resident parent should almost always prevail – can easily prioritise the abusive parent's rights over the welfare and rights of the other parent and the children, overlooking both their safety and their voice (Jacobs, 2023: 24). The strength of the assumption in private law proceedings is something which Thiara and Harrison (2016) describe as representing a clear difference between private and public law cases, where much greater restrictions can be placed upon the abusive parent's future involvement with the children.

Whilst there is a general appreciation that children have a right to maintain contact with both parents, this must not be to their detriment. A silenced majority of children in Holt's (2018) study challenged this presumption that contact is inevitably going to be in their best interests. For them, a 'pro-contact' philosophy resulted in feelings that no one had cared about or listened to what they had expressed when they were asked for their opinions. As well as looking to the child's views, the courts must consider all factors impacting upon the child's safety and welfare. In particular, it is important to recognise the contexts of abuse with respect to developing knowledge about how perpetrators might use child contact - and protract the court proceedings related to contact disputes - as an opportunity to further exert power and control over their ex-partners and children. As Lamb et al. (2018) explored, a central tenet of rebuilding relationships with abusive parents is the need for the process to be controlled by the children themselves, for example, by being able to say that they are perhaps not ready to spend time with their abusive or absent parent *yet,* and to have that choice respected.

2.3.6.3 'Manipulation'

The second assumption which gives rise to concerns is the often highly gendered issue of 'parental alienation' claims in the family court and the related matter of alleged 'manipulation' of children's views. As discussed in relation to adult victim/survivors' experiences, rather than being framed as a protective parent, mothers who might seek to oppose or restrict their child's contact with their fathers can be viewed as implacably hostile, manipulative, irrational, or unreasonable, wishing only to alienate their child from their father (Thiara & Harrison, 2016; Hunter et al, 2020). Most of the accounts on the impact of parental alienation allegations on experiences within family law proceedings are based upon the adult view of the issue, including that of parents and professionals. However, there is emerging concern that the concept is having significant impact on children's experiences too, particularly in affecting their right to participate.

For a child's view to be given meaningful weight, it should be considered free from coaching or other parental influence. Hence, the family courts can find difficulty with children's views which they consider to have not been made freely or autonomously (Morrison et al., 2020a). The notion of 'parental alienation' therefore presents a sharp challenge to children's participation: their involvement can be significantly limited where they are deemed vulnerable to manipulation by one of their parents. Children's voices may be disregarded under the assumption that their perspective was manipulated, or that they were being prevented from telling the truth or unduly influenced by such alienation (Birchall & Choudry, 2022). This can lead to the silencing of children's views when they express a reluctance for contact with the non-resident parent.

The reporting restriction rules in the UK can make research on this area difficult: we do not know exactly how common these 'alienation' trends are (Ayeb-Karlsson, 2024). However, a disturbing suggestion by Daly (2018) is that the suspicions around the manipulation of children's views is often a default position for family court professionals. Tisdall (2016) found that this concern could be traced throughout UK case law, with numerous decisions mentioning the manipulation of children through pressure exerted on them by their parents. This may include for example the parent being present during interviews with the child or perhaps giving some sort of material 'bribes' (*Ellis v Ellis and C v M* [2012] GWD 9-170). Empirical evidence suggests that where children's views are considered to have been manipulated, the courts tend not to weight their accounts heavily and may even regard offering an opportunity to the child to share their preferences as running contrary to their best interests (Morrison et al., 2020b: 405).

For instance, one child in Morrison et al.'s (2020b) study had attempted to gain her own legal representation and become party to the dispute. This attempt was refused by the court: it was suggested that it was evidence of the mothers' attempt to manipulate the child. In line with Daly's assertion that a child's vulnerability to manipulation may be the default position, Tisdall (2016) highlights cases which contain

counter-assertions, such as noting that the children answered questions 'without any sign of being coached and with no detectable bias in favour of either parent' (*G v G* 2014 WL 2194580, 28) or that a child 'knew her own mind' (*H v H* 2010 SLT 395, 31). As a result, this assumption - that children's views are not always autonomous - can have a chilling effect upon their ability (and right) to have their concerns heard.

Whilst issues around parental alienation and manipulation are being raised in connection with children's participation rights generally, they are of particular importance to the context of DVA. This presents a highly problematic assumption which further undermines the weight given to the child's experiences. Existing research demonstrates that the presumption of manipulation does not waver even when DVA is alleged to have occurred. Even where children express their wishes and feelings clearly, the 'alienation' label effectively serves to silence them (Ayeb-Karlsson, 2024). This may occur despite victim-survivor accounts, research evidence, and knowledge that 'parental alienation' claims are being used in the family court as counter-allegations to abuse (Hunter et al, 2020; Jacobs, 2023: 26). Where a child's opinions are seen as backdropped by alleged 'alienation,' their accounts of abuse can be similarly disbelieved or subjected to intense scrutiny (Gutowski & Goodman, 2020).

This is often in spite of evidence that children typically have well thought out reasons for objecting to contact (Holt, 2018; Lamb et al., 2018). Viewing DVA allegations as evidence of one parent's campaign of alienation against the other, risks an oversimplification of the issues affecting children's best interests and a barrier to children representing their views on contact. A child's exhibited reluctance, resistance or refusal toward contact, which is a reasonable response to DVA, may be framed incorrectly as alienation (Jacobs, 2023: 27; Hunter et al., 2020). Perhaps, then, courts should 'maintain a healthy degree of scepticism' where claims of alienation are made and carefully consider all the reasons why children might be resistant to contact (Rathus, 2020). Rather, the current approach and the assumption of child manipulation potentially leaves children who have experienced abuse - and who wish to express their views in family court proceedings - in a very vulnerable position, unless there is further 'objective' evidence of the abuse (Hunter et al, 2020). As such, this intersection between allegations of child manipulation/alienation and DVA presents a significant and serious risk to child participation rights (Morrison et al., 2020b).

Daly (2018) explains further how the issues around manipulation highlight a wider concern regarding the high standard which children are held to in relation to their rationality, consistency and independence. Children's views are more likely to be taken seriously if they are deemed 'unambiguous' (Daly, 2018). However, family law proceedings are intimate matters of family breakdown in which adults' feelings (and indeed those of their children) will often understandably be unclear or ambivalent. It also overlooks the fact that children's views, much like those of adults, are shaped by and entwined with familial relationships. Children have been shown to do their own relational weighing when considering contact and their perspectives may well be influenced by their own predictions of how their parents, siblings and wider family

might respond to their views, without actually being 'manipulated' (Morrison et al., 2020b).

Where DVA is a factor, children can face even greater difficulties in making sense of the situation: they can present a confusing picture for decision-makers (Gutowski & Goodman, 2020). Questions also arise where children use language which is deemed to be too 'adult' to be their own (Tisdall, 2016; *E v W* 2014 WL 4063090). Echoing these issues, Tisdall (2016) warns that as children become more informed and gain experience of expressing their views, they risk their perspectives being given less weight because it is not considered to be 'authentic' (p.373). In any event, the notions of parental alienation and manipulation are particularly 'knotty issues' within family law proceedings (Morrison et al. 2020b, p.406), especially in terms of the impacts these can have upon children. It bears noting that changes are proposed (in respect of England and Wales) involving amendments to the Family Procedure Rules ('FPR') and their associated Practice Directions ('PD'). These will be aimed at ensuring that experts providing evidence in such proceedings will hold relevant qualifications and be subject to oversight.[28]

Lapierre et al.'s (2025) scoping review of the literature between 2009 and 2020 identified the importance of listening to children's voices, understanding their experiences from their own perspectives, and fostering their participation in research and professional practice. Aside from helping the family courts make more appropriate decisions, there is growing recognition that the participation of children has inherent benefits for the child. The potential advantages of participation were outlined in the Harm Panel Report (Hunter et al, 2020) especially in cases involving DVA, where listening to children's accounts can validate their experiences and better promote their safety and welfare. Some empirical studies support the contention that fuller participation in family court proceedings can benefit the child, indicating that they had a positive experience. Where children were given a choice, felt listened to, and saw that decisions made on their behalf had reflected their viewpoints, they felt empowered and had increased self-esteem (Holt, 2018).

There is also evidence to suggest that reform of the issues identified throughout this review can do much to ameliorate the impacts upon children of participation. In comparison with earlier findings that children's experiences of participation were particularly negative, Jones' (2023) examination of the new Pathfinder Courts model in Wales has shown the experience to be regarded more positively. In this report, where children were given the chance to talk to someone about their perspectives

[28] See further https://www.gov.uk/government/consultations/family-procedure-rules-new-draft-255a-changes-to-252-and-practice-directions-25b-and-25c/consultation-on-the-standards-required-for-expert-witnesses-proposed-practice-direction-changes which suggests that 'only experts with the relevant qualifications, experience and oversight [be] instructed in the family court. For an expert to be regulated by a UK statutory body, accredited by the Professional Standards Authority or ...regulated by an approved regulator under the Legal Services Act 2007, they must comply with a set standard on education and conduct. This change will improve the consistency of the standard of expert evidence presented to the court. This change will also provide parties to proceedings a clear route to raise the concerns over the conduct of an expert.'

(and felt understood in doing so) the experience was described as having felt 'like a weight had been lifted off,' to 'get things off their chest,' and 'empowering' (p. 20). These quotes demonstrate the positive emotional effect participation can offer children, where it is done correctly.

On the other hand, children can experience numerous adverse impacts on their health and wellbeing due to family court involvement (Dalgarno et al., 2024b) which can be 'catastrophic' (Grey, 2023 p. 358). Most of these impacts are reported through mothers and include regressed speech, distress, grinding teeth, reduced eye contact, self-inflicted constipation (Roberts et al. 2015). For example, one mother in Birchall and Choudhry's (2022) study described the profound effect upon her child as including a growing distrust of authority figures and the legal system, alongside suicidality. Frequent litigation can also disrupt family stability and result in strained relationships between mothers and their children (Gutowski & Goodman, 2020).

It is of course important to acknowledge that some level of uncertainty and apprehension amongst children is unavoidable given the nature of family court proceedings. However, the system should strive to avoid unnecessary aggravation of this. Many studies point to negative participatory experiences as contributing to the impacts of the process upon children. The issues identified in this review around the right to participate have been seen to cause children significant emotional harms, from either not being spoken to directly or having suffered the inability to communicate effectively (Dimopoulous et al. 2025). Studies suggest a range of adverse consequences deemed negative by the child. For example, where a child felt that her words had been 'twisted,' this led to more worry and increased feelings of uncertainty about the proceedings and the courts' decisions (Jones, 2023: 21). Where orders are made contrary to a child's view, this could cause upset and distress, with emotional anguish manifesting as bed wetting and nightmares (Holt, 2018). Mothers in Grey's (2023) study reported their children returning from seeing their father 'in a mess,' perhaps vomiting, or engaging in self-harming behaviours such as banging their head: they linked these to the child having been subjected to unwanted contact. In terms of children with disabilities, Gregory et al. (2024) highlight how the courts' failure to take the child's circumstances into account when granting contact often led to negative impacts. The children experienced disruptions to their routine, changes in temperament, and the aggravation or exacerbation of psychological and physiological symptoms.

2.3.7 Summary

In sum, 'while courts may make orders that regulate child contact, they do not deal with the consequences that contact in this context may bring' (Morrison, 2015: 274). Victims/survivors report a sense of systemic bias, operating within frameworks that frequently fail to fully recognise the complexities of DVA and the impacts upon children and young people. Particular bias can be seen in the misunderstanding and misapplication of such pseudo-concepts as parental alienation and in the dismissal or

minimisation of children and young people's voices, so as to perhaps prioritise parental contact 'rights' over the safety and well-being of DVA victims/survivors, both child and adult.

The various themes identified within the literature contribute to our understanding of when and how children and young people might be better supported to participate more fully and meaningfully in the family court proceedings that affect them. A number of key concerns and challenges are evident in relation to children's participation rights, particularly regarding how their views are gathered, represented, and ultimately considered within decision-making. These concerns are exacerbated in court cases involving DVA: this adds an additional layer of complexity to the concept of children's participation rights.

Chapter 3:
COMPARATIVE ANALYSIS:
DIFFERENT JURISDICTIONS, SIMILAR ISSUES

Although the specifics of the legal mechanisms of family courts may differ within and across jurisdictions, many of the underlying, systemic issues outlined above appear to be widespread and quite firmly embedded. This chapter offers comparative analysis, exploring issues and challenges outside of Northern Ireland (e.g. in Scotland, England and Wales, Canada, Australia, New Zealand, the United States, Italy, Brazil, Sweden). It argues that we have much in common in terms of structural challenges and systemic failings: these are neither isolated nor localised. It looks then at evaluations of the Pathfinder pilots in England and Wales, before offering some observations on the recently issued Guidance (June 2025) by the Lady Chief Justice of Northern Ireland, which is aimed at supporting the judiciary in family proceedings involving domestic violence and abuse (DVA).

3.1 Litigation Abuse and 'Parental Alienation' Accusations

Systems abuse was one core theme that appeared to transcend jurisdictional boundaries, bringing with it an especially relentless form of sometimes less visible coercive control, which could often easily continue post-separation. This was seen particularly – but not exclusively - in relation to family courts in Australia (Douglas and Fell, 2020) and Brazil (Dalgarno et al., 2024b). Gendered accusations of mother-survivors engaging in some form of 'parental alienation' (where child contact is blocked vexatiously rather than through concerns over abuse) were also widespread in many jurisdictions, including the United States (Meier, 2020), Canada (Sheehy and Boyd, 2020) and, worryingly, the United Kingdom (Burton, 2022). Although the concept of vexatious alienation has been increasingly scrutinised (and is generally no longer regarded as a 'syndrome,' at least not overtly) it was still often alluded to by many abusive ex-partners (Lapierre et al. (2024), on Canadian family law proceedings).

As Williams et al. (2024: 177) have recently argued – of North America - some 'custody cases characterized by conflict may involve allegations of abuse or parental alienation.' Their small-scale study found that certain accusations could lead to other 'stereotypes and biases' involving 'race, culture, religion, and gender' which might be underpinned by darker 'social myths' about fathers in particular. These could then spark 'inequities in parental rights and harm to their children.'[29] When such

[29] Noting also the various 'biases experienced by fathers included racism, sexism, Islamophobia, and xenophobia, which manifested as presumptions that such fathers espoused outdated gender roles, exerted excessive authority in the home, and were unwilling to adapt to mainstream culture—which can bias the decision-making of custody evaluators, child advocates, lawyers, and judges.' They observed too that errors made by the court included 'ignoring the voices of the fathers, delayed verdict delivery, inadequate assessment of abuse, and failure to prioritize the children's welfare.'

accusations are tied to the concept of litigation abuse, they seem to represent an especially insidious and chronic form of 'family violence.' As Nonomura et al. (2022: 3) found:

> …such actions cause ongoing harm to survivors and their children and waste the time and resources of the family justice system. However, it is not always clear when "litigation abuse" is occurring and trauma-informed understanding of how these behaviours are an aspect of family violence (FV) is not yet widespread among lawyers and other family justice professionals.[30]

Campbell's (2017) observations of U.S. courts found that ongoing forms of coercive control by abusive former partners tended to be complex and multifaceted, especially where they occur within the fraught arena of the family court. They might, for example, see a former abuser:

> …demanding custody simply for the sake of staying involved in the victim's life; forcing the victim to return to court dozens of times to prolong contact; using court-mandated visitation or custody as an opportunity to commit physical violence against the victim; intimidating the victim into conceding joint custody during coercive mediation sessions; and refusing to pay child support to force the victim back into court (p. 41)

Such encounters can leave victims/survivors more vulnerable and prone to being retraumatised, via further (or indeed fresh) harms, through courtroom repetitions of the original patterns of abusive behaviour. This was seen in many jurisdictions: England and Wales (Coy et al., 2015), the United States (Campbell, 2017), Canada (Gutowski and Goodman, 2023; Boyd and Lindy, 2016); New Zealand (MacKenzie et al, 2020).[31] Dalgarno et al.'s (2024b) recent observations of family law processes in Brazil likewise identified that coercive control and 'pre and post-separation abuse often go hand in hand' (p. 12). Silencing can easily occur through ongoing systems abuse, not least where there is the threat of being labelled an 'alienator.' This can profoundly inhibit a victim/survivor's ability to voice their safety concerns around contact and the lasting impacts of abuse on their children (Birchall and Choudhry (2022) on England and Wales).

Much of the literature unsurprisingly suggests that children can easily suffer additional harms through prolonged or repeated litigation, regardless of jurisdiction. For instance, Morrison's (2015) study set in Scotland highlighted the 'salience of the on-going relational consequences of domestic abuse when considering children's wellbeing and safety in contact arrangements' (p. 275). As Heward-Belle (2018) similarly found in respect of Australia, cross-sector relationships have often 'facilitated or impeded

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[30] https://www.fvfl-vfdf.ca/briefs/Briefs%20PDF/Family_Violence_Family_Law_Brief-15-EN.pdf. See further Nonomura, R. et al (2022) '*Engaging fathers who commit family violence: Issues and challenges for family courts'* Centre for Research and Education on Violence Against Women and Children, Western University, London, Canada.

[31] See also McCormack, M. (2025). Endless litigation in family court as a method of post-separation coercive control *Journal of Social Welfare and Family Law*, *47*(2–3), 183–212. https://doi.org/10.1080/09649069.2025.2530882

effective responses to women and children experiencing domestic violence' (p.136) across the related fields of child protection, family law, DVA, and community services. Multiple policies and practices within the public sphere could worsen the impacts of violence against women within the private arena. As such, lived experiences of victims/survivors must be validated through inclusive, trauma-informed assessment processes and comprehensive risk assessments. These must be aimed at gauging the potential risks posed by state institutions, to make more visible 'the coercive tactics of the state' (p.135).

Definitions of the best interests of the child in Australia have also been 'legislatively shaped' to promote 'ongoing beneficial post-separation parental relationships' which should allow for children to be protected from harm (Rathus, 2019:408). Family reports (i.e. expert witnesses and assessments) remain key, as in other jurisdictions. Further reforms are needed, however, to improve the various practices and procedures associated with the writing and oversight of them (as seen also in England and Wales, discussed above in Section 2). There is a clear need for the judiciary to consistently 'display serious concern for the safety and security of children and their (usually female) primary caregivers,' though gender issues and ideological preferences for shared parenting where at all possible can make this challenging to achieve (Sheehy and Boyd, 2020: 81, on Canada). Such things can form a significant barrier to meaningful reform.

In some cases, courts within the United States continued to invoke and give much credence to the concept of parental alienation 'syndrome,' either impliedly or explicitly (Campbell, 2017). Reference to it may not necessarily involve the use of this exact term, however, phrases such as 'implacable hostility' may often appear instead but tend to imply much the same thing. Concerning outcomes have been noted in parts of the United States with children sometimes being removed by the state from the care of mothers who have been accused of apparently alienating behaviours (Meier and Dickson, 2017; Meier, 2020). Worryingly too, much of the research literature also points to occurrences of child abuse having been validated by expert witnesses but then still falling foul of a 'seemingly irrebuttable presumption of falsity,' quite often in the context of residence disputes (Meier and Dickson, 2017: 318).

As MacKenzie et al. (2020) noted of New Zealand, some abused women perceived themselves as having entered a sort of 'alternative reality,' where judges and lawyers simply did not believe them. This runs contrary to the widespread aspirational message that DVA are simply 'not ok' (p. 115). In some instances, mothers' attempts to protect their children from ongoing or future harm were yet again construed as maliciously motivated acts simply aimed at vexatiously alienating them from their fathers. Outcomes based on such reasoning risked undermining the protective instincts of victims/survivors and further jeopardising children's rights and welfare.

Alsalem (2023), in her capacity as UN Special Rapporteur, has made various recommendations within her report on Violence against Women and Girls to signatory states on how they might best protect survivor-mothers and their children. Among

these was the suggestion that specific legislation must be enacted 'to prohibit the use of parental alienation or related pseudo-concepts in family law cases and the use of so-called experts in parental alienation and related pseudo-concepts' (p. 19). In line with this, the Domestic Abuse Commissioner's Report recommended that the Ministry of Justice should appropriately legislate on this matter, including 'consult[ing] with her Office, the specialist domestic abuse sector, the relevant regulatory bodies, NHS England, NHS Wales, [and] the specialist children's sector to develop a stricter definition of psychologist' (Jacobs, 2023: 65 - 67).[32]

The Family Justice Council (FJC) has similarly recently offered Guidance (2024) on the issue of parental allegations of alienating behaviours, stressing the 'highly emotive tensions' associated with this topic and reminding us that arguments over them are often very 'counterproductive to the best interests of children.' They can easily, for example, take the 'focus away from the voice of the child' (2024: 3). Attention should remain on the impacts of DVA upon the child 'rather than on parental behaviours.'[33] The FJC Guidance reiterates that the notion of parental alienation syndrome 'has no evidential basis and is considered a harmful pseudo-science' even though concepts such as this one are being 'increasingly exploited within family litigation' (2024:3).[34] It distinguishes between the various behaviours often seen in the context of familial breakdowns, classifying some as typically protective (parental) and normal emotional (child) responses, which have not arisen from any sort of 'psychological manipulation by a parent' (p.4). These can include the 'justified rejection' of a parent by a child because of their abusive behaviour. The FJC Guidance does however still refer to the existence and occurrence of 'Alienating Behaviours,' describing these as:

> psychologically manipulative behaviours, intended or otherwise, by a parent towards a child which have resulted in the child's reluctance, resistance or refusal to spend time with the other parent. (p.4)[35]

Likewise, there is a somewhat equivocal category included, termed 'Reluctance, resistance or refusal ('RRR'),' to describe those 'behaviours by a child concerning their

[32] See further, guidance in British Psychology Society (2023).
[33] FJC Guidance (2024) on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour: https://www.judiciary.uk/wp-content/uploads/2024/12/Family-Justice-Council-Guidance-on-responding-to-allegations-of-alienating-behaviour-2024-1-1.pdf
[34] The FJC Guidance also distinguishes between various concepts: 'Attachment, affinity and alignment ('AAA') – reasons why children may favour one parent over another, or reject a parent, which are typical emotional responses to parenting experiences and not the result of psychological manipulation by a parent; Appropriate justified rejection ('AJR') situation where a child's rejection of a parent is an understandable response to that parent's behaviour towards the child and/or the other parent; Alienating Behaviours ('AB') – psychologically manipulative behaviours, intended or otherwise, by a parent towards a child which have resulted in the child's reluctance, resistance or refusal to spend time with the other parent; Protective behaviours ('PB') – behaviours by a parent towards a child in order to protect the child from exposure to abuse by the other parent, or from suffering harm (or greater harm) as a consequence of the other parent's abuse; Reluctance, resistance or refusal ('RRR') – behaviours by a child concerning their relationship with, or spending time with, a parent, which may have a variety of potential causes.' (p.4)
[35] See further *Re C ('Parental Alienation'; Instruction of Expert)* [2023] EWHC 345 (Fam) para 103, on the three elements which must be present for Alienating Behaviours to be deemed present.

relationship with, or spending time with, a parent, which may have a variety of potential causes.' The FJC Guidance warns also of the harms that can flow from experiencing 'severed relationships' or hearing 'false narrative,' including adverse impacts on the child's identity and on their 'self-worth and sense of safety in the world.' The 'significant emotional impact on parents of the loss of a relationship with a child' are also highlighted (p.6).

The FJC cites the findings of Hine et al. (2024) which recommended a 'two-fold plan' to both raise public awareness of the issue and 'boost mental health support for affected parents, via training for professionals, support groups, and counselling for families.' It bears noting here that Hine et al. (2024) observed that their research participants 'did not report many manifestations of alienation in children (as measured by the new Five-Factor Model)' (p.5). They also (p.9) define parental alienating behaviours ('PABs') as 'coercively controlling forms of abuse' (Harman & Matthewson, 2020) which can 'result in what is known as 'parental alienation.' They go on to categorize parental alienation, somewhat equivocally, as 'the actions and attitudes manifested by the child when there is a coercively controlling abusive dynamic in the family system' (Hine et al., 2024: 9).

3.2 Gender issues

Given that Northern Ireland continues to be described by some as a 'conservative and patriarchal society' (Lagdon et al., 2024: 5), it has been suggested that DVA may at times run the risk of being overly normalised. Some scholars have pointed to a degree of near complicity amongst some professionals (Doyle and McWilliams, 2019). Romero and Staudenraus (2024) likewise offer a useful analysis of the experiences of Canadian victims/survivors of intimate partner violence throughout all stages of familial dissolution. They focus particularly upon the wider, perhaps unseen, impacts of family court hearings on such private matters as child 'custody' and contact, noting how instances of stalking, harassment, verbal, psychological, and emotional abuse might very easily continue post-separation. The re-traumatisation of adult victims/survivors – unwittingly perhaps, by legal professionals, but sometimes within the confines of the court room itself – can also be a factor. Certain 'dark behaviours' (threats of further proceedings, or more delays, for example) by ex-partners can easily amount to litigation abuse, outside of the courtroom.

This could sometimes go largely unnoticed by legal professionals, indicating a sharp lack of understanding of the potential for continuing abuses within and outside of the family court arena. This was seen in many jurisdictions, including Scotland (Mackay, 2018; Burman et al., 2023) and Australia (Kuruppu et al., 2013; Roberts et al., 2015). As Morton et al. (2021) further observed of some judges in Ontario, there was at times a tendency to 'de-gender' such abuse and then minimise it by terming it simply as 'conflict' rather than classing it as a type of abusive behaviour. As Kjellberg (2024:1) has also recently argued of Sweden:

> Women who are abused by their male partners are defined as victims of crime entitled to support in international declarations such as the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011) and the Declaration on the Elimination of Violence against Women (1993).

Regardless of jurisdiction, children can easily suffer additional harms via prolonged or repeated litigation, especially where this is coupled with, for example, threats of their being removed from the family home. Moroskoski et al. (2022) have categorised this as a type of 'lethal violence' against women (in respect of Brazil). There may also be a widespread lack of public awareness as to what might actually constitute incidents of coercive control, as Lagdon et al. (2023) have observed in respect of Northern Ireland.[36] As Feresin (2020: 61) noted of Italian courts, accusations of parental alienation, yet again, remain prevalent: this is often deemed to be a typically female problem, with some mothers seen as having actively directed or manipulated their children's thoughts, opinions, and behaviours. Familial breakdowns can likewise be regarded as simply a private problem for individuals to manage alone rather than something that might well require the intervention of the state to ensure the safety of the vulnerable (Francia et al., 2019, on Australia). Such a stance displaces – and ignores – wider systemic issues involving the varied societal, political, or legal contexts which can underpin, prolong, minimise, or worsen DVA.

3.3 Structural and Systemic Issues

In relation to Sweden, Bruno (2018: 426) suggested that the particularly difficult 'times of trouble following a separation' might perhaps be indicative of thorny issues associated with national self-image. Such a point seems particularly relevant to Northern Ireland given its turbulent, violent history and ongoing political situation. As Lagdon et al. (2024: 5) also found, 'the fragmented, and at times conflicting, nature of civil and criminal justice systems can negatively impact a victim's/survivor's access to, and experience of, justice.' Choudhry and Herring (2017) have further highlighted how easily human rights violations (under Articles 2, 3, and 8 of the European Convention, for example) might arise and go unaddressed, particularly where litigants are unable to easily access adequate legal aid or other essential supports. Burton (2022: 414) has similarly warned – in respect of England and Wales - that the process of 'mediation is not a panacea and holds its own dangers in domestic abuse cases.'[37] Where litigants in person are involved, it seems that there may also be a greater risk of 'secondary victimization' (Laing, 2017:1315, on Australia). This can then result in a

[36] See also Lagdon et al (2024:5) on how matters are further complicated in this jurisdiction by the 'wider gender norms and heterosexual assumptions that represent unique challenges for male victims and those from the LGBTQ+ community.'

[37] Adding that 'the new pilots of an alternative 'investigative' approach to child arrangement cases, perhaps hold greater promise of a breakthrough in an area which continues to present significant problems for the legal system and risk of harm for children and 'protective' non-abusive parents.'

sharp ‘weaponization’ of the legal system by perpetrators of DVA (Douglas, 2018: 85).[38]

To an extent, the establishment of the 2022 Pilot for Pathfinder Courts (in North Wales and Dorset) does at least represent a commitment to a greater sharing of information between key agencies i.e. the courts, police, and social services. This is being done with a view to achieving more supportive and ultimately ‘safer outcomes for child and adult victims and survivors.’ The focus is intended to be upon actively problem-solving and making family law processes much more child-centric (Jacobs, 2023, at para 2.7.5). As Weston et al. (2025:106) have argued – and as is noted throughout much of the literature - ‘the need for a trauma-informed approach to representation in family proceedings is increasingly recognised.’ The implementation of a fully trauma-informed approach (TIA) is likely, however, to demand the introduction of varied and deep-seated structural changes, including, for example, further training for professionals to enable them to better support victims/survivors of DVA when they are engaging with family court processes.[39] There is a difference between being trauma-aware and fully trauma-*informed*: practitioner knowledge of the many physiological and emotional effects on victims/survivors is often in need of some fine-tuning. It is unsurprising that:

> many individuals report being traumatised by their own representatives, of not feeling heard or believed or of being asked questions in a way that triggers distress and traumatic memories and reactions. (Weston et al., 2025: 108)

Roberts’ (2023: 6) warnings (on England and Wales) highlight too that, although ‘judges, Cafcass, Cafcass Cymru, and social workers are … committed to improvements,’ they must still contend with significantly ‘heavy workloads and lack of resources’ (para 2.10). DVA victims/survivors seem likely to continue to suffer unmet legal needs in civil proceedings. This is not unique to the UK, however; Chiapetta (2019) has raised similar concerns in relation to the United States. The lack - or a too-sharp rationing - of legal aid can, however, lead to a widened ‘justice gap’ and poorer eventual outcomes. In respect of Northern Ireland, Lagdon et al. (2024: 5) highlight similar barriers to justice, such as victims/survivors having often had to evidence DVA as part of their application for legal aid or endure the trauma of having ‘the systems interact with a recipient’s social security and/or immigration status.’ Similarly, they found that the financial situations of victims could often be ‘complex and intertwined’ with those of their abuser. This could further exacerbate the precarity of their overall

[38] Douglas (2018) further argues (in respect of Australia) that ‘engagement with the legal system may be experienced by one party as abuse at the same time that the other party justifies their engagement as a right (85).’

[39] On the issue of training and awareness-raising, CAFCASS stated within its *Domestic Abuse Practice Improvement Programme* (2023) that ‘a mandatory Domestic Abuse Learning and Development Programme is in place for all Family Court Advisers along with Domestic Abuse Personal Learning Plans to support practice improvements. It has been completed by 95% of those eligible, with a rolling programme available and required for new employees.’ https://www.cafcass.gov.uk/about-us/our-reports-and-publications/domestic-abuse-practice-improvement-programme

position, by entrenching a 'perceived hierarchy of representation, with those in receipt of legal aid at the bottom' (p. 6).[40] The Department of Justice for Northern Ireland (2025: 3) has recently reiterated that legal aid is a core:

> …component of the welfare state ensuring access to justice for people who would otherwise be unable to afford legal representation. It provides protections in law in respect of the ability of people to defend themselves: in criminal proceedings, and in civil and family proceedings. It provides access to professional advice and representation and supports the protection of human rights.[41]

They found also that, although the quality of the support provided by legal professionals was generally described by stakeholders as having been good, others some had 'voiced concerns that some solicitors appear to act in ways that seek to maximise their income' or perhaps did not provide legal-aid eligible clients with sufficient information to help them apply for it. As such:

> steps should be taken to ensure that all solicitors who undertake work associated with the family court understand the waiver process and offer it to every respondent who has experienced domestic abuse (p.30)

Criminal Justice Inspection Northern Ireland (CJINI) (2024) has further highlighted some of the barriers facing victims/survivors, in terms of, for example, accessing legal aid. Although a waiver (of financial eligibility rules) was introduced for victims/survivors of DVA in cases involving applications for Article 8 Orders (contact, residence, specific issues, prohibited steps) brought by the perpetrator, it appears that there have been very low levels of take-up (and indeed awareness) of the waiver by solicitors. This is unfortunate given that the waiver was established in recognition of how litigation abuse can adversely impact upon victims/survivors:

> ... perpetrators may seek to abuse their victim by continuing to require them to attend hearings in the Family Proceedings Court, placing the financial burden on them of paying for legal representation.[42]

Other barrier-causing issues included the high evidential threshold that relates to proving the occurrence of DVA (para 6.28) and concerns on the part of those who might be called upon to offer evidence of abuse where a victim/survivor had not reported the matter to the police (e.g. GPs, health visitors, social workers or housing providers) (para 6.29).

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[40] Practice Direction 12J and the findings of the Harm Panel Report (2020) do not apply to Northern Ireland.

[41] Department of Justice (NI) (2025) 'Enhancing Access to Justice for Victims and Survivors of Domestic Abuse: Report Under Section 29 Of The Domestic Abuse And Civil Proceedings Act (Northern Ireland) 2021' https://www.justice-ni.gov.uk/sites/default/files/2025-06/Enhancing%20Access%20to%20~%20out%20of%20Section%2029%20Domestic%20Abuse%20and%20Civil%20Proceedings%20Act%20NI%202021.pdf

[42] CJINI (2024) *Review of the Effectiveness of Part 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021* *https://www.cjini.org/reports/review-of-the-effectiveness-of-the-domestic-abuse-and-civil-proceedings-act-northern-ireland-2021/*

3.4 Financial Abuse in ancillary relief proceedings

In respect of England and Wales, Resolution (2024: 33) has highlighted four areas of practitioner concern on the issue of financial abuse which merit mention here (though they were beyond the scope of their 2024 Report). Firstly, cohabiting couples are particularly vulnerable, lacking even the limited legislative property rights 'protections' of those who are married or divorcing. Second, a review of the 1989 Children Act's legislative framework (Schedule 1) is needed, to better factor in the impacts of such abuse upon vulnerable children and their parents. Third, a failure to disclose family assets by one spouse or partner can easily amount to a form of DVA.[43] Likewise, the current system of child maintenance is now worryingly 'complicated, and ineffective as evidenced by the scale of the arrears and non-compliance' with court orders. It can frequently render applicants acutely vulnerable financially especially 'in circumstances where the respondent does not have a regular PAYE income'. As such, 'these issues are all likely to be associated with cases of economic abuse' (p.33).

Similarly, some victims/survivors of DVA have indicated that they were prepared to accept much less than they might have been entitled to, post-dissolution, due to an inequality of 'bargaining power associated with domestic abuse' (Hitchings and Bryson 2025: 40) and a need to avoid protracting litigation, or potentially achieve a 'clean break' in respect of the division of their assets. One of the key findings of Hitchings and Bryson's study (2025: 1, on England and Wales) was that 'child maintenance arrangements were more likely when non-resident parents had more contact with their children.' On the issue of financial abuse leading to post-separation financial precarity they argue that:

> …for those parents who were unable to come to any arrangement, fear, intimidation and abuse was a factor raised by some interviewees in why they had to walk away without a financial arrangement in place. (p. 27)

Likewise, they observed the concerning outcome that 'resident parents who received the smallest proportion of the total assets were the least likely parents to receive ongoing child maintenance' (p.57).[44] They noted also that those who had had legal representation often 'did not feel comfortable negotiating with their ex-spouse,' perhaps because of a history of DVA (p.30).

Such things can clearly affect a resident parent's ability to 'recover financially' from the impacts of the divorce and to meet their children's current and future needs: this may be especially problematic for those in 'lower asset groups' who might have zero child

[43] See further *Tchenguiz and Ors v Imerman* [2010] EWCA Civ 908 which places sharp limitations on the admissibility of certain documents e.g. those detailing assets, which might have been obtained unlawfully.

[44] See further Hitchings et al. (2023), Fremder (2025) 'who argues that neither Hitchings *et al* nor Resolution have called for urgent legislative reform: 'Resolution noted the complexity of translating abuse into financial redress, while *Fair Shares* deferred to future Law Commission work to explore whether reform was warranted.'

maintenance arrangements in place, potentially causing or worsening child poverty (p. 57). There is clearly still a need for an even wider 'cultural shift' (Resolution, 2025) amongst legal practitioners, regardless of jurisdiction, to acknowledge the various 'power imbalances, cultural clashes and differing perceptions of fairness' (Calver and Edwards, 2025) that can easily influence outcomes in private family law proceedings, perhaps even *before* marriages or civil partnerships occur. Even pre-nuptial agreements may fall subject to coercive control:

> …as we become more alive to the prevalence and forms of domestic abuse and the ways in which the law and procedures don't adequately support victims, it's important that we apply that awareness to our work on nuptial agreements (Calver and Edwards, 2025). [45]

As Calver and Edwards (2025) argue, to take 'conduct' into account within financial remedy cases in the UK would require legislative reform: such an approach could, however, help to prevent those outcomes that often fail utterly to 'mitigate the effects of domestic abuse on its survivors.' Thompson and Campbell (2024) have likewise suggested (in respect of Australia) that family courts could perhaps look to the use of some implied term within pre-nuptial agreements that these would be unenforceable by any party who then goes on to commit DVA. They justify this approach on the basis that it can be assumed that the parties to the marriage would be unlikely to want the agreement to be enforced if this were to occur.

Recent legislative reforms in Australia are relevant here. Prior to the enactment of the Family Law Amendment Act 2024 (in force from 10th June 2025, substantially amending its 1975 predecessor) the courts only needed to 'make just and equitable orders to settle the property pool' (Byrne, 2025). It is now mandatory for them to 'assess whether family violence has affected a party's contributions, future needs, or entitlement to maintenance' (Fremder, 2025a). The new Australian legislation is aimed also at ensuring that the 'care and housing needs of children are considered in financial and property decisions' and that financial information should be disclosed as early as possible to promote speedier resolutions. The courts there should also now take a less adversarial approach, while a new regulatory framework for Children's Contact Services will hopefully improve the provision of 'safe and child-focussed services for children whose families are unable to safely manage contact arrangements on their own' (Feminist Legal Clinic, 2024).[46] Rowland (2025) has further suggested that Australian family courts will have 'a new power to prevent sensitive information being viewed or used as evidence in family law proceedings, where the harm in doing so outweighs the need for the evidence.'

[45] They call also for greater 'recognition of domestic abuse as a factor rendering nuptial agreements invalid or unenforceable under the current law.'

[46] Arguing also that the reforms should 'put the best interests of children at the centre of parenting decisions in family law matters.' Other key changes include more funding for the Federal Circuit and Family Court of Australia to extend their *Lighthouse* model, a scheme aimed at improving risk screening, triage, and assessment of family law matters.

Fremder (2025a) describes the new Australian legislation as a useful step towards integrating DVA 'as a structural factor in financial decisions,' noting the contrast with the courts in England and Wales, which still rely upon the 'limited conduct provisions' of the Matrimonial Causes Act 1973. She adds that by codifying the common law principle in *Kennon v Kennon (1997) FLC 92–757,* Australia's new statutory framework is now geared towards ensuring that 'financial arrangements post-separation fairly reflect the adverse impact of abuse during the relationship.' It usefully differentiates between conduct and misconduct, reframing these 'within the assessment of fairness, contributions and future economic vulnerability' which acknowledges how financial inequalities can lead to long-term harm.

Even prior to these legislative reforms, however, the Australian courts had adopted a different approach to that of the UK, for example adjusting financial settlements to take account of DVA. *Castelli v Castelli* [2023] (FedCFamC2F 1172), for example, acknowledged that psychological harm and abuse had been suffered by the wife. In *Sweet v Sweet* [2022] (FedCFamC2F 676), the presence of coercive control had likewise required that an adjusted award be made in the wife's favour. The new legislation builds, therefore, upon common law principles, whilst also amounting to an 'explicit statutory departure from discretionary treatment of abuse in financial settlements' (Fremder, 2025b). In sum, there seems now to be in Australia a 'developing jurisprudence in which abuse is acknowledged not merely as a moral or criminal matter, but as an economic reality with enduring consequences' (Fremder, 2025b).

This differs from the situation in England and Wales, where DVA must still be quite 'serious and result in a clear financial detriment' for an award to be affected (Fremder, 2025b). [47] Likewise, though the Domestic Abuse Act 2021 brought in a long-awaited, wider definition of DVA - including that which is financial in nature - it unfortunately made no changes to the legislative framework on financial remedies (Fremder, 2025b: 31).[48] As Gordon-Bouvier (2024: 650) summarises, the UK's current approach to this issue clearly 'fails to adequately recognise the nuanced experiences of domestic abuse survivors.' Factoring the presence of DVA into ancillary relief proceedings should not, however, be seen as 'moralising,' but rather as a tangible recognition of the:

> substantial and long-lasting impact that domestic abuse can have on a victim-survivor, affecting many aspects of life and often substantially inhibiting the process of financially recovering from the breakdown of a relationship (p.651).

Jacobs (2025) has recently reiterated the prevalence of financial abuse, which can take various forms and have profound, lifelong consequences for victims/survivors, adult and child, alike. In addition to being left with inadequate financial support, they

[47] Citing *In N v J* [2024] EWFC 184, and adding that 'even where allegations are substantiated, they rarely lead to an adjustment unless the impact is directly quantifiable.'
[48] Ibid., adding that 'the conduct threshold under s 25(2)(g) remains unchanged and highly restrictive in practice.' See also the controversial outcome in *Traharne v Limb* [2022] EWFC 27.

might, for example, also be referred for inappropriate extra-judicial dispute resolution or must endure their abuser breaching court orders. Recent case law brings little comfort. *Tsvetkov v Khayrova* [2023] EWFC 130 confirmed that allegations relating to poor conduct should be case-managed at the First Appointment, after which pleadings cannot usually be amended (to include, say, DVA allegations). In *N v J* [2024] EWFC 184, the court did note 'the increasing awareness of the incidence of DVA and its harmful and pernicious effects' but still went on to declare that this 'does not lower the conduct hurdle to be surmounted in financial remedy proceedings' (para 29). In *Y v Z* [2025] EWFC 221, the court did permit the wife to change her pleadings to include mention of her husband's abusive conduct, but this was done to 'ensure fairness to the husband in enabling him to respond to those, as his counsel had requested.'[49]

3.5 Children's Participation

While family law policies increasingly aim to present more progressive principles regarding children's participation rights, a clear disjuncture yet remains between policy and practice. Behind a rhetoric of inclusion lies a broader debate about whether, how, and to what extent children's rights are being meaningfully respected and realised in practice. Some jurisdictions fail to perceive participation as a 'right' of the child, presenting it instead simply as a possibility available to the court, should it be deemed necessary (Daly, 2018).

3.5.1 Potential for reform? The Pathfinder Pilot in England and Wales

It is important that reforms are continuously tested so that it can be seen how they are operating in practice, whether they achieve their intended aims, and, if so, what unforeseen consequences they might give rise to (Ryder, 2018). As noted above, a Pilot for reform, the Pathfinder Court model, has been underway in England and Wales for several years now. It is apparently intended to be the 'default model' for private law cases elsewhere (Doughty, 2025). Rather than being litigant-led, its problem-solving approach is said to apparently be much more child-centric in nature (McFarlane, 2024). As Doughty (2025) has observed, the Pathfinder model was intended to achieve a more 'investigative approach' towards private law disputes, and thereby:

> improve the experiences of families in child arrangements proceedings, reduce the re-traumatisation of victim-survivors of domestic abuse, reduce the amount of time families spent in court, and improve coordination between agencies.[50]

A key aim is to improve 'the sharing of information between agencies to allow for more informed decision-making and fewer hearings' in addition to offering specialist support to domestic abuse survivors' (Fouzder, 2025a). Jones' (2023) examination of Cafcass

[49] McHale (2025), adding that the judge did note that he 'remained to be persuaded that they would add much to the evidence already before him.'
[50] It began in North Wales and Dorset in February 2022 and expanded to South East Wales and Birmingham in Spring 2024.

Cymru (via interviews with FCAs and children) identified some concerns, however (noted in Section 2). Though children's views are now at the forefront, some problems remained in respect of their active choices over whether, how, when, and where they might participate in proceedings: their knowledge of the process and why they are being asked for their views; rigid timescales impeding their opportunity to have a say; and the inadaptability of modes of participation to make children feel comfortable. These represent continuing barriers and challenges to children's effective participation within family court proceedings.

Pathfinder differs from the Child Arrangements Programme ('CAP') in terms of its processes: under the CAP, a Cafcass practitioner does an initial safeguarding check for potential risks of harm, looking to other agencies and making phone calls to parents. Generally, they will not see the children concerned. Their findings are then summed up in a letter which will inform the first court hearing. With Pathfinder, there is a front-loaded 'information gathering phase' comprising of an in-depth assessment 'to understand the impact of issues in the case on the children involved, resulting in a child impact report (CIR).' This should be informed by conversations with parents *and* children, to better ascertain their wishes and feelings. The report will then be reviewed by the court which can recommend a 'non-court resolution, request further investigation of issues, make interim orders, such as periods of supervised contact, or hold a decisions hearing and make a final order' (Samuel, 2025).

In other words, Pathfinder involves three phases: information gathering and assessment; interventions and/or decision hearing; a review. It relies upon a 'dedicated Case Progression Officer in the court administrative team' who case co-ordinates and serves as a point of contact and support for families (Barlow et al., 2025:3).[51] Funding is key: support agencies carry out 'DASH' risk assessments (domestic abuse, stalking, and honour-based violence). The emphasis upon 'frontloading' means that the early information gathering done at the start of the court process should save time and enable better cross-agency working. The voice of the child is the central focus, with their experiences and views garnered from the beginning, via their engagement with a Family Court Adviser (or local authority social worker), or through the court appointed Children's Guardian. Children could meet with or write to the judge or – less frequently – provide evidence in court. (Barlow et al., 2025).

Barlow et al. (2025: 5) suggest that, in comparison to CAP, Pathfinder has achieved 'substantial improvements both in terms of the experiences of children and families as well as to system efficiencies.' This includes a better hearing of the child's voice, and more respect being afforded to children's views at an earlier stage of the proceedings, with assessments being completed more quickly. CIRs are crucial: these can contain contributions from DVA support services if needed. Fewer court hearings were required, and the introduction of Case Progression Officers saw greater efficiency,

[51] Barlow et al (2025) 'Private Law Pathfinder Pilot: Process Evaluation and Exploratory Financial Analysis' Ministry of Justice

better communication, and more support for families. It was suggested too that re-traumatisation was lessened, given the 'more supportive process and a better court environment' (p.6).

There were some challenges identified, however, in terms of implementation (rather than with the model itself). For example, the practical aspects of centring the child's voice, and the ascertainment of children's wishes in connection with legal proceedings, remain matters of concern. The issues associated with navigating change meaningfully were also highlighted: it was essential to include 'key people, and agencies' from the very start, to 'maximise staff engagement with the new approach and…drive forward cultural change within organisations' (Barlow et al., 2025:6). The presence of legacy cases (being dealt with concurrently under CAP) also complicated matters.

The most significant factor however, which had the potential to hinder the success of the Pathfinder pilot, was the issue of finite and scarce resources, not least staff capacity and 'recruitment challenges,' present from its introduction. The high number of cases involving DVA allegations – and counter allegations – could not be overlooked (p.6). Wider support for families was often lacking (e.g. supervised contact, or courses to improve parenting skills). There was a degree of confusion too over certain roles and remits: a 'lack of definition and boundaries of the Case Progression Officer role' was noted. In relation to the Pathfinder process itself, its 'review stage' had given rise to some problems, for example in terms of ascertaining when it should be employed. Not all cases required a 'check in,' though this was seen as beneficial where DVA had been present (p.7).

In relation to costs, Barlow et al. (2025:8) suggest that the more 'complex' cases – in terms of 'resource intensiveness' – generally tended to cost less under Pathfinder, with the less complicated ones sparking higher costs (as compared to those being dealt with under CAP). DVA support services added to costs: under CAP they are not funded by the family justice system. Pathfinder had fewer court hearings, however, which did see savings. However, the compressive effects of front-loading – over six to eight weeks – did create a significant 'resourcing challenge' for Family Court Advisers. As such, any further rollout of Pathfinder would demand a 'careful consideration of resource allocation across the family justice system on an organisation-by-organisation basis.' (Barlow et al., 2025: 8)

Doughty (2024)[52] has similarly analysed the 'problem-solving approach' that the Pathfinder pilot seeks to espouse, noting its key aim of having courts 'identify at an early stage those cases where there are safeguarding or abuse issues and those that are suitable to be resolved through non-court dispute resolution.' She cites HHJ Scannell's recent judgment in *Re Child A and B* [2024] EWFC 284 (Cardiff Family

[52] Doughty J (2024) '*Why would you give me the power to make decisions about your children?*' https://transparencyproject.org.uk/why-would-you-give-me-the-power-to-make-decisions-about-your-children/

Court) which laid out some guidance on the Pathfinder process. There is a sense of adaptability: cases that began pre-Pathfinder, as this one did, might still benefit from adherence to the Pathfinder principles, not least in terms of accepting the need to avoid undue delays and prolonged bouts of litigation. Although DVA was not raised as an issue in this specific case, the parents' relationship was apparently marked by much acrimony. The court hearing saw the mother screened off from the father. As Doughty – who was present at the hearing - observed of the proceedings:

> ...it seemed odd to hear the judge so actively encouraging parents to behave positively about each other in a court room where the mother had to be physically shielded from the father.

The father was granted more contact with the children on the basis that they would likely suffer 'emotional harm' if they were unable to form a relationship with him. The arrangements set out by the court (rather than via an agreement reached by the parents) were quite detailed, which to some extent contravenes the Pathfinder policy of avoiding the 'micro-management of a family's time' (Doughty, 2025). The case offers some useful guidance, however: Child Impact Reports (CIRs) should for example be grounded in a 'broad child focused analysis' to help the court fully 'address each element of the welfare checklist when reaching a conclusion.' For most cases coming before a Pathfinder court this CIR will be their only welfare report: the emphasis is however upon having 'greater upfront investigation.' The voice of the child must be heard, with Cafcass set to meet children at an earlier stage to draw up the CIR. This strategy is also aimed at giving parents more time to come to terms with the court's decision (Doughty, 2025).

The initial evaluation of Pathfinder (Barlow et al., 2025) has been described as being 'quite limited in scope' looking as it does only to the views of relevant professionals (who provide rather than receive a 'service' under this pilot) (Doughty, 2025). These professionals were 'generally positive' about the new process, seeing it as at least a cost-effective improvement on the 'old' system. It does not reveal however if Pathfinder changes the way in which cases are being decided or settled, or if its use has led to fewer or more court orders perhaps being made (i.e. on contact, residence, or shared residence) nor does it indicate if more cases are being resolved by way of some amicable agreement between drawn up by the parties themselves (Doughty, 2025). It would be disappointing if its main benefit was eventually found to be one of cost-cutting, by virtue of simply speeding things up, without fully addressing the thornier, and more complex issues of underlying concern.

That said, Barlow et al.'s (2025) findings do suggest that children were to some extent being more seen and heard under Pathfinder, and that this was happening at an earlier point in time. As noted above, the front-loading of information often led to less time in the courtroom, fewer hearings, and more support for DVA victims/survivors. As Doughty (2025) warns however, the report does sound 'a note of caution about the

quality and consistency of the court data they were examining.'[53] Fouzder (2025) noted also that the 'Pathfinder' courts do have a 'more child-led, problem-solving approach to resolving disputes [and] reduced case duration' but that their roll out has so far been exceedingly slow.

In sum, the model needs more resources but there has yet to be an assessment to gauge accurately the level of funding needed.[54] As Samuel (2025) argues, Cafcass has warned that a lack of social workers remains a significant 'barrier to [the] rollout of private law pathfinder.' Some 200 extra social workers are apparently needed if it is decided to proceed, on the basis that pathfinder relies upon family court advisers (FCAs) to work more quickly with children and families at an earlier stage, than under the CAP presently in place. It has been found too that local authority costs in Pathfinder areas were more than twice those seen with CAP, given the greater numbers of cases. The Public Accounts Committee has called for 'an assessment of how the [Pathfinder] model will affect spending and how it intends to reallocate funding to Cafcass and local authorities as necessary' (Samuel, 2025).

The Ministry of Justice remains largely positive however (MOJ, 2025:2) claiming that court backlogs have been reduced under the pilot, and that the Pathfinder model 'represents a holistic transformation of system-wide practice and procedure.' It cuts delays, they argue, by creating:

> a context in which risk is assessed earlier and is better understood, where conflict is reduced, and where children are put at the centre of proceedings. The model also provides expert domestic abuse support and advice to victim-survivors which is desperately needed. [55]

The President of the Family division (at the time of writing), the Right Honourable Sir Andrew McFarlane (2025:3), has similarly hailed the Pilot as being:

> even more effective than its originators thought might be the case. In particular, it is seen by domestic abuse professionals as being a better way of addressing issues of domestic abuse and protecting victims and children than our present system.[56]

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[53] Doughty (2025) adds that 'In view of how positive the MoJ is about the Pathfinder, we're surprised it's being rolled out to other courts so slowly. While the whole of Wales is being included, only a handful of English court areas are mentioned,' noting that 'a finding that staff were happier to be spending less time there doesn't really tell us much about the effectiveness of the process.'

[54] Fouzder M 'Family justice system 'badly letting children down', MPs warn' (2025b) *Law Society Gazette,* noting that *'*a National Audit Office report published earlier this year …found family court delays were putting children at risk of harm and anxiety, and doubled legal aid spend.' See also Fouzder(2025a)

[55] MOJ '*Private Law Pathfinder: An update on the implementation of the Government's Pathfinder programme for private law reform'* (2025) https://assets.publishing.service.gov.uk/media/67e277f770323a45fe6a7067/pathfinder-programme-update.pdf

[56] *A View from The President's Chambers:* April 2025 adding that It is a decade since the last major reform of our approach to Private law with the introduction of the CAP (PD12B: Child Arrangements Programme). What is now in train is the establishment of a far more fundamental change in

Further research into the Pathfinder model must aim to explore the wider contexts in which the family courts operate, including analysis of the relationship between children's involvement and the decisions taken by the courts, to gauge if reforms are improving matters relating to the weighing up of children's views.[57] The experience of the Pathfinder model has at least demonstrated the benefits of the judiciary developing and maintaining regular working relationships with other key agencies. The President of the Family Division has recently encouraged the Local Family Justice Boards in England and Wales to ensure that they include a representative from their local DVA services, to promote better understanding of that abuse (McFarlane, 2024). It is important too that reforms include consideration of children's views on how the system can best support them in terms of participating in decision-making and indeed what exactly meaningful 'participation' means to them.

Barlow et al. (2025: 9) do sound a note of caution over their findings in terms of the 'limitations in the quality, availability and comparability of data within the family justice system' and the 'regional variation in court practice and case complexity.' [58] Not all of the wider benefits and costs of Pathfinder could be included in their analysis (e.g. fewer appeals or less protected litigation). They do however make several implementation-focussed recommendations ('Lessons for Rollout') in terms of practice, policies and further research elsewhere within the UK. These include keeping the focus upon children - and the voice of the child - to include consideration of what the concept of ''child-centred' looks like on a case-by-case basis.' Information gathering is also crucial, with an earlier, more investigative model (via the CIR) taking centre stage. There is a need to figure out just how this activity might best be 'maintained and balanced against timely case progression in any future rollout,' given that delays can occur (particularly where 'fact-finding' is needed).

On the review stage, it was suggested that greater consideration might be given to issues of communication and implementation. Likewise, to build effective partnerships in new areas of rollout, more thought must be given to the question of how local 'buy in' might best be achieved, alongside 'investment from all agencies at an early stage of the implementation process.' Staff engagement is key: DVA support services are vital. The role of the Case Progression Officer (and that of the core team who will 'gatekeep') are 'fundamental from the perspective of participants' not least in terms of achieving a multi-agency approach, against a challenging, increasingly austere

supporting separating parents to resolve disputes. https://www.judiciary.uk/guidance-and-resources/a-view-from-the-presidents-chambers-april-2025/

[57] See further Murphy, G (2025) who states that 'access to the children court's guardians in private law proceedings is largely missing and is something that has been advocated for, for a long time. Instead of guardians, the courts dealing with private law contact/residence applications, hears the children's voices from the parents and the Court Children's Officers (social workers attached to the court). Occasionally, the official solicitor is appointed to represent the child. *What we are seeing is resource and time pressures impacting on the child's voice being heard independently in the private family court system.'* (Emphasis added).

[58] Noting that their findings might not be 'representative of the whole system. As a result, the differences in cost between court areas and between Pathfinder and CAP may reflect data limitations or differences in local court practice rather than actual differences in cost between the two models.'

'landscape of wider support services.'[59] The most significant concern is likely, as ever, to be one of resourcing (i.e. staffing, capacity) given that the Pathfinder model can alter 'the cost profile of a case, with higher costs for some organisations at different stages within a case' (Barlow et al., 2025: 10). Investment is needed, in 'joint training and role-relevant domestic abuse training' if there is to be a successful rollout to other areas of the UK.

The Ministry of Justice's ('MoJ') recent update (2025) has acknowledged some of these concerns and echoed the need to reduce the amount of ongoing court cases before Pathfinder's proposed roll-out, to avoid overburdening the system with two separate processes running concurrently. Likewise, the review stage has been deemed 'confusing for families and difficult to operationalise' [60] and was therefore dropped from the Private Law Pathfinder Pilot 11 Practice Direction in December 2024 (p.10).[61] On the issue of DVA support services, it was conceded that these did not initially offer 'stability or appropriate assurance to providers or to the MoJ,' but that these are now commissioned via a different system, aimed more at timeliness, and at ensuring that Independent Domestic Violence Advisers (IDVAs) are 'appropriately trained and inducted'(p.11).[62] It is noteworthy that consideration will also be afforded to the issue of 'how domestic abuse harms are assessed and managed,' together with a review of how the model has worked for those parties who are not parents (e.g. grandparents) (p.13).

The Domestic Abuse Commissioner (2025) has expressed her approval of Pathfinder's innovations, stating that they seem to offer a 'vastly improved experience for victims,' in the sense that, quite often, the sense of 're-traumatisation is reduced, and families are spending less time in court, as cases are resolved more quickly.' She has called however for proper funding of the courts and the specialist DVA sector 'so children and adult survivors of abuse can get the support they need,' adding that:

> As we're nearly five years on since the publication of the Harm Panel Report, it has long been clear that urgent change is needed. The Family Court should be a place of support and protection, and we owe it to adult and child victims to make this a reality. [63]

3.5.2 Reform in Other Jurisdictions

In acknowledging the similarities of the many issues and challenges facing these jurisdictions, it also merits mentioning that some examples of *good* practice can also

[59] Such as 'access to contact centres, parenting advice for families and interventions for perpetrators of domestic abuse.'
[60] Originally, families would be contacted at some point between 3 months to a year after the making of a final order, to ascertain how they were doing and to direct them towards further support.
[61] 'Work is ongoing to identify an alternative way to support families after a final order.'
[62] The services are now to be 'commissioned through grant funding and working with offices of the Police and Crime Commissioners who have expertise in commissioning these services' (MoJ, 2025).
[63] https://domesticabusecommissioner.uk/commissioner-responds-to-the-governments-evaluation-of-pathfinder-family-court-pilots/

be found throughout much of the literature. For example, in interviewing advocacy professionals in Scotland, Morrison et al. (2020a) identified a specific service for children who had experienced DVA and then been subjected to contested child contact applications. The aim of the service is to feed children's views directly into cases: it is available for children as young as 4 years old. The Children's Rights Officer (CRO) will meet children multiple times, initially with a parent, at their home, to explain their role and the boundaries of their work, and to give the child essential information (on confidentiality and on what will happen in connection with their views, within the legal process). Following this, they meet with the child several times outside of their home to facilitate the collection of their views, which are then recorded in writing verbatim and checked over with the child. These can then be amended by the child at a subsequent meeting. Only once the child is satisfied with the recording of their views will these be forwarded on to the court. It is of note too that CROs are not involved in the legal proceedings. Their role is limited to reporting the child's views accurately to the court. Whilst they may meet with the child once proceedings have concluded, any knowledge of legal decisions that is conveyed to the child is not coming directly from the decision-makers.

Scotland has also seen the introduction of its Victim's Code (2018)[64] which places significant emphasis upon the vulnerabilities of victim-survivors of crimes. It refers specifically to children, highlighting that their best interests must be taken into consideration (factoring in their age and capacity). They must also be protected from further victimisation, intimidation and retaliation during and after the investigation and proceedings' (p.3) which is particularly apposite for family court proceedings involving DVA. The right to participate throughout the various processes – though more couched in adult-centric terms of understanding and being understood (including translations from English, where needed) - is also stressed (p.6). Notably too, this Victim's Code stresses the need for special measures for those who might be deemed vulnerable in some way: victim/survivors of DVA are seen as akin to those who have suffered more visible, less familial or private wrongs and harms:

> All children (aged under 18 years) are, by law, classed as vulnerable and, alongside alleged victims of domestic abuse, sexual crimes, human trafficking and stalking, are automatically entitled to the use of certain standard special measures.' (p.11). There is also scope to include within this categorization those who may have 'a mental disorder, learning disability or [be] suffering fear and distress' (p.11) at the prospect of giving evidence in court.

Within Scotland, there also appears to be an increasing trend of children speaking directly to the Court. Tisdall (2016) found that some members of the Scottish judiciary had adopted a more proactive approach, in terms of taking the opportunity to directly interview the child, as evidenced within Scottish case law (e.g. *G v G* (2014) WL

[64]*Victims' Code for Scotland

2194580, though the judgment did not refer to the view expressed being influential within the decision). Anecdotal evidence also suggests that this is an increasing trend (Orr, Dickinson and Smythe, 2024).

As Burman et al. (2023:234) further note, within Scotland there has long been a backdrop of increasingly ambitious strategies aimed at sparking tangibly meaningful policy and practice responses, including specialist DVA courts, alongside the use of specialised training and guidance for those in the criminal justice sector. There has been 'considerable reform in the context of child law, family law and children's rights, with evidence of an ambitious and innovative strategy in pursuit of a civil law framework suitable for contemporary families' (p.235). The Family Justice Modernisation Strategy (Scottish Government 2019b) sought to bring in new measures for the civil courts, including having more information available on DVA and bettering the links between the civil and criminal courts in cases where DVA was a factor. The Scottish Women's Rights Centre (SWRC) also provided approved Domestic Abuse Training for Solicitors, on the topic of 'good practice when working with those who have been subjected to domestic abuse.'[65]

However, the issue of DVA does not yet seem to be always fully 'brought to the attention of the family lawyers and the court' in civil proceedings. Formal mechanisms 'by which practitioners are informed of criminal proceedings in relation to domestic abuse' are often lacking, meaning that the client must raise the issue, often after civil proceedings have already begun. This carries a 'risk of partial or inaccurate information being conveyed or miscommunicated.' Therefore, a lingering 'lack of awareness of the occurrence of domestic abuse and the outcome of any associated criminal proceedings may compromise the safety of the child and the non-abusive parent' (Burman et al., 2023:244).

Worryingly too, there were widely differing views amongst lawyers over 'the importance of domestic abuse as a significant consideration in child contact' cases, with some seeing domestic abuse as being of quite limited importance to the child's wellbeing and safety. This suggests that at times the 'risks to the child are being underplayed, because the nature and impact of abuse on children continues to be misunderstood.' Similarly, DVA was seen by some as simply an 'adult matter': its presence within proceedings involving child contact was occasionally viewed merely as a point of argument between separating couples rather than as an often highly gendered, now criminal offence tied directly to 'the imposition of power and control.' The best interests of the child were sometimes also under-considered, and this was exacerbated by a predominantly pro-contact culture, where 'a high level of risk needs to be established before contact is considered harmful' (p.245).

[65] Scottish Government, (2019b). *Family Justice Modernisation Strategy.* Edinburgh: Scottish Government. https://www.gov.scot/publications/family-justice-modernisation-strategy/document

The Scottish Child Interview Model ('SCIM') (2019) is however grounded in a rights-based trauma-informed approach which prioritises the needs of children who have experienced or witnessed neglect, crime, or abuse. It aims to promote greater consistency and quality of joint investigative interviews ('JIIs') which focus on creating safer spaces where children can offer accounts of their experiences, free from the risk of suffering re-traumatisation. Interviews are carried out by specially trained social workers and police officers (the training lasts 7 weeks): they must adopt trauma-informed approaches. In other words, they will be able to recognize how trauma can deeply affect the emotions, responses, and behaviours – often profoundly unique in nature - of child victim-survivors. The child's evidence is recorded with a view to it being used in subsequent court proceedings, potentially reducing or removing the need for repeated testimony-giving or too-frequent court appearances. Such thinking is also seen in forensic interview settings, where it is now accepted that:

> Trauma and adversity can affect children and their general development; affect their ability to make sense of, store, and remember events; affect their ways of coping and managing feelings under pressure; affect a child's understanding of relationships and people, which might affect how and who they tell (Frier et al., 2022:5). [66]

As Frier et al. (2022:5) argue in respect of interviewing child victims/survivors, a safe environment is key to meaningful participation, in terms of enabling the child to be 'understood and calm [to] help them talk about their experiences.' Such an approach towards fact-finding could also work well in other contexts, for example, in relation to court proceedings involving DVA allegations, regardless of whether these are occurring in criminal or civil, public or private family law cases. Those who are seeking to fact-find via interviews with the child (judicial or otherwise) should adhere to 'the trauma-informed principles of safety, choice, collaboration, trust and empowerment' (p.6). They should therefore:

> pay heed to the child's non-verbal communication...to support the child to remain regulated and able to engage – they must attune to changes in the child's physical presentation and mood and consider what this might be communicating about their ability to manage their emotions throughout the interview (p.6).

In terms of practical elements, the emphasis is on child protection as much as it is on participation. Much like Pathfinder in England and Wales, there is a clear need for consistent interagency co-operation to pre-determine and plan strategy, with an interagency referral discussion ('IRD') setting out clear aims and objectives well in advance, before children are interviewed. (p.9) Interview plans must look to the child's 'strengths and resources' to identify how to support the child's needs during the interview. These might include the accommodation of complex needs, 'self-soothing behaviours', taking into account the 'child's stage of cognitive development' and the need perhaps for focussed questions. In particular, the child's experiences 'of trauma

[67] Stressing also the need for 'non-suggestive social support' i.e. the avoidance of 'leading questions' to encourage meaningful participation by children.

and adversity [and] potential triggers' should not be overlooked or sidelined. Helping the abused child remain with their own, individual 'Window of Tolerance' (Siegel, 1999) to avoid emotional dysregulation is often key to having them 'function most effectively' and 'readily receive, process, and integrate information.' Similarly, it is stressed that children often tend to have unique speech, language or communication needs, even where they have been deemed to fall within the usual ranges of 'normative development' (Frier et al.,2022: 10).

Though civil and private family law proceeding do differ in many respects from criminal and public family law proceedings, it may be argued that the presence of DVA can serve to blur the boundaries and distinctions between them. Victim/survivors – children in particular – can have enhanced vulnerabilities, generally requiring higher levels of care and support all round. Legal professionals and judges within Northern Ireland seeking to adopt (or adhere to) best practices could perhaps look to the approaches outlined in the SCIM (2019) for dealing with child victim-survivors of abuse, proven or alleged. La Rooy et al.'s comments (2015) could also at times be seen to apply to key aspects of private family law proceedings involving DVA allegations made by children:

> ...poorly conducted interviews have terrible consequences: Children are put through lengthy, stressful legal proceedings only to have experts later testify that the interviews were inconclusive; misunderstandings and inaccuracies may lead to false conviction or family breakup; alternatively, abusers may be free to exploit other children (p.4).

Adherence to the NICHD protocol (National Institute of Child Health and Human Development) might likewise serve to give dealings with child victim-survivors a more 'evident structure' which could help avoid the risk of 'poor questioning strategies that may lead to contamination or memory distortions' (La Rooy et al., 2015: 7).

McCabe (2024: 522) offers a further observation, namely that Scotland's approach to DVA policy making has been hailed as 'world-leading' in respect of its 'explicitly feminist policy constructions.' There are, however, certain 'fault lines' even within this lauded model. The sector's focus, for example, that of a unified 'anti-violence movement', could be seen as having perhaps prioritised the framing of gender issues to the detriment of certain other matters, leading to a 'marginalisation of intersectional frames, particularly the intersection of race and gender.' Other inherent or system-worsened vulnerabilities (such as age, ethnicity, disability, and sexual orientation) should equally not be overlooked or inadvertently sidelined (p 523).

As McPherson (2022: 496) has also noted, there has been a significant degree of hybridisation in Scottish Law, for example with the introduction of the 'distinct, gender neutral offence of domestic abuse against a partner or ex-partner.' In other words, the use of non-harassment orders (arguably, not completely dissimilar to non-molestation orders in Northern Ireland), in conjunction with criminal proceedings, can impact upon family court decisions on child contact. Notably, it seems that their usage can appear 'inconsistent with the move in Scotland towards increased respect for the views of children in contact proceedings.' As Cairns and Callander (2022) further argue, the law

could do more to recognise and validate the experiences of children and young people who have been exposed to DVA, namely by categorising them as 'adjoined victims' under 'the expressive and symbolic power of criminal law' (especially as it relates to the notion of coercive control).

There are lessons and warnings here perhaps for Northern Ireland's DVA law and policy makers, in terms of ensuring that the overlaps (and gaps) between criminal and civil law do not serve to prejudice or sideline the participation rights (or indeed the best interests) of vulnerable children or their parents. The need to for adequate funding, again, cannot be ignored.

Likewise, as one Scottish NGO, Children First, (2025) has recently pointed out, even despite the drafting of fresh legislation,

> ...child contact centres remain unregulated. This leaves uneven safeguards in places where victim-survivors and children may be forced into contact with perpetrators - spaces that can retraumatise and endanger families. The potential for the system to put women and children at greater risk can also affect women's willingness and ability to seek help in situations of domestic abuse.

Koshan's (2018:515) arguments (in respect of the United States and Canada) ring true here: integrated domestic violence courts ['IDV'] *do* have the potential to deal with familial contact disputes more effectively, given their frequent emphasis upon child and family law issues. There is still a significant risk however that such courts may tend towards increasing levels of (potentially quite unsafe) contact-ordering. This does little to prioritise the safety of victim-survivors or minimise the chances of their suffering further harm[s]. She suggests that jurisdictions without the resources to implement IDV court systems could instead work towards developing clear 'information sharing protocols to avoid inconsistent orders in different courts, while being mindful of the risks of information sharing.' She adds, pragmatically, that

> While no one court model can ever solve all of the difficulties and risks inherent in domestic violence cases, procedures that involve dedicated and specially trained judges and other court personnel, legal representation and other support services for the parties (including children), and judicial monitoring of compliance with court orders hold some promise for better resolving parenting disputes and better protecting the safety of women and children (p.529)

Dimopoulos et al.'s (2025) qualitative interviews with children in Australia have also identified that effective participation should include professionals listening to, hearing, and *understanding* their views. The creation of child-led space[s] for participation, the building and maintenance of trust, receptiveness to children's views, and the accurate conveying of those views to decision-makers, are also key aims. Australia's *Lighthouse* Model advocates specific stages 'to manage and streamline matters that require urgent attention.' These include: early risk screening (using an online platform, Family DOORS Triage); early identification and management of safety risks; assessment and triaging of cases by a specialised team (offering support and referral

on to appropriate services); case management which includes referring high risk cases to a dedicated court list (the Evatt List).

Davis (2015) also suggested a usefully straightforward, four-pronged approach (in respect of U.S. family court systems), whereby all professionals involved in decision-making should firstly identify DVA and then seek to actively understand its nature and context. They should then determine the implications of such abuse, before accounting for its nature, context, and consequences in all 'custody-related recommendations and decisions.' Such a template might help to address concerns that some victims/survivors have expressed, namely that their fears and testimony were often at risk of being minimised or disregarded completely at certain points in the process.

An approach like this could also aid judges, if they are hoping to better convey their expectations about what they want to find out about DVA from the professionals concerned (Davis, 2015). Similarly, it might help to 'define the contours of appropriate parenting arrangements' and aid the development of 'institutional policies, procedures, and practices and to design forms, checklists, practice guides, and manuals' (Gutowski and Goodman, 2023: 537). [67] Despite its time-consuming nature, it might also serve to deter unconscious bias and prevent the making of harmful assumptions.

To achieve greater compliance with the provisions and principles of the UNCRC, changes are also needed to reflect children's specific experiences within the family courts, post-DVA. There is an urgent need to legislate for - and invest in - an independent system for children who are subject to court proceedings. This could ensure that such children receive independent information and advice, in addition to ongoing support, and meaningful opportunities to develop trusting relationships with those adults who can safeguard their participation rights (Morrison et al. 2020a). There must also be a more long-term, radical shift in relation to some of the conceptualisations of participation rights (and of contact) in the minds of professionals.

3.5.3 Northern Ireland

Gillen J has recently observed that there are three key considerations that must be taken into account if we are to gauge 'the evolution of children's voices in the family court system' in Northern Ireland (Agenda NI, 2025). Scarcening resources is a key factor, which cannot be ignored. Equally, there is a need to 'take caution when transferring solutions from Britain to ensure they are adaptable to Northern Ireland' (Agenda NI, 2025). That said, the piloted Pathfinder programme (in England and Wales) does stress the need for children to be given the option of a direct meeting with the judge. Likewise, it requires that between child impact reports and the final order, considerable attention should be given to how court decisions will actually be

[67] Adding that '…the strength of the framework lies in the fact that it does not assume anything about abuse but requires practitioners to delve into the specifics of abuse. It is gender neutral on its face, but invites rigorous gender analyses' (p 537).

communicated to the children involved, with a view to ensuring and enhancing greater transparency and accountability (Lloyd, Agenda NI, 2025).[68]

Northern Ireland has also recently seen the Lady Chief Justice of Northern Ireland (LCJ) release detailed Guidance for the Judiciary (June, 2025) in relation to family proceedings involving DVA (admitted to, proven, or alleged) where an application for a contact and/or residence order has been made.[69] The LCJ Guidance, from the outset, speaks to the need for more trauma-informed, child-centric thinking and practice, highlighting that even infants in utero can 'suffer harm from domestic abuse' (para 2.1). It notes, pragmatically, that the parties might wish to resolve matters themselves, via a privately drawn up agreement, but that any such outcome must be subject to the court's scrutiny and approval (para 2.2). As a number of studies have found, there are often challenges and vulnerabilities associated with such privately agreed solutions in family law, in terms, for example of perhaps perpetuating or overlooking coercive control, or gendered inequalities of 'bargaining power' (Mant, 2017; Bruno, 2018; Hunter et al.,2017; Francia et al., 2019). As such, the need for judicial oversight of such privately reached resolutions cannot be underestimated.

On the matter of DVA allegations, the onus is on the parties to raise these – and indeed set them out – at 'an early stage,' alongside any other relevant child protection issues (para 3.1).[70] Where DVA has been proven or admitted to, the proceedings are more straightforward: a residence or contact order should protect the safety and wellbeing of the child, without exposing them to 'the risk of further harm.' If abuse allegations are in dispute, a fact-finding exercise may be necessary: again, the courts must decide as quickly as possible if this needs to be carried out.[71] Where such a fact-finding exercise

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[68] Noting that, 'For us as judges, there is a qualitative difference between engaging with children in public law and private law cases, we are far more comfortable in discussing with a child any state interference in their lives, but far more squeamish about asking a child about their views on parental disputes. That is something we are trying to rectify.' (Lloyd, G (2025) *Agenda NI Roundtable*).

[69] It applies to any proceedings within the Family Division of the High Court, the Family Care Centre, or the Family Proceedings Court being brought under the Children (Northern Ireland) Order 1995 (and, indeed under the Adoption (Northern Ireland) Order 1987) https://www.judiciaryni.uk/files/judiciaryni/2025-07/Guidance%20for%20the%20Judiciary%20-%20Family%20Proceedings%20-%20Domestic%20Abuse%20-%20300625.pdf. The comprehensive Guidance is also applicable to 'any proceedings in any other court in which any question arises about where a child should live or about contact between a child and a parent or other family member where the court considers that an order should be made' (1.2). It is relevant also to litigants in person (1.3). Domestic abuse includes behaviour falling within the definition offered by section 2 of the Domestic Abuse & Civil Proceedings Act (Northern Ireland) 2021, in conjunction with section 4 ('Meaning of behaviour').

[70] As with the Pathfinder (England and Wales) and Lighthouse (Australia) models, time is of the essence: courts should therefore (3.2) 'identify at the earliest opportunity the factual and welfare issues involved; consider the nature of any allegation, admission or evidence of domestic abuse and the extent to which it would be likely to be relevant in deciding whether to make a contact and/or residence order and, if so, in what terms; give directions to enable contested relevant factual and welfare issues to be tried as soon as possible and fairly; and ensure that *where domestic abuse is admitted or proven,* any contact and/or residence order in place protects the safety and wellbeing of the child and does not expose them to the risk of further harm (emphasis added).

[71] Notably, if a fact-finding exercise is found to be unnecessary, court orders should record the reasons for this decision, underscoring further the need for greater transparency in relation to such decision-making.

is found to be needed, the court must provide direction on how this will be run in a fair, timely, and proportionate manner, 'within the capabilities of the parties.'[72] The Guidance stops short however of suggesting that such fact-finding might always or often be necessary – or indeed desirable – in every case where DVA has been alleged (Campbell, 2017; Barry, 2020). This is reflective perhaps of the inevitable delays and additional costs that such an approach would likely incur.

As Transparency (2025) have pointed out in respect of England and Wales, scarcity of resources can put added 'pressure on judges and magistrates to deal with cases as quickly as possible and on Cafcass staff to limit their inquiries.' This, combined with the increasingly widespread prevalence of DVA, (and the 'structural factors of the pro-contact culture') can lead to 'most allegations being treated as marginal or irrelevant,' irrespective of jurisdiction. There is therefore, within the LCJ's Guidance, much-needed, welcome acknowledgement of the many and varied difficulties facing domestic abuse victims/survivors during family court proceedings (Harwood, 2019; Walker, 2020). They may require support to be able to give evidence or indeed be 'unable for reasons beyond their control to be present in court,' perhaps requiring special measures to be put in place. Equally, an alleged perpetrator may need support, to have a 'reasonable opportunity to challenge the evidence' that is being submitted against them.

Continuity (Douglas, 2018) is another key aim, with, ideally, the same judge (or panel) hearing both the fact-finding proceedings and any subsequent applications concerning contact or residence. On such issues as contact and residence – or any other matters relating to the welfare of the child – the court should consider directing that an expert report must be prepared, unless it is satisfied that no such evidence is needed to safeguard the child's interests. Such reports should come from the Children's Court Guardian Agency or a Court Children's Officer, a Social Worker, or '*any other expert* whose expertise the court considers might be of assistance to them (emphasis added).' Arguably, the inclusion of this last category of expert witness is perhaps mildly concerning, given the recent Recommendations by UN Special Rapporteur Alsalem (2023) (within her report on Violence against Women and Girls) on how signatory states might better protect victims/survivors of DVA.

As discussed above, Alsalem, has warned of the use of certain expert witnesses, calling for the introduction of specific legislation aimed at prohibiting the use of 'parental alienation or related pseudo-concepts in family law cases and the use of so-called experts in parental alienation and related pseudo-concepts' (p. 19). Her unease is echoed by the Domestic Abuse Commissioner's suggestion that the Ministry of

[72] If allegations are contained in a schedule, there should be a note of what evidence might be needed to 'determine the existence of coercive, controlling or threatening behaviour, or of any other form of domestic abuse' perhaps also including third party evidence (e.g. from health or social care professionals, the police, or domestic abuse support services). See further *Re H-N* [2021] EWCA Civ 448, wherein the Court of Appeal suggested that narrative statements from relevant parties are preferable to using Scott Schedules to itemise abuse allegations pre-fact finding hearing (given the nature of coercive control).

Justice should introduce such legislation which includes 'a stricter definition of psychologist.'[73]

That said, where there are unresolved, disputed allegations of DVA, the LCJ Guidance makes it very clear that no interim order on contact or residence should be made, unless the court finds that the best interests of the child would require otherwise. In keeping with the need to avoid the pitfalls of a seemingly 'pro-contact culture' (Barnett, 2014; Dalgarno, 2024b; Feresin, 2020; MacDonald, 2017), the LCJ Guidance also states that any such order must not 'expose the child to an unmanageable risk of harm' given the profound 'impact that domestic abuse against a parent can have on the emotional wellbeing of the child and the need to protect against domestic abuse.' (para 6.1(b)). [74] Should an interim order for contact or residence be under consideration, the court should look to the specific arrangements that might be needed to ensure:

> as far as possible, that any risk of harm to the child and the parent who has made the allegation of domestic abuse is minimised and that the safety of the child and the parties is secured.

For example, if contact is ordered it may need to be supervised or somehow supported, subject to available resources, and it must be beneficial to the child. Moreover, wherever practicable, the court should make findings of fact:

> as to the nature and degree of any domestic abuse which is established and its effect on the child, including where appropriate, the effect on the child of the harm caused to the parent against whom the domestic abuse is, or was, directed.

Given the need for transparency, such findings should be noted in a schedule to any relevant order, which should then be available to the parties concerned. The Court Children's Officer should also be sent this. Where DVA has occurred – and regardless of whether or not a fact-finding exercise was held – concerns over contact, residence, or 'other involvement' in the life of the child might see the court consider the need for further assessments (e.g. social work, psychiatric, psychological, or expert safety and risk) in relation to the child or any other party. Courts should 'ensure that any order for contact does not expose the child to an unmanageable risk of harm' and that it will be made in their best interests.

Such a template arguably suggests that some risks of harm might be manageable, and not necessarily incompatible with the making of a contact order. Notably though, the courts must consider *any* harms which the child has suffered through DVA: this can include those resulting from 'the impact of the domestic abuse on the parent

[73] See further the findings and suggestions of Campbell (2017), Meier and Dickson (2017), Grey (2023), Gutowski and Goodman (2020), and guidance in British Psychology Society (2023).
[74] The welfare checklist (Article 3(3) of the Children (NI) Order 1995) must be considered as appropriate, paying particular attention to 'the likely effect on the child, and on the care given to the child by the parent who has made the allegation of domestic abuse, of any contact and any risk of harm, whether physical, emotional or psychological, which the child is likely to suffer as a consequence of making or declining to make an order.'

against whom the domestic abuse is, or was, directed' and which the child is 'at risk of suffering if a contact order is made.' In sum, it seems that contact orders should only be made where the court is completely satisfied that 'the physical and emotional safety of the child …can, as far as possible, be secured before, during and after contact.' The court should also consider 'the conduct of both parents towards each other and towards the child and the impact of same on the child.'

The LCJ Guidance plainly acknowledges that litigation abuse (Nonomura et al., 2022; Campbell, 2017; Reeves, 2020; Douglas and Fell, 2020; Rathus et al., 2019; Burton, 2021) does occur, referencing as it does those situations where it is unclear whether a parent simply wishes to promote their child's best interests, or is perhaps instead seeking to use family court processes 'to continue a form of domestic abuse against the other parent' presumably, some manner of coercive control.[75] Contact in the wake of DVA is not automatically or explicitly ruled out however, despite its long association with litigation abuse and gendered risks of harm (Coy et al., 2015: 53; Walsh, 2024). Indeed, it seems that the court could perhaps in some cases (and despite 'having considered any expert risk assessment and having carefully applied the welfare checklist') potentially still go on to direct that contact could be both 'safe and beneficial for the child' in question. It should, however, always consider 'what, if any, directions or conditions are required to enable the order to be carried into effect' (such as supervision of the contact, for example).

Whether this then leaves a degree of scope for some sort of de facto (or default positioned) pro-contact presumption to emerge in certain cases remains to be seen. Such an outcome seems highly unlikely however, given the recent developments in England and Wales, which have served to spotlight just how frequently 'domestic abuse is routinely a factor in child arrangements cases, in a system that was not designed and is not resourced to deal with this' (Transparency Project, 2025). As The Transparency Project suggests, the current monitoring mechanism in England and Wales should continue and be expanded to include the Pathfinder courts and financial remedy cases.[76]

3.6 Recent findings

As discussed above, the 'rhetoric of idealised post-separation family life' (Holt 2020b: 325) can be concerning. Hay et al. (2023:1292) have outlined the various 'systemic challenges' which signal the increasingly acute need for a meaningful, trauma-informed 'paradigm shift' that fully recognises how the nuances of coercive control can continue to affect victims/survivors, adult and child alike, post-dissolution, via familial

[75] Article 179(14) of the Children (NI) Order 1995 may be used, even absent an application for such an order, to protect domestic abuse survivors from repeated bouts of litigation.

[76] Transparency Project (2025) https://transparencyproject.org.uk/new-research-shows-domestic-abuse-issues-fall-by-the-wayside-in-making-decisions-about-children/ concluding that 'the next phase of the monitoring mechanism should include active participation by children and further interviews with court professionals.'

litigation. Harwood's (2021) suggestion that a presumption *against* contact in cases where DVA is present remains a timely one, particularly in the light of the most recent findings from England and Wales (Jacobs, 2025).

In relation to these, the Domestic Abuse Commissioner has expressed her deep concern and reiterated that – despite the passage of five years since the Harm Panel Report, and the degree of relative progress apparently being made by the Pathfinder pilot – 'the level of change required remains largely unfulfilled.'[77] There are still 'significant risk[s]' for victims/survivors of DVA, often arising from 'a pro-contact culture and a failure to recognise abuse contributed to decisions that may have put children in harm's way' (Jacobs, 2025). Victims/survivors indicate for example that they were at times discouraged from making allegations about DVA on the basis that 'it would have no sway over whether the abusive parent would be granted contact.' Likewise, in 'nearly half of the cases reviewed, unsupervised overnight contact was ordered.' Potentially unsafe child arrangement orders have similarly been accepted by DVA victims/survivors for fear that some even worse outcome might have been forthcoming such as having to leave their home. Moreover, 'almost half of final orders were made by consent, but this does not necessarily indicate that they were safe. Parents were often encouraged or pressured to settle, by the court or their own lawyers.'[78] Most worryingly perhaps, it also appears that an:

> outdated understanding of domestic abuse amongst some legal professionals frequently saw physical violence and sexual abuse taken more seriously, while coercive and controlling behaviour — which often underpins physical abuse — were often dismissed (p.3).

A prominent charity (*Surviving Economic Abuse*) has offered a detailed response to the findings in Jacobs (2025), summarising the current situation as one in which abusers can quite easily 'turn the family courts system into a playground for coercive control.' They may do so via divorce and financial proceedings, to:

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[77] Jacobs N (2025): https://www.gov.uk/government/publications/everyday-business-addressing-domestic-abuse-in-the-family-court/everyday-business-addressing-domestic-abuse-and-continuing-harm-through-a-family-court-review-and-reporting-mechanism

[78] Home Office/Jacobs N., '*Everyday business: Addressing domestic abuse and continuing harm through a family court review and reporting mechanism'*. (Para 4.4) https://www.gov.uk/government/publications/everyday-business-addressing-domestic-abuse-in-the-family-court/everyday-business-addressing-domestic-abuse-and-continuing-harm-through-a-family-court-review-and-reporting-mechanism#recommendations. See also Burton M and Hunter RM '*Everyday business: Addressing domestic abuse and continuing harm through a family court review and reporting mechanism'* (2025) (upon which the Home Office Report is based https://domesticabusecommissioner.uk/wp-content/uploads/2025/10/Everyday-Business-full-report-web.pdf.

> sabotage victim-survivors' efforts to rebuild their lives by racking up costs and drawing out proceedings for years. Due to unreachably high legal aid thresholds, victim-survivors are often forced to face an abuser alone in court without advice or representation. This is often too great a risk, and victim-survivors are forced to settle for an unfair outcome just to escape this abuse. Due to gaps in legal rights and protections this can be even worse for survivors who live with their abuser but aren't married to them. [79]

Their recommendations for meaningful reform include the removal of barriers to justice by ending the means test for legal aid for DVA victims/survivors, and the introduction of compulsory specialist training on DVA, 'including coercive and controlling behaviour for judges and all relevant court professionals.' As Jacobs (2025) states, more funding is clearly needed to promote better family court review and reporting mechanisms (FCRRM), which should, in turn, spark more 'rigorous oversight and continued accountability.'

That said, some significant 'pockets of good practice' can be seen within the family justice system, across jurisdictions and professions. The Foyle Family Justice Centre in Northern Ireland, for example, has been hailed as a best practice exemplar, given its collaborations-led aim of going 'beyond the traditional notion of agencies and support organisations' to have several 'partner agencies physically located in the same building and working under one roof.' As such, it:

> reduces the number of times victims have to recount their ordeal; it reduces the number of places they have to go for help; and it increases access to a wider range of support services for victims.[80]

One small but powerful suggestion put forward by the Family Justice Young People's Board and Cafcass (2020:14) makes much sense, in terms of reminding us of why the family courts exist, and how they might strive to better protect vulnerable children:

> All children should be encouraged to write a letter to the judge to explain how their family difficulties affect them. The family courts have come a long way since 2010 and the voice of the child is louder than ever before.[81]

3.7 Conclusion

> '…antiquated thinking, coupled with a severe lack of resource and siloed working is leaving many survivors feeling unheard, unsupported, and unprotected.'

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[79] Surviving Economic Abuse 'F*amily courts failing victim-survivors and their children – SEA responds to new report'* (2025) https://survivingeconomicabuse.org/news/family-courts-failing-victim-survivors-and-their-children-sea-responds-to-new-report/

[80] See further About Foyle FJC – Family Justice Centre

[81] Cafcass and The Family Justice Young People's Board (2020) *'In Our Shoes: Experiences of children and young people in the Family Justice System'* https://www.cafcass.gov.uk/children-and-young-people/family-justice-young-peoples-board/fjypb-book-our-shoes

- Jacobs, N (2025) '*Everyday business: Addressing domestic abuse and continuing harm through a family court review and reporting mechanism' (*Home Office, Indep. Report, Foreword).

In reviewing recent literature on adult and victim/survivors' experiences within the family court system, the conclusion is clear: there are still many significant and persistent 'barriers to navigating [the] legal system' (Bradshaw et al., 2024: 120). Studies consistently show that accounts of DVA, from both adults and children, are often marginalised in family law decisions, much to their detriment. Failures within the family court system, as experienced by victims/survivors, often lead to a profound sense of wider, institutional, systemic betrayal. This manifests as a growing distrust of the legal system, particularly when the institutions are meant to provide protection but instead perpetuate harms. Therefore, the existing evidence base highlights the need for responses to disclosures of abuse to be met with visible and tangible compassion from professionals, grounded in an enhanced awareness of the cumulative impacts of DVA alongside the inherent legal, physical, psychological and socio-cultural vulnerabilities that victims/survivors and their children too often face, especially within the context of family court proceedings (Douglas, 2018).[82]

3.7.1 Persistent Issues

A number of persistent issues emerged across the literature, painting a rather bleak picture of the current state of the family law sphere – one that comparative analysis suggests is not confined to Northern Ireland, but replicated across many jurisdictions. Inadequate training and awareness, gendered presumptions, and entrenched power imbalances have left many adult victims/survivors fearing that their accounts would not be believed by those in authority within the family law system (Cross, 2016; Douglas & Fell, 2020; Gutowski & Goodman, 2020; Sheehy & Boyd, 2020). Victims/survivors frequently describe feeling 'entrapped' by the very systems intended to support them, reporting that they felt 'compelled by law to interact with their abusers' and 'subjected to secondary victimization through invasive questioning (or false counter-allegations)' (Nonomura et al., 2022: 8). For mother-survivors in particular, efforts to protect their children from a coercive and controlling co-parent could be met with judicial rebuke (Douglas, 2018).[83] Problems also extend to professional practice, where expert witnesses have at times been described as 'biased', 'judgmental and dismissive' (Alsalem, 2023:15), reinforcing broader concerns about systemic

[82] As Douglas (2018) suggested in the Australian context, the use of the 'one family–one judge' model is to be commended. This is ostensibly aimed for in Northern Ireland, with guidance stating that 'it is intended that judicial continuity be maintained so that the judge who will eventually decide the case will manage it, wherever possible, continuously from an early stage. It is therefore essential that each case be allocated or, if necessary, transferred to the appropriate level of court at the earliest practicable stage' (Department of Justice for Northern Ireland, 2012: [2.2]).

[83] See also Stark & Hester (2019) and Stark (2007) (which, though it is beyond the scope of this literature review in terms of its date, merits inclusion as a seminal work).

misogyny and the persistence of gendered assumptions in many family courts (Brandt, 2023).

From the perspective of children, the shortcomings of the family court system are equally, if not more, stark. Research consistently demonstrates that children want their perspectives to be heard and that they can articulate clear, coherent views on what they want from abusive parents (Lamb et al., 2018; Lapierre et al., 2025; Dimopoulous et al., 2025). Yet, a multitude of practical barriers stemming from the lack of training among professionals (Parkes et al., 2015) through to resource constraints (Morrison et al., 2020a) and cautious judicial cultures (Lloyd, Agenda NI, 2025) continue to constrain their participation. While family courts have striven to be more attentive to the legal obligations surrounding children's participation, deep-rooted assumptions about the vulnerability of children, nuanced pro-contact norms, and the role of parents continue to pose significant risks for children in the context of DVA (Mackay, 2018; Alminde, 2024).

The difficulties faced by adult and child victims/survivors are not merely procedural: they raise profound human rights concerns (Lagdon et al., 2024). Decisions of the family courts which fail to safeguard victims/survivors by not recognising or denouncing abusive and coercive behaviours risk violating rights enshrined in the ECHR, not least Articles 3 and 8 and indeed those within Article 3 of the Istanbul Convention (Melzer, UNSROT, 2019:4; Alsalem, 2023: 8)[84]. Bias and discrimination based on gender, race, disability, or parental status also remain evident, giving rise to further concerns about Article 14 (in conjunction with Articles 3, 6, and 8 for example) (Hester, 2011; Walker, 2020).[85] Moreover, despite progressive policy rhetoric about promoting the rights of children in the process, everyday practice appears to leave their participation rights under Article 12 UNCRC only partially realised (Alsalem, 2023; Alminde, 2024).

3.7.2 Final Reflections

As Transparency (2025) have argued, clearly our 'Family courts were not set up to deal with the prevalence and impact of domestic abuse on children and protective parents.' Ultimately, both adult and children's perspectives within the existing literature reveal a family court system that too often serves to compound, rather than alleviate, the harms of DVA. As Burton (2023) likewise aptly observes, 'the legal system is still failing to protect adult victims of domestic abuse and their children' (p. 75). Failures to listen to victims/survivors, to take their accounts seriously, and to embed trauma-informed practice not only undermine trust in the system but also risks perpetuating cycles of harm. While some proposed reforms – such as the Pathfinder pilot in England

[84] Melzer adds that domestic abuse 'represents one of the predominant sources of humiliation, violence and death worldwide; roughly comparable to all of the killing and abuse caused by armed conflict.' (Small Arms Survey, Global Violent Deaths 2017: Time to Decide (Geneva, 2017), p. 10. 5).
[85] Cafcass (2022) has also noted that there is yet a need for 'more comprehensive data…on domestic abuse and *other factors such as ethnicity*' (p. 6)

and Wales, to an extent – at the very least signal a significant appetite for change in the UK, the literature still makes clear that 'the modernisation of family justice remains very much a work-in-progress' (Ryder, 2018). Meaningful reform will require a decisive and adequately funded shift towards trauma-informed, victim/survivor and child-centred processes. This must be underpinned by meaningful dialogue, deep-seated structural changes, enhanced training,[86] and a sustained commitment to improving the participation rights of those who are often the most vulnerable during, before, and after family court proceedings.

[86] On the issue of training and awareness-raising, Cafcass (2023) has stated (in relation to England and Wales) that 'a mandatory Domestic Abuse Learning and Development Programme is in place for all Family Court Advisers along with Domestic Abuse Personal Learning Plans to support practice improvements. It has been completed by 95% of those eligible, with a rolling programme available and required for new employees.'

Chapter 4:
METHODOLOGY

4.1 Introduction

The overall objective of this study was to better understand the experiences of domestic violence and abuse (DVA) victims/survivors and children engaging with private law family court processes in Northern Ireland. Specifically, the study had the following research questions:

1. How do adult victims/survivors of DVA experience private law family court proceedings? How could their experiences be improved to prevent re-traumatisation and further victimisation?
2. How do children experience participation in the family courts when there has been DVA in the family? How could children's participation be made more effective to ensure that children's voices are heard, listened to, and meaningfully considered?
3. What are the views of practitioners working in different capacities with regard to how children and adult victims/survivors of DVA experience family court proceedings and how practices might be improved?
4. What is the evidence of best practice with children and adult victims/survivors of DVA in family courts in other jurisdictions? What are the implications for reform of the family court system in Northern Ireland?

To meet these aims, we engaged with various groups of participants who could speak to the experiences of adult victims/survivors and/or children and young people – victims/survivors, judiciary, legal professionals, Court Children's Officers, independent social workers, child/victim advocates and children and young people. In our examination of children and young people's experiences, we also engaged with a Children and Young People's Advisory Group to ensure effective engagement and participation with children and young people and to draw on their expertise to inform appropriate questions, given that less is known in the literature about children and young people's experiences.

4.2 Children and Young People's Advisory Group

Central to the chosen methodology was a commitment to Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), which states that children have the right to express an opinion and to have those opinions heard in all matters that affect them. Therefore, we embedded participation in all stages of the project that focused on examining children/young people's experiences of family court processes. Reflecting Lundy's (2007) model of effective participation, the project design and ethos incorporated: 'space' for children to express their views; methods that facilitate their 'voice'/views to be expressed; an 'audience' to hear children's views; and a means

through which these can ‘influence’ policy. As such, we recruited young people as members of a Children and Young People’s Advisory Group (CYPAG) who were involved in the design of aspects of the study related to children’s participation and experiences of family court processes. This commenced with informing the Terms of Reference (Corr et al., 2024) for the research (related to children's participation) through to the dissemination of findings related to children and young people’s experiences. Young people were recruited through the Social Action Youth (SAY) project at Women’s Aid Federation Northern Ireland (WAFNI), all of whom had experiences of DVA and family court processes. As a pre-existing group, they had a pre-established working relationship around issues related to DVA and staff members attended all groups to offer support. We did not request that CYPAG members speak about their personal experiences in the group setting, but rather to draw on their knowledge and insights in considering the design and implementation of the current study.

The first phase of engagement with the CYPAG contributed towards the publication of a Terms of Reference (Corr et al., 2024), which the Commissioner for Victims of Crime (CVOC) used to inform the aims of the current study. This early stage of the work with the CYPAG focused specifically on children’s participation in family court processes and explored CYPAG members’ views on what future research on the topic should examine and who it should engage with. Sessions in this phase (reported in detail in the Terms of Reference) were devised to build the young people’s capacity to meaningfully engage with the research topic, in order to explore their views on children’s participation in family law proceedings (including how children’s views are expressed, heard, and have influence) and to design a research agenda for future research on the topic.

The second phase focused on designing the current research study, commissioned by CVOC after considering the input from the Terms of Reference. This phase built on the previous work produced for the Terms of Reference by engaging with the CYPAG to: design data collection methods with children and young people; decide the best ways to talk about sensitive topics with children and young people; and, agree the topics to be explored with the other research groups e.g. parents (victim/survivors), legal professionals, and Court Children’s Officers. We also worked with the CYPAG in the explanation and interpretation of the study findings, focusing on the data collected with judiciary and legal professionals on children’s participation in the court processes – as this responded to the CYPAG’s wish to better understand how decisions were made. We continue our engagement with the CYPAG in the preparation of a child-friendly version of this report (forthcoming).

Throughout our engagement with the CYPAG, we integrated feedback opportunities to ensure that young people knew their views were being listened to and were aware of how they had shaped the research. For example, each time we met, we provided young people with an update – ‘you said, we did’ – to discuss how we had implemented their views from previous sessions. Additionally, the research team provided digital

updates at key points, supported also by feedback from CVOC, advising on how they were using the work from the Terms of Reference.

4.3 Sampling and Recruitment

Criteria for inclusion in the study were informed by the parameters of the project as set out in the tender document, ensuring that participants could speak to the experiences of victims/survivors and/or experiences of children's participation in family court processes. The final criteria were agreed in consultation with CVOC and with members of our CYPAG, who specifically advised on which participant groups would be best placed to reflect on the experiences of children/young people within the process and its impacts. A total of 51 participants took part across five participant groups: Children/Young People, Victim/Survivors, Court Children's Officers and Independent Social Workers, Child/Victim Advocates, and Judiciary and Legal Professionals.

4.3.1 Children and Young People

Children and young people were recruited via support organisations to ensure that, where necessary, they had access to professional support before and after research participation. Inclusion criteria for children and young people to take part were:

- Aged 10-17 years;
- Have experience of the family court (private law) process in cases of DVA;
- Children and young people who are 3 months post court process and/or proposed by support worker as able to take part in research process.

In total, ten children and young people aged 12-19 took part.[87] Two young people were over the age criteria but spoke retrospectively to their experiences of family court processes when they were aged under 18. Family court proceedings had concluded for most of the children and young people; however, in a small number of cases, children thought proceedings may be ongoing (indicative of the extent of their knowledge of their family's involvement). In these cases, children, their parents and support workers confirmed that they were still happy to participate in the study.

4.3.2 Adult Victims/Survivors of Domestic Violence and Abuse

A range of relevant agencies were contacted to recruit adult victims/survivors, including organisations specifically offering support related to DVA and organisations that offer more general support services, but where victims/survivors may be likely to access a service. Inclusion criteria for adult victim/survivor participants were:

[87] Additional characteristics of children and young people are not disclosed to maximise anonymity. We also use gender neutral pronouns throughout the process in relation to children and young people for the same reason.

- Adults aged 18 years or above;
- Adult victims/survivors who have had experience of the family court (private law) process in cases of DVA within the last 5 years;
- Parents of children under 18 years (at time of court proceedings);
- Adults who are three months post court process and/or proposed by a support worker as able to take part in the research process.

Twelve adult victims/survivors (ten female and two male) were recruited via two organisations supporting victims/survivors of DVA and through CVOC, where individuals had been in contact in relation to their experiences. Additional organisations/agencies were contacted, but the research team either received no response or were advised that participants were more likely to be accessed through other specialist DVA services. Whilst there is more representation of females within the adult sample, this reflects the prevalence and impacts of DVA within the population. That is not to say, however, that further research on the experiences of male victims/survivors is not warranted. All adult victims/survivors interviewed self-identified as heterosexual. Eight of the twelve reported they had had prior contact with a Court Children's Officer. Whilst we do not name the court districts to maximise participants' anonymity, participants' accounts represent experiences across five different Court Offices in Northern Ireland. Only one participant reported that they had not received legal aid. All adult victim/survivors reported they had had legal representation while attending the family court, while two noted that they had acted as a litigant in person on some occasions.

4.3.3 Court Children's Officers and Independent Social Workers

Initially, the research aimed to recruit five Court Children's Officers (CCOs). However, in light of some delay experienced in receiving Trust Research Governance approval to recruit participants, we also extended the call for participants to Independent Social Workers (ISWs). The inclusion of ISWs is also a reflection of comments from other participants in relation to their increasing role in family court proceedings. ISWs were contacted via publicly available information where it was indicated that they had relevant experiences of working within the family court. Once ethical approval was obtained from the relevant Trusts, potential CCOs were identified from two Trusts who gave approval within the timeframe of the study. In total, four ISWs and six CCOs participated.

4.3.4 Child/Victim Advocates

Requests to recruit individuals who offer support or advocacy for adult victims/survivors of DVA and/or children and young people were sent to a range of organisations providing services to women, men and children. Several organisations pointed towards the expertise of specific DVA organisations that would be best suited to participate, often noting that they did not have the relevant expertise within the

organisation to speak to the focus of the research. As a result, of the eleven child/victim advocates recruited, ten of these worked in one DVA organisation supporting women, working in roles specific to supporting women, children or both. An additional participant worked as a school counsellor with experience of supporting children with experiences of DVA and family court processes.

4.3.5 Judiciary and Legal Professionals

Permission was sought from the Office of Lady Chief Justice of Northern Ireland (LCJ) to approach members of the judiciary to take part in the research. Three members of the judiciary, representing different levels of court, were recruited for individual interviews.

Five legal professionals – three members of the Bar of Northern Ireland and two family law solicitors – were also recruited to take part in the study. These participants were identified through the Family Bar Association and the Family Law Committee at the Law Society (NI) based on their experience relevant to the research aims.

4.3.6 Sample Profile

Overall, 51 participants took part in the study and are summarised in the table below:

Table 1: Sample Profile

Participant Group	**Number of Participants**
Children and Young People	10
Adult Victims/Survivors	12
Court Children's Officers	6
Independent Social Workers	4
Child/Victim Advocates	11
Judiciary	3
Legal Professionals	5
Total	**51**

4.4 Data Collection

A flexible approach was adopted for data collection, in which participants were offered options to take part in an individual interview, a paired or small group interview, or a focus group. This allowed participants to decide the context in which they felt most

comfortable participating and aligned with their other commitments. In addition to being flexible in terms of the format of data collection, the research team were also accommodating in scheduling the time and location of interviews/focus groups to maximise participation across all participant groups.

4.4.1 Collecting Data from Children and Young People

Eight children and young people chose to participate in an individual interview. Two, who were siblings and noted that they are used to doing everything together, preferred to take part in a paired interview. Interviews with children/young people explored their experiences of having their views collected for Article 4 reports; the methods used to gather their views; experiences of feedback; the challenges and barriers to participation; their perceptions on the influence of children's views on decision-making; and the impacts of family court processes on their lives and wellbeing. Methods of engaging with children were informed by discussions with the CYPAG, which advised that different approaches were used to elicit children's experiences. Children/young people were first shown an introductory portion of a video about family courts produced by the Children and Family Court Advisory and Support Service (Cafcass) to familiarise them with the general research topic. They were then shown two sets of images. The first of these portrayed individuals who may have engaged with children during family court processes (e.g. CCOs, legal professionals, judiciary) and in each case the child/young person was asked to reflect on their experiences of engaging (or not) with various professionals. A second set of images portrayed the potential impacts of their family being involved in the family court process (relating to, for example, education, home life, friendships, leisure time, health and wellbeing). Children/young people were asked to select the images that represented aspects of their lives that they felt had been impacted and to discuss these experiences. In this way, they had control over what they were willing to share with the researcher and could choose the order in which topics were discussed. Finally, children/young people were asked about how the system could be improved for children in the future.

4.4.2 Collecting Data from Adult Participants

Five adult victims/survivors of DVA took part in individual interviews, four took part in a paired interview and three took part in a small group interview. Discussions focused on their experiences of family court proceedings, the impacts of engagement with family court processes and the supports that they received. They were also asked to reflect on their children's experiences as well as their views on how processes could be improved.

Six CCOs took part in three paired interviews and four ISWs took part in individual interviews. Interviews focused on methods used to capture and reflect children's views, the influence of children's views in decision making and ways to ensure children's best interests are taken into account. Interviews also focused on the

perceived challenges for adult victims/survivors in their engagement in family court proceedings, as well as their perceptions of best practices and recommendations for improvement.

Three individual interviews, one paired interview and one focus group were conducted with child/victim advocates. These interviews focused on the perceived challenges and impacts for children and adult victims/survivors in their engagement with family court processes. We explored their views and experiences of the current supports for children and adult victims/survivors and the potential for improvements in processes.

Finally, all judiciary and legal professionals participated in individual interviews. These discussions focused on the operation of family court processes in cases of DVA, with a particular focus on how allegations of DVA are dealt with by the court and considered in risk assessments and decision-making. Interviews also focused on the current methods used to capture the views and experiences of victims/survivors and children/young people, and examined the extent to which such views informed decision-making. Discussions also explored their views on the perceived challenges faced by adult victims/survivors in the court processes, perceptions of best practice, and recommendations for improvement.

4.5 Data Analysis

Interviews and group discussions generated a vast amount of rich qualitative data. Each interview/group discussion was audio recorded, with the permission of participants, and transcribed verbatim. An anonymised transcript of each recording was prepared, and data were input into NVivo, a computer programme used for managing qualitative data. Thematic analysis was then employed to identify, analyse and report patterns/themes within the data (Braun and Clarke, 2021) which addressed the study's research questions.

4.6 Ethical Considerations

The research required discussions of sensitive topics, particularly related to the work with the CYPAG, and interviews with children and young people and adult victims/survivors. Ethical approval was sought from the School Research Ethics Committee at the School of Social Sciences, Education and Social Work, Queen's University Belfast and Research Governance approval was sought from Health and Social Care Trusts for engagement with CCOs.

4.6.1 Informed Consent

Voluntary, informed consent was sought with every participant. Details of the research and what taking part entailed was explained as fully as possible via Participant Information Sheets and orally before the start of each interview. Care was taken to ensure that the language and terms used were easily understandable to participants,

including why they were being asked to take part; what being involved entailed; issues of confidentiality and anonymity; what would be done with their respective contribution and the findings of the study as a whole. Where relevant, information sheets were designed in an accessible manner, taking account of varying levels of literacy for child participants. All participants were advised that participation was voluntary and that they had the right to refuse participation or withdraw without any repercussion.

4.6.2 Parental Consent

In addition to the child and young person's own consent, parental/guardian consent was obtained for participants aged under 16 years. The research team were mindful that in some cases seeking parental consent may be impractical or jeopardise the safety and wellbeing of children, and so advice from gatekeepers was followed – in all cases parental consent was received.

4.6.3 Limits to Confidentiality

Due to the nature of the study, participants (adult victims/survivors, children and professionals) disclosed sensitive information. Participants were advised where disclosure of information may not be held in confidence, for example, when a participant discloses that a child, young person or vulnerable adult, or indeed themselves, are in danger or at risk of harm. All data was anonymised as much as possible and no identifying information is contained within this report or other outputs related to the research. Professional participants were advised that although any personal information would be removed from the data, that due to their role they may still be identifiable to some extent based on what they have said.

4.6.4 Participant Safety

A participant safety protocol was devised and implemented at all stages of the research, particularly in relation to data collection with children, young people and adult victims/survivors. The CYPAG sessions took place at Queen's University Belfast and two members of WAFNI attended to support young people in their engagement. All interviews with children and young people and most adult victims/survivors took place in organisations that had facilitated contact and where participants had access to support before and after interviews. This ensured that the gatekeeper was aware of the session/interview taking place and that the participant was familiar with the setting. A small number of interviews with adult victims/survivors were held via Microsoft Teams. These individuals had been recruited through organisations offering support.

4.6.5 Remuneration

In recognition of the time given by participants, a £20 voucher was offered to children, young people and adult victims/survivors who supported the research as a participant. Members of our CYPAG also received a voucher for each session they attended, as well as receiving recognition for the work through a certificate and a Centre for Children's Rights hoodie.

4.7 Presentation of Data

The chapters that follow present findings from an analysis of data across all participant groups. Chapter 5 explores adult participants' views and experiences of court systems and processes and is followed by an analysis of the ways in which court processes may be experienced as traumatising or as secondary victimisation, detailed in Chapter 6. Chapter 7 draws heavily on the accounts of children and young people, as well as adult participants, exploring children's experiences of participation in family court processes. Chapter 8 examines the impacts of engagement with family court processes and systems on adult victims/survivors and children, followed by an analysis of experiences of post-separation contact in Chapter 9. Finally, Chapter 10 draws on participants' views on ways to improve experiences. Throughout, the analysis presents participants' voices through the use of direct quotation – presented in italics.

Chapter 5:
VIEWS AND EXPERIENCES OF FAMILY COURT SYSTEMS AND PROCESSES

5.1 Introduction

This chapter examines the views and experiences of victims/survivors and professionals – including members of the judiciary, legal representatives, Court Children's Officers (CCOs), independent social workers (ISWs), and child/victim advocates – regarding family court systems and processes. It begins by exploring accounts of mediation, which some professionals proposed as a potential alternative to adversarial court hearings, but which also raised some concerns among victims/survivors due to the impacts of engaging with perpetrators.

The chapter continues by considering the processes available to the court for assessing allegations of DVA and evaluating the risk posed to victims/survivors and children/young people. This analysis highlights questions about the extent to which DVA is centred within risk assessments and decision-making, going some way towards contextualising victims/survivors' expressed feelings that their concerns have been dismissed.

Key issues relating to the duration and delay of court proceedings are also discussed within this chapter, alongside reflections on and questions about the judicial attitudes that inform decision-making, including debates surrounding the operation of an assumption of contact. The challenges faced by victims/survivors in relation to their understanding of family court systems and processes are also explored before turning to professionals' understanding of DVA. This understanding, in part, informs the experiences of victims/survivors with legal representation in the family court sphere, which concludes this chapter.

5.2 Mediation

Participants in all groups spoke of the practice of mediation and the potential of avoiding the court arena where disputes are resolved through dialogue between parents. This was often presented as the first step in the process considered by most, but not all, CCOs and was advanced as a timelier way to resolve disputes, where possible. Indeed, several participants noted an expectation or '*pressure'* placed on victims/survivors to '*sort out'* the issues with the perpetrator for the benefit of their children, either through formal mediation or concessions made via legal representation.

> *Because often in private law the goal is to get an agreement. You know, and it's stated like that. 'Well done, you have got an agreement. Music to my ears'. You know that's the way it is really, you know. Or you've made an agreement that it's just let's thrash this out and get to an agreement.* (ISW)

Some noted that early agreements or decisions regarding contact helped ensure that children would not have long gaps of not seeing a parent, and this would ultimately benefit the child once contact was re-initiated. However, others highlighted the risk of victims/survivors agreeing to contact arrangements that they were not happy with, particularly when these decisions are made from a position of limited choice within a controlling relationship:

> *And it's very hard to roll back from that because the court will look at it from the viewpoint 'Well, what do the parties agree at the time of separation?' And that becomes the starting point. So I will often at those very early stages be saying, 'only agree to what you think's best'. And start with less, and if it works well, build up because it's much easier to build it up if it's working well than it is to backtrack if it's not working well… Because look, she was agreeing to that, and without an understanding of she was doing that because they didn't have that dynamic where she had a choice not to agree to it, you know. So there's a lack of understanding sometimes of the context in which those decisions are made.* (Legal Professional)

Echoing the concerns expressed here by a legal professional, one CCO also recognised the context within which agreements of contact may be made. They explained that where a victim/survivor has agreed to some contact between their child and perpetrator, it should not be inferred that the severity of DVA experiences was not significant. Rather, they clarified, not agreeing to some element of contact may have put the victim/survivor at risk:

> *that is something that we are continually, you know, advocating and putting forward before the court ... that a victim of domestic abuse may well make a decision to allow contact post separation and that's not in itself an attitude of, well, this individual doesn't present a risk. It may well be an actual safety aspect for the individual to allow that level of contact to progress.* (CCO)

The same CCO also explained that they do not offer *'alternative dispute resolutions'* in the cases involving DVA, noting that it would be inappropriate to bring a victim/survivor and perpetrator together in the same room. Other CCOs, however, reported that mediation was their '*first port of call'* to assess whether issues could be resolved between parents or legal teams without requiring input from children/young people and/or the courts. Whilst they were clear that a '*black mark'* does not apply to those who choose not to participate in mediation, victim/survivors nonetheless indicated feeling pressured to engage with the mediation process and expressed concern that refusal might be looked upon negatively by the courts:

> *You nearly kind of felt pressured into going along with their suggestions. Because if you sort of stood your ground and didn't agree then you know, you were worried in case that would have implications for you then.* (Victim/Survivor)

Attempts at joint mediation – with both parties present in the same room – were considered if time had passed since DVA allegations and where such allegations were not of a '*significant level*'. Victim/survivors, however, often described a reticence to engage directly with perpetrators in a process of mediation:

> *That doesn't work if you're in an abusive relationship. Because the last thing you want is to be either in the same room as that person like, you know, face to face trying to talk out the issues.* (Victim/Survivor)

Several participants highlighted the impacts on victims/survivors of engaging directly with perpetrators, as well as the unlikelihood that conversations would be productive due to continued control and manipulation. Some professionals involved in mediation processes drew attention to the risks of bringing these individuals together in person and described strategies such as using online meetings or, alternatively, avoiding direct contact altogether through shuttle mediation. These approaches were acknowledged by some as important safeguards, allowing the victim/survivor to remain in the safety of their own home, avoiding visual contact with the perpetrator on screen, and limiting the perpetrator's ability to '*reach*' the victim/survivor. Nonetheless, victims/survivors still spoke of the potential impact of certain arrangements which allow for some element of direct communication:

> *She (CCO) was trying to make me engage in a mediation on a Teams meeting. … that would have been horrific for me to have had to go onto a Teams meeting … there was no communication between us. And because I was so afraid of him… That would have been awful for me, because I would have had to have went on camera, he would have been able to hear me, hear my voice.* (Victim/Survivor)

Victims/survivors spoke of the frustration of being unable to explain that any opportunity to '*communicate amicably'* with a perpetrator was unrealistic, and that meeting to discuss their children would serve '*no function'*. This was echoed by child/victim advocates, noting that attempts to come to a mutual solution were unlikely where perpetrators remained focused on their abuse:

> *… if you were dealing with a reasonable man, you wouldn't have a woman sitting in a refuge …. You know, reasonable people don't end up in court with contact orders. Reasonable people work it out. You're not talking about reasonable people. You're talking about skilled, groomed offenders that have practiced their trade on maybe six women prior to her who know what they do.* (Child/Victim Advocate)

Additionally, one legal professional described perpetrators' capacity to groom professionals tasked with mediation, and thus expressed a reluctance to the assumption that some form of mediation would precede court proceedings:

… stop pushing this whole notion that mediation is the be all and end all… I know the whole idea of shuttle mediation. I also know you have to be very, very on your game when you are dealing with people who are coercively controlling. Because the best ones I think are verging on psychopaths. They're brilliant, they are. And they can groom you, and you mightn't even realize that you are being manipulated and groomed…. And they're very calm. And they're not histrionic. And they're not all the things that normally the wife or mother is driving everybody else nuts and insane because they're not listening to anybody. Whereas he is sitting there very calmly listening to everybody…. And going, 'there you go, that's what I've had to deal with'. So it slightly annoys me a little bit that that's that script. (Legal Professional)

5.3 Establishing Allegations of DVA

Recent guidance for the judiciary from the Lady Chief Justice of Northern Ireland (LCJ) (2025) in relation to family proceedings involving DVA highlights the obligation to identify child protection issues at an early stage. Parties are invited to set out allegations of DVA, and courts are required to, *inter alia:* identify at the earliest opportunity the factual and welfare issues involved; and consider the nature of any allegation, admission, or evidence of DVA and consider the extent to which it would be likely to be relevant in decision-making.

5.3.1 Considering Allegations and Fact-Finding Hearings

The LCJ's guidance advises that a fact-finding hearing (sometimes referred to as a *Re L* hearing[88]) is considered at the discretion of the court in cases of disputed DVA allegations. In deciding whether conducting a fact-finding exercise is necessary, the court will take account of: the views of those involved in proceedings; whether admissions provide sufficient factual basis on which to proceed; whether relevant factors can be determined without a fact-finding exercise; the nature of evidence required to resolve disputed allegations; if allegations, where proved, would be relevant to court decision-making; and, whether a fact-finding exercise would be proportionate. Where the court determines that a fact-finding exercise is necessary, it considers, among other things, what evidence is required to establish the existence of coercive, controlling or threatening behaviour, what third party evidence (e.g. from police, health and social care, DVA support services) is required, and what evidence an alleged victim/survivor is able to give.

In practice, legal professionals and CCOs noted that processes to establish evidence of DVA may differ across courts; therefore, victims/survivors will have different experiences of how allegations of DVA are dealt with. This was often explained as

[88] Re L (A Child) (Contact: Domestic Violence) [2001] Fam 260.

depending on an individual judge's preferences, thus opening the potential for inconsistency in victims' experiences:

> *I suppose it really does depend. It depends on the court a lot of times and on the judge and what the judge wants. It's very much the judge's court and you follow what they want you to do.* (CCO)

Differing practices related to whether courts insisted on the initial submission of Form C1AA (Supplemental Information form), which includes a statement setting out the alleged abuse, and whether fact-finding hearings took place. The submission of Form C1AA was considered to be '*good practice*' by some, providing a summary of issues to highlight any matters of concern, and drawing on evidence from police involvement, criminal convictions, social services, and DVA support organisations. This, it was felt, allows for clarity and visibility of allegations of abuse at the outset of proceedings:

> *So I think that's probably good practice… because it means that this isn't something that gets buried along the way … that's quite important because it means that the allegations are there front and centre at the beginning.* (Legal Professional)

Despite being considered good practice, legal professionals explained that some courts rarely insist on the submission of Form C1AA. Similarly, several participants noted differing practices in relation to fact-finding hearings, with particular members of the judiciary highlighted as '*refusing*' to hold one. Cases where allegations of DVA were disputed and where there was deemed a *'direct risk*' to the child or young person were more likely to involve such hearings. Conversely, where allegations of DVA were historical and/or where the victim/survivor and perpetrator were not in contact, fact-finding hearings would be less common. Additionally, one member of the judiciary noted that if it was the intention of the court to direct contact even where allegations are substantiated, fact-finding hearings would rarely take place:

> *Those hearings very rarely take place anymore. And mostly the reason for that is that actually the court will say well… even if it is to find that these allegations are true, I still would be minded to direct that there should be contact … it's about then seeing what provisions can be made to enable there to be [contact].* (Judiciary)

Other professionals raised the lack of implications associated with a finding of abusive behaviour, therefore perhaps questioning their worth in the process. For example, some noted that confirmation of DVA through a fact-finding hearing did not hold the same weight as a verdict of guilt through the criminal courts and thus, in a sense, remains a mere allegation:

> *Because, you know, it's still in one sense, an allegation. Because it hasn't been a conviction in the Criminal Court … I find it hard to take it as a given because it hasn't went through the process of a Criminal Court.* (ISW)

Additionally, a confirmation of DVA through the fact-finding exercise does not trigger repercussions for the perpetrator, nor does it lead to opportunities to mandate treatment or supports for the perpetrator's behaviour:

> *So in private law, when you're applying the Re-L, if you're going down that mark, well then what happens? What actually happens when you make that finding? Other than the debate about contact? But what happens when there has been a finding against a father to say, 'Yes, the court has found that you have abused or coercively controlled X, Y, Z'. At the moment, nothing. So I actually think that's why in private law, probably more and more, the courts have just sort of skipped the hearing, the evidence.* (Legal Professional)

The absence of confirming DVA, however, can have implications for other professionals in the process in terms of the information and evidence that is available to them relevant to their own responsibilities. CCOs, for example, explained that they had to be '*very careful'* not to accuse an individual '*where there's no actual concrete evidence'* in terms of allegations being proven true, and remember that they are working with allegations. As a result, they described '*going in blind*' to the process where a fact-finding hearing had not taken place, requiring them to conduct their own '*multidisciplinary checks*' to inform their assessments:

> *There's other CCO areas within the Northern Ireland will refuse to take the case unless the judge does the Re-L hearing because we're going in blind… You know there's these allegations, [but] no one has made a decision about whether they're actual or not.* (CCO)

Victims/survivors also raised their concerns and disappointment where fact-finding hearings did not take place. Legal professionals did express a commitment to receiving instructions from victims/survivors and to eliciting detail on their experiences – '*to be able to put that to the alleged perpetrator*' (Legal Professional) – yet they were also mindful of the impact on victims/survivors where no finding of truth is made in the context of '*heavily contested*' allegations. In the absence of such findings and acceptance of allegations of DVA by the court, victims/survivors feel their concerns have not been taken seriously, contributing to their perceptions of not being believed or heard.

5.3.2 Establishing Evidence of DVA

Responses to initial allegations of DVA shape victims/survivors' perceptions of the processes and the extent to which they feel their accounts have been heard or challenged. Where allegations are contested, legal professionals discussed the range of evidence that the courts might consider. Additionally, CCOs in one Trust noted the benefits of a '*clinic*'-style approach – involving consultation between the judiciary, CCOs, and legal representatives – to ensure that allegations of DVA were '*set out properly and correctly*', and with the victim/survivor receiving the appropriate legal support to do so. Challenges were noted, however, regarding systems for information sharing and the potential implications for delays and the completeness of evidence considered.

Subsequent to the submission of initial statements of evidence (Form C1AA), which are largely informed by the victim/survivor's account of events, the court collects and considers information from a range of sources considered relevant to assessing the allegations. These sources include a range of agencies and departments, and may include records and reports from the police, probation, social services, medical professionals, schools, etc. One member of the judiciary highlighted the tension between the need to consider all the relevant information and the principle of avoiding unnecessary delay (see section 5.5):

> *So, for me it's really a matter of trying to say where can I get the best information from. And that involves creating space. So, in a way it's not very consistent with the no delay principle. ... sometimes it just takes longer than I would like… It takes patience. That's really what it takes. And as I say the culture is obviously about wanting to do the best we can, as fast as we can. And I'm learning that sometimes taking a beat is a purposeful thing.* (Judiciary)

There were also frustrations expressed by several participants – legal professionals, CCOs and judiciary – about the challenges of information sharing, which, many noted, required good relationships across departments and services. Several references were made to the difficulties of sharing evidence across court jurisdictions, particularly from relevant criminal court proceedings into private law family proceedings. No formal processes exist for sharing information across jurisdictions (unlike public law hearings); yet legal professionals were not aware of any legal reasons preventing the implementation of a sharing protocol in private law hearings. There may also be a reluctance to disclose evidence, particularly at the earlier stages of proceedings, where this might negatively impact criminal court proceedings. Thus, the onus of supplying relevant information can lie on the victim/survivor and their legal team:

> *Often I suppose.. it would be the solicitor providing that information. ... And often we're getting that information directly from the victim. You know, in terms of when the case is up and what is happening with the case. … the information obviously is relevant and it is provided but there isn't a very formal arrangement for that in my experience.* (Legal Professional)

Difficulties can arise, however, where parties are not authorised to share such information by certain authorities. For example, one male victim/survivor explained that he was not authorised by the Public Prosecution Service (PPS) to advise his legal team that his former partner was going to be charged with an indictable offence:

> *I wasn't allowed to disclose that at the family court … because of the procedures that PPS still had to follow in order to put together a case file for the criminal side. So I had to just let on that I didn't know what was happening.* (Victim/Survivor)

Hence, waiting for the conclusion of criminal court proceedings can present an additional element of delay to family court matters, and, in some cases, legal teams may attempt to agree on a schedule of facts or proceedings may continue without specific evidence instead:

It can happen where there's going to be lengthy, protracted criminal proceedings, you sometimes have to balance off whether or not you're going to wait for that piece of evidence to come through or whether you feel you can proceed… But yes, there should be that information available to the court. If it's relevant it should be there. (Judiciary)

Not taking account of developments in criminal law matters in family court proceedings, however, may leave victims/survivors feeling that their experiences of DVA have been deemed '*irrelevant*' by the courts:

Even though they knew as well that now there was an investigation underway with the police for the physical assaults and stuff… their nasty response is they don't want to hear about that. They don't want to hear…. I have been there in court with judges saying that. … basically that's irrelevant. But it's not irrelevant. It's very, very, very relevant. (Victim/Survivor)

5.3.3 Consideration of History of DVA

Victims/survivors and child/victim advocates stressed the importance of the courts taking account of a full history of the perpetrator's behaviour to establish evidence of DVA, whether there is a repeat pattern of behaviour, and to assess the current/ongoing risk posed to victims/survivors and their children. However, many felt that there was 'a complete disregard' for victims/survivors' experiences and perceived that histories of DVA were being ignored by the court – and by some legal representatives. Several participants spoke of specific examples where they felt relevant evidence of a perpetrator's history was not taken into account, including a history of sexual offences, reports of violence from a new partner, breaches of probation conditions and breaches of non-molestation orders:

You maybe have a perpetrator who has been on the MARAC or come up in the MARAC with multiple women in multiple relationships. And that shows his credibility in terms of his behaviour, you know, his abuse of women. His prolific abuse of women. And I think that that's completely ignored. (Child/Victim Advocate)

Because that was one thing I asked when we went to court, was, 'can we use his past cases against him?' because there's been so many of them. And I was told 'no you can't. (Victim/Survivor)

I think for me the hardest thing about family court is that it just didn't feel as if anything was ever properly investigated… it doesn't seem to matter whether you have lots of evidence or not. (Victim/Survivor)

One CCO offered an account which suggested a different practice, within their 'clinic' style approach, to early consultation with the judiciary and legal representatives. Contrary to the experiences of victims/survivors within the study, this CCO described

the importance of establishing evidence of DVA across relationships, particularly evidence which relates to allegations that did not progress into the criminal courts:

> *what we'll be asking the court to do is to number 1 ... make a direction at that very early stage for a domestic abuse report from the PSNI, and that's in regards to the alleged perpetrator, and that is to include any and all incidents where the individual who's alleged to perpetrate the domestic abuse has been named. We think that's a very important step and so much that it's not just a check in regards to the respondent or the applicant. So it's not just in regards to the people who are involved in those set of proceedings. That helps to give us some level of insight into whether the alleged perpetrator has a history and a history across multiple relationships or a history within their birth family as much as anything else as well.* (CCO)

Nevertheless, several victim/survivors felt that their experiences of DVA were overlooked by the courts. One victim/survivor, for example, noted she had '*never been asked'* about her experiences of DVA despite a long history commencing when she was pregnant, being referred to a multi-agency risk assessment conference (MARAC), and being supported by Women's Aid. A male victim/survivor simply stated that the courts '*don't want to hear it*' when referencing the history of DVA he had experienced. Similarly, child/victim advocates felt that victims/survivors' individual experiences were ignored in the interest of looking at the family unit and that whilst they '*sit on really valuable information'* in relation to the DVA experienced by those they support, they are '*never'* asked for inputs into proceedings:

> *And all of a sudden any history of domestic abuse is basically pushed under the table. ... It is more about that family unit as opposed to that woman's individual, what's happened to her*. (Child/Victim Advocate)

Legal professionals also noted that a tendency to focus on establishing contact could result in risks being overlooked, in the context of a system *'desensitised'* to DVA:

> *And the problem we have in these family courts is we are seeing such an overwhelming amount of domestic abuse in these cases. … So you then have maybe a bit of desensitization. …family courts are sort of really focused on, well, let's just try and get this child to have a relationship with both parents. You know, how can we do this? And it's very focused on getting to that point. Which means quite often the subtleties or the intricacies of the dynamics and the risks may not be fully explored in every case.* (Legal Professional)

Victims/survivors and their advocates also observed that certain aspects of abusive relationships were more likely to be overlooked by the courts, particularly where this related to coercive control, continued post-separation, and that was assessed as *'historic'*. The perceived insufficient consideration of such experiences could speak to the level of understanding of the dynamics of abusive relationships among legal professionals and members of the judiciary (explored further below):

> *And I've had to remind… the barrister that just because this couple have been separated for two years, abuse continues and it is now in the courts. We need to put domestic abuse back on the agenda or children are going to suffer.* (Child/Victim Advocate)

Members of the judiciary, however, highlighted both the requirement of the courts to only consider relevant evidence and the evidential challenges entailed in establishing certain forms of DVA. One, for example, outlined the need to balance allowing parties to bring evidence to the court against the requirement of only considering evidence that is relevant to the case:

> *A court is not going to… hear evidence which is not relevant to the issues. And I think that sometimes is something that parties struggle to understand. If you have a particular application in front of you, then you want to hear the evidence that is relevant to that application. That is not necessarily what an adult party wants to do. An adult party might want to say… look what I've put up with for the last twenty five years. But that's not necessarily going to be helpful to the decision that's made. …. So sometimes people don't see that distinction.* (Judiciary)

Victims/survivors who had experienced a history of coercive control perceived a reluctance by their legal representation to submit such experiences to the court. On the other hand, legal professionals and the judiciary noted evidential challenges to establishing such behaviour which acted as a barrier to presenting these to court. One member of the judiciary demonstrated their awareness of the impacts on victims/survivors, where they feel their experiences have been dismissed:

> *But coercive control by its nature is a more insidious kind of treatment and therefore it can be harder to identify and harder to prove. You could have coercive control by intonation and how something's said as much as what is said. So the court has to be very attentive … I do think judges are very alive to it, but again, it has to be based on evidence. That sounds like a mantra, but it's a basic building block of any kind of legal proceedings. You've got to have the evidence to show it. … and I'm quite sure legal practitioners would be saying to clients, 'it's not that you're not being believed, but it doesn't mean we can prove it'. And those are different things. And that can be hard for people to take on board as well. If somebody has a lived experience of this kind of abuse, but a lawyer or a court is saying 'I'm sorry, you haven't got the evidence in place that persuades me that it's definitely happened', that's a difficult, I think it's very difficult for that individual to hear.* (Judiciary)

Thus, the perceived overlooking of DVA by the courts is, in part, explained by the ability to establish experiences with reference to evidence and an assessment of the relevance of such experiences to the decision before the courts. In relation to the latter point, this is shaped by the emphasis on risks posed to children/young people and the extent to which victims/survivors' experiences of DVA are considered relevant to this assessment.

5.4 Assessment of Risk to Children and Adult Victims

Judiciary, legal professionals, ISWs and CCOs described what they viewed as a comprehensive risk assessment process where information and reports were sought from a range of professionals in relation to both parents and their children. Such information is used by CCOs to compile Article 4 reports, alongside accounts from parents and children/young people, which were considered '*pivotal'* in the courts assessment of risk. Some concerns were raised in relation to these reports being shaped by who CCOs speak to first. Several participants – victims/survivors and child victim/advocates – recounted experiences where perpetrators had been interviewed first by CCOs, and there was a concern that this set the agenda with establishing contact as the starting point for assessments and the goal to work towards. There were different practices among CCOs, however, in terms of who they choose to speak to first, with one noting an alternative viewpoint that it was important to speak to the victim/survivor first to understand initially why they were not agreeing to contact.

5.4.1 The Responsibility of Risk Assessment

Whilst several concerns were raised regarding the risk assessment process, discussed further below, it was evident that the responsibility could weigh heavily on the relevant professional. CCOs noted that specific judges or courts, particularly in family proceedings courts, were reliant on CCO risk assessments and some spoke of the '*immense pressure'* they feel:

> *The judge is exceptionally reliant on this CCO service. Exceptionally so… and would rarely go against what we would say. That puts a huge pressure on us to make sure that we are doing the right thing.* (CCO)

> *The pressure of making sure you're doing the right thing for this child, and that you're trying to eliminate the risk to this child is just, if you thought about it, you just don't think about that because that's... I don't know how you could keep your head on your shoulders.* (CCO)

Whilst some CCOs reflected that in the past their reports and recommendations may have been accepted without question, all commented that contemporary practice included subjecting the CCO report and its recommendations to scrutiny and cross-examination, particularly at the level of Family Care Centres and the High Court. They valued such scrutiny, ensuring parties knew that their recommendations could be challenged, and viewed this as a method of safeguarding against flawed decisions:

> *I don't think it's a healthy position for any single profession to carry too much weight in regards to what has been said, and certainly I've noticed a significant change over the years in the preparedness of legal representatives to challenge any report that is written by the CCO and I think that's great.* (CCO)

> *… in the Care Centres or the High Court, it's a different story, which I prefer because I know then, it's my recommendation and I'm making it. But someone else is actually making this decision, in this risky situation…. I feel it's almost like a safeguarding for me that there's somebody else really looking at this and going OK, CCO doesn't know everything. CCO can be flawed. Let's look and I welcome that I really do… I feel less pressure in that situation.* (CCO)

5.4.2 Inconsistent Assessment of Risk within the Family

Several victims/survivors and child/victim advocates expressed their concerns and frustrations with approaches to risk assessments that appeared to dismiss earlier involvement of children's social services due to child protection concerns within the family. Some victims/survivors noted, for example, that prior social work involvement did not appear to inform current risk assessments. They explained that earlier social services' involvement had emphasised the need to protect children from their father's harmful behaviours, yet when a contact application was made to the court, evidence and support from social services was not sought or deemed relevant by the courts:

> *So when social services had been involved years prior and they were very concerned about him and his behaviour, and you were being a protective mother and you had no intention of him ever seeing the children. But then when he applied obviously to private law, that he wanted contact, then social services at that stage should have written a report saying absolutely not, this man is really dangerous.* (Victim/Survivor)

Echoing such concerns, one legal professional also described such inconsistent assessment of risk across various teams within social services, noting the frequency with which it occurs:

> *We've had many a case where you'll have the child protection team telling the mother, if you allow, have any relationship with that man, we will remove that child. Two years later he comes along and to the courts looking for contact and a children's court officer tells her she's got to offer contact. How? How can a mother work that out?* (Legal Professional)

Victims/survivors articulated a sense of confusion when social services '*closed the door*' after they sought help in the face of a contact application, despite prior '*grave concerns*' about their ex-partner's threat to their child. Whilst some victims/survivors criticised the CCO for not taking past child protection involvement into consideration, two CCOs also expressed their frustration about the competing worlds within their profession:

… what I find difficult within our Trust, I'm sure this is Trust-wide, is that if you have a parent say a mother, saying, or a victim saying there's no contact, Social Services will close the case down because she's a protective mother. But it comes to us then for us to do the risk assessment… it's the competing worlds. The worlds are not marrying up, the world of child protection versus us [the family court]. (CCO)

5.4.3 Narrow Assessment of Risk

Victims/survivors and child/victim advocates expressed a concern that risk assessments adopted a narrow focus in which consideration was solely given to the risk posed to individual children/young people if they were to have contact with an abusive parent. As a result, accounts of DVA perceived to be directed solely towards a partner, or to partners and children in the context of a new relationship, did not tend to inform risk assessments in the case before the court. Moreover, a number of victims/survivors referred to criminal convictions or ongoing criminal proceedings which did not seem to prevent contact from happening. One victim/survivor, for example, referred to the assessment of her former partner as a '*good enough'* father, despite a criminal conviction for assaulting her. Several asserted, therefore, that ongoing risks posed to victims/survivors seemed to be overlooked in such assessments:

… it wasn't about me. Do you know, family court is about contact with the children. So it wasn't about me. It was about the children. So everything I was putting was about my concerns of his parenting. My concerns of his safety with the children. My concerns of what I felt, the emotional fall out would be... it's not an environment where you get to say 'I'm afraid of him' because it's not, well, that's all right, but your children aren't and you can't make your children afraid of them. (Victim/Survivor)

Additionally, the harm suffered by victims/survivors appears to be understood narrowly as impacting themselves only without a comprehensive understanding of harm caused to the child who witnesses and lives with DVA in the family home and its effects on their resident parent post-separation. One mother highlighted the importance of the resident parent in terms of safeguarding children, and explained that the court therefore needs to take account of the risk posed to victims/survivors and the impact this has on their safeguarding role:

But the mother of those children is very important too in that factor, you know. Their mother is important because she's the one bringing them up and trying to protect them. (Victim/Survivor)

Others spoke of the struggle to articulate to the court the impact of their partner's behaviours on their children prior to separation without also being judged as '*petty'* by the court:

Like those incidents I was talking about at bedtime whenever he would have started kicking and screaming and slamming doors because [child] wanted me to read a bedtime story. Or days that I came home from work and he was lying drunk, and they were looking after themselves. Or times he'd taken them to see friends but haven't put shoes on them and they were walking, you know, so. It's like trying to build the picture with the fear always is that you look petty and that… kind of tit for tat and it's, you know, they're both as bad as each other. (Victim/Survivor)

Victims/survivors' interpretation of the risk assessment process appeared to align with the general consensus among professionals that the process was centred around individual children/young people:

The child is very much at the centre, so in the assessment of the parent, your focus is fully on the child and the risk to the child. And the impact that previous behaviour has had on this child's future as well. So the child is very much the focus. (ISW)

… everything must be seen through the lens of what's best for the child… and sometimes parties can come in and, probably without realising it, they are more focused on their own interests than necessarily the interests of the child sometimes. I think it's the function of the judge to remind them of where the court's focus is going to be. (Judiciary)

Assessments of the relationship and experiences of DVA between the parents were only deemed relevant in the context of the harm posed to the children. One CCO explained, for example, that any focus on '*mum and dad'* and their relationship was only to assess whether there was an impact on their ability to co-parent. One ISW also noted that, in the context of separation, the risk posed to the child may be considered minimised:

I ask… 'what's your evidence that he directly poses the risk of the children? I'm not saying what he did to you… but has it been direct harm to the children? And if not, could he have those children and have an enjoyable day with their daddy? But it's how you two battle has been the issue.' So you're looking at a strength of risk and protectiveness around do they together pose a risk? Do they individually protect? (ISW)

5.4.4 Counter Allegations of Risk

Whilst much of the focus of risk assessments is on the perpetrator of abuse, several participants noted the impacts of counter allegations of risk that made the victim/survivor the subject of assessment. Both male victims/survivors in the study spoke of counter allegations whereby, having made an allegation of abuse against a former partner, they were subsequently accused of substance use and subject to hair follicle tests:

> *... there's people I've seen in court hearing, or witnessed, they're going to have to get hair strand tests to see when they last used drugs and, there's guys who I know have had that done and it's all just been a delay tactic by the other side. Or by the mum. And I understand the court has to take it seriously. … I don't know how you get around that. Because whenever I compare situations like that, the court is going through all these steps to vet dad as such, based on these allegations as to whether they're true or false, it doesn't, in my case for example it doesn't feel like they've done the same the other way around.* (Victim/Survivor)

Whilst the account above suggests that male victims/survivors are subject to such counter allegations more often, a member of the judiciary also noted the impacts on mothers who are subject to assessment and trying to prove themselves as a 'good mother':

> *So maybe in the middle of it all, you've to say it would probably be helpful here if we lay that issue to rest and so sort of without pointing fingers say you know, can we do something about organising a hair follicle test here. And I mean, that's not a great place to be standing in when you're on the back foot and you're trying to keep social workers at bay from where you're standing as a mum. You're trying to do what you can for the children. But you know it's a good indicator of risk if you've issues around drink and drugs.* (Judiciary)

Some accounts revealed how victims/survivors could themselves feel judged during their assessment process whether this is in response to allegations or where professionals are seeking to contextualise victims/survivors' experiences in an assessment of the '*credibility*' of their allegations of DVA. One ISW, for example, explained the importance of them attaining an understanding of the victim/survivor's '*developmental history and relationship history*', whether there are '*any adverse experiences or vulnerabilities that would make her prone to being victimised'* and, whether there was any evidence of '*personality disorders, mental health presentations, substance use'*. Whilst assessments of the perpetrator are equally comprehensive, no doubt questions asked of the victim's/survivor's character and needs, feeds into their perceptions of being judged and on trial themselves (see Chapter 6).

5.5 Duration and Delay

The 'no delay principle' is outlined in Article 3(2) of the Children (NI) Order 1995 which states that the court should consider that any delay in proceedings is likely to prejudice the welfare of the child. Whilst children and young people in the study were not always clear on how long their family had been engaged in family law proceedings (see Chapter 8 (8.3)), several victims/survivors spoke of processes that lasted over several years. During these extended periods, several interim orders may have been made before the final ruling of the court. Additionally, perpetrators may have made further applications to the court after the final ruling, seeking changes to contact arrangements and prolonging engagement with courts processes.

Some victims/survivors described being in court as regularly as once a month or every six weeks over a period of years, frustrated when it seemed that limited progress was being made or that perpetrators appeared to be engaging in delaying tactics:

> *… maybe he hadn't turned up they were then saying, 'oh, he wasn't aware he had to come to court'. So you were sitting up and he wasn't there. But that was because of delaying tactics and things. And then there's a lot of, you know, 'it's in for review, but you have to come and you have to sit'. So the amount of times that I had to physically… go to court took so much of just trying to pull yourself together trying to build the courage. It took everything out of me.* (Victim/Survivor)

Victims/survivors are not required, however, to attend all hearings and thus can decide to limit their attendance, allowing them to minimise the disruption to their lives and exposure to the adversarial setting, including contact with the perpetrator. At the same time, some victims/survivors expressed a concern that in not attending hearings they risked missing out on some important details. Similarly, members of the judiciary noted certain stages in the process where it was important that parties are in attendance:

> *I don't really press on the rule which says parties are to attend court at every review unless excused by the court. Except when I want to talk to the parents and then it's very annoying of course when they're not there. By that I mean, it might be on a key event like the court children's officer report has come in. Or it might be that all those preliminary searches about criminal record and so forth have come in.* (Judiciary)

A key reason for delay in proceedings was the time required to gather and establish evidence related to allegations of DVA and assessment of risk to a child, as outlined above. Several professional participants spoke of the balance between working within the no delay principle and ensuring that the court takes account of all relevant evidence and information to proceedings. Whilst some victims/survivors felt that such delay was a result of legal professionals '*milking the system'*, with the suggestion there was a financial motivation on the part of professionals to prolong proceedings, judiciary and legal professionals emphasised the importance of creating spaces within the system to ensure all appropriate evidence was presented to the court.

Waiting on the conclusion of criminal proceedings could cause significant delay and as a result, family proceedings may continue in the absence of a criminal finding of guilt. Alternative evidence required information from other agencies or departments and included waiting for various types of assessment related to the perpetrators and/or victims/survivors such as psychiatric assessments and alcohol and drug tests. Several participants, including the judiciary, highlighted the implications for delay but also recognised, in the context of under-resourced teams, that requests from the court may not be considered a priority where they do not relate to an immediate child protection issue:

And everybody is so busy. So, I'm finding across the piece if we ask a social work team for information, it's not that they wouldn't give it to us, it's about seventy-fourth on the list of to-do jobs for a team where half of them are on long term sick leave because they're worn out. And it's not a child protection issue for that minute. And that's just generally we're finding that you have to keep asking. (Judiciary)

Where the court decides to request an Article 4 report, limited CCO resources meant that this, too, could add significant delay with waiting lists for CCOs reported to be as long as up to six months:

I think the majority of the delay, whilst you're going back and forth, the majority of the delay is because you're allocated, you know, the case is maybe assigned to go to the CCO… and the waiting list for that is so long. (Victim/Survivor)

Several participants referenced where perpetrators could use techniques to delay proceedings in order to frustrate victims/survivors and cause more emotional and financial harm to victims/survivors. One victim/survivor noted how her former partner frustrated proceedings through failing to submit papers and not attending court.

And it all has to be much quicker. You know, taking a year, all of the ins and outs, and failing to submit papers and not turn up to court. And those things as well, like their conduct around the court proceedings and how they're interacting with the court themselves. If they're shown to be purposefully trying to make the proceedings difficult do you know. And kind of getting a sense of things not going their way and then not turning up to court. So I think the whole, the whole system has to be done much quicker. (Victim/Survivor)

Such practices, alongside the potential for numerous reapplications to the courts over several years, allows the perpetrator to use the system to facilitate prolonged abuse on victims/survivors. Victims/survivors noted that lengthy engagement with the process – whether through system delay or manipulation by perpetrators – had both physical and emotional impacts where they felt '*aged*' and '*exhausted*' as a result of the '*constant fight*' they were subject to and likening the impact of delay to '*torture*' and '*PTSD*' (see Chapter 6 for further discussion on impacts).

5.6 Decision Making

Whilst decisions are made at different stages of the process – through mediation and negotiation between legal representation, by CCOs in their assessment of risk, interim decisions throughout proceedings – much attention was given to the final decision of the court in relation to long term arrangements around contact. Concerns were noted in relation to the influence of attitudes among individual judges which led to a perceived inconsistency of outcomes across the various courts. Concerns were also raised regarding a presumption of contact with the perpetrator, even in cases where DVA was confirmed. This presumption, whilst not enshrined in legislation within Northern Ireland (as it is for the time being in England and Wales), was still perceived to operate in

practice at all stages and meant that some element of contact was inevitable in nearly all cases.

5.6.1 Judicial Attitudes and Inconsistent Outcomes

Several participants – CCOs, victims/survivors and legal professionals – noted the potential for varying court outcomes, largely explained by different judicial viewpoints, variation across CCOs in different Trusts and pointing towards an inconsistency across courts and divisions. One CCO explained that the differing views and experiences that all professionals bring to the process will shape eventual outcomes:

> *I mean it's not a science. You will get a different response. You'll ask ten judges, you will get a different response. You know, so it's very difficult. We all work differently. We all have different views, different experiences and we bring that to the job.* (CCO)

Similarly, one legal professional noted that whilst there was a general tendency towards shared care with fathers, still there was evidence of variation between the courts:

> *But I think across the courts and across the province that there would be variation in terms of the contact orders that are issued. And if you got into analysing those that you would see a difference. Just in terms of the level and extent of, particularly, overnight contact.* (Legal Professionals)

Several participants thus noted that court outcomes were largely dependent on the presiding judge, with some judges identified as being predisposed to recognising or dismissing victims/survivors' concerns. Thus, outcomes could be viewed as a matter of '*luck'* rather than a reflection of a system which has appropriately assessed risk. One victim/survivor, for example, reflecting on experiences of others, noted they felt '*lucky'* and '*almost guilty'* that her concerns about direct contact had been acted upon by the court in deciding upon indirect arrangements only. Several victims/survivors made reference to judicial attitudes towards women and the '*reputation'* that precedes them – some were known as being '*very much for women'* whilst others were described as '*misogynistic*'. As a result, victims/survivors described being '*guarded'* in their engagement with the court and some perceived a '*fear'* of some judges among legal professionals which influenced the evidence they chose to bring to the court. Ultimately, they felt that such views were influential in decision making:

> *But no weight was given to that. No weight in court that that judge was completely disgustingly out of control… It was as if that judge didn't like women. I says 'oh it was completely misogynistic. Completely misogynistic'. That sort of power needs to be took away from them. (Victim/Survivor)*

5.6.2 Perceptions of a Pro-Contact Culture

Participants – judiciary, legal professionals and CCOs – appeared to reference a working assumption, informed by a research evidence base, that the '*ideal*' in a child's life is to benefit from a relationship with both parents:

> *I think what the courts have done, what the courts are alive to is that in general terms the involvement of both parents in a child's life is an ideal.* (Judiciary)

> *I think there's a lot of research on it in terms of children, in terms of how they do better if they have a relationship with both of their parents and if they're permitted to have a relationship with both of them. And a lot of the time that is the sort of basis on which the court is operating.* (Legal Professionals)

5.6.2.1 Prioritising Relationships with Both Parents

In the context of a child having lost so much through experiences of DVA in the home and the impacts of parents separating, one judge explained their focus of minimising further loss in a child's life by ensuring the relationship with their father is not fractured:

> *I don't have a blueprint. …just making sure that child hasn't the further loss in their life of not seeing dad. So that's tricky, frankly. So, it's case-by-case.* (Judiciary)

Several victims/survivors and child/victim advocates raised their concerns with such an assessment. They described examples where they felt the rights of fathers, in particular, were prioritised over the rights and safety of mothers and children, and, as a result, the history of DVA in the home had been overlooked:

> *Because sometimes it's just difficult to understand how these outcomes are thought through. Because sometimes for the woman, we have had cases where they ask so much from mum, but dad has been abusive… awful behaviour throughout the child's life. But he'll still have the right over the children… But the court still finds that that father figure is so important when sometimes that father figure is so disruptive and so negative for the child and for the whole family. So, I think that is probably one of the things that sometimes is just puzzling.* (Child/Victim Advocate)

Indeed, CCOs and legal professionals assess that it was '*very rare*' that a court would rule no contact and that in most cases some degree of contact would be agreed upon, even in cases of serious DVA. For some, particularly victims/survivors and child/victim advocates, this was understood in the context of a 'pro contact' culture operating in the system:

> *… when it goes to court it's nearly God given conclusion that he's going to see his child.* (Child/Victim Advocate)

5.6.2.2 'Contact at all Costs'?

Many participants across all categories referred to a degree of inevitability of contact with the abusive parent - described by one as '*contact at all costs'*. Victims/survivors noted their disbelief that even after incidents where partners had been violent, shown aggression towards children, committed sexual violence or threatened arson to the home, contact was still viewed as a priority by the courts, CCOs and ISWs. It was also noted by legal professionals that only in the '*most serious'* of cases would the court rule '*no contact whatsoever'* and most experiences of DVA will not be sufficient to put a bar on contact:

> *And even though we don't have the presumption of contact over here… the court may take it (DVA) into account, but then go on and say, 'well, I still think that there should be supervised contact'. And then that feeds into the, well, 'nobody's listening to me'*. (Legal Professional)

Similarly, one CCO explained that only in a case of '*significant risk*' would contact not be considered:

> *So even with all of the considerations, I would still find in practice that there still is a focus to where absolutely possible and unless there is really significant risk that contact should be occurring in some format.* (CCO)

As a result, several participants, mostly those supporting women experiencing DVA, noted that their experiences of DVA were taken off the '*agenda'* whilst contact was negotiated. Whilst there is no statutory pro-contact presumption in Northern Ireland, some participants felt that in practice there was an assumption towards awarding contact to the perpetrator, even where children clearly express that they do not wish to see the abusive parent (see Chapter 8):

> *Recently I've also had a child who has very clearly voiced to the court that he does not want to see this parent. He hasn't seen him in over a year… But has been ordered to be indirect contact in terms of, the dad has been left to write a letter to the child and the child has to go to a contact centre to have this letter delivered with mum and CCO present.* (Child/Victim Advocate)

The idea of a presumption of contact operating in practice was refuted by some participants – judges, CCOs and legal professionals – who argued that decision-making involved a more complex consideration of a range of factors:

> *… there's a perception that the court is starting from the basis of, well, there's a presumption that there must be contact, so that's where we're starting from. … But I don't think that's actually the case.* (Judiciary)

> *I reject the notion that it's a contact at all costs, or there's a contact culture. It's much more sophisticated than that.* (Judiciary)

> *…I don't believe that there is a position where contact at all costs. I think that the judges are very alert to weighing up the different factors in each and every case. And they also, you know, will listen to whatever arguments solicitors or barristers have to make about, well, what are the benefits, what are the disadvantages here of contact?* (Legal Professional)

Nevertheless, even though there was a denial of a contact culture by some, the narrative offered around decision-making reflected that professionals working within the system were still '*minded to direct contact'* (Judiciary). A number of participants – such as judiciary, CCOs and ISWs – noted, for example, that their starting point in deliberations was a consideration of contact and an individual's Article 8 (European Convention on Human Rights) right to respect for home, family, and private life. From there, they consider '*well why can it not happen?*' (Judiciary) and work back from that point:

> *… on balance, I am always anxious to see if we can have contact where it's safe as houses, where the child's losing an awful lot. You know, if you're losing an awful lot, then also losing contact with a parent, it's a major hole in a child's life.* (Judiciary)

> *I think we have to work on a premise first of what's right for the child. And I think we do have to go with a pro-contact. You know, I think that's right. I think that should be our starting premise … if we're looking at it from the child's perspective of, you know, the child's right to have a nice family life. The child's right to experience that. So I think my baseline on this is, it would be good for this child for contact with both their mummy and their daddy or mummy and mummy or daddy and daddy or whatever it is.* (ISW)

A number of CCOs confirmed that their direction from the courts was to consider contact as a starting point, with judges having come to a decision, prior to receiving CCO reports, that some element of contact was going to be ordered. Their role, as a result, was framed as how can contact '*move forward… be safe… (and) be beneficial for the child*':

> *… can there be safe contact that's meaningful to that child and if not, why, and what are the steps that can be taken to ensure the contact. The court is very much contact focused.* (CCO)

Although the data suggest that contact was the almost automatic starting point for decision makers, judiciary (and some CCOs) emphasised that '*pro-contact'* does not equate to '*pro-direct contact*' and a number of indirect or supervised arrangements may be considered more appropriate. Direct, in person, contact was not always considered feasible nor in line with the child's wishes and/or best interests and the progress towards having in person contact with the perpetrator in some cases needed to be gradual. In contrast, CCOs explained that decisions were also made to stop contact that a victim/survivor had agreed to where contact was deemed unsafe, thus refuting '*contact at all cost'* assertions:

> *… sometimes you will get a victim agree into something and you have to go, 'right is this the right thing for this child? Where's this coming from?'... So we have to be aware that they may be making decisions that aren't safe and aren't right for the child. ... where contact has been established and you have to come in and go – 'I don't think this is safe. I feel that we need to either put supervision elements in or suspend until we get more information'.* (CCO)

Indirect contact arrangements, however, were not considered sufficient safeguards for several participants and a number – including victims/survivors and child/victim advocates – spoke of a need for a presumption *against* contact in cases of DVA:

> *I don't think there should be a presumption that somebody has been violent toward women can safely parent children.* (Victim/Survivor)

> *I do think there should be a presumption against contact if there's allegations of abuse and that should trigger in every instance a risk assessment before determination is made about contact or what contact looks like.* (ISW)

Child/victim advocates also noted that working towards contact with an abusive parent (either direct or indirect) should not be assumed as the priority and that for some children, '*it's better not to have a father figure than to have a really negative one that's constantly letting them down'.* They were keen to emphasise that abusive behaviours will not stop at the end of a relationship and that through contact, children will remain at risk of being exposed to harmful behaviours:

> *Well I don't think it's in any child's best interests to go back into an environment that is being controlled, manipulated and is extremely violent or abusive, either physically or emotionally. I mean a person just doesn't stop being abusive when they're separated from their partner… they're still always going to be an abusive man. You know, a controlling man. A manipulative man. That's not just going to stop because they're now not with their partner. You know? And I think that needs to be thought about a wee bit more. You know, so that, that child, even just going for contact is still going to be subjected to some level of emotional or physical abuse. And that is the truth.* (Child/Victim Advocate)

Victims/survivors and child/victim advocates also explained that an assumption in favour of contact demonstrates a lack of understanding of the dynamics of abusive relationships, especially in the period of post separation where risk to victims/survivors and their children (particularly in relation to a threat to life) heightens:

> *… if after the abuse is over in post separation, if he's still abusing the mother, if he's still breaching restraining orders, if he's still withholding financial support, do you know, then how can that be somebody that is going to be trusted to be caring?* (Victim/Survivor)

The perceived inevitability of courts ruling in favour of contact, however, provided challenges for those supporting victims/survivors to reassure them that legal processes and systems would operate in ways that would keep them and their children safe:

…we still would struggle to like offer reassurance that she's doing the right thing and there will be like consequence for him and she will be safe. When it comes to the family court, we can't as professionals really give much reassurance that she's going to be safe. And that the children are going to be safe. Because the court constantly like, insists that contact has to happen. She has to see him. The kids have to see him. (Child/Victim Advocate)

5.7 Understanding of DVA among Professionals

The majority of participants who work within or alongside the family court processes referenced attempts to advance understanding of DVA through engagement with training, often delivered by external experts on DVA. As a result, the analysis does demonstrate an increasing awareness and understanding of the dynamics of DVA and its impacts. At the same time, victims/survivors' experiences in particular, as well as the perceptions of child/victim advocates, suggest that there remain significant gaps in understanding that continue to result in negative impacts on victims/survivors as they navigate the family law system.

5.7.1 A Developing Understanding of DVA

There was a sense across the judiciary, legal professionals, CCOs and ISWs that understanding about DVA – particularly coercive control – has developed among those working within and connected to family court proceedings. Such understanding was illustrated, in part, by the recognition of the impacts of the process on victims/survivors, a perceived willingness to facilitate special measures where required, and the ways in which judges directed proceedings. For example, a number of participants referenced best practices by members of the judiciary who did not allow perpetrators to directly question victims/survivors through cross-examination. Others spoke of advancing knowledge on the impacts of DVA on victims/survivors and children/young people, particularly in relation to the need for trauma-informed responses and practices within the family court system. Additionally, there was some indication of a growing understanding of male victims'/survivors' experiences of DVA.

Participants also noted a more developed understanding of the dynamics of DVA, particularly in relation to the barriers faced by victims/survivors in leaving abusive relationships. Two members of the judiciary, for example, explained a shift away from positions that have wrongly judged victims/survivors for remaining in abusive relationships:

I think it's changing, yeah. It is a more developed understanding, it's a component part of training for judges so that they do have, as I say, they get an expanded view of what's happening. And trying to make sure that you're moving away from sort of the old tropes … - 'why did she just not leave?', 'Why did she stay there and do those things?', 'It can't be as bad as she's saying it is' - without understanding the really toxic nature of that relationship and how somebody gets bound into that relationship. And the kind of cycles that relationship can go through. So I think judges are much better now at understanding those nuances (Judiciary)

…. I'm very conscious of the fact that victims of domestic violence, who are frequently but not always women… don't put up the hand for help until they've had a very bad time of it. ... We know that you've had any number of hammerings before you lift the phone. We know that you don't leave because you've nowhere to take them to. You generally have no financial resources. And what you do not want to do as a parent of two or three children is you don't want to leave the house and risk them all to be farmed out across the family circle. We know that all of that keeps people in the house. (Judiciary)

CCOs also described a developed understanding of the effects of DVA on victims/survivors, particularly in relation to the potential impacts of contact arrangements on victims/survivors themselves and on their ability to parent:

I suppose we are always very aware of, if the victim is the primary carer of the child, we have to be aware of the fact that contact … is that going to impact the primary carer's parenting ability, in regards to their mental health in regards to trauma. … we have to be aware of everyone's rights, the rights of the perpetrator to have contact with the child, the right of the child to have safe and meaningful contact, but also then to be parented by someone whose mental health isn't being triggered or trauma is being triggered by contact. And it's so complicated. (CCO)

Developing knowledge and understanding was attributed to a commitment to engage with available training delivered by external expertise. Several referenced how their practice was enhanced as a result of their more nuanced understanding, allowing them to engage more effectively with victims/survivors. Whilst it is not compulsory for members of the judiciary or legal professionals to attend such training, one legal professional described the personal motivation of those in their profession to continue to '*upskill*':

I think that there has been a big emphasis on trying to upskill to gain an understanding of the challenges that people are coming to the courts with and to improve and expand on our skills, as advocates, to make sure that our client's case is presented to the best way that it can be. And that the court experience is the best that it can be for your client. … it is all our responsibility to just continue in terms of our education on the issues that are developing. I think that we're quite proactive in that. Which, for being a body of self-employed people is, you know, a good enough achievement that everyone is proactive enough in that. … There's a responsibility and I think we all keenly feel a responsibility to keep ourselves trained and current with what is going on. And that is all I think that we can do to improve victims' and children's experiences. (Legal Professional)

5.7.2 Gaps in Understanding

Although development of a more nuanced understanding of DVA was evident across adult participant groups, accounts from victims/survivors and child/victim advocates nevertheless identified particular gaps that remain in understanding, which could continue to negatively impact victims/survivors' experiences.

Whilst the term 'coercive control' was recognised as now being cited regularly, several participants described a limited understanding in terms of how this manifests in abusive relationships and the ways in which non-physical abuse, including financial abuse, and emotional harm impacts victims/survivors. One ISW, for example, noted that understanding did not extend to an appreciation of how experiences can impact victims/survivors' own behaviours and explained how risk assessments may neglect to connect behaviours to coping mechanisms as a result of experiencing DVA:

… the court did not recognise the coercive control of the father at all. And because he was "the best of the two", I would suggest, from the Court's eyes ... i.e. mum had developed an addiction largely as a result of the abuse that was inflicted upon her and the manipulation etcetera. And he fed into that and he aggravated her addiction as part of his control over her. … was able to manipulate the courts and the children's court officer and social services for the good guts of a year, until an assessment was done and the assessment then began to be shared with the parties. (ISW)

Focussing specifically on female victims/survivors, this participant noted that in the absence of a more developed understanding of coercive control, professionals' assumptions about mothers and appropriate behaviours in their role as primary caregiver are shaped by '*the same biases that sit within wider society*'. As a result, in cases where mothers may present with non-typical behaviours associated with a caregiver (despite being triggered by experiences of DVA), they may lose custody of their child(ren):

The courts are seeming to more likely inhibit contact with mum and allow primary residence with dad. And that for me would be not uncommon. (ISW).

This resonated with other accounts that suggested inferences are drawn if a victim/survivor had previously agreed to contact, remained in or returned to the relationship, and/or continued contact with the perpetrator post-separation. Participants noted that such judgements lacked an understanding of the dynamics of controlling and abusive relationships and the several barriers, including financial, that victims/survivors face in navigating a route out of such relationships. Lack of understanding also extended to the period post-separation and failing to recognise this as a period when risk is heightened, particularly risk to life. Such gaps in understanding meant that victims/survivors could be put at risk of further abuse through requirements for mediation or to facilitate contact arrangements.

Additional gaps in understanding related to the presentation of the perpetrator and how their character was assessed by those working within the system, raising concerns about the possibility of professionals being '*groomed'*. A number of victims/survivors spoke of how their ex-partners had been able to '*keep that persona*' of a '*reasonable'* and '*charming man'*, which subsequently informed professionals' impressions:

> *She (social worker) said to me, um, 'oh no, he was really nice on the phone'. Now this is somebody who'd abused me and my children. And had done so many, and I couldn't believe she'd even use that word. You know? It's disgusting… maybe she didn't think about it but they need to think about these things. And the effect. And I'm still remembering it now. I'm still annoyed now thinking about it. How dare she assume that this person is nice.* (Victim/Survivor)

Child/victim advocates also noted the potential for professionals within the system to be groomed by perpetrators. They noted this could lead to misconceptions and a lack of awareness of the motivations of perpetrators to '*track'* and '*exhaust'* their ex-partners through the legal system. One legal professional thus drew a distinction between how perpetrators and victims/survivors may be viewed:

> *… often you will find working in domestic abuse situations that the perpetrator can be quite charming and they can seem terribly reasonable and … you know professionals perhaps are groomed and they couldn't believe that this person could be anything other than you know very pleasant… and conversely you can often have a person who has been a victim of domestic abuse being a bit of a broken sort of individual, you know, and perhaps reacting to things. What would seem to a professional as reacting irrationally, and that's sort of trauma response, you know? And so they're very, very complex cases.* (Legal Professional)

Additionally, some legal professionals and members of the judiciary referenced the need to be '*trauma aware'* or to create *'trauma-informed*' environments in the court. The extent to which they all understood how this could operate in the everyday workings of the system was less clear. For instance, when asked about trauma-informed training, one member of the judiciary questioned:

I would have to ask what do you mean, which maybe answers your question. Trauma informed in what sense?... It's part of the judicial studies, I don't think I can remember a kind of focused talk upon how do you handle parties in court. (Judiciary)

5.8 Victims/Survivors' Understanding of Family Law Processes

A number of participants – including the judiciary, victims/survivors and child/victim advocates – spoke of the difficulties for victims/survivors in navigating and understanding family law processes. One member of the judiciary noted their concerns that victims/survivors may not easily follow proceedings and considered a need to gauge the level of understanding of those involved in the dispute:

> *… what I would like to do better would be to have some way of really checking did people understand what happened. You know, obviously people are fully represented so I can't sort of say… 'Legal advisor, stand to the side', I just want to check did you really get what's gone on there. You know, sometimes I'm not sure people have entirely understood.* (Judiciary)

Child/victim advocates also identified gaps in understanding, referencing victims/survivors who were confused in relation to the scope of the court's jurisdiction, including what matters could be dealt with. They were also unfamiliar with what was required from their engagement with CCOs or were unclear as to their role in the court: *'do I have to go into court? Do I have to speak out loud?*' (Child/Victim Advocate). Those who were self-representing (as litigants in person) similarly expressed an unfamiliarity with court processes, which they needed to learn over time to ensure they were not placed at a disadvantage:

> *… So because we were so new to litigation at the time, we didn't know any better and we just right, this has been accepted by the judge and whatever. We were unaware that we could appeal it and we could put in information about it and whatever.* (Victim/Survivor)

Additional intersecting challenges were identified for those whose first language was not English or victims/survivors who were considered to '*lack capacity*' through a learning disability or mental health diagnosis:

> *… because they sometimes have that added challenge of needing to have a, not only an interpreter in court, but a written statement and it translated. And that definitely slows the process down. But I think it's really important that everybody knows the case they're having to meet.* (Judiciary)

> *… professional people who really want to promote good quality engagement have a way of signalling that… we need more time. And that's really helpful…. Now what we struggle with would be parents with personality disorders as opposed to classic mental health. Some of those parents, I think, find our court system really very difficult to work with.* (Judiciary)

Barriers to understanding were identified at both an individual and systemic level. Child/victim advocates and victims/survivors noted that an ability to understand proceedings would be affected by the impacts of trauma, making it difficult for victims/survivors to process all the information that they are presented with – '*you can't take an awful lot of that in'* (Victim/Survivor) – and so they highlighted the importance of supports, especially in the early stages of the process:

> *… from one day to the next, you don't know anything. Do you know there's no update service... even the terminology, the letters, the codes, all of those things. Do you know, the different forms that have to be in. It's a massive learning curve… It's like being dropped into an alien world that you've never experienced and having to learn it.* (Victim/Survivor)

Others noted that challenges to understanding processes stemmed from a lack of information, communication and supports for victims/survivors navigating the system – described by one victim/survivor as '*the real issue'.* One male victim/survivor, for example, noted that he had not been informed of the detail of the CCO report – *'my solicitors wouldn't give it to me'* – and was unaware of the final position going into court hearings. Child/victim advocates also described barriers to accessing information to assist the victims/survivors they were supporting. They noted the difficulties in identifying and navigating the correct channels of communication to access the most relevant information.

> *… the biggest impact of what I have been able to see, it's the lack of communication. … whenever they need to know what is going on with the process. … just to get the information of what was the outcome of that, I had to phone, oh, everybody like don't know five, six different people and for everybody to say to me that is not up to them to give me the information I need to go somewhere else. They'll phone the other person and they will tell me was the person before or another, a third one. So that is understandable how a woman can be so frustrated.* (Child/Victim Advocate)

As a result, some victims/survivors felt ill-equipped to engage with their legal representation or make informed decisions about their cases. More generally, they described a system that was unfamiliar and thus daunting to enter. Those who had experience of criminal court proceedings drew a distinction between the supports that were available across court jurisdictions and in the level of preparation that assisted victims/survivors in their understanding:

> *… the family court is so different even to Criminal Court… I know with Criminal Court, you know, you have Victim Support. You were able to get court support and there was a courtroom. And there was a court officer that would give you the familiarisation visit. And they would take you round. There's nothing like that for the family court even to let you see what, what family court looks like, or to know who's going to be in the room?* (Victim/Survivor).

5.9 Experiences of Legal Representation

Victims/survivors' experiences of their legal representation varied and were likely shaped by the level of understanding of DVA among their legal team (explored above) and also by the outcome of their cases.

5.9.1 Communication, Preparation and Responsiveness

Positive experiences of legal representation tended to reflect clear, honest communication where victims/survivors felt that they had been prepared for court and were kept informed of any progress. For instance, one victim/survivor expressed the importance of their solicitor being upfront with information in relation to the proceedings and their costs:

> *Well, they just know stuff and don't bullshit you. They don't tell you what you want to hear. They say to you this is what's going to happen. ... and they tell you what's going to happen. They tell you how much it's going to cost.* (Victim/Survivor)

Similarly, others referenced the importance of '*good communication'*, feeling evidence was dealt with '*thoroughly'* and all important and relevant aspects had been explained to them. They noted the importance of having their calls and emails answered and of not feeling ignored. Indeed, a number of victims/survivors, as noted above, highlighted the difficulties in understanding the processes and explained that the support and advice of experienced legal professionals was crucial, as well as receiving feedback at key points in the process:

> *To be fair like my solicitor has been good. I know some people don't have the same, don't have as, like, good communication with their solicitor which again would be really frustrating. Mine after the hearing will, within a day or two, have sent you like a report back on everything that's been happening or discussed. Which is good.* (Victim/Survivor)

Victims/survivors also reported positive experiences of legal representation where they felt they had been listened to, that their abuse had been acknowledged and their challenges of dealing with an abusive ex-partner through the courts system was understood. One noted the relief when her barrister recognised the importance of raising her ex-partner's history of violence in court:

> *Somebody who believed me. You know? Could see the pattern of abuse that this man had put on so many other people and it was actually being recognised. Because that was one thing I asked when we went to court, was, 'can we use his past cases against him, because there's been so many of them'. And I was told 'no you can't.' And to hear my barrister sitting there saying 'yes we are going to use these' was a real, that was a relief.* (Victim/Survivor)

In contrast, other participants spoke of experiences where victims/survivors did not feel adequately represented by their legal team. Such accounts pointed towards a lack of preparation or guidance and/or a perceived discouragement to present their

experiences of DVA to the court. One child/victim advocate, for example, explained how some victims/survivors were not fully informed regarding court proceedings, impacted by their legal representative's heavy caseload. As a result, advocates played an important role in filling a gap in preparation:

> *… even trying to get hold of their solicitors or even solicitors taking the time to explain to the woman what that process is going to look like. It's often us explaining what that process is going to look like because there's normally very little contact with the solicitor beforehand... even whenever we go into court, you'll be told be in court for ten. Maybe the solicitor or barrister doesn't even come in and speak to the woman until half twelve, one. Because they'll be off dealing with multiple cases at the same time.* (Child/Victim Advocate)

One victim/survivor echoed such concerns where they described the fear they felt due to a lack of direction from their legal representation:

> *And sometimes you don't know, because you don't want to take, you're scared of taking a wrong turn or step. You know, looking badly on you then. So that's the bit that's hard, you know? The solicitor doesn't really provide you with a lot of guidance. You're sort of left up to your own.* (Victim/Survivor)

Other concerns related to the extent to which victims/survivors felt their legal team was familiar with their case. Some questioned whether their representation had engaged with the details of their file, whilst others noted the impacts of junior solicitors being brought in to cover absences or barristers who did not appear sufficiently briefed before a hearing:

> *… The amount of evidence in my case, and it's like, they just, it almost feels like they're almost just making up as they go along. Like the amount of times I sit there thinking 'have you actually looked at the stuff that is being handed in? Like are you actually looking at that?'* (Victim/Survivor)

> *The solicitor hadn't, she was clueless… and when I went into court, then, solicitor is standing like, 'I don't know what to say next'… Because she hadn't been told anything about the case. So she was literally clueless.* (Victim/Survivor)

Reflecting concerns discussed above in terms of the lack of consideration of DVA by the courts in risk assessments, a number of victims/survivors expressed their frustration that they had been discouraged by their legal representation to recount experiences of DVA. Some felt that their legal team's '*loyalty*' was to the court rather than to them as the client and perceived a reluctance towards or '*fear'* of challenging the court and/or certain members of the judiciary. Some expressed concern when the legal team did not speak back to accusations of implacable hostility and likened the experience to wearing a '*gag'* and lacking in voice. Others, then, spoke of '*doing the work*' themselves in order to have what they perceived as relevant information presented to the courts:

> *… but I just stared at my solicitor … and I was like, 'she's going to do nothing for me. Could I speak Your Honour?' And I thought well, like, if she's not going to do something, I have to. You know? Or else he's just going to get these kids. You know, so.* (Victim/Survivor)

Others also raised a perceived lack of trauma-informed practice and expressed the importance of legal representation showing care for their clients and acknowledging the impacts of their experiences.

> *You send the stuff through in emails. They'll send you very brief email back. There doesn't seem to be actually any care or compassion. And I have been through couple of different solicitors. And it's the same thing. So it's not only seen to be one. To me I see it as ... it's just a job to them. And with cases like this, you're not just a number. It's hard to verbalise the feeling of even when you're going to court you go there, you sit there, your legal team come and meet you whenever they're finished doing whatever they're doing. …And it will be a very brief, 'oh well, right, well we've got this through from you and this through from you. The judge is going to look at this'. ... it's like you're expected to see this as just like a day at the office …* (Victim/Survivor)

On the other hand, the legal professionals we spoke to were aware of the importance of a trauma-informed approach to engagement with their clients. Some, for example, spoke of trying to create '*relaxed environments*' to facilitate their clients in preparing statements of evidence. At other times, however, they had to work within the constraints of the system and providing a trauma-informed environment to engage with clients was hampered by the infrastructure of the court building (see Chapter 6, section 6.5). They, too, were aware of the potentially traumatising effects of victims/survivors having to (re)tell their experiences to several legal representatives, but also needed to balance this against being able to present the strongest possible case to court:

> *So they may be able to interpret that as re-traumatising. I suppose on the flip side, the reason that legal representatives want to hear it from them is so that they can assess what evidence is needed to back this up... does it sound like they can perhaps give good evidence to the court … would the person particularly act as a good witness … So if they then come to meet with a barrister after having spoken with their solicitor, they might have to go over their story all over again for us to make our own adjudication of that. So that might be one format of feeling that it's been re-traumatising.* (Legal Professional)

At the same time, legal professionals also acknowledged the potential for variation within the practice and the potential for personal biases to inform practice more widely beyond those represented in this study:

I think we're all human. I think we all have our own bias whether that is bias that we're aware of or whether that's unconscious bias. So I can see how that can infiltrate in terms of the approach that somebody might take. You would hope that they, you know, don't have, you would hope they're aware of it and have insight in relation to it. But some people maybe aren't as insightful as others. So I could see how different approaches get adopted based on what people perceive to be what they think should happen. (Legal Professional)

5.9.2 Experiences of Self-Litigation

5.9.2.1 Victims/Survivors as Self-Litigants

Legal professionals and members of the judiciary noted that choosing to be a litigant-in-person was quite *'rare'* for victims/survivors, most likely motivated by financial concerns, due to costs of legal proceedings, or following a breakdown in the relationship with legal representatives. In the context of the legal aid waiver for victims/survivors of DVA in Northern Ireland (whereby victims/survivors of DVA may be eligible to apply for Legal Aid even where their financial circumstances would usually make them ineligible), some professionals noted more of an element of '*choice'* in the decision to self-represent and referred to individuals '*who do not wish to be advised'*. Regardless of motivation, experiences of self-litigation could be challenging - some even considered it to be '*dangerous'* (CCO) – for victims/survivors to navigate.

Two victim/survivor participants had experience of self-representing in proceedings. One described her frustration with her legal representative and encouragement from a fellow victim/survivor as motivating factors:

I says 'why is she not putting in imperative information to my hearing? … why would you not put this kind of stuff in?' It's really disappointing that you're in and you're representing myself. Not just myself but also my [child] in these circumstances. ... And it was only through [friend] pushing and saying 'you need to self-litigate. You need to self-litigate'. And I was like, 'but I can't. I can't. I'm scared. I'm scared. What do I do?' And obviously the more we had got to know each other the more we were backing each other up with saying 'look, this is about our children. This is about safeguarding our children and this is about the fight to protect our children'. So I had went to court the next day as a self-litigant. (Victim/Survivor)

Both victims/survivors and child/victim advocates identified an advantage of being directly '*in front of the judge*', with the potential to feel more '*seen'* and recognised and, as a result, receive more positive outcomes:

You get to actually speak to the judge therefore… I think the judge sees you as a human… if the judge isn't able to talk to you and they're just going off what barristers and solicitors are saying … then you're not getting the human side put across as to like what is actually, like (Victim/Survivor)

And they've actually had more positive outcomes because they are being heard in the court in front of the judge. And they are given time to explain what has happened.… And the outcomes then were more towards, geared towards what she wanted. And that doesn't mean no contact. It's just 'I know with my child, this is going to work. So this is what I feel should happen'. And it happened. So yeah. (Child/Victim Advocate)

Self-litigating as a victim/survivor, however, was also described as '*brutal'* by victims/survivors, who noted several challenges. They acknowledged that they were unaware of the legal processes, including the potential to apply for a McKenzie Friend as support in court. They also described feeling overwhelmed by the sheer amount of work involved and feeling intimidated by direct contact with the perpetrator's legal team. They spoke of the steep learning curve they needed to embark upon, and the *'hours*' required to read and learn, prepare a file and deal with correspondence from the opposing legal team:

So the more we got to know things and whatever, then it was, it was a bit easier but you're doing a lot of reading. You're doing a lot of research. You're doing a lot of, you know, trying to figure things out. (Victim/Survivor)

5.9.2.2 Challenges of Perpetrators as Self-Litigants

Participants noted that it was more common for perpetrators to act as self-litigants, which also raises implications for victims/survivors and their experiences of proceedings. Legal professionals referenced a '*grandiose*' personality among perpetrators who self-litigate and who were perceived to '*enjoy'* working '*outside of the norm'*. They were seen as engaging in a more deliberate choice than victims/survivors to self-represent, expecting greater potential advantage and opportunity for control:

And I do also believe that in some cases where there are litigants in person who are perpetrators, that they're deliberately choosing to be litigants in person because it does give them this advantage and because of this grandiose type controlling personality, you know. And also because it may be that they have decided they don't like the advice their solicitor's given them so they're going into court and dealing with that. (Legal Professional)

Legal professionals also suggested that victims/survivors perceived an advantage for perpetrators when they were self-litigants, feeling that their voice is more influential because of the space that they can occupy in the court:

> *… because they (perpetrator) are able to be up front, saying stuff, speaking out, you know, and maybe, it appears that what they're saying is being given more weight because it's their voice that's saying it, you know. And, and the court does expect leeway to be given to them because, you know, so they'll be able to make points potentially that a lawyer wouldn't make because a lawyer would say, well, if that's, that's not going to be acceptable to the court'. So it can, it definitely can give a victim a sense that they're being given preferential treatment.* (Legal Professional)

Of greatest concern raised across all groups of adult participants was the potential for perpetrators to directly cross-examine victims/survivors during family court proceedings. Whilst the practice prospectively stands to be prohibited by Article 36 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, which is yet to be implemented, judiciary noted that a key motivation for perpetrators to self-litigate can be the opportunity to directly ask questions of the victim/survivor. Prior to the 2021 legislation, all members of the judiciary noted they had introduced important safeguards for victims/survivors to set some '*clear parameters'* within their courts. They noted that they had stopped the practice of cross-examination directly by perpetrators several years before the legislation was drafted, prompted by an increasing awareness of the potential impacts and issues with questions that were being posed:

> *I've been not allowing cross examination for about fifteen years. I've been working on the basis, I didn't invent it, it just evolved within the bench that you put the questions you want to ask to me and I'll ask the questions. And I've done it twice, that would be the height of it… And I think I spent more time interrupting to say 'you can't ask that question'. That's one reason why I converted to, just put the questions to me.* (Judiciary)

Victims/survivors and child/victim advocates similarly referred to the practice of judges requesting that perpetrators who were self-litigants first address the court with their questions and the judge then taking on the role of asking the questions directly of the victim/survivor. Even using the indirect method, however, victims/survivors remain affected by knowing the questions were coming from their abuser:

> *But the questions have been there, you know, and they have not been pleasant. And it's neither like, you can just hear that he's asking questions, and he's only in that arena be for himself to be able to continue that abuse and to watch her.* (Child/victim advocate)

An additional concern through this practice, as noted by one legal professional, is that the judge can be seen to be the perpetrator's voice in this instance and can feed into perceptions by victims/survivors that the court is more aligned with the perpetrators' views:

… one of the problems you have is if, if it's done that the judge filters the questions, that the judge asks the questions on behalf of the perpetrator then the judge is sort of becoming, their position is slightly blurred and it looks like they're in some ways wearing the hat of the perpetrator because they're the one filtering. (Legal Professional)

5.9.2.3 Professional Responses to Self-litigants

Members of the judiciary and legal professionals acknowledged the challenges faced by self-litigants – whether they are victims/survivors or perpetrators – and noted a responsibility in the way they engage with them over the course of proceedings. They noted, for example, that individuals needed to be responded to with '*considerable care',* are often nervous and were '*suspicious'* of what they are being told about how the process works. They understood that self-litigants were not familiar with rules and procedures that those within the system had '*absorbed over decades'* and thus required advice and support. Thus, they described guiding them in what is required from the court, advising on procedure and ensuring they requested breaks when needed '*to gather their thoughts'*. Legal professionals noted a responsibility to keep self-litigants updated and treat them with respect, noting that, in respect of perpetrators, '*they want to be heard regardless of what they have done'*. There was also a balance to be struck, however, between ensuring a self-litigant is sufficiently informed and not becoming '*some kind of advisor'* to them:

So giving information's one thing, but you have to be very cautious about it where you can go in terms of giving advice. … Others struggle with a level of insight and objectivity. And that's perfectly normal. And the judge will do their best to bring them back to where they need to be to deal with the issues that are in the case. And it's not an unfamiliar mantra from judges to be saying, 'this is what I have to decide, so I need to hear evidence about this so I want you to concentrate on this area and we'll talk about these things'. (Judiciary)

In addition, those working within the system were also keen to emphasise that a case will proceed through the same channels regardless of whether it involves self-litigants, albeit at a slower rate, and they refuted the notion that self-litigants – including perpetrators – are at an advantage in the process:

And then sometimes there is a perception from clients that the litigants in person have an upper hand or are getting more assistance from the court. I don't always agree with that. So I think if you treat them with respect, if you keep your client fully advised about what's going on and just communicate and everybody understands the kind of confines of what we're working within, it's of greater assistance. (Legal Professional)

5.10 Conclusion

This chapter has detailed the views and experiences of adult participants on family court systems and processes, drawing on the accounts of those who work within and alongside the family courts and of those who experience it as victims/survivors. Whilst the analysis demonstrates variation in practice, views, and experiences across courts and regions, several concerns emerged across different participant groups. Underlying a number of concerns was the perception that experiences and impacts of DVA were disregarded or overlooked, and, as such, a DVA lens was not applied throughout the process. This was illustrated in accounts which emphasised the challenges of mediation in the context of abusive relationships, including the post-separation phase, and where some participants felt insufficient attention or effort was given to establishing allegations of DVA or to consider the impacts of DVA in risk assessments. Several raised concerns about courts neglecting to conduct fact-finding hearings or to acknowledge DVA that was historical, continuing post-separation, not perceived to pose a direct risk to a child, or deemed irrelevant to the case before the court. Efforts to establish DVA and conduct risk assessments were also said to be frustrated by challenges in sharing information, contributing in part to the significant delay experienced by some, exacerbated in turn by under-resourced departments and intentional delay tactics used by perpetrators.

Whilst there is no statutory presumption of contact in Northern Ireland, the analysis, nevertheless, demonstrates an assumption of contact that operates in practice. Several, for example, spoke of the consideration of contact as the starting point of risk assessments and that in the majority of cases, some form of contact – albeit indirect in some cases – will be ruled on by the court, even where DVA is confirmed. Such a position was shaped by the perceived benefit of a child having a relationship with both parents, even where one is abusive, and is also shaped by levels of understanding of DVA among those working within the system. Whilst a developing understanding of DVA was acknowledged by many, several gaps remain, particularly a more nuanced understanding of post-separation abuse, coercive control and its impacts on how victims/survivors present, and the behaviour and presentation of perpetrators.

Navigating the family courts processes was challenging as victims/survivors enter into an unfamiliar world, exacerbated by a lack of formal support. Whilst responsive legal representation helped address some of these challenges, variation in practice meant that some victims/survivors struggled with a lack of information, communication and acknowledgement of their experiences. Challenges were considered intensified for victims/survivors, if few, who acted as self-litigants, and whilst important safeguards had been put in place, an increased need for support was identified.

Chapter 6:
SECONDARY VICTIMISATION AND TRAUMA

6.1 Introduction

Drawing on interviews with adult participants including victims/survivors, child/victim advocates, Court Children's Officers (CCOs), and independent social workers (ISWs), as well as legal professionals and the judiciary, this chapter examines how family court proceedings can elicit further trauma for victims/survivors of domestic violence and abuse (DVA), including experiences of secondary victimisation (i.e. further victimisation through the response of institutions and individuals to the victim).

Before presenting the analysis of participant views, it is worth noting that literature related to trauma-informed approaches to service provision (aimed at addressing past traumatic experiences and promoting engagement and recovery from harm) emphasises the importance of building safe, trusting and transparent relationships between service users and providers. This literature also stresses the value of promoting the service user's voice and choice, as a means of countering previous experiences of powerlessness and lack of control (Mooney et al., 2024). It is acknowledged that this is challenging to achieve in a court system which is adversarial in nature and often working with contested accounts of previous life experiences.

Several themes emerged from detailed analysis of participant interviews which are presented below. These include: victim/survivor perceptions of being '*not heard*' and '*not believed*'; perceptions of victims/survivors under trial themselves; traumatising experiences of court proceedings; the physical environment of the court; and litigation abuse. These themes express many of the challenges in achieving such trauma-informed goals within the family court system, as well as some efforts made to address such challenges.

6.2 'Not Heard' and 'Not Believed'

Following accounts in the previous chapter which detailed the ways in which experiences and impacts of DVA may be overlooked in the application of family court processes, the following analysis illustrates how such perceptions affect victims/survivors' experiences, primarily culminating in a sense of feeling that they haven't been heard or believed. Those working within the courts – including the judiciary – were aware of the potential impacts when the absence of evidence of DVA is questioned as part of the process:

> *But quite often you'll find in a case the male partner will say, 'this was never reported to the police, nobody. She never made any reports to anybody. So it's all invented. It's just to stop me seeing [child]. It's never arose until these proceedings started. So it's all concocted'. And that's a very standard line of defence. And that*

must be very difficult for victims to hear and be told 'well, you should have made, if you'd made more fuss at the time'. (Judiciary)

Others, however, noted even in the absence of some evidence sought by the court, a considerable '*stack of information'* – as a result of prior involvement with multiple safeguarding agencies – is often available. The fact that this is overlooked, described here by one child/victim advocate, can shape victims/survivors' perceptions of feeling unheard:

I think they [victims/survivors] don't feel heard because they're not heard… Nobody actually considers any of the information that's there. So… usually by the time a woman comes into the refuge she has a stack of information in relation to what's happened. So she's spoke to one of us. She's maybe spoke to Gateway. She's maybe spoken to the police… And nobody's heard her. So you know, if all that information's sitting there and you're still hit with a Contact Order to go back into court. (Child/Victim Advocate)

Additionally, victims/survivors referred to being dismissed by their legal representatives when they recounted their experiences of DVA, describing being met with '*rolled eyes*' and a failure by their legal team to present such accounts to the courts:

Because you're not being believed … you know that what you're saying in that room [with solicitor], you think they might be writing that down, but that is not getting any further than that room. It maybe goes to his [the applicant's] solicitor in their room, but like, it should go in front of the court. ... I honestly think that stuff you're telling your solicitor never ever gets to the judge…. It never gets to the judge… it never leaves the room that you're in. (Victim/Survivor)

This sense of feeling *'ignored'* or *'not heard'* was also compounded where they felt the applicant's parental rights were being privileged over the safety and wellbeing of the victim/survivor and their child:

They [victims] often feel ignored. They often feel like the domestic abuse side of the relationship is ignored in terms, to see the dad as a good parent, and that actually dad has put, dad's contact is put before the needs of mum and child and the safety of mum and child. And it's definitely a running theme that… women don't feel heard…. even if there's been children services involvement… it's still putting dad's contact above safety, above mental health, above, you know, having that secure place for the child (Child/Victim Advocate)

These repeated instances of not feeling heard – to the extent they felt rendered *'speechless'* and *'silenced'* – led some participants to conclude that the family court was '*stacked against*' DVA victims/survivors. This was experienced by some as traumatic:

…within the family courts, the trauma that they cause on top of everything else. The dismissal of the domestic abuse. You know, they still continued to keep trying

to push for contact… it's traumatic. And domestic abuse is just dismissed. (Victim/Survivor)

6.3 Victim/Survivor On Trial

Some adult victim/survivor participants spoke strongly about their experience of being '*judged*' and treated as though they were *'the perpetrator'* on trial in the family court, with a sense that they had to prove their innocence, rather than the spotlight being placed on the abuser's history and behaviour:

> *Some of them [court professionals] were on my side, but some of them I felt like I was the one in court being judged, you know, rather than the other way round. It always felt like I was the perpetrator of something. And I always felt like I had to try and claim my innocence rather than you know, I had to try and prove what he [ex-partner/abuser] was doing. And it felt very much like I had done something wrong rather than the other way round.* (Victim/Survivor)

6.3.1 Treated like the Perpetrator

One victim/survivor described this experience of feeling as though it is the victim/survivor who undergoes trial as being treated like the perpetrator, including via being '*gaslit*' or '*abused*' by the system. They compared this to '*an abusive partner*'. Some victims/survivors also reported that over time this sense of feeling on trial themselves engendered a sense of doubting their '*own reality'*:

> *…Because you feel so gaslighted by the system that you start to doubt - like being in the family court system is like being with an abusive partner in the sense of you doubt your own reality. You don't know, like, what you're thinking is even true… It's abusive to me.* (Victim/Survivor)

> *Because they [the Court] make you doubt everything… [like] you're the perpetrator*. (Victim/Survivor)

6.3.2 Victim-Blaming

Given the perceived absence of sufficient attention being given to reports of prior DVA and safeguarding concerns with regard to contact (see Chapter 5 for further discussion), a number of different participants, including legal professionals, noted that often victims/survivors are '*blamed*' or '*seen as the problem*' if their child does not wish to go to contact:

> *No matter how much she [resident parent/DVA victim] kept on reporting the safeguarding concerns, they were being ignored. And her child was being ignored. And her child was actually hiding in bushes... She was still being made to go see Dad. And was hiding in bushes and then… Mum was seen as alienating this child. Mum was seen as being non-compliant to the court basically. Even though she*

had two other children who were going [to contact]. But this child… Mum was seen as the problem. (Child/Victim Advocate)

But when the child doesn't want to go with her father, it's the mother's fault… . If my daughter doesn't want to talk to me about contact, that's my fault. ... It's me that's the problem. (Victim/Survivor)

This can sometimes mean that court professionals quickly resort to the use of legal terms such as '*non-compliance*', '*alienation*' or '*coaching*', rather than giving consideration to potential safeguarding concerns or alternative explanations for a child being reluctant about contact. The use of such terms inevitably leaves victims/survivors feeling blamed:

... I think CCOs as well sometimes fall into that trap…. 'oh look, they said that after contact, therefore it is because of X'… automatically the focus being on, it has to be something that the mother has said or done. And sometimes it could be, well, yeah, maybe they have seen their mother crying and you know, that happens. And it's very hard. Or they might have heard her cry or something like that, but it might also be for other experiences they have had which explains why they do not necessarily want to have contact with the other parent. Which is not, they haven't been coached or alienated. (Legal Professional)

6.3.3 Feeling Judged and Monitored

Many adult victims/survivors spoke evocatively about their experience that they – not their ex-partners – were constantly being '*watched*' and '*monitored*' by the professionals involved in the family court processes. In the absence of evidence of DVA allegations or fact-finding hearings and in an effort to understand child-parent relationships, assess risk, and form contact recommendations for court, CCOs also spoke about observing parents and children together and being alert to the child's voice '*mirroring*' or becoming '*blended*' with the resident parent's voice.

One victim/survivor participant spoke of how she had become '*so guarded*' about what she said and how she said it, that she was constantly '*second guessing*' herself. In particular, she was concerned that if she were fully honest about her fears, including, in this case, that her ex-partner may murder her children, that it would be '*used against*' her in the Court arena as evidence she was '*obstructing*' contact. This constant state of vigilance in having to be careful at all times and '*not just believed*' led to profound feelings of '*powerlessness*', knowing that she and her children were '*at everyone else's mercy*':

… you have to be so guarded because I couldn't go in and be fully emotional, 'I'm really terrified of him. I think he's going to murder my kids… because then I could be seen to be obstructing. Do you know?' It's like… nearly, the more emotional, the more like determined you are… I think my fear was that it would be used against me then… All of that constantly second guessing yourself and, and also feeling so powerless to protect your children because they were at the mercy of

somebody making a safe decision for them… Because we do just really feel at everybody else's mercy… not being able to have any real control of that. And you are confined. I remember thinking, 'like surely this is just so obvious to people. Why am I having to try and justify my feelings of being afraid of him having contact with them?'... But that you're not just believed and you're having to be so careful to not look spiteful. You know, so trying to be reasonable. (Victim/Survivor)

Such feelings of being '*under the microscope*' by involved professionals, were recounted by a number of victims/survivors, with professionals perceived to be continuously working out if the victims/survivors were '*telling the truth*'. This was reported by victims/survivors to lead to feelings of '*paranoia*' and '*exhaustion*', unsure even what they were '*allowed to say*' to their own children. This state of paranoia was likened by this participant to being in an abusive relationship where you '*lose yourself*':

I was really stressed because we'd done that interview online with [CCO]... I didn't feel she [CCO] was on my side. … I wasn't in the room [with the children] and I didn't ask what was said. I never did, I don't know why, but I think I was just so relieved it was over, I was so exhausted, that sometimes I didn't ask… I also wasn't sure I was allowed to. You know, because you're always paranoid. You're so paranoid, you see, of what you're allowed to say and not say to your children. Because you're always, you're under, you know, the microscope all the time. All these people are studying you, and, I suppose deciding whether you're telling the truth. Are you the one that's making your children say this… And my sister kept saying, '[Interviewee name], at the end of the day, how could you make three children go in a room and say that?'… But what she doesn't understand is, because she hasn't been in a coercive relationship, that you're so paranoid, even in a relationship you lose yourself that much, that when you come out of it they're still kind of controlling you. (Victim/Survivor)

Other victims/survivors spoke of the level of scrutiny that came with counter allegations posed by their former partners, where their ability to parent was questioned and they had to defend themselves as a '*good mum*':

She'd [social worker] come to my house loads of times… I don't know what she was looking for … I was thinking, I'm being totally scrutinised here just because he wants, he's saying, because of what he is saying about me. Even though I have all this evidence of what he's done to us. I'm still the one under scrutiny here and I'm having to tell them that I am a good mum. (Victim/Survivor)

6.3.4 Adversarial System – Everything Could be 'Twisted Against You'

Many victims/survivors further described how, within the adversarial nature of proceedings, they became *'guarded'* in their communications with court professionals. One victim/survivor spoke of being constantly in a battle of '*trying to do the right thing'*, knowing that '*every single thing you do will be twisted and used against you*' by the litigant's legal team as evidence of parental alienation:

… I was emotional, but then he [applicant's barrister] just totally tore it to shreds… I had been advised… to be honest with [the children] … But then that was used against me because they were saying that I was also trying to make the children afraid of them… So you're, you're constantly in a battle of trying to do the right thing do you know. And knowing every single thing you do will be twisted and used against you anyway. (Victim/Survivor)

Such experiences of feeling under immense and continuous scrutiny were reported to impact victim/survivor help-seeking with one participant describing how she was '*terrified*' to even to go to the GP, worried that any inference of poor mental health would '*go against her*' in the family court:

... even psychologically you're terrified to even go to your GP for help. Because, they're probably going to offer you anti-depressants… But I was too afraid to go to my GP because I thought, if they give me something to help me sleep or something, that's all going to be in my record and, they're going to then think… So even things like your own mental health, you're not looking after it because you're so terrified of that system going against you that you won't even, you know, seek [help](Victim/Survivor)

6.3.5 Feeling under Pressure to Agree to Contact

As outlined in the previous chapter, many participants reported that victims/survivors were put under pressure by court professionals to acquiesce to contact with their ex-partner/perpetrator or else they would be seen by the court as being '*unreasonable*' or labelled as '*hostile*'. For example, one victim/survivor reported how her solicitor had advised that she needed *'to give him something':*

Because even the solicitor had said to me, you know, 'you have to give him [ex-partner] something. You have to give him something.' You'll be seen as… being unreasonable if you can't give him contact or whatever. (Victim/Survivor)

One of the hurdles that they [victims/survivors] meet is also that they're seen as hostile if they're not agreeing to things. And they're being told by their legal teams that you need to agree to this because you're going to be seen as hostile by the judge. (Child/Victim Advocate)

This was noted as unsafe practice, with victims/survivors reporting that they felt unable to speak of the DVA or raise their concerns for the children/young people, in fear that it would be used against them as evidence they were seeking to '*alienate*' the children from their non-resident parent:

…sometimes being told, you know, not to mention the abuse in case you're seen to be trying to alienate the children, but you know there couldn't ever be any possibility of having a fair hearing if you can't talk about that, that's, do you know, to me it's the most important thing. (Victim/Survivor)

I think women sometimes are a bit afraid to say 'no, you're having no contact because that's in the interests of my children'. Because she's going to be seen to be… using the system to get back at dad and it's not. It's about protecting their children. (Child/Victim Advocate)

6.3.6 Feeling Threatened by Court Processes

Fear of *'losing their children'* was reported by many adult victims/survivors as their '*worst nightmare*':

So, my worst fear was that the children were going to be taken off me… in my worst nightmare I was going to lose my children. And they were going to be put into care… and I'd never get them back. And you know, that was a reality of it, that could have happened. (Victim/Survivor)

Victims/survivors and child/victim advocates reported fears of victims/survivors being labelled by court professionals as '*implacably hostile*' or seeking to '*coach*' or '*alienate*' the children from their non-resident parent, and subsequent court rulings going against them as a result. This was reported to keep some silent about their concerns about contact and abuse experiences, forcing them to facilitate contact, even if not desired or considered safe. One victim/survivor reported being accused of emotional abuse instead of the discredited term of parental alienation, with fears that their child could be removed as a result. This was in spite of no concerns being raised about her parenting:

Like they're basically accusing me of parental alienation without calling it parental alienation. So like they have no issues with me raising [child]. They have no issues with [their] health or education or anything like that. Their only issue is the lack of contact with [their] father. And they're jumping on that but not calling it parental alienation. They're calling it emotional abuse. Which is vague enough anyways as it is. And there's children being removed from mothers for that very thing. (Victim/Survivor)

Others described how they had been directly threatened with child removal, fines or imprisonment if they did not comply with the Court rulings. This was termed by some as '*legal abuse*':

This is the thing, re-traumatisation is one of the biggest things of the family court. So you've been actively abused for whatever period of time… Once you go into that court it's then the legal abuse starts. It's the legal threats of, you know, you'll be imprisoned. You'll have the child removed off you. I want evidence. I want proof. The tactics of drawing things out longer. And no matter what, you still have to go back and you still have to be that mummy. You still have to be that safe parent. All whilst trying to fight to protect your child in an environment that should be listening to you but is not listening to you. (Victim/Survivor)

6.3.7 Perceived Gender Bias

There was a perceived gender bias in such legal threats expressed by some participants:

> *And I think that women who are abused are treated differently in the system. I do think that, no matter how much these professionals say, I think they look down their noses a lot at these women.* (Victim/Survivor)

Many, including legal professionals, felt that victims/survivors (mostly mothers) were blamed and punished for not doing enough to facilitate contact, while fathers' rights to contact were privileged:

> *The thing that really irritates me is, say, a mother says, right, or the child doesn't want to have contact… it becomes, 'oh, you're absolutely implacably hostile, and we must have and it's so important for this child, so damaging for this child not to have a relationship with her father'. And you know, 'if you don't do this, I'm going to send you to prison. I'm going to fine you. I'm going to transfer residence. I'm going to transfer the child to live with her dad, right?' Right. So that's how important it is for this child to have a relationship. So even though this mother in every other respect is meeting that child's needs, and even though it'd be very distressing, this is the big threat and the big oh, big cross judge. You know this disobedient mother.* (Legal Professional)

On the other hand, there seemed to some participants to be no legal repercussions for fathers who do not attend contact or do not want a relationship with their child (see Chapter 9). This was thought of by some as '*internalised misogyny*' embedded within the family court process. This perceived gender bias was echoed by victims/survivors and some professional participants who noted the impact of wider societal attitudes about DVA which could lead to professionals having higher expectations of mothers than fathers:

> *I deliver training to social workers etcetera and I will be saying 'don't be judging anybody for the decisions they make until you know the options that were available to them at that time'… there is a significant degree I think, of judgement if mum is not presenting in the way that would be expected of a mother. But you don't get that in the same way with a father, you know. There is a higher level of presentation or maternal presentation that's expected of mothers. And there is still that sense that abounds that if it was that bad, why didn't you just leave? You know, and that's still, it mightn't be said, but it does feature… social workers, I don't believe are immune to lots of those wider societal attitudes about domestic abuse or those wider issues, you know.* (ISW)

This gender bias was thought to lead to harsher judgement of mothers within the family court:

> *She's [mother] an alcoholic. She missed a couple of contacts. He's stable, he's getting the kids to school. House is good. He's pleasant. Contact is here. You*

know, *I've had sex offenders have more contact with their children than an alcoholic mother*. (ISW)

…and he [Judge] went… 'The father has parental responsibility. The mother, even her body language is uncooperative.' I mean, the father, this is his words: 'the father's a hard working man. He must be accommodated'. (Victim/Survivor)

It is of note, however, that perceived gender bias was also raised by the male victims/survivors interviewed in this study, with suggestions that *'mums are taken more seriously'* by the family court when self-identifying as victims/survivors of DVA:

… Now don't get me wrong…there are going to be genuine circumstances where all of those things [DVA allegations] are true. But there's a lot of guys there who it's all false. And there's more emphasis, or there...seems to be… the mums are taken more seriously. (Victim/Survivor)

6.4 Traumatising Experiences of Court Proceedings

The family courts were explicitly noted as not trauma-informed by a number of participants. This included a child/victim advocate who described how court proceedings re-traumatise victims/survivors by continuing the process of '*degradation*' and '*humiliation*' which began in the original DVA relationship. In such circumstances, the victims/survivors were thought to be rendered '*speechless*', impacted by multiple – sometimes small – trauma triggers associated with DVA (for example, a perpetrator's aftershave) which are not taken account of in the court process:

… there's very simple stuff. We know enough about trauma now to know about triggers, and what triggers will do. And a number of women will smell his aftershave when they go into the court and just end up in a heap. Literally can't speak. They're rendered speechless. So there's no allowances. They're not trauma informed courts. They're just not. And they don't understand very basic stuff around isolation, financial abuse, sexual abuse, how she's humiliated and degraded in that relationship and how that's continued through the court process. So if you look at how abusers break women down psychologically, the courts are actually part of that process. (Child/Victim Advocate)

I just enjoy looking at the amount of effort that's gone into trauma informed practice, but we're not trauma informed when we put them [victims/survivors] through those systems. (ISW)

Participants further described a range of ways that family court proceedings were thought to continue to traumatise or re-traumatise victims/survivors.

6.4.1 Further Trauma – Ongoing Fear and Uncertainty

The court experience itself was noted by many participants as '*traumatic*' for adult victims/survivors and indeed children. Child/victim advocates explained that for judges

and court professionals, the court arena is '*their job*' and thus an environment and processes that they become very familiar with and can put to one side. However, for victims/survivors, being in court is not only related to past traumas but also ongoing fear and uncertainty, which cumulatively have a significant impact on their wellbeing:

> *… I spoke to somebody this morning who has an emergency non-molestation order. So has to go back in a couple of weeks for the full order. There's a criminal case as well. So she's been told that'll probably be adjourned, but not really explained why, do you know? So she's like, 'do I turn up? Do I not turn up?' … I think sometimes the whole court arena don't take that into account that, you know, they're used to this. That's their job day in, day out. But for people who are coming in, it is a trauma… You know, it's traumatic for them.* (Child/Victim Advocate)

Child/victim advocates also noted that it was important to remember that while victims/survivors may have left their ex-partner, the situation remains ongoing with real-time implications for the victim/survivor's life and wellbeing, and their children. In fact, the post-separation period is known to be one of the most dangerous times for victims/survivors of DVA (Dalgarno, 2024a; Francia et al, 2019; Katz et al, 2020), with a number of study participants recognising family court proceedings as a form of post-separation abuse capable of extending DVA for many years (see section 6.6 below for further discussion). As this participant stated, the victim/survivor will still be living in a state of '*continuous fear*', continuing to '*risk assess*' and make judgements about what can or cannot be said or agreed to, in the knowledge that they may well have to facilitate the children's contact with their ex-partner and the wider extended family:

> *I think also what we have to... consider, is also that… she [the victim] is still thinking about him [the abuser]. And 'what happens if I say no?... is he going to do something?' Because she knows that she is still, even though it's down the line in that relationship and it is over, she continues to risk assess. To see what she can say yes or no to. 'So I'm better off saying yes because he is just going to start on me. I'm the one who's going to have to facilitate this contact. His parents, you know?' So it's the whole dynamics of it… it's not just him. So it is that, you know, continuous fear.* (Child/Victim Advocate)

6.4.2 Powerlessness and Loss of Control

Victims/survivors and their advocates spoke passionately about how the family court experience as a whole evoked profound feelings of '*powerlessness*', '*loss of control*', '*intimidation*' and '*fear*' which persisted for weeks, months and even years:

> *It is a very scary place to be. And also a loss of control of your life… All of a sudden there is a judge and solicitors and barristers who are deciding on the outcomes of my life* (Child/Victim Advocate)

Victims/survivors used phrases such as '*your life's in their hands'* or *'being at everyone else's mercy'* to convey this profound loss of control that characterised such extended experiences of navigating family court in the aftermath of DVA.

These feelings of powerlessness and loss of control were likely exacerbated by situations in which victims/survivors felt under pressure, coerced, or threatened into agreeing to contact, as explored above. Such feelings are common for people in abusive relationships and demonstrate how the family court, in different ways and at different stages, can cumulatively reproduce the trauma experience for many victims/survivors. The comparison of the family court experience to their original experiences of DVA was recurringly commented upon by many participants. Some of the ways this cumulative sense of powerlessness was enacted in different aspects of the family court are further outlined below.

6.4.3 Perpetrator Proximity

Many victims/survivors and child/victim advocates spoke of victim/survivor's fear or '*terror*' of seeing or having to speak to the perpetrator in court. These feelings of fear were described as intensely emotional and with physical ramifications (see Chapter 8 for further details of impact). This participant recounted how she would go '*into shock*' at just seeing her ex-partner as she was '*still really frightened of him*':

> *I remember that day was horrendous. It was just horrific. Just knowing that he was going to be able to, that we were going to be there and he was going to be speaking to me. Because every time, at that point, still, every time I see him, I just went into shock nearly. Do you know? And I could feel just the fear. Yeah, I was still really frightened of him then.* (Victim/Survivor)

As expanded further below, the limitations of the physical space in many of the family courts meant that victims/survivors and their perpetrators were in very close proximity, having to sit and wait – sometimes for many hours - in '*an open waiting room*'. This further exacerbated the '*lonely*' and '*frightening*' experience of being in the family courts for many victims/survivors:

> *I think just the fear of physically seeing him every single time we went to court. And the courts aren't really set… You had to walk past him and there's one door in from [town] court. The Family Court is up the stairs and up the back. It's an open waiting room. So you just have to sit in an open waiting room. You can hear them talking… My solicitor would have got us a seat near the court door, near where the security men would have stood, you know… It's quite a lonely, frightening experience even just sitting there.* (Victim/Survivor)

Due to the closed nature of family court proceedings, many participants also remarked on the '*intimidation*' experienced by adult victims/survivors having to see and meet with their ex-perpetrator without support:

> *… some of the key challenges would be the intimidation that they feel even just in the court setting. The fact that, you know it's public waiting rooms… I think one of the main things is the fact that they're actually having to see the perpetrator, meet that perpetrator and go into court and face him without any support because it's closed court.* (Child/Victim Advocate)

When discussing the fear expressed by many female victims/survivors of their ex-partner, it should be stressed that these were reported as justified fears of physical violence, founded upon previous experiences of violence or threats of violence having been received by the police. For instance, one participant spoke of how she and her sister received death threats from her ex-partner prior to her first appearance in Court.

Other victims/survivors spoke of their ex-partners/perpetrators waiting for them after court was over, and how '*terrifying*' it was to be in the same courtroom with him. This was in spite of court officials' encouragement to direct her eye contact and responses toward her legal team:

> *No [the judge would speak] directly to me, but she [barrister] got me to, to look at her. She told me to make eye contact with her and to give her my answer. So I didn't have to look at him and give my answer to him. It's a U-shaped table, so she was at the top. We were on the right-hand side of the table and he was on the left-hand side. And then there's a U bit you know. So he was just across, it's a small room. He was across the table with a bit of a gap in between. So even just being so physically close to him, being [in] the same room as him, do you know. The last time, bar in court, the only time I had ever seen him in those two years was in court…. And so every opportunity, every time I had to go to court was like, just really terrifying. I found it really difficult that my solicitor and barrister wouldn't let me leave that day because they were worried that he would be outside. And I remember my friend, I said 'my god, for goodness sake, like he's long gone'. He'd left about two hours at this stage. And when the four of us walked out, he was sitting, there's a bar beside the court… and he was sitting the window of the bar. So they were right, you know?* (Victim/Survivor*)*

6.4.4 Fear of Court Professionals – Power Differentials and Lack of Transparency

Perpetrators were not the only people victim/survivors reported feeling fearful or mistrustful of in the context of family court proceedings. Given that the adult victim/survivor generally experienced the '*whole environment*' of the court as '*very controlling*' and fear-evoking, there were also reports of feeling '*scared*' of the judge and other professionals, who ironically were tasked with supporting the victims/survivors and making '*good decisions*' about the care of their children:

> *You shouldn't be made to feel scared of a judge or social services. Like you really shouldn't be. They should be the people you should be trusting, you know? Like you should be trusting that judge to make a good decision on the care of your kids and stuff.* (Victim/Survivor)

As noted in section 6.2, some victim/survivors had felt '*ignored*' or *'unheard'* by their legal team, despite their remit to represent the victim/survivor. As well as feeling silenced, victims/survivors also likened such experiences with professionals to

abusive relationships, feeling '*too afraid*' to speak out or disagree with their legal team, concerned that they would get unfavourably labelled as '*hostile*' in the court arena:

> *… your whole case can depend on where your finances and what solicitor you get… and if you're very vulnerable and feeling pretty broken, you don't have the confidence to say 'I'm not happy with what you're doing'. Especially if you've been in a controlling, you know, a coercive [relationship], these people then go on to do the same. It's the same with the barristers, the judges. That whole environment…That whole environment is very controlling. You don't have enough empowerment to say 'hold on a minute'. And even though you're fighting for your children, you're too afraid.* (Victim/Survivor)

In victim/survivor accounts, this fear and mistrust of court professionals was no doubt exacerbated by experiences of not being believed, treated with some suspicion or feeling under investigation themselves as discussed above. In addition, many victims/survivors reported a lack of transparency in their interaction with court professionals. This included not feeling fully informed about what would be talked about in CCO interactions with their children or not being involved in court discussions:

> *No, there's not a lot of transparency… Even if you're sitting in a waiting room and your barrister's coming out, you're just… it would be useful to be in the court… I've been in family court for two years now but I've only ever been in the courtroom for like five or ten minutes in that whole time, it doesn't make sense…. You should be able to, you know, witness the discussions that are happening around your life and your kids' life. And arrangements that are being put in place by strangers.* (Victim/Survivor)

Cumulatively, such experiences of exclusion heightened victims/survivors' perceptions of powerlessness in the court arena and diminished their sense of trust in their relationship with court professionals and processes.

6.4.5 Recounting DVA Experiences

Many study participants, including not only the victims/survivors but also their advocates and court professionals, mentioned the challenges for victims/survivors in recounting their experiences in family court. This was recognised as potentially re-traumatising.

Members of the judiciary spoke to the efforts made to give the victim/survivor '*the best chance to tell their piece*', which often involves speaking to one of the court professionals. Court professionals understood how DVA was often a hidden aspect of victims/survivors' lives, associated with shame and self-blame, which further exacerbated the challenges of recounting the details of prior DVA to '*strangers*' in the court arena – which is often on multiple occasions, to different professionals including their solicitor, the barrister, and the CCO:

A lot of people have held in their experiences for a long period of time and not discussed it with friends, family, those people closest to them. So to then divulge it all to a legal representative whom they don't know, who's a stranger, I think that that reliving it and giving the detail of it can be difficult. (Legal Professional)

There's a lot of shame… for victims, you know… DV is quite private, you know, it's always behind closed doors and you're having to then tell everybody, this is what I let happen to me, this is what happened to me over how many years and I stayed and I'm going into a courtroom, potentially, and I'm being grilled and questions on that and you know, I shouldn't have stayed, I should have left the first time it happened. And why didn't you phone the police? And you know, it's that awful kind of shame and guilt that victims come with. (CCO)

Court professionals understood that some victims/survivors are reluctant and might refuse to be interviewed for such reasons, relying instead on previous statements. While understandable, this would inevitably impact on any assessment:

I would ask to meet Mum sometimes to… outline the exact extent of the allegations. On occasions, the few occasions, Mum may not want to do that and is happy for … the concerns that have been recorded to be shared with me. She doesn't want to be put into the interview process for whatever reason, re-traumatising as it may be, that could be something that's prohibiting her decision to involve herself in the assessment process. (ISW)

Victims/survivors too noted the challenges of recounting the detail of their DVA experiences to court professionals, over extensive time periods. One victim/survivor spoke of just how stressful having to recount past frightening experiences was, as it '*brought a lot of stuff back*'. In her case, this period of intensity extended for over two and a half years with long-lasting impact on her wellbeing when she couldn't '*really manage much else*'. This was all the more difficult when her ex-partner and DVA perpetrator would counter with false allegations. This was described later in the same interview as '*torture – actual torture*':

Aye, it was just really, really difficult and then I think it brought a lot of stuff back because then you met with a solicitor and you were going through stuff, and then…I had to write lots of stuff down, yeah. And then it was bringing it all up because at that point it was going to be where I was going to have to go and… Speak to the judge and things. And then you were talking to the barrister. And then he [ex-partner], they put a letter out and then he brought one back which was a lot… [of] porky pies, as they do. And then you had to write another letter back and then wait. It was over a matter of two and a half years, you know. And nothing was sorted. (Victim/Survivor)

While legal professionals recognised the potential for re-traumatisation, they also noted the need for an '*evidential base*' in the context of alleged DVA. Asking the victim/survivor to *'tell the story once again'* therefore had a dual purpose, allowing legal

representatives to assess whether the victim/survivor would make a good witness and what additional evidence was needed to build a strong case:

> *… I suppose that the catch 22 where the court is asked to find facts in relation to allegations of domestic abuse. Then you have to relive it in order to give the evidence. The court has to have an evidential base on which to make findings of fact. So there has to be that evidence and that inevitably is going to come directly or indirectly from the person concerned… it must be a very difficult process from start to finish.* (Judiciary)

6.4.6 Cross-Examination

Victim/survivor cross-examination was recognised by legal professionals as one of the most challenging and potentially re-traumatising aspects of court proceedings. They noted that while not '*setting out*' to traumatise victims/survivors, cross-examination by its very nature involved '*undermining the person's evidence*' which inevitably would be experienced as challenging for those on the witness stand. They also noted the key goal of upholding '*the right to a fair hearing*' for the applicant and alleged DVA perpetrator, given there is a lot at stake for both parties:

> *Giving evidence and in particular cross-examination, is probably one of the most traumatic experiences for people. And I don't think that anyone in cross-examination sets out to make it traumatising at all. That's not our role. It's not our role to do that… But it is obviously to undermine the person's evidence is the purpose of cross-examination. And so inherently within that, the person who feels that they have been abused may find that traumatising. And I can understand that. But again, I think that that's where you are up against the right of a fair hearing for the other party who is accused. And you know, the implications for the other party as well are significant, because they then are more than likely trying to secure rights to having contact with their child or children, or potentially residence all depending on the relevant circumstances.* (Legal Professional)

A number of legal professionals, however, spoke of efforts made to avoid cross-examination in the context of DVA allegations with '*very few*' private law cases thought to proceed to witness cross-examination. Other court professionals also noted significant improvements in the way victims/survivors were spoken to in the court itself over the years of their practice, with stories recounted of judges having to stop barristers '*shouting at*' victims:

> *… the process of giving testimony and being open to scrutiny on that, albeit, you know, I think it has improved over the years. I remember being in court, it must have been 30 years ago, and I remember the judge having to tell the barrister to stop shouting at the victim. He literally was shouting at her.* (ISW)

One victim/survivor also spoke appreciatively about how practice had changed in very recent years to disallow an alleged perpetrator self-litigant to cross-examine the

victim/survivor. She herself had experienced a judge protecting her from such an encounter, despite a non-molestation order already being in place:

> *I know it has changed now in the family court with the introduction of new laws. But at that time, he [the alleged perpetrator/applicant] was actually allowed to cross examine me in court, even though we had a, you know, a non-molestation order and a restraining order in place. He wasn't allowed to have direct contact with me. But he sacked his barrister before the final hearing… that morning, and was insisting to the court that the hearing would go on ahead and that he would cross examine me and it was only the judge that said 'no, this lady isn't prepared mentally today for that to happen', so she put it back for two weeks. But when we went in he was representing himself at this point and he was allowed then to contact me directly in family court. I know that has now ended and they're not allowed to do that. You know, that has changed, which is really good because that was that in itself was awful.* (Victim/Survivor)

6.5 The Physical Environment of the Court: Fear, Intimidation and Lack of Privacy

The limitations of the physical space in the family courts were mentioned by many participants – victims/survivors, child/victim advocates and court professionals - as an area of particular challenge which resulted in further trauma in the context of DVA. While having to engage with your ex-partner/perpetrator was an inevitable challenge for victims/survivors due to child contact considerations, the '*actual fabric of the court building*' was thought to exacerbate such challenges with the absence of separate entrances, small shared waiting rooms, limited refreshment facilities and the lack of spaces for private consultations to discuss '*the most personal and intimate issues*':

> *Most courts aren't set up for even private consultations. So not only is there a struggle to get a corner to speak to your client in private about the most personal, intimate issues, you could also find that in the same waiting room, in the same waiting area, there is the perpetrator of these incidents of abuse. So I think that that is a big, big issue. The actual fabric of the court building. You know most of them now don't even have anywhere for someone to get a cup of tea, a glass of water… you know, just, where someone could get away from, and kind of settle themselves. So I think the court fabric as it is, itself is difficult.* (Legal Professional)

While the physical layout and facilities were reportedly marginally better in some courts than others, there remained a risk that family courts would be downgraded to office-like buildings where people would be '*sitting on top of each other*'.

Female victims/survivors spoke evocatively of the challenges presented by the limited physical space in the family courts, including the waiting area and the actual court itself. Many noted how they remained very '*frightened*' and '*intimidated*' by their ex-partner, and how '*terrifying*' it was that they might meet them in the small waiting area, or that they might '*stand outside court waiting for you*'. While finding a separate space

for the victim/survivor to wait, often for many hours, was reported to be possible in some courts at some times (particularly when the solicitor or barrister was present), this was not universally available, leaving victims/survivors feeling alone and unprotected:

> *… the waiting room in Family Court is also open and there's no, in [town] Court, and it's quite a small court and there's only the one door in and out of it as well. So even just being in court was intimidating, knowing that you could potentially be arriving at the same time as he was arriving. That he could be standing outside court waiting for you do you know? Everything about it was terrifying. I hated it. But yeah, it made it worse. The fact that he was the one doing this because there was nobody there to check him then either. Do you know, at least if there had been a barrister there, the barrister would have been kind of trying to counter his contact. Do you know?* (Victim/Survivor)

Similarly male victims/survivors also spoke of the '*anxiety*' of being in the same waiting room space with their ex-partner, which '*just didn't feel right*' in the context of DVA:

> *… thinking about having to go there is the fact that you're in a waiting room… and it's the same for everybody there potentially if they've been a victim of any type of domestic abuse, no matter how serious it is. Or if it's really serious… then you're in a waiting area with that person. You don't have to sit near them. But it just doesn't feel right being forced into that, you know, and you're being told you have to attend… you know, for anybody that's suffering from anxiety or depression as a result of that domestic abuse, it would be, or you know PTSD symptoms or anything like that, it would be an awful, it's an awful feeling, you know. The anxiety of it.* (Victim/Survivor*)*

Some female victims/survivors, child/victim advocates and legal professionals spoke about how ex-partners/alleged perpetrators would deliberately use the lack of physical space to further intimidate victims/survivors. Having to sit '*cheek by jowl*' in small waiting rooms, often for considerable time periods. In such circumstances, victims/survivors could be subjected to '*dirty looks*' or unwanted physical contact as ex-partners '*squeezed*' past them:

> *You can get access to a room, you know, so that you're less likely [to meet perpetrator]. But that's not to say that you're not going to bump into your perpetrator as you're arriving at court or as you're leaving from court. And you do hear of people saying, 'oh, you know, he was giving me these dirty looks'… So it is an intimidating space and each court is different. Some courts have better waiting areas than others. Others, they're everyone's cheek by jowl.* (Legal Professional)

> *…so to start off with it was in [town] court… they had put us in one of the courts that I couldn't see him and he couldn't see me, which was requested. I couldn't even be around, or be near him without feeling like I was going to pass out. But after that first occasion no… in [name of court]… there isn't even two separate*

sides for seats. All the seats are on one side…. if he goes in first… he purposely will sit on the bottom…because he knows I have to [squeeze] past like his legs… he still will…purposely do things that he knows would affect me. (Victim/Survivor)

Such accounts of intimidation were corroborated by child/victim advocates who described liaising with court security to effectively '*smuggle*' victim/survivors in and out of the Family Court, or victim/survivors unable to use the toilets for fear that they would meet their perpetrators. Such seemingly '*small*' and '*petty*' things, like having a separate toilet, different doors or waiting area, were described as significant areas for potential improvement to decrease the likelihood of the court being used by perpetrators to further intimidate their victims/survivors:

We'll check in. We'll go to our room. There, we have a bolt on the door and the blind down. And a lot of the time, the woman won't even exit that room to even use the bathroom because the perpetrator could be sitting in the waiting area outside the bathroom, which has happened. I've had perpetrators standing outside the secure room door discussing the case with their legal representatives. It's just… it's such a fear. And same as leaving. We won't leave until we have checked with security that the perpetrator has left. I have had to smuggle women in and out of court with their solicitors. We have had to, you know, get secure transport up… because she couldn't access public transport due to the fear and risk from the perpetrator. It's… not even having different doors to go, like that's such as it seems like such a small thing, or having a toilet that's not in the waiting area. It seems like such a like a tiny, petty thing. But they will use that to intimidate the woman and she knows that. (Child/Victim Advocate)

The profound impact of being in such close proximity with their perpetrators, and sometimes family members, was described in strong terms by child/victim advocates with reports of victims/survivors being '*terrified*', '*shell shocked*' and '*literally shaking*' after such encounters:

… it's just horrendous… luckily enough in [name of court] we can go up and use the victim support room. The setup of the family court in [place] is awful. Because you are sitting in the same waiting area outside the same door. And barristers come along with their clipboards and… they're discussing what's going to happen feet away from a perpetrator and his maybe family members who are with him. Mum, dad, brother, whoever. And then both have to walk down to the courtroom and go in, almost at the same time. I was there last week with a woman and we went upstairs to sit, which is great, that we can do that, but we still had to go down eventually. And there he was with his mum and dad, and her whole body language changed when she saw him walking down that corridor. She just, you know, you can just tell that she was terrified. So he went in first and then she followed her barrister in. And came out literally shaking. (Child/Victim Advocate)

I find that they [victims/survivors] come out [of the court] and they're nearly shell shocked… Because all of a sudden they have sat, especially if this is a long hearing, they could have been sitting there for a couple of hours in the same

courtroom. I know they don't sit beside each other and their legal teams are right beside them. But they are fully aware… of this person who has been abusing them. And they're in that, they're in … the same room. (Child/Victim Advocate)

In spite of significant efforts by some court professionals to work around the limitations of the physical court environment in the best interests of victims/survivors, such conditions were known to actively contribute to perpetuating victims/survivors' experience of trauma, and did nothing to create a physical or psychological space where victims/survivors could feel safe.

6.6 Litigation Abuse

6.6.1 Another Stage of the Abuse – Ongoing Power and Control

Many study participants, both child/victim advocates, ISWs, CCOs and legal professionals spoke of how the family court, in the context of previous DVA, can be used to facilitate ongoing abuse. This was described by one child/victim advocate as '*another stage of the abuse*' where the children/young people (via the courts) are '*used*' to exert further '*power and control*' over the victim/survivor. This participant noted how the end of the relationship was often erroneously thought of as the end of the abuse – '*one of the biggest mistakes*' given that victims/survivors are at the gravest risk post-separation.

While noting the absence of research or statistics, one member of the judiciary described the common perception that the applicant/alleged perpetrator had '*no interest in the child*' but was instead using the family court process as '*another form of coercive control*' against the victim/survivor:

It's purely anecdotal. I don't know anything in terms of research or statistics, but ... there's quite often a perception, even when people are legally represented, that they feel that the party who's the alleged abuser, is simply using this process, has no interest in the child, but is simply using the process as another form of coercive control. So that's a common enough feeling. (Judiciary)

Post-separation abuse was noted by participants to take different forms, including financial issues, housing matters and divorce as well as the perpetrator deliberately utilising the family court, as one of the few arenas remaining where they could potentially exercise '*continuous power and control*' over the victim/survivor.

The use of the family courts as a form of post-separation abuse was echoed by adult victims/survivors who frequently spoke of their lives, and those of their children, being '*still controlled*' and '*hurt*' by their ex-partner/abuser via their ongoing attendance at the family court:

He [ex-partner] is not trying to get contact with my [child]. [The child] is the only link to keeping a form of control over me. (Victim/Survivor)

.. to annoy me, to hurt me in any way he could. And that was the only way he could hurt me. (Victim/Survivor)

For some, this ongoing form of abuse was affecting '*every day*' and '*every part*' of their life, often many years post separation:

> *.. it was affecting every day, every part of my life was still being controlled by this man who I had left. And to be honest, to a degree it still is. Now, even to this day, eight years later, I am still controlled, to a degree, by this person.* (Victim/Survivor)

6.6.2 Applicant Motivation

Some participants noted, both from their beliefs and their practice experience, that certain applicants seeking contact through the family courts (in the context of DVA) are not genuinely interested in seeing their children or promoting their children's wellbeing. Instead, they perceived court proceedings as being (mis)used to make the victim/survivor's '*life hell*' or as an attempt to manipulate them into returning to the relationship. Participants pointed to instances where applicants failed to '*show up*' even after contact was eventually granted as evidence of the lack of genuine interest:

> *I do believe there's absolutely men that use contact and court and keep pursuing the matter in court that I don't conclude have any interest in their child's wellbeing… When I'm talking to this man about a child, he has no interest. You know, this is a tactic.* (ISW)

> *… we can see from the woman's perspective that Dad is really not interested in the child. He's just interested in getting to the woman just to make her life hell. Or trying to manipulate to get her, to get back with him. But there's some, I don't know whether to say the majority. But there's just so, so many [men] that they go to court and they fight to see the kids and, and they say that they miss them all. They really interested in, in being part of that child's life. But then whenever they get the contact, they don't show up. They don't, and they just utilise that child. They use that child to get to the woman in a negative way.* (Child/Victim Advocate)

Court professionals were encouraged to pay more attention to the *'motivation'* of men who are known DVA perpetrators who pursue their ex-partners for child contact via the family court. From a DVA perspective, such actions were seen as a way of continuing the mental abuse as well as '*keeping a track*' of the victim:

> *…if you know anything about domestic violence, you know that part of it is keeping that woman exhausted. And tracking her and knowing her whereabouts and what she's doing. But a huge part of it is keeping her tired and exhausted, because she can't really make good decisions when you're wrecked. And it impacts your mental health. So part of men, abusive men, pursuing children through the courts is to keep a track on their mummy. And to keep her exhausted… So… unless the like of the Court Children Officers, unless they understand that, his motivation, at least look at it. At least look at it as part of the evidence around what's motivating him to see his child here… unless you look at what's motivating him, realistically, based*

on the information you have about both of them, you know, you're going to make impossible decisions for children. (Child/Victim Advocate)

6.6.3 Deliberate Prolonging of Proceedings to Continue the Abuse

Victims/survivors and child/victim advocates identified additional applications for different or revised contact arrangements as further ways perpetrators seek to extend the court process. In such circumstances, '*goal posts'* were changed, with the victim/survivor reportedly expected to *'roll with it'* and work around the perpetrator/applicant's schedule with little consequence in the court if the contact was eventually declined. Such actions were perceived as another means by which the applicant/perpetrator seeks to maintain *'power and control'* of the DVA victim/survivor, including causing further financial harm with the threat of returning to court if the Order is breached:

> *The control aspect of abusive dads asking for specific times so that mum can't do anything… I've had women taken to family court for, where perpetrators have said, you know, they want increased contact… And then… when they've returned to court for a final order, they've said actually I can't facilitate that. It's changed now. We need to go back and do this again. And it's gone back to court four or five times. And each time the goal posts change. And the woman just has to keep rolling with it. And if she doesn't agree, then she is seen to be difficult. She is seen to be restricting contact… I find that the court system will grant contact around his work schedule and mum just has to work around that.* (Child/Victim Advocate)

Some victims/survivors feared that this would continue until their child was of an age that was outside the Court's jurisdiction, with some ex-partners/perpetrators reportedly threatening to make victims/survivors life '*hell*':

> *Unless there's change, this is going to continue on until my [child] is sixteen years old…. he'll keep at it. He is not going to give up… Any non-abusive father would say right, let's pause. Let's pause the contact…. Let's look at the best interests of the child. Why is [child] reacting like that?... But that's not the way it is at all…. he did say to me that if I break up with him that this is going to get messy and he will make my life a living hell... He has kept up to every single word.* (Victim/Survivor)

Interviews with legal professionals demonstrated their acute awareness of vexatious court applications, such as when applicants applied to the court a day after a suspended sentence had been issued or a restraining order put in place, or where '*the ink was hardly dry on the previous orde*r' (Legal Professional). Such instances were seen as a '*red flag*' that the court was being used as a '*kind of power play*':

> *There was one that got a restraining order on [date] and he was signing papers for contact application on the [next day] and started the application in the family proceedings court for contact. That's a bit of a red flag. It's the very process of being able to bring the woman, the mother, to the court itself is a kind of power play that, you know, that in itself, you cannot stop people.* (Judiciary)

Legal professionals however reported that there was little that could be done to stop applicants with parental responsibility submitting an application and summonsing the victim/survivor to attend court, even in the context of a previous Order against the applicant/perpetrator that prohibited direct or indirect contact with the victim/survivor.

In addition, child/victim advocates noted how ex-partners/perpetrators would use vexatious counter allegations to Social Services or the police as an alternative means to prolong proceedings and exert further control. This includes through negatively influencing how the victim/survivor was viewed by other services, including the court:

> *It's just another form of abuse. It's post separation abuse… I often say to women, you know, when they're thinking of leaving these relationships… it's when an abuser can no longer control you, they will try to control how other people see you. And that's where you're getting these counter allegations into social services and, and you know, even to the police. Counter allegations. And it's just about he can't control her anymore. So he'll try and make her look bad in everyone else's eyes.* (Child/Victim Advocate)

6.6.4 Court Efforts to Mitigate Litigation Abuse

While members of the judiciary and legal professionals were clearly alert to vexatious applications, these participants also noted that '*a parent with parental responsibility does not need the permission of the court to bring a further application*', so it is not always simple to prevent litigation abuse or '*close the door to all applications*' in family law. Other legal professionals, however, spoke of legislative measures which could be used as safeguarding measures where there is a '*pattern of repeat applications*' such as making an Order under Article 179 (14) of The Children (Northern Ireland) Order 1995, which puts a restriction on a person's ability to make further applications for a specified period of time without the permission of the court:

> *If there is a pattern of repeat applications, then the courts are able to consider whether or not to put an order on a, or a prohibition on that particular file… It can also consider whether it's within the child's best interest to have repeat applications as well. So I think that there are safeguards and, but there's no set number of applications that there should be within a five year period, for example. I think it would be extremely difficult to do that because the nature of family law and the nature of children is that things can change. There are so many variables. So it's very difficult to close the door to all applications, but the leave requirement can be a useful tool where it is felt that proceedings are being used, you know, by way of litigation warfare, really continuing the difficulties.* (Legal Professional)

While some noted that these Orders were used frequently, and that vexatious applications, they hoped, could be '*nipped in the bud pretty quickly*' (Legal Professional), others reported that these measures were '*extremely hard to get*' and that they were advised not to raise their potential use:

> *There is the Article 179 to stop someone bringing it back to court for two years or whatever, but they're extremely hard to get. Sometimes, I mean, we are not supposed to raise that as a potential, but I have, because, you know, it's clear to me and I think I have enough evidence to say this keeps happening. When I'm talking to this man about a child he has no interest. You know, this is a tactic.* (ISW)

Some victims/survivors spoke positively of the efforts made by the court to stop or minimise litigation abuse – for example, social workers reading letters from the children's father rather than the victim/survivor having to – but noted the stress involved in these arrangements and how they could be easily manipulated and used against the victim/survivor by the perpetrator and his legal team. While appreciating when an Order of no contact was eventually reached, some participants felt strongly that as victims/survivors of DVA they should never have had to go to family court and endure the months and even years of stress and other negative consequences:

> *So he [ex-partner] should never, I should never have had to go through Family Court… it needs to improve in how they deal with women. Especially when they've said they're victims/survivors of domestic abuse. You know, it's not just a straightforward they don't love each other anymore but they could be great parents. This is a man who's hurt his children and hurt their mother. So there's no way that they should put the mother through a Family Court system… my children just would be better never seeing him again. Because he's a threat. He's dangerous and… I think judges need to realise that. You know, they need to listen.* (Victim/Survivor)

6.7 Conclusion

Drawing on interviews from adult study participants, this chapter examines how family court proceedings can elicit further trauma for DVA victims/survivors in addition to their previous abuse experiences, as well as secondary victimisation through the response of the family court and associated professionals. Detailed analysis of participant interviews brought forward reports of victims/survivors feeling silenced, not heard or believed in the family court, with prior DVA perceived as dismissed or ignored. Victims/survivors described feeling judged, monitored, threatened and on trial themselves, rather than their abuser. The court environment itself brought further trauma due to perpetrator proximity and experiences of fear, intimidation and a lack of privacy, while proceedings elicited profound feelings of powerlessness and loss of control as well as ongoing fear and uncertainty. There were also accounts of litigation abuse with the family court reportedly used by DVA perpetrators as another form of post-separation abuse. These themes express some of the challenges in achieving a trauma-informed family court system.

Chapter 7:
CHILDREN'S PARTICIPATION IN PRIVATE FAMILY LAW

7.1 Introduction

In this chapter, we collate findings from the interviews/focus groups on what children and young people, parents (adult victims/survivors) and professionals told us about children's participation in family court processes. We do so utilising the Lundy (2007) model of child participation, as this is grounded in an application and understanding of the UNCRC. Article 12 of the UNCRC has two parts, it states that children have 1) the right to express a view and 2) the right to have the view given due weight in accordance with the age and maturity of the child. It requires, therefore, that adults not only collect and listen to children's views but that they also take those views into account when making decisions that impact children. Lundy (2007) asserts that for meaningful and rights-compliant participation, four elements are required. The first two relate to the first part of Article 12 in relation to the right of children to express views – Lundy (2007) reminds us that this right is not dependent on age or maturity:

- space: children must be given the opportunity to express their views in a safe and inclusive space – the onus is on duty bearers to actively create such a space;
- voice: children must be facilitated (but not forced) to express views and be given a choice in the mode of expression. This must be afforded to all children and with recognition that they may need help to form and express their views.

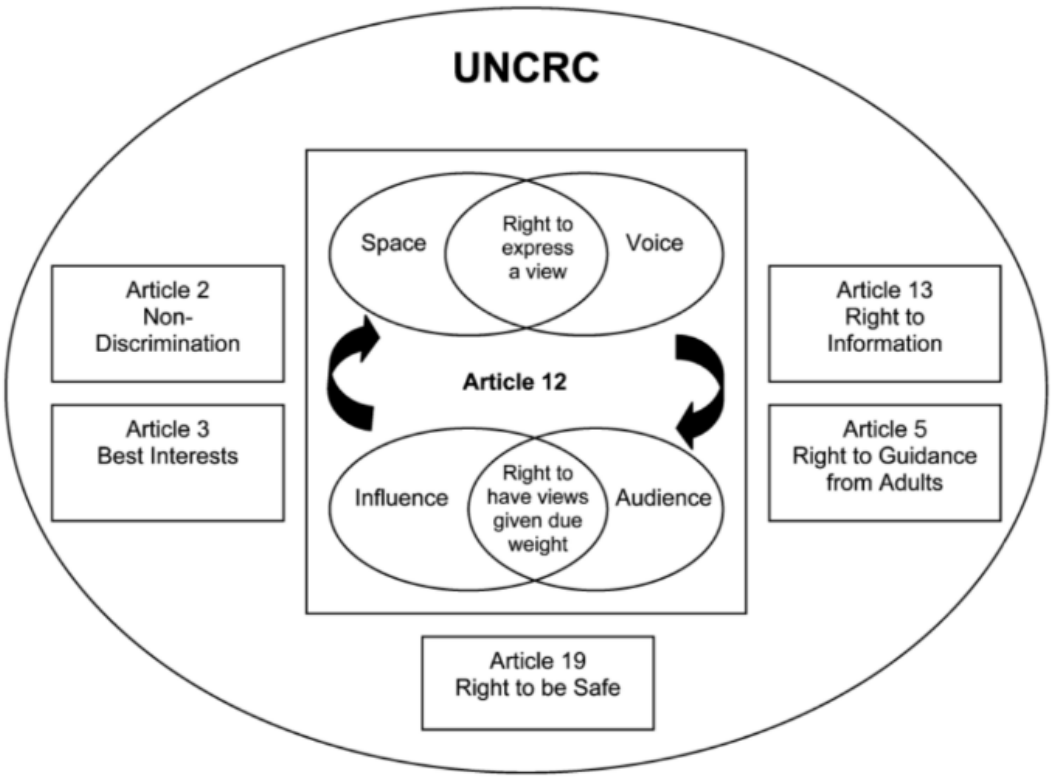
The second two elements of the model relate to the right to have views given due weight. Here, age and maturity are a factor in relation to influence:

- audience: children's views must be heard by a dedicated listener who has influence over the child's life;
- influence: children's views must be acted upon in accordance with their age and maturity. Lundy (2007) notes that this does not mean that decisions speak to a child's incompetence, but there should be a presumption of doing what children want, unless it is not possible. Crucial is that in all cases there is formal feedback to children on how their views influenced decisions.

Some additional elements of the Lundy model are noteworthy in the context of the analysis presented in this chapter and are illustrated in Figure 1. Children require the necessary information to inform their views, and this should be presented in an age/developmentally appropriate manner (Art 13). In other words, children cannot form or express views if they do not have adequate information to do so. Related to this, they also have the right to be helped and supported by their parent/s in expressing their views (Art 5). Further, all children regardless of their background should be afforded the right to participate (Art 2) and adult based assumptions about what is in

the best interests of the child (Art 3) should not override their right to participation. Best interests and protection from harm (Art 19) can be facilitated through participation.

Figure 1: Conceptualising Article 12 (Source: Lundy, 2007)



The statutory provision for children's participation in family law proceedings in Northern Ireland is contained within The Children (Northern Ireland) Order 1995. Article 4 states that the court may arrange for a suitably qualified person to report to the court on matters relating to the welfare of the child. In private law proceedings pursuant to this, the court can, but does not have to, appoint a Court Children's Officer (CCO) who is a specialist social worker. A CCO will typically meet with both parents, perhaps GPs and school representatives, and witness contact arrangements. They also have the option to meet with the child to ascertain their wishes and feelings, although this is not compulsory. A report with recommendations will then be provided to the court. The CCO will be cross-examined, and the judge will weigh their recommendations alongside the welfare checklist contained within Article 3(3) of the 1995 Order. The latter includes an assessment on seven factors including, for example, a child's physical, emotional and educational needs (Art 3(3)(b)), the harm a child has suffered (Art 3(3)(e), and the capability of parents to meet children's needs (Art 3(3)(f)).

There are a number of discretionary spaces, therefore, which may mean the child's participation is restricted – the judge does not have to order an Article 4 report and thus engage a CCO, and the CCO then does not have to engage a child in the preparation of their report. Guidance issued in June 2025 for the Judiciary by the Lady Chief Justice of Northern Ireland (LCJ) in relation to Family Proceedings in the context

of DVA reaffirms this element of discretion in relation to children's participation, only noting that a judge 'should consider' directing a report by a CCO and does not refer to a *requirement* for children to be consulted nor to receive feedback on court decisions.

In addition to the CCO, the children's views and wishes may also be collected by and represented to the court in other ways – an Independent Social Worker (ISW) appointed by the court or legal team, a parent or, in limited cases, either parent's legal team. Who is involved depends on the circumstances of each case; some children and young people will have had contact with a CCO, some with an ISW, some with solicitors, and some with a number of these. This causes particular confusion for children who have had social worker involvement, as they find it difficult to disentangle their engagement with a CCO from other social workers. In this research, one of the benefits of working with the CYPAG was that this was revealed during the preparation phase, and methods were put in place to help children decipher the professionals they may have engaged with as part of family court processes.

In this chapter, we present the views of those involved in the research on children being informed of, and included in, family court processes ('voice'). The balancing of protection and participation rights is a key concern in much of the discussion among adult participants. Framed around the Lundy model, the data are analysed in relation to understandings and experiences of how children's views are currently collected to be represented to the courts, and the effectiveness of these approaches (i.e. the methods and 'spaces' used to facilitate children to express their views – to have 'voice'). We then move on to consider the influence of children's voices on decision makers ('audience' and 'influence'). This includes an analysis of the factors that impact decision-making and the weight given to children's voices. Children and young people, legal professionals and the judiciary also explored the possibility of an alternative method of influence for children – communicating directly with the judge. The chapter concludes with an analysis of what is often the neglected or under-explored element of participation – children's right to feedback on how their views were used in decision-making. There is inevitable crossover in the themes presented below, but they provide a useful means of examining the various facets of participation.

Overall, the chapter demonstrates the complexity of decision-making, concerted efforts by professionals to collect, represent and listen to children's voices and an understanding of the stresses and pressures on children in sharing their views. It should be noted at the outset that those tasked with collecting and considering children's views talked of the care with which they tried to do so, the '*honour*' of children trusting them and sharing difficult experiences with them. Despite some of the methods noted by professionals to build rapport and provide space for the safe sharing of views, these were not reflected in most children and young people's accounts. This may be reflective of our sample, or it may simply suggest a disconnect between practice as intended and practice as experienced.

7.2 Involving Children in Family Courts Processes: Participation, Protection and Preparation

This section examines the views of the various participants on informing and involving children in family court processes. It considers the degree to which children's voices are felt to be important and reveals how some voices may be excluded from participation due to concerns about age, capacity, safety and/or wellbeing. Importantly, children's understanding of, and responses to, some of the concerns are also discussed. These reveal greater levels of understanding and competence than some adults may perceive.

The section begins with a brief overview of children's recollections on being informed (or not) of the initiation of family court proceedings, and their feelings in relation to this. This is an important starting point as it tells us something about when and how children's participation is initiated or thought to be important, and the preparation (or otherwise) for their more active role in the process.

7.2.1 Children's Awareness and Understanding of the Initiation of Family Court Proceedings

When children and young people were informed that family court proceedings had been initiated, and what this meant, varied across those involved in the research. While one young person could not remember, most others recalled being informed by their mother (who was the resident parent). Generally, this was some way into the process, leading up to children meeting with a CCO or solicitor to discuss their wishes, or prior to contact with the abusive parent as part of the CCO's assessment process. Illustrative of this, one young person recalled:

> *I actually don't think I was told that we were in court. It just kind of happened … But when I was … spoken to, I'm pretty sure I was told but I didn't really understand what was going on. I was just told that I need to, like, talk to people to help them make a decision about … where I go or something like that. That's about it.* (Child/Young Person)

This young person felt that being told at this point was understandable, given their age at the time (nine years old). Others, however, explained that the lack of process, build-up and information prior to meeting a CCO or their active involvement in the process, made it feel sudden, stressful and decontextualised:

> *I would say we [themselves and their sibling] were kept out of the loop mostly. The only … person that we'd spoken to was the children's court officer. Other than that, the information we were given was very restricted, so it was. And that left us with almost no clue what was going on*. (Child/Young Person)

Parents (victims/survivors) and child/victim advocates contextualised the timing of informing children, with explanations primarily framed around the desire to protect them from a hostile process. Despite attempts from adult victims/survivors to '*keep*

them protected', '*to not even let them see*' their stress, several child/young person participants spoke of sensing parental stress, noticing changes in behaviours and/or overhearing discussions:

> *I think I just knew. I think I already knew what it was because like, I don't know, it's just like, from people speaking about it. I just kind of caught on that, you know, it's just to help families and all, but, I don't think she [mum] really explained to me what it was. I just knew*. (Child/Young Person)

Others spoke of periods of change, unsettledness and confusion before formally being told that family court proceedings had been initiated. Despite their efforts, therefore, parents were not always able to protect children, and, in some cases, their methods were counterproductive, leading to heightened anxiety through limited or incomplete information. Such an experience and its impacts are evidenced in the following child's account:

> *… I just live with my mum and like, whenever she's had an email and like, she's crying in her room with maybe grandad's come over from down the road, and like, is comforting her, and then I'll ask the morning after what happened and it's like, 'I can't say, by the judge, I can't say', something like that. And it's just hard. It's really hard seeing her upset and I've no idea, I can't even guess what it's about because I haven't had enough contact with judges, solicitors, and that. It's just hard*. (Child/Young Person)

Child/victim advocates further explained the difficulties for victims/survivors discussing the family court process with children. Three interrelated issues emerged, some of which were supported by the accounts of victims/survivors themselves: fear they would be accused of influencing the child's wishes; fear about having to explain the DVA context of proceedings; and, related to this, fear they would be blamed by children for contact decisions (especially if the courts decide no contact). This resulted in some parents encouraging children/young people to give their own views, which inadvertently placed a burden of responsibility on children/young people. Interviews with CCOs also contextualised this, whereby some noted that they advised parents not to discuss the process with children in advance, as they could influence them, but instead:

> *I'll always sort of say to parents to, you know, reassure them … that I'm nice or whatever and that just sort of be honest about how they feel and to tell the truth.* (CCO)

What is perhaps most telling in children/young people's memories of learning about the initiation of family court processes were the emotions they attached to it. For half of the sample, their memories related specifically to fear or anxiety about contact with the non-resident parent. When asked about their understanding of what was happening, for instance, one young person framed their response entirely around their anxiety about contact:

> *… I think that's when I started feeling, like, anxious. Because I just didn't really want to see him, and I wanted you know, time to process things*. (Child/Young Person)

Discussions about contact with a child/young person who has lived in a household where there is DVA can be anxiety inducing. This was keenly understood by many of the adult participants in the study. Indeed, a child/victim advocate noted that often how children/young people are informed about the initiation of family court proceedings is being told: '*it's because your dad wants to see you and that frightens them*'. All of the CCOs also acknowledged the pressures children/young people could feel to make decisions, the fear of meeting with a stranger, and the stress of talking about sometimes '*horrific*' experiences.

The degree to which children wanted to be more informed about the process, and at an earlier stage, again varied by the individual child, their age at the time of proceedings and family circumstance. Some, for instance, felt that because they were young (i.e. under 11) and the process is confusing, that they had been informed at the right time, and told what was necessary i.e. that they would be asked for their views about contact and/or residence. Now older, another young person acknowledged that they had not been more fully informed because their mother did not want to tell them of the abuse she had experienced by their father. Others, however, who felt caught in the crossfire of parental disputes, or who felt pressurised, harassed or overwhelmed by messages/information from one parent (usually the non-resident parent) would have preferred to only be brought in when necessary. As noted below, however, most felt unprepared for meeting the CCO, and found the process to be difficult, confusing and/or stressful.

7.2.2 Views and Concerns about Children's Participation

Across all cohorts there was a general sense that children and young people's views should be sought with regards to decisions made about them. Some reinforced that children were victims/survivors in their own right and should have this recognised through opportunities to share their experiences and preferences:

> *I want my wee boy to be spoke to. …. I want my wee boy to be able to say that he is scared of his daddy. And, to actually put his own voice out there, so I would very much want to go down this route of somebody speaking to my boy*. (Victim/Survivor)

Child/victim advocates, ISWs, CCOs and those in the legal profession all recognised the importance of children's views being represented in family court processes. A member of the judiciary captured the position of many in stating that this process is '*all about the child*'. Because of their centrality, an ISW expressed their view that *'children need to have their voice'* and that *'there should be an agreement that it happens in every case'*. Participants from the judiciary were also willing to consider different ways that children could express their views directly to them, with one stating *'I would be*

open for anything. Anything that makes them feel truly involved', and another noting that while '*it's not easy for children to be involved, … they can be*' – see section 7.4.3.

7.2.2.1 Contingent Participation

Despite recognition of the importance and value of children's participation, the actuality and experience appeared contingent on two interrelated factors: age and capacity; and, balancing participation with protection. In the words of one parent (victim/survivor) this led, in their experience, to:

> *the child's voice not being even, not even being talked to, never mind listened to.* (Victim/Survivor)

Participants across all cohorts noted that some children are effectively excluded from participation. This can be in cases where CCOs are not appointed – estimated by legal professionals to be about half of all cases – or when they, or an ISW, are appointed, but children are nevertheless not consulted. This could be where the risk posed to the child's welfare was not felt to warrant their views being elicited, or when the child was not perceived to have the capacity to express their views. Indeed, many participants noted that there was an unwritten rule that only children aged 7 or 8 and above would be consulted, depending on their capacity. Some CCOs reported, however, that they sought to speak to children from about age 4/5 onwards. Yet this was not universal, with others reporting they might not necessarily speak to the child if contact arrangements could be agreed with the parents at an earlier stage in the process. This was expressed as an effort to not place further burden on children/young people if not necessary.

In these instances, this means '*there's no independent voice of the child. You're just relying … on the parents*' (Legal Professional). As parents' views are not deemed independent by the court, the child's wishes expressed through this channel may lack influence. Added to this, while some children/young people may be content for their parents to speak for them, this will not be the case for all. As noted consistently by children and young people in this research, alongside our CYPAG, children should be offered the choice to participate. The value of being provided the opportunity to participate is illustrated by the following young person:

> *… I was told by my mum that they were going through family court, and I was going to speak to a children's court officer about what exactly I wanted and that I can want whatever I want and she doesn't mind. … it was a bit like, pff, that's a bit confusing. I'd like to know more. And then, I kind of felt like quite happy that it was something from my point of view and from what I wanted was being taken into consideration. Even if I wanted the same thing, I'd still like my voice to be heard.* (Child/Young Person)

Understanding the potential harms of involving children/young people in family court processes, particularly those already impacted by DVA in the home, was recognised across the adult participants in the study. Some spoke of the '*fine balance*' of

participation and protection, and concerns for the degree to which expectations and involvement could impinge on children's lives and wellbeing:

> *… I'm a great proponent of children's wishes and feelings being reflected, but children not being put under pressure or their wee lives interrupted. So, it's a balance for me and it depends on the age*. (Legal Professional)

Children and young people attending court was a particular concern, and it was felt by legal professionals and the judiciary alike that the best way for children/young people to share their views was through CCOs (see section 7.4.3). These were viewed as experts in engaging with children, and in collecting and reviewing evidence to provide a balanced recommendation to the court in the best interests of the child. Parents (victims/survivors) and child/victim advocates on the other hand, spoke of the difficulty for children engaging with strangers – CCOs, ISWs, solicitors – and of the pressure they could feel to make decisions around contact and residency:

> *I just think that a lot of time pressure can be put on the child that, you know, they're responsible for facilitating the relationship with dad.* (Child/Victim Advocate)

These concerns were reflected in children's own accounts (see sections 7.3 and 8.3). However, as noted shortly, parents (victims/survivors) and child/victim advocates felt this was often a result of a lack of information, preparation and trauma-informed and/or child-friendly processes. CCOs, on the other hand, tended to feel it was a consequence of parental influence or unrecognised pressures on the child. A key task for CCOs then was to '*remove the burden of responsibility*' on children in an effort to enable them to express their own views.

In some instances, ISWs contextualised their decision not to engage with children directly, particularly where they felt the information already existed to make a decision:

> *Sometimes you can see that children have been spoke to maybe 10 times by different social workers and asked the same questions. There is no point, you know, in me going and speaking to this child. Now it's just going to be ticking a box. So, I do think that happens a lot too. There's a lot of tick a box to do what's said, because that's in the court report. If it's not in it, it's not right.* (ISW)

Here we see how participation can be balanced with protection. The child's voice is not excluded, but it is recognised that they have expressed their views through other means and that this information could be used as part of decision-making. Similarly, some children/young people suggested that an alternative to meeting with CCOs/ISWs could be for their views to be collected from and expressed through those with whom they had a trusting relationship – counsellors, teachers, support workers.

7.2.2.2 Responding to Concerns

Children and young people, their parents (victim/survivors) and child/victim advocates stressed that a lack of capacity and the harms of participation should not be assumed. Indeed, one young person felt that engaging children in the family court process should

not be '*a last resort'* but '*one of the first options*'. Children and young people emphasised, however, that engagement should be dependent on the child wanting to be involved, and after providing them with information so they can make informed decisions. They noted the importance of offering children and young people the option of being involved at different points and to varying degrees. Related to this, and reflective of UNCRC Article 12, participation is a right, not a requirement. Children can choose whether to exercise this right but, to do so, they must be provided with the opportunity. This was reflected in children and young people's discussions of voice, participation and choice:

> *… but you've got to remind them [children] that if they don't want to make that choice they don't have to. Because I know like I got a little stressed over it, just like it's my choice I don't want to like hurt either of my family*. (Child/Young Person)

Some also reinforced the inaccuracy of assumptions that (younger) children do not understand and that not informing and involving them equates with protecting them from harm. The following is a reminder of how protective assumptions based on age can be damaging and demeaning to children's lived experiences:

> *… you've always got to remember the kids that go through that [domestic abuse] are always going to grow up and be more emotionally mature. Because they've already seen it happen. You can't shelter the kid from it. Again, like what's done is done. …. Like don't just baby them ….* (Child/Young Person)

An ISW, drawing on their own experiences of engaging with children/young people, also spoke of misconceptions regarding age. They noted that age was not a good marker of capacity, and that younger children may more freely express their wishes as they have fewer concerns about responsibility to, and impact on, parents:

> *So younger children, stating they don't have the capacity because they're so young, doesn't work for me because they don't have that same heightened anxiety about the future that that older children can or even guilt. A sense of I'm doing this to my parent. Or if I'm saying, that parents got to be angry. Sometimes younger children don't have that sense. It really, really depends. I think age and stage of development, yes, a guideline, but it has to be really bespoke to each child's individual personality*. (ISW)

Also of interest, some CCOs, in discussing children's voices, framed much of the discussion around their observations of contact and how what children say about contact may differ from how they act during contact. It was evident that in these instances, and where children vocalise little in meetings aimed to ascertain their wishes and feelings, observations of contact could override, or be taken as an indication of the child or young person's 'voice':

> *It's vital that their voice is heard … and if their voice isn't heard, their behaviours are observed. The behaviour, it can speak, it speaks volumes* (CCO)

The combination of adult beliefs about competency, age and harm can result in children's exclusion, through either their voices not being collected or only being

collected to a minimal degree. As noted above, children and young people are often aware of the situation, therefore not informing or involving them at some level can be damaging. Suggesting how to balance participation with protection, one young person noted the importance of:

> *Just making them feel included at some point. And like obviously not too much, because I'm sure I don't know everything that went on in the courts, but just enough that they know what's going on*. (Child/Young Person)

Overall, while the desire to protect children and young people from the harms of participating in what can be a damaging process was expressed by many, it was clear, from both the accounts of children/young people and those who support them, that preparation can limit potential harm. In other words, preparation can be both protective and participative.

7.2.3 Preparation for Participation

The voice element of Lundy's (2007) model considers the information and supports children require to help them form and express their views. Much of the parent (victims/survivors) and child/victim advocates discussion in this regard revolved around the lack of preparation for children in meeting with the CCO. CCOs confirmed that they did not provide any information to children in advance of their meetings and further actively requested parents not to prepare them for these. While all had knowledge of child-friendly information leaflets provided in the past, none had seen or used these in some time. This resulted in children not being provided with appropriate information to ensure they understand the process they are to be involved in.

Some CCOs did outline, however, that once they met with children, they explained the process, their role and how children's views were used in decision making, through play or in child-appropriate language. This was not, however, reflected in the majority of the children and young people's accounts, whereby it was evident that processes and systems were unclear to them. While some understood at a basic level the aim of meeting with a CCO, they often did not understand who the CCO was, their role, what meetings would entail, how their views would be used, and the weight that would be given to them. As one child/victim advocate noted, while a child they supported knew the CCO was there to '*help her', 'she didn't really know <u>how</u>'*. Explaining that they were '*really clueless as to what was going on'* when they were meeting a CCO, one young person felt that:

> *… if young people just knew what was going on it would probably be a lot easier for them to grasp the concept of what was happening and be able to understand … what's going to happen to them.* (Child/Young Person)

In response to the lack of information, parents and support workers often took on the responsibility of preparing children/young people for their engagement. Yet illustrating the inappropriateness of such expectations, a young person told us that their parent could not explain the process in any detail or answer all their questions. Reflective of

this, an adult victim/survivor spoke of their concern when answering questions from their child:

> *… just hoping that I was telling her the truth because I wasn't sure either what was going to happen, do you know. So, you're not really sure if you're telling them lies or not.* (Victim/Survivor)

This is a reminder that parents may not be equipped with knowledge about children's role, the nature of engagements with professionals and factors influencing decision-making, in order to inform and support children. Further, as noted above, parents were actively discouraged from doing so. Providing limited information to parents and children/young people was, therefore, a considered and deliberate practice, and may be deemed in breach of children's Article 13 right to information and Article 5 right to parental support to express their views:

> *I don't want the conversation to be opened with the parents, the parent and the child, that they have the whole conversation themselves. So, the child comes in with this rota. And there is everything answered. So sometimes it's good not to give them too much information, and then when they come into you, you set the context, and you do that through play.* (CCO)

The implications of the lack of preparation and information to participate were, however, evident in children and young people's accounts. Not knowing what to expect, meeting with a stranger and/or a sense that contact would be the focus of the meeting could lead to fear, anxiety and non-engagement/self-silencing (see below – section 7.3). One young person also described how the limited information they received on the implications of sharing their views suppressed what they were going to say, thus restricting their voice:

> *Because you don't really know what way things are going to end up and where they're going to be taken to that extent. So, you're almost like suppressing what you're trying to say. Or what you need to say rather because you don't know what's going to happen… if you don't know what's going to happen with it, you're going to have to like, almost assume the worst of it … it just completely limits what you're going to say*. (Child/Young Person)

That children and young people report learning about the initiation of family court proceedings and their involvement in the process as confusing and/or stressful should not be read as a lack of desire to be informed and involved. The stress that children/young people experience seems to come from the focus on/concern about contact, lack of preparation and knowledge about the process, engaging with a stranger and lack of clarity about how decisions are made. Given the context of DVA and the generally hostile nature of family court proceedings, engaging in the process is difficult by nature. However, the lack of information and preparation can exacerbate this. It is for this reason that it is incumbent on professionals to find appropriate means of facilitating children to express their views, should they wish these to be considered in decision-making. As expressed by an ISW:

> *… anything that sits outside what childhood should be is adverse, in my view, opinion. And therefore, we have to recognise that, validate that for the children, allow them to express how they feel about it in the first instance, and then have environments at the very least, that enables those conversations that we need or want to hear from those children to take place safely*. (ISW)

It is to a discussion of the places and spaces and nature of engagement with children as a means of ensuring their views are represented that we now turn.

7.3 Engaging with Children: Time, Space and Underlying Assumptions

While there was a general belief that children should be engaged with and their views sought, there was concern among many about the methods employed, the effectiveness of these and consequently, the potentially negative impacts. The two main conduits for children's voices are CCOs and solicitors. In some cases, ISWs are also appointed. These, along with judges, would be defined as 'audience' in Lundy's (2007) model of participation. That is, they are those who children's views are communicated to, who have a responsibility to listen to them and who have the power to act on them.

Children reflected in detail on their experiences with some of these professionals – mainly CCOs. They, parents (victims/survivors) and child/victim advocates noted various concerns and/or negative experiences. These experiences were in direct contrast to the views of legal professionals and the judiciary who viewed CCOs in almost wholly positive terms. There was also a disconnect between the practices that CCOs shared and the experiences children and young people recollected. While being sensitive to the accounts of both, and recognising the pressures and constraints on CCOs, we note the difference between practice as expressed and practice as experienced. It is important to prioritise the voices of children here as this is the perspective that is often missing, with professionals' voice/interpretation more commonly heard. Some children/families also had experiences with solicitors and reflected on the ways in which they engaged with children to represent their views to the courts.

Of the ten children and young people who engaged in the study, eight recollected engaging with a CCO. Six described their experiences in primarily negative terms, and one young person who had engaged with two different CCOs had both a more positive and more negative experience. Three had engaged with a solicitor, two described negative experiences and one described more positive engagement.

Criticism revolved around four inter-related issues: meetings not being child-centred/friendly – i.e. not at a level children could understand; meetings being one-off and there being insufficient time to build rapport, confidence and trust; the spaces/environments of meetings not making children feel safe and/or comfortable to share their views; and the presumption of contact over-shadowing meetings. These

limited children's ability or willingness to voice their opinions, and on some occasions led to great stress. More positive engagements, good practice examples and recommendations for improving engagement and thus supporting children's participation are discussed in the final part of this section (section 7.3.5).

7.3.1 Methods of Engagement

Adults spoke of a range of methods they used or were aware were used, particularly by CCOs and ISWs, to engage with children – pictures/drawing/colouring; puppets; the three houses tool; booklets that are worked through; discussions (with adolescents); walking; and, engaging with children in activities they have an interest in e.g. sport/ games. CCOs and ISWs attested to this with some of the former noting the use of play, child-orientated and therapeutic methods. Interestingly, none of the children with whom we spoke mentioned any method other than discussion, and often in their descriptions this was more akin to questioning than conversation (see below).

While some of the adult participants spoke positively about the more interactive or child-orientated methods used to engage with children, there were broader concerns that children lacked understanding of why they were being engaged with, the meaning of the questions asked and/or the consequences of the information they would share. In this respect, some felt that the engagement with children could be tokenistic, providing limited detail on children's view to inform the overall assessment and recommendation to the court. Others voiced concern that because of the lack of preparation for children, as well as the nature of (short-term) engagement, that interactions with CCOs could be re/traumatising. Time was one of the factors recognised as impacting on this:

> *… from my experience working with primary aged children, it can be really re-traumatising. It's not necessarily done in a child friendly or a child sort of sensitive way. Like I, a lot of the time would prepare children for that. Help them to sort of arrange their thoughts and their feelings before they would go in. Because a lot of the time that work isn't really done in that session with the CCO.* (Child/Victim Advocate)

This was, however, in contrast to the accounts of some CCOs who, despite noting time and resource pressure, outlined how they explained their role and the process to children and young people:

> *… I just think of it as a social story as to who we are, what we do and our role. … reinforcing to the child that it's just not everything that they want or what they're going to get is going to be the outcome. … that's something that I always make sure a child knows because number one, I don't want them to think they're all powerful over everybody in the world and get exactly what they want because that's not how it works when you're a kid. But also, I don't want them to have the weight of the world on their shoulders that, 'oh, I have to pick between mommy and daddy' …* (CCO)

The process outlined above is akin to what some children and young people suggested when considering how practice could be improved (see section 7.3.5). Yet none relayed this sort of practice in their own accounts. This disparity may reflect that children in this research were simply not privy to such good practice or that the content and delivery of information failed to make an impact - hence suggesting a communication gap.

7.3.2 Time

In Lundy's (2007) model, for children to participate meaningfully they should be provided with space to express their views. Space is both physical and emotional. It refers to the location, structure and aesthetics of places where children meet with adults, and within these, the creation of an environment in which they feel comfortable and safe to share their views. Time was a major issue in discussions about the ability to create the emotional space for children to express their views.

Among parents and child/victim advocates there was an acute understanding of the pressures on CCOs - long waiting lists, heavy workloads - and thus limits on their time. CCOs confirmed this and spoke about work pressures and the minimal allocation of time to cases. As a guide, one noted that they were permitted to meet with children on up to three occasions but could employ professional judgement depending on the complexity of cases. Sometimes they would meet only once, on other occasions they could engage with children and families over long periods. Almost all stated that generally there was insufficient time to meet with children and that this needed to be increased. Indeed, in discussing the limited time and resources available to them, one CCO concluded: *'children's voices are being undermined by the lack of resources'*. In contrast, ISWs acknowledged that they had the *'luxury'* of time that Trust social workers did not.

The majority of parents (victims/survivors) and children in this study reported that in their experience children generally only met with a CCO on one occasion. The disparity in accounts might be explained by the tendency of CCOs to include observations of contact in their explanations of how they ascertain the child's view, whereas children and parents spoke only of direct engagements as the means of collecting their views. In these instances, there was limited time to create a safe space through establishing rapport, building trust and ensuring children felt safe and comfortable to share their views. While doing their best to create space for authentic engagement some CCOs acknowledged the difficulties of '*trying to develop a relationship with the child within a very short period of time'*.

It was in explaining the process and outlining the content of a typical session with a child, that this CCO realised the amount covered and the potential impact on the child:

> *… how do you come in and talk to a strange woman, about something so horrific within 10 minutes of building, trying to build a rapport…Even just discussing it now,*

> *you kind of just think to yourself how, how does a child, because it's the impact of that session with the child is just packed full of so much …* (CCO)

Likewise, an ISW recognised the importance of authentic and meaningful engagement, and the time required for this:

> *I find it very difficult to state that I'm fully representing a child's wishes and feelings when I have an opportunity only to meet them once. … And so, in my mind, to really capture that, you'd need to be working with a child for months. And obviously it's dependent on the child. I have an issue with the wishes and feelings reports because often children will state wishes, and they have feelings. But they don't know where they're coming from or why they're there, and they don't understand the complexities of that. … [This] is also partly why I'm independent, because I can do what I believe is right, more authentically, is being honest*. (ISW)

This supports some of the concerns of child/victim advocates who felt there is limited time to ensure that children fully understand the meaning of questions, and the consequences of responses. Reflecting the complexity of wishes and what those might mean in practice (i.e. in terms of decisions/outcomes) a child/victim advocate questioned the extent to which the '*true voice*' of the child can be represented in such processes:

> *Somebody, an adult is being brought into their life to ask questions about mummy and daddy and what they want and I'm just wondering, do they, when children say 'I want to see my daddy', but they don't understand what the implications for that, and, because there's a difference, they want to see dad but that doesn't mean I want to stay overnight. … I'm just wondering … is their voice really heard … by those officers? And I'm just wondering even is a stranger speaking to children, and they don't build up that relationship and I'm just, I don't know what the best is but, at this moment in time, I don't think it's still …the right avenue*. (Child/Victim Advocate)

The limited time that CCOs had to spend with children, some noted, could result in children feeling '*the pressure of being asked direct questions and they having to answer'* (Child/Victim Advocate). This could lead to some not fully engaging with the process or providing 'moment in time' responses (see below). Illustrative of the latter, a parent (victim/survivor) spoke of how their child's view on contact varied day by day depending on the extent to which they missed the non-resident parent. Standalone meetings, therefore, were not felt to be sufficient for teasing out children's true feelings about contact and the manner in which they desired this to take place.

Many parents and child/victim advocates also spoke of children's fears and concerns about meeting with someone whom they had never met before, in a process they understood as being focused solely on decisions about contact. Parents struggled with the guilt of convincing children to attend meetings when they could not adequately prepare them for these, and explained how the stress could play out:

… if I go back to when I had to speak to the children's court officer … The drive to there, I had to stop the car three times because he [son] said he wasn't going. … And he got so angry. He was kicking the car. He was saying he wasn't doing it. He was crying. By the time we got there I thought what am I going to do here? Is he even going to speak to this woman? (Victim/Survivor)

Again, this should not be read simply as a lack of willingness to engage - in this instance the child did voice their views:

But I don't know what he said to her, but he did go in and was interviewed…I think he just really let her see everything. You know, he didn't hold back. (Victim/Survivor)

However, it provides a sense of the difficult emotions attached to children feeling they have to engage with a process that is primarily about contact, and about which they have limited information and preparation.

Related to the impacts on children of engaging with CCOs and the time spent in supporting them with and through the process, child/victim advocates and some parents (victims/survivors) also spoke of the after-effects of engagement. As detailed in Chapter 8 it was often the resident parent who was left to deal with the fallout of meetings. These could impact children for weeks afterwards as they processed the discussion and reflected or indeed worried about their 'in the moment' answers which they felt unable to change, did not understand the consequences of and/or worried about the impact and influence of. After the last of their meetings with a CCO, for instance, this young person explained:

… I would then… for the next few days or week, feel like, keep going through in my head what I had said. And like, the day after I'd said about sending letters to my dad it was kind of like I wanted to go back to the children's court officer to say no, I don't want that. But there was no way of me doing that. (Child/Young person)

As a result, child/victim advocates enforced the importance of time for pre- meeting support, adequate time for effective engagement in collecting children's views, and time for post- meetings support:

I've had children really regress like after talking to the CCO. … there's no sort of aftercare from my experience anyway. They're not checking on these kids after they open up all this trauma for them. … the pre-CCO meeting and the post-CCO meeting could probably be a lot more therapeutic and a lot more understanding around like, you know, the trauma that they're having to go through. Yeah. There's not really anything before it to prepare them and then as I said after to support them with everything that's going on. (Child/Victim Advocate)

7.3.3 Relationships and Environment

Children and young people spoke in detail about their engagement with professionals, even in instances where it had been many years prior. What is most memorable for them is important as it demonstrates what they found meaningful and impactful about the process. It is noteworthy that children talked (often in great detail) of the space and environment of meetings, much more so than any of the adult cohorts. Indeed, the detail with which some described the room, the atmosphere and their feelings attached to it was visceral. While many adults, especially parents (victims/survivors), also spoke of how relationships and spaces were not conducive to children being able to voice their opinions, we prioritise the first-hand accounts of children in this section.

It is difficult to disentangle children's criticisms with the method of communication from the environment in which it took place, one often fed into the other. However, reflective of the views of many parents (victims/survivors) and child/victim advocates, several children explicitly stated or intimated that meetings were '*not child-friendly*'. This included inappropriate language used by professionals – words and questions they did not understand – as well as the tone of questions, and the demeanour of the professional asking them. Their accounts demonstrate that this was crucial to children's comfort, safety and willingness to open up, engage and express their views. Speaking of their meeting with a CCO, this young person explained:

> *I found them quite difficult…. Like, just the things she was asking, like, it's not really like, I couldn't process it fully. It was like really big words. Like I can't even remember what she said*. (Child/Young Person)

Another likened their engagement with a CCO to what they perceived engaging with a legal professional to be like:

> *Like he had very like, legs crossed, a stern expression, and taking notes down without even looking at me. Um, even like, the way he sat could have been nicer. You know?... I, I thought he would have had that. And it just felt like it was me talking to a solicitor, which I didn't expect at thirteen*. (Child/Young Person)

More broadly, and reflective of some of the concerns expressed by parents (victims/survivors) and child/victim advocates, most children felt that they had not really understood the process. Some stated explicitly that the purpose of the process was not explained to them in the meeting with the CCO, and while some were asked questions about their mum and dad and/or their views on contact, others were asked the former but not the latter. Most, however, did not understand how the information/answers they provided would be used. From the majority of experiences shared there was a distinct sense of confusion about the process, and lack of trust of CCOs. Again, these sorts of accounts and the feelings attached to them were in stark contrast to the accounts provided by CCOs of how they explained the process, the manner in which they did so, and their sense that children felt *'empowered'* by their engagement.

The setting, as noted, was key to children's recollections with some remembering small details about the layout, smell or feel of a room. The consistency of their descriptions were incomparable to the '*very child-centred rooms*' some CCOs spoke of, and akin to the '*office accommodation ... in social services buildings*' that others noted was all they had available to them. Others recalled what the CCO or solicitor was wearing, their manner/ how they spoke with them, and on four occasions their feelings of dislike towards them (even some years after). Reflecting their views on engagement methods and the lack of relationship building, many of their descriptions pointed to the distance they felt between themselves and adult professionals who were variably described as *'cold'*, *'strange'*, *'odd'*, *'serious'*, *'stern'*. This made children feel *'uneasy'*, *'scared'*, *'intimidated'* or guarded and appeared to be a consequence of the structure and focus of meetings which were, or felt, inquisitorial in nature. Discussing their experience with a CCO, one young person explained:

> *She was just like, I don't know. It was just something about her personality. She was just like, very straight up and asked us a question. We replied 'okay', moved on. Just like didn't really help*.
>
> ….
>
> *If it was like someone who, you know, we've met up with a few times and like, just got to know us before we actually like went into the, you know, big questions. Then I would have been more comfortable doing it. But just because it was like straight in like that*. (Child/Young Person)

This young person (and their sibling) elaborated on the nature of the meeting, likening it to a police interrogation. The room set up (an office), where they were sitting (opposite to the CCO who was behind a desk), and the nature of questioning, all contributed to this. Describing the room as '*dark and gloomy'* with '*four greyish walls, two chairs and a desk and a computer*' they explained: '*It was like, she was sitting behind the desk and … it was as if we were like, having a jail interview or something*.'

While this analogy may seem extreme, it demonstrates in a very evocative manner the feelings this space and engagement invoked. It symbolises the children's discomfort and nervousness and the power dynamics which effectively resulted in their lack of ability to engage and exercise their voice. The level of detail the following young person shared provides a similar visual picture of the space in which they met with a CCO. Again, the imbalance of power is palpable, especially given that only the adult had access to the key card to leave the room:

> *... it was very, an office that like I was sitting on a comfy-ish chair when about a metre away from him while he was taking notes down in this big suit and like pointy shoes with his desk and his laptop flashing and his computer showing some email of some kind. Um, with like, but, yeah. It felt weird just one-to-one with like two doors to my grandad that were, that you needed a badge [card reader] for*. (Child/Young Person)

Such environments were not restricted to young people's accounts of meetings with CCOs. Two of the three young people who had engaged with solicitors described similar physical surrounds and an air of officialdom:

> *… from what I remember there was like a table and chairs on each side. Like just, you know, facing each other. There wasn't really much in the room.* (Child/Young Person)

Another young person described a similarly '*really uncomfortable'* office space in which she was sat opposite the CCO and asked questions. They explained how this led to anxiety and an inability to speak. In the following extract, the young person explains how this was mistakenly read by the CCO who shut down communication and effectively silenced her:

> *… she wouldn't let me talk. She didn't ask me anything. She just said, 'oh, like, do you just not like seeing your dad? Is your dad a bit mean sometimes? Is he a bit strict?' or something like that. … And I was like, I was shaking crying. … And then she wouldn't let me speak. Like she tried to get me to speak and then because I was so anxious all the time and I couldn't have my mum or anyone else in there. She would just be like okay, you just don't want to talk to me. Like it's just all a lie and never like asked me properly about it*. (Child/Young Person)

While this young person felt purposely silenced by another, the accounts of professionals (above) can shed some light on how such instances may occur as part of a desire to protect children from harm. In fact, a CCO explained a similar situation in which they read the child's silence as protective and a choice not to engage:

> *… nothing the child has remained zip [quiet]. And that in itself tells a lot, because the child is unable to speak, their voice is silenced because of the whole process. And that's OK, because some kids don't want to speak at all. And … you have to respect that.* (CCO)

Other children's accounts, however, showed the more subtle and nuanced nature of silencing. The environment, nature of questioning, lack of understanding, information and preparation, and impersonal, official and perfunctory relationships with professions could lead to self-silencing, or a feeling of being so overwhelmed they could not engage. As a result of the process one young person simply stated, '*I just didn't know what to say'*. Another, who again felt unprepared and lacking in information about the meeting explained:

> *I think I was just really confused on what was happening and I think I was slowly becoming more aware that whatever I say really affects what's going to happen*. (Child/Young Person)

This belief, the pressure it invoked and the manner in which they described their engagement with the CCO, led them to feel '*mostly confused and just dead set on not talking to this woman …*'. As noted previously, this young person talked of feeling sole responsibility for making a decision about contact and of not wanting to hurt either parent. This again points to the lack of information provided, or the ineffective

communication of information about how children's wishes and desires would inform decisions, and what other information would be taken into account.

7.3.4 Presumption of Contact

Related to criticisms about the manner in which some professionals engaged with them, some children felt that decisions had been made prior to ascertaining their views. A number described feeling that contact with their non-resident parent, usually the father, was the focus of meetings, and that no matter what they said a decision had already been made. This was expressed by one young person who said of their engagement with both a solicitor and a CCO:

> *… they seemed kind of like they were telling you what was going to happen instead of asking you what you wanted to happen*. (Child/Young person)

Two also explicitly stated that they felt the CCO *'sided'* with their father and that this overshadowed the nature and content of the meeting – '*she kind of like, sided with my dad without talking to me*'. A further young person, who was one of the few to have multiple meetings with a CCO explained how contact was presumed, with them being asked '*how do you want to have contact with dad?*'. Their account demonstrates how children can be asked for their views, and provided with options, but within boundaries pre-set by adults:

> *And I was given like five different options of like, letters, facetimes, seeing him in person, seeing him in person with this guy. There was one other thing I can't remember. And in the end, I kind of felt pressured by him or whatever, because he actually showed me a letter that my dad had written saying he wanted to speak to me or something. I felt in the end pressured to say letters. And I got the letters, and I've read the, I wasn't too comfortable with sending back letters. But that was kind of what I agreed to by saying letters.* (Child/Young Person)

The presumption of contact was a major issue in discussions with victims/survivors and child/victim advocates and is discussed in more detail in Chapter 5. With regards to children's engagement with CCOs, some of the views expressed by parents (victims/survivors) and child/victim advocates are reflected in the personal accounts of children above. This includes parents' belief that the child's meeting with the CCO, the nature of discussions, workbooks or creative engagements are all premised on the assumption of contact whereby '*in an idealistic world, the children, somebody would be helping for them to see their mummy and daddy'* (Child/Victim Advocate). Further to this, some parents (victims/survivors) felt their child/ren had been *'bullied'* or *'tricked'* into agreeing to contact, with a legal professional providing further verification of children's own beliefs: '*I've done cases where children say that they felt bullied by the CCO to, to adopt a certain position'*. Others, again reflective of some children's own accounts, felt that even when children stated that they did not want contact with the non-resident parent, that their '*voice was not being heard*' (Victim/Survivor). These

issues, and the extent to which children's views are given weight in recommendations to the courts, and in judicial decision-making are discussed further below (Section 7.4).

7.3.5 Supporting Children's Engagement: Recommendations and Good Practice Examples

It is as important to highlight areas of good practice as this not only acknowledges current strengths, from children's perspectives, but provides guidance on how future practice might be developed.

As noted above, two young people described positive experiences with a CCO (as did one parent), and another reported positive engagement with a solicitor. Analysis of these accounts reveals the factors that made these experiences effective. Unsurprisingly, they were often the opposite of some of the factors that made engagements confusing, stressful, uncomfortable and/or superficial. Summing up their positive experience with a solicitor, one young person explained the basis of this was that they were provided with clear information in a manner in which they could understand. They were also provided with choices:

> *They're really nice. They were asking me what I want to do and the decisions that I want to take, and do I want to get phone calls from him, do I want like, birthday cards from him. And like do I want to see him or who do I want to live with and stuff. And then like they were really nice, and they explained like a wee bit. But I didn't have to go up to the court so then they didn't explain that part.* (Child/Young Person)

Another spoke of their experience of being '*heard a lot more*' in their engagement with a second CCO. They identified the physical and emotional space, time and patience as enabling them to voice their opinions. The experience below is in direct contrast to this young person's other experience with a CCO in which they felt unable to speak, and effectively silenced (see above). It also contrasts with the inquisitorial nature of meetings described by other children and young people:

> *… she just kind of let me do what I had to do to let myself speak. She didn't ask me like pressing questions I think she was really nice. … She just kind of gave me like the time that I needed to adjust myself to what was happening and like I was also in a familiar space and stuff. Like I was in my own house. … she just kind of let me be and then when she did ask me something it wasn't really pressing, it was easy enough questions to answer. And I eventually talked to her about it, and she was just like a lot kinder and more willing to help me.* (Child/Young Person)

The repetition of the word *'nice'* is important in the extracts above. While this may initially seem a weak or vague word, others in their discussion of how their experiences might have been more positive also used this term. In their descriptions it meant kind, personable, interested, patient and in the words of one young person '*just being gentle',* using '*a gentle tone'* (Child/Young Person):

More broadly children and young people provided various thoughts on how engagements could be improved, and thus children's participation made more meaningful. What might be perceived as small things - having fidgets or comfort aids, comfortable chairs, colourful (or at least not sterile/official) rooms, being able to see an exit and knowing they could leave - were cited as important in creating an environment in which children felt safe and which would be conducive to them expressing their wishes and feelings. Thinking about physical space is particularly important for children who have sensory needs and those who have experienced DVA in the home. Below is an illustration of the various aspects of physical space that are important to children, and which can impact their ability and willingness to express their views:

> *… I really don't want another kid to have to sit through a surgical white room feeling like they are like the problem here. So, like even like a room like this. This is like comfortable. Like you recognise it's a room for kids. You see the stuff and like, you don't really get distracted. You can have a quick glance about and you know what's about, but you've also got the big light flooding in [the window] and it's a very open space. And you see the like, the closed doors and you know how to get out if you want to get out…. Like even like the artwork. It makes the space seem very, very happy and very, very open.* (Child/Young Person)

Honesty, clarity and relationship building were also identified as important. This included the professional explaining their role, the purpose of meetings and what they will entail. Explaining how the information children provide will be used, who will see it and how it will be used (alongside other information) in decision-making is also important. One young person suggested this could be provided in a *'little drawling like showing how information gets passed back and forward*' and explaining the process. This is likely similar to the 'leaflet' all CCOs spoke of being used in the past. The use of language that children understand, talking and discussing rather than direct and persistent questioning which feels *'scripted'* and the same for everyone was also identified as important. Above all else, one young person felt professionals needed to see and treat children as people, not cases, and this could be done by showing an interest in their lives and making a connection. They provided the following experience as an example:

> *Like the new one [counsellor] was like, 'do you want to see a picture of my dog?' It's like yeah. Like, she'd remember little things about you and that's what's important because they're not just cases, you're also like humans. Like, a bit of a human emotional connection could do wonders in those years.* (Child/Young Person)

Finally, children and young people reinforced the importance of genuinely asking children for their views, not directing or pushing them towards particular outcomes. Related to this was listening when they do express their views and ensuring these are communicated to decision-makers (see section 7.4 below):

> *Like just listening to what they say. Like, not trying to push anything or like force them to say yes to things just because like, I don't know. It just seems like that's what they were trying to do. It was just getting me to say yes to something.* (Child/Young Person)

The importance of options resurfaced with the reminder that some may not want to input into all decisions. The young person below suggested that if consultation with children was continual rather than a one-off process, it would be child-centred and empowering:

> *I think almost if they were given like, the option to choose between like how they meet someone or how much they're told. Like, asking them even at the start and then even after each session that they're talking to them, like, even asking them if there's more that they'd like to know or if they're effectively re-evaluating every single time.* (Child/Young Person)

Many of the suggestions for enhancing children's participation put forward by adults were similar to those expressed by children and young people. As noted, lack of preparation for meeting CCOs was a major concern for parents (victims/survivors) and child/victim advocates, as was the time they had to meaningfully engage with children. It is unsurprising, therefore, that recommendations related to this dominated their suggestions. This included preparing parents to prepare their children and ensuring adequate time and appropriate space to build relationships with children. Part of preparation should be informing children that recommendations and final decisions are not based on their views and desires alone. This could address multiple concerns – children not feeling the weight of responsibility for decisions, and if a decision is made that is different to their expressed desire, this could help them understand why this might be the case. Some CCOs did describe engaging in this very process, enforcing the importance of it for '*helping children to engage*' through '*removing the responsibility off their shoulders*'. One stated, for instance their efforts to clarify that:

> *... it's not about making the children make decisions, and it is about helping them to understand that yes, they will be listened to. Yes, their voice is absolutely important, but they are not the people who have to make the final decision.* (CCO)

Repeating this throughout the process would be useful given the importance of this, and the degree to which its omission featured in children and parents accounts.

Training for those engaging with children was mentioned by several child/victim advocates not only in terms of how to engage with children, but also in understanding the context and impacts of DVA on them. Such training, it was felt, would enhance understanding of children's fears, a resistance to talk about contact and modes of engagement – including the need for safe spaces, multiple meetings and different methods to enable children to share their views. Related to this, was not presuming contact as inherently positive, particularly given the context of DVA. CCOs themselves also spoke of the need for training that is child rather than adult focused.

Given the time and resource pressures on CCOs, and how difficult many children find the experience of engaging with them, parents and child/victim advocates suggested other means through which children's views could be collected and shared with the courts. This included other professionals, such as those trained in working with children impacted by DVA, preparing and supporting children pre-, during and post-engagements with CCOs. Having a trusted adult at the meeting/s with the child was also suggested and aligned with some of the children's recommendations - '*somebody by their side that they feel familiar with rather than a complete stranger asking very intimate questions sometimes'* (Child/Victim Advocate). Alternatively, where children's views have been or can be ascertained by other trusted adults (teachers, counsellors, support workers), this can be provided to the court.

The practice/methods employed by some ISWs and CCOs are also encouraging, suggesting more promising practice that aligns with what children and young people advocate. ISWs, for instance, spoke of having the '*luxury of trying to get to know children from where they're at'*. This was enabled by having multiple meetings with children, learning how they like to communicate and building a relationship before engaging in discussion about their wishes and feelings. Some also spoke of the value of engaging with the resident parent regarding the child's needs and interests. The following practice encapsulates many of the issues children raised in discussing how engagement with them could have been more positive, effective and meaningful:

> *We'll talk through who I am, why I'm here, you know, what I want, what, what we want to talk about. Then I will spend time getting to know the child a little bit more or certainly trying to put them at their ease. That they talk to me about other things that have been, you know, that are going on for them in their lives. School, their friends, what you know, what their interests are. Spend time talking about all of that before I would even attempt to start asking about ...* (ISW)

7.4 Audience and influence

Article 12 of the UNCRC entails not only the requirement to consult with children to collect their views, but for those views to be given due regard in decision-making. In the Lundy (2007) model of participation, this relates to the connected elements of audience and influence. Within family court proceedings there are two audiences for children's views where they have potential influence – the CCO, how they collect and integrate those views into their report, and the judge who takes account of the CCO report in their decision-making.

A number of issues arise in relation to this, and as evidenced in the above discussion. Firstly, legal professionals and the judiciary cite CCOs as *'pivotal'* in reflecting children's views (and best interests) to the court. They are seen as providing an expert, independent and holistic account of the child's situation. As half of children's views will not be collected by CCOs, however, they do not have a channel to the judge, and thus no audience for their views. A second issue, also noted above, is that methods used

to elicit children's views were often perceived to be limited. Even when they were engaged with, therefore, their true views may not have a been collected by CCOs and heard by judges. Finally, even in instances in which children and young people are engaged with, and do express their views, many felt their voices were not reflected in court reports and/or adequately considered in court decisions.

In this section we reflect on the extent to which children and young people, their parents and those supporting them feel their views are listened to/heard by those responsible for informing or making decisions about their lives. We then move on to examine, through those who collect and/or hear children and young people's views, the extent to which they give them due weight in making decisions, and the factors influencing this.

7.4.1 Voices Unheard

Five children and young people stated explicitly that they did not feel their views were listened to by those collecting them and/or making decisions about them - CCOs, legal professionals, and/or the judiciary. Another two felt unable to comment stating they did not know what the CCO was recording from their meeting, never mind the degree to which anything they said was reflected in their report to the court. This connects to issues noted previously regarding the lack of information children received about the purpose of meetings, how the information they provide will be used and the degree to which it will influence decisions. Only two of those interviewed, therefore, felt their views had been listened to and taken into account by both the CCO and the court. Unsurprisingly, these were the same young people who reported positive engagement with the CCO – one at age seventeen, the other between the ages of six and eight.

Among those who did not feel listened to, concerns were expressed about the accuracy with which their views were reflected in the report to the court, and how what they said may be (re)interpreted and diluted. Hence some suggested the direct words of children should be used in reports. Others felt it would be useful to have sight of the CCO report prior to submission, to check for accuracy of interpretation, especially in instances in which children may not say a lot:

> *… say if we say anything to her and we found out like what was said on the report and if there was any like wrongs about it, we would like, know that was wrong, I didn't say that. Or like, she's missed out on something we can like, let them know and get the full story.* (Child/Young Person)

With few mechanisms to facilitate children to express their views and feeling their views have been ignored, it follows that children believed they had limited influence in decision-making – either in the CCO's recommendations to the court or in judicial decision-making. This was most stark for children where contact had been agreed with an abusive parent when they felt they had been clear in their wish for no contact. As noted above, several children and young people reported feeling pressurised, *'tricked'*

or *'bullied'* into agreeing to, or expressing views in favour of contact with an abusive parent. Of their engagement with a solicitor one young person expressed:

> *… the solicitor, he kept like just trying like, kinda get me to say yes to something [contact with father] … and just, not really listening to what I was saying* (Child/Young Person)

Likewise, the young person who had multiple meetings with a CCO explained their shock at the degree to which someone tasked with collecting children's views, did not listen to them:

> *… lawyers and solicitors and all that are very good with their words. But I didn't think they'd ever go against the child that they're in charge of, you know? It felt like he just wanted to have a happy family back together instead of what I in fact wanted.* (Child/Young Person)

This young person expressed in each meeting that they did not want to have contact with their father. Demonstrating how they struggled to have their voice heard, they explained:

> *… I think he eventually came to his senses on the third meeting. Because like, once you've been told a few times that like this, 'I don't want to see him', he eventually realised I don't. And he passed that on to the judge …* (Child/Young Person)

Of course, given the problems with single engagements and 'moment in time' decisions, this may indicate that the CCO engaged with the child on multiple occasions to ensure they were accurately collecting and reflecting their desires. However, when asked if it was explained to them why they continued to ask about/suggest contact, the young person did not recollect this happening. Summing up their experience they stated:

> *It just felt, I felt useless in a dynamic where it was all about me … No. I didn't feel listened to at all.* (Child/Young Person)

A further two young people felt their voice was not heard and/or passed on to the judge in the court report as their views were either not prioritised or not trusted. One stated explicitly: the CCO '*didn't believe me'*. The basis of this perception was unclear but several parents and child/victim advocates also expressed the view that children are *'not heard'* and *'not believed'* in court processes. This was particularly the case for younger children whose views were not trusted because of their age and/or because they were viewed as susceptible to parental influence.

Reflecting what some children and young people told us, parents (victims/survivors) also shared instances in which their children had told the CCO they did not want contact with the abusive parent, but this was granted, nonetheless. Of their child's experience, one parent explained:

She has repeatedly, the whole time, kept telling them that she did not want to go [to contact]. Kept telling them the reasons. … And it still doesn't seem to matter. My child's voice was not being heard.

…

The child's wishes are dismissed. These are all supposed to be the core things in the family court. It's not how it happens. My daughter's voice has been silenced and silenced and silenced. (Victim/Survivor)

Illustrating the dangers of not being listened to, this parent reported that their child closed up and stopped engaging with professionals:

... she had got to the point where she didn't, she like, she didn't want to speak to him [the CCO]. She didn't want to. Because she wasn't being listened to.' (Victim/Survivor)

Interestingly, a number of adults moved from using the language of children being *'not heard'*, to children *'being silenced'*. This is an important distinction as being silenced shifts the emphasis from an almost passive omission, a problem with communication, to imply something more active, structural and systemic. In this case children, or particular groups of them, are silenced by institutional practices and cultural beliefs about age, capacity or parental influence:

Unless the child is a teenager, then I really don't hear their voice being heard in court. … Other than that, I feel like the children's choices aren't heard. They're not listened to. They're not believed. … If you're ever younger than like ten, eleven, then it's almost seen like it's coming from mum, not coming from the child. (Child/Victim Advocate)

Not believing children is effectively silencing their voice. As illustrated below, some of the factors that influenced decision-makers were congruent with this perception/claim.

7.4.2 Decision-Making Processes and Influences: The Weight of Children's Voices

As noted above, all adults including CCOs, ISWs, legal professionals and the judiciary, generally agreed that children's views should be considered in decisions made by the family courts. Given that relatively few children and parents felt this translated into practice, it is important to examine the factors that influence decision-making and the degree to which children's views feature in this. A fundamental starting point is to reiterate that the children with whom we spoke did not know how their views would be used or necessarily understand that they were one of a number of people whose accounts would inform decisions about them. This in itself may explain why, when decisions were different to their wishes, they felt their voices had not been taken account of at all. While CCOs report that they do communicate this to children, there is an evident gap in communication or understanding. Indeed, that CCOs do not feed

back to children on how they reflect their views in their reports may be a large contributor to this lack of understanding (see section 7.5).

CCOs outlined how they collected a range of evidence to inform their reports to the court, and that children's views were, in most cases, part of their assessment about what was in the best interests of the child. Likewise, while cognisant of children's wishes, members of the judiciary noted that they *'carefully'* consider a range of factors, and do not make decisions *'lightly'*. They and legal professionals did note, however, the weight they put on the views of the CCO. These were described as '*the boots on the ground'* (Judiciary), *'… the independent taker of the child's views… the court's eyes and ears …'* (Legal Professional). ISWs noted that if the judge felt a '*good assessment'* had been carried out, that no matter the degree to which the child's voice was included within it, this would hold considerable sway. Indeed, CCOs themselves recognise the weight courts put on their reports and recommendations, acknowledging that judges '*rarely go against what we say'* (CCO).

In sum, the CCO reports and recommendations hold considerable authority, and while the CCOs we spoke with outlined various methods of engaging with children to facilitate their views to be heard, this was not mirrored in most of the children's experiences. As such, the degree to which children's views are accurately represented in reports to the court and thus inform decision-making, requires critical consideration. Likewise, while a legal professional felt that when children expressed '*strong views*', this held weight in decision-making, some of those with whom we spoke felt they had made their views on contact clearly and persistently, but that these were still ignored. It is clear then, that other factors are at play.

Overall, CCOs and the judiciary were unambiguous in stating that the role of the court was to make decisions that were in the best interests of the child. CCOs spoke of the '*balancing act*' of marrying what children say and desire with the views and desires of parents, other family members, experts and observations of contact (CCO). One judge explained this as a '*herculean task'* which *'hopefully'* incorporated '*what the child's thinking and feeling now but also safeguarding that child into the future*'. They explained the thought and care they put into making decisions, and their efforts to get a sense of the child who was at the centre of their decision making:

> *… for me it's about could I justify that to them when they're grown up? Because they may not understand it now. … I'm fortified by the fact that I've really read all your papers, and I've really asked all the questions I want to, and I really thought about you as an individual, not a child, not a case. You know. And I know something about you, I know what you like. … And I've tried to form a picture of you and if you've wanted to meet me, I've been available.* (Judiciary)

As outlined below, while some of the judiciary are open to meeting with children, only one of those involved in this research thought this might have been offered to them.

Both CCOs and judges were also clear, however, that a child's wishes do not necessarily equate to the child's best interests and it is the latter that guides their

judgement. While children are always at the forefront of the CCO report and '*the child's voice is powerful'*, their views do not always align with the CCOs recommendations. The child's wishes are weighed up against an assessment of multiple views from various actors who should be speaking to what is in the child's best interests. Where the child's views are in contradiction to such views, it is unlikely that they are going to have significant influence:

> *It is not a dictate that the child wants this therefore this is the way it has to be. No, it has to be what is in the child's best interests. The child's best interests are paramount. Not the wishes of the child.* (Judiciary)

While the concept of best interest featured prominently in the accounts of decision-makers, parents (victims/survivors) and child/victim advocates questioned how decisions could be in the best interests of the child in instances where contact was granted with an abusive parent, children's voices were disregarded and/or court-ruled experiences were traumatic. In the words of one parent (male victim/survivor):

> *… the whole family court is meant to be child focused and in the best interest of the child at the court. But yeah, at times it doesn't feel like that. You know, whenever you're having to peel a child off you and they're crying and they won't get in another car and you're trying, you know. That's just awful. It's just really horrible situation. And it, not only traumatises the child but it, for the parent who's having to do that as well, it's traumatising.* (Victim/Survivor)

Children's voices, and best interests were also felt to have limited influence on legal professionals who primarily represented parents. Describing their experience of being cross examined by a solicitor, an ISW explained that the focus was on the wishes/concerns of the victim/survivor and there was '*no mention of the child'*.

A range of other factors were identified as impacting the trust in, and weight given to, children's views. In particular, the degree of influence of a child's view was dependent on their age. The judiciary and legal professionals were clear that views of older children had greater influence in decision-making. This appeared to be based on judgements about the degree to which it was felt children were able form and express their views freely and without external influence:

> *… Age obviously is an important factor. The older a child the better demonstration of capacity and level of insight, the more weight I would give to the wishes and feelings of that child.* (Judiciary)

How this can play out in decisions about contact were discussed in some detail. The following demonstrates the relative weight given to the child's view on the basis of their age:

> *My first question is, then, well, you know, if the child is adamant and the child is, well, a different answer if the child is four than if the child is eleven. If the child is eleven or thirteen and is saying 'don't want contact' then why are we saying that we're just going to have to try and press on with contact*? (Judiciary)

While reporting a greater level of insight, it was also recognised that more weight was given to older children as they could more actively resist decisions they did not agree with. In other words, '*it would be very difficult to force [a decision on] a thirteen-year-old*' as they could '*vote with their feet'* (Legal Professional). Indeed, one young person did not necessarily feel that their voice was given greater recognition once they were a teenager, it was simply that '*they can't do anything to stop me'* (Child/Young Person). These points aside, legal professionals, CCOs and the judiciary noted that welfare concerns could supersede the wishes of older children if their desires were not in their best interests:

> *So, you know, just because the child reaches a particular age, does not mean that their wishes and feelings will be determinative. It has to be taken into context with everything else that is known about the child, about the case, about potential influence, and their experiences as well*. (Legal Professional)

As alluded to by the legal professional above, concerns about parental influence in children's views, could impact the degree to which they were trusted. Where the CCO or court assessed that a child had been influenced or *'coached'* by a parent – indicated by the use of language not typical of a child or echoing what their parent has said - these were less likely to be given consideration by decision-makers. This was a consistent theme in one group interview with CCOs. While they reported that children's voices held '*most weight*' and were '*very powerful*' in decision-making, they consistently queried the degree to which children's voices were a mirroring of parent's voice. That this was raised on almost every occasion that the influence of children's voices in decision-making was discussed, suggests this very much informed their views on the independence of children voices, and might therefore, have impacted the weight given to these in their decision-making. The following are illustrative:

> *I think it's so vital … that their [children's] wishes, you're saying do they influence the report? Of course, they influence the report [but] they can be coming from a negative influence. So, they're mirroring someone else, their parent's voice. It's not their voice. Their voice is lost. Their voice is no longer their voice*. (CCO)

And again:

> *… obviously the voice of the child sometimes is not the voice of the child, it's the voice of the parent and what the parent wants, and it's so, the voice of the child is blended … So, it's trying to tease that out … because what I find, is parents… will say, 'if you speak to the child, I want you to speak to the child' and what I'm finding … there's more and more pressure being put on the children for their voice. Just their voice. We want the child spoken to ... And they're getting younger.* (CCO)

Some legal professionals noted that courts place an overemphasis on the potential for parental influence and in these cases children's voices get lost. Indeed, while the court concern may be about parental influence, as illustrated previously several parents, children and legal professionals spoke of CCOs influencing children (in favour of contact with the non-resident parent). As discussed in Chapter 5, a number of

victims/survivors, child/victim advocates spoke of the pro contact culture of the courts, and the biases of some judges. Whilst denying a presumption of contact, it was evident from some judiciary, legal professionals, CCOs and ISWs that a consideration of contact was their starting point to work back from. As expressed by one ISW:

> *I think that should be our starting premise that for any child we have to, if we're looking at it from the child's perspective of, you know, the child's right to have a nice family life. The child's right to experience that. So, I think my baseline on this is it would be good for this child if contact [is] with both their mummy and their daddy or mummy and mummy or daddy and daddy or whatever it is.* (ISW)

Related to this, in their discussions of what they take into account in decision-making, observation of contact appeared more significant in CCO's determinations, than children's expressed wishes.

The lack of consideration or minimising of children's voices based on assumptions about age and capacity, *'coaching'* and the right to family life, can silence children's voices. The impact may be that they are reticent to disclose future harms, withdraw their participation and willingness to engage with professionals in the future. While decisions may be made on the weight of evidence and in consideration of the best interests of the child, children's views may not be accurately represented in that evidence. Children also lack understanding of how decisions are made, if and how their views were taken into account, and how their best interests are decided upon. We will return to some of these issues in section 7.5 but given that children and young people are concerned about the accuracy with which their views are communicated to the courts, we now explore the possibility of children communicating directly to the judge.

7.4.3 Direct Audience – Enhancing Influence?

As noted above, children, parents and child/victim advocates suggested that children's views could be sought and represented to the courts through adults they had a longer-term trusted relationship with. This included teachers, counsellors and support workers, or as one young person suggested, a child advocate being present in meetings with the CCO or solicitor:

> *… maybe like another person being there to like advocate for you so like they're also listening to what you're saying so it's not just one person has decided for you what you're going to do and what's happening. You know, if there's another, like a second person there, who knows what you've said. I think that would help.* (Child/Young Person)

The ultimate audience for children's views in family court proceedings is the judge, but this felt fairly remote for children. A direct line of communication between the child and judge was offered as an option to only one young person in the study. While not availing of this at the time, they reflected that they wished they had communicated directly as the whole process: *'… felt very distant from me and like it was my mum and*

dad's thing as opposed to me and my mum and my dad's stuff'. None of the other children and young people in the study were provided with this option despite the belief of one judge that '*children are told that they could write to the court. They are told that they could come and ask to see the court, meet the judge'*.

Children and young people expressed varied opinions on whether they would have wanted to speak to a judge. Partly this depended on the method - speaking in open court or through a more personalised approach - and their age. For some, the thought was *'scary'* or stress-inducing, while others said they would have done so willingly. Reflecting on their own experiences, children noted that direct communication would mean '*what they're saying can't be misinterpreted*', and that the judge could directly hear their '*side of things'*, '*our perspective on like what we want to do …'*. As noted above, a number of children raised concerns about their words, wishes and feelings being diluted in court reports. Speaking to the judge would '*make him [sic] understand in first person my views instead of second, third, fourth [hand].* One young person was firm in their position:

> *I've always said I'd speak to the judge. It was probably, like, as it got to the end of the process and I got a little bit older and kind of understood what was going on and was like 'why did I not get an opportunity to speak to the man who's going to make all the decisions, who was in charge, or going to have to speak to a woman [CCO] who didn't believe me*.' (Child/Young Person)

The general consensus, therefore, was that communicating directly with the judge should be an option for children – whether this be speaking in court, speaking in chambers, writing a letter or sending an audio message.

While members of the judiciary were generally receptive to hearing children's views, challenges were identified by judges and legal professionals. These related to welfare, privacy, and questions around the true nature of participation. Strong concerns were expressed, for instance, firstly, about the potential for manipulation of children by parents. It was also recognised that neither the court setting nor the process was established with children in mind. Highlighting how concerns over protection may restrict such forms of participation, they spoke of the potential damage of questioning, cross-examination and being exposed to an adversarial process. Explaining efforts to balance participation with protection, a legal professional noted:

> *… the judges are trying to sort of shelter the children from court proceedings as well. There's a balance to be struck in terms of you don't want the court arena interfering in their young life unless sort of it is something that has to be done.* (Legal Professional)

With regards to children communicating to judges in their chambers, through letters or voice notes, there was more support for this. However, judges did note privacy and communication concerns. They explained, for instance, that children would need to understand that their views would have to be made available to all parties. Given issues raised by children, parents and child/victim advocates about CCOs and those

trained in engaging with children, there are understandable concerns here too. Judges are not trained in engaging with children, they may not have the time, space and skills conducive to support effective engagement/voice. That said, they might more accurately be able to explain the process of decision-making.

7.5 Feedback

In the Lundy (2007) model of child participation, a crucial element is providing feedback to children on how their views were considered. Demonstrating the impact and influence of their views ensures their participation is meaningful and not tokenistic. Although children and young people in this study wanted to know how CCOs had represented their views to court and why the court came to their decision, most reported little feedback in this regard. There is no formal duty on either CCOs, ISWs or judiciary to provide feedback and as a result little consideration had been given to this. One judge reflected:

> *…I suppose in private cases, it's not something I've ever had any feedback on from anybody saying, would I do it or would I not do it. So perhaps my honest answer is I haven't really directed a mind to should I do something that is directly to the children.* (Judiciary)

With no formal requirement, no resources or time are factored into the process or workload, making it challenging for professionals to meet such wishes. A member of the judiciary, for instance, while not opposed to communicating the reasons for their decision-making to children (in the form of a letter) recognised the '*immensely challenging workload'* of *'distilling such information for children'*. Limitations on time also impact the extent to which feedback is possible from CCOs. Speaking of their experience, a young person told us:

> *… I had actually requested from the children's court officer, but he was too busy or something. He just couldn't do it. … I went [to see him] three times in two, three months and I was updated those times with minimal detail. And then that was like a year ago. I haven't heard since and I don't think [if] it's actually finalised yet*. (Child/Young Person)

CCOs confirmed that they did not typically provide feedback, with just one reflecting that over several years as CCO they had only been directed twice by the judge to advise the child on the decision. Another explained that they were often still writing their report at the last point at which they met with children and, *'when the decision is made that that is it and that is our role over*' (CCO). Another CCO elaborated:

> *... if you had a scenario where you've met mum once, dad once, children once and then written a report and it's gone to court and then the outcome of court. As whatever the outcome is. Well, we'll never see those children again. ... the only feedback they're getting is from Mum and Dad and that will be very much shaped on their outcome of the proceedings, whether they're happy with the outcome of*

proceedings, whether they're not happy with the outcome of proceedings. And that is a challenge absolutely within the process. (CCO)

As noted in Chapter 5, court processes can be long and drawn out and during this time the child can be left in a state of anxiety and uncertainty. Updates, even when there is little to report, can go some way to easing that anxiety. The young person above, for instance, spoke of how they did not know if there had been a resolution in their case, if receiving emails from their father was an interim agreement and/or if the case was ongoing. The extract below demonstrates the questions they were left with:

Like, why is he getting to send these emails? Is there a law saying that you have to have some contact? Is it the judge felt I needed it? Is it, all of these things? Like why?... If I got an email straight from the judge saying we do apologise, or, this might not be to your best wishes, you have to send two emails to him by law, or we think it would be best. Okay. I'll send those emails. (Child/Young Person)

In the absence of communication from professionals, the onus typically shifted onto parents to communicate the process and outcomes. This could negatively impact the child-parent relationship, particularly where decisions were not in line with children's wishes (see Chapter 8). On reflection, some legal professionals and members of the judiciary did see the difficulties this might pose for parents, and the problems when some may also put a particular *'spin'* on the decision. How decisions are communicated is important, as the following legal professional explains, as it impacts on how well a child accepts a decision:

… there's no real control over how that feedback is given, so the parent may be doing their best, but maybe not … be equipped to … and they may not be happy with the decision either you know. So, you know they, the messenger, and how … the message … [is] delivered … how the child accepts that or how well they accept it really depends on how it's communicated. (Legal Professional)

As outlined in section 7.2.3, a major concern of professionals and some parents, was the potential harm of informing children of family court processes and decisions. The aim of many was to shield them from this. As noted above, however, children were often at least partially aware anyway, and it was at the decision-making process point that they would have most liked feedback i.e. from CCOs about how they presented their views and from the courts, about how their views were taken into account and the final decision made. Only one of the children/young people involved in this research intimated that they had sight or explanation of the court report before it was submitted. While noting there was likely little time for such practice in the Trusts, a few ISWs said they did have the ability to meet with children after their report was written to check for accuracy, omissions and misquoting. One explained the value of this for reiterating that children's views are one of many that inform decisions. In this way it is useful for managing expectations about court decisions but can also act as a means for professionals to check if their interpretation is in line with children's wishes, and to address further needs in that regard:

> *… feedback sessions can be important to say, "right this is what happens". But I think that's also why being transparent about what you're going to put in your report and that, that detail to a child. 'I'm putting this in my report'. And seeing their reaction is really helpful to help you understand if you're making the right decision or not at times. But as well with understanding what their needs are. Which mightn't always go in hand with what their wants are*. (ISW)

After the report is submitted, however, most CCOs or ISWs had no further direct communication with the child. In other words, apart from the one CCO noted above, neither CCOs/ISWs nor the judiciary had any personal experience of communicating/feeding back court decisions to children. The impact was that children could lack preparation for change, feeling they were '*just thrown into the Order'* (Child/Young Person).

Children and young people were generally in favour of judges or CCOs reporting decisions back to them. Two felt the CCO should lead on this given their experience of working with children. They were of the view that CCOs work with children to collect their views and represent these to the court. They are, therefore, the natural person to explain court decisions to children and these could complement the information provided by others e.g. parents. This was supported by a member of the judiciary who, upon reflection, recognised the difficulty for parents in sharing court decisions with children. They concluded:

> *There's maybe a need for a bigger pool of CCOs to go back at the end of a case and say, 'well this is what's happening, this is how we got to where we are'. And that the child already knows the CCO…. we probably need the familiar non-invested face going out to explain all of that.* (Judiciary)

Others felt it would be most useful for the judge to provide feedback on their decision. This was based on the premise that the judge could provide a factual, honest and holistic account of the process, including where children's views featured. They could also explain the basis of their decision. Children and young people spoke of how such feedback would be *'helpful'*. Indeed, in the extract below we see the reiteration of this point. The reasoning why it would be helpful was similar to that expressed by others, that they had not been provided with a clear, full or impartial explanation elsewhere:

> *… even if they [judge] got back to me about like, what actually happened, how he done his job, would have been helpful. … I think like the report from the judge of like explaining like the reason and the method and like how he actually came to a conclusion of making his decisions I think would have been really helpful. Like, the bit by bit of like, the point of it, the evidence and then explaining like why he done what he did. I think it would have been helpful to kind of explain to me. Because I didn't really ask [parent/s] too much about it* … (Child/Young Person)

The *'helpfulness'* of judges providing an explanation for their decision was also expressed by a child/victim advocate who had supported a child who had met with a judge to receive feedback. Reflecting on this experience, they said:

If the judge can say 'I have listened to what you told the CCO and this is what I've decided, and this is why', it's so much more helpful to kids, for kids to, even if there is that sort of injustice of it's not what they wanted, they can sort of rationalise it a bit better in their head. (Child/Victim Advocate)

Clearly, in this case the method of communication was appropriate and the impact positive. Some were concerned, however, about the lack of skills of judges to communicate complex decisions to children. One judge expressed this themselves:

There's an element of caution in that if I'm providing a judgement to the adults, then whatever I'm saying to a child can't create any kind of confusion. A judgement speaks for itself, and a judgement should be a final word. And I can see how … there's a certain danger in trying to express, in child friendly language, other than somebody saying, I've made my judgement and I'm just letting you know that I do understand the impact it has on you. (Judiciary)

This is a valid concern given some of the criticisms noted above about children's engagements with CCOs and solicitors, particularly the lack of time and appropriate space to support effective engagement. Added to this, some professionals – particularly judiciary – questioned the aim of providing feedback to children, noting they did not want to open a discussion on a decision that was fait accompli – i.e. they did not want to raise any expectations with children that the decision was up for negotiation. However, children's accounts did not suggest any expectation of this, but instead the desire for clear and impartial explanation of court decisions. Children noted that feedback could help them in understanding why decisions were made, could be in some way therapeutic and help them accept outcomes, if they were not in line with their wishes. Whilst young people did not necessarily want to know everything – and certainly some noted that they only wanted to know a little at this stage – providing a choice and a mechanism for feedback to children, if they desire it, was considered important to let them piece together the aspects they wanted to know more about. As one young person explained, they had been provided with some versions or elements of feedback from family members, but official accounts would help provide a more complete picture: '*I had four out of ten jigsaw pieces. To have two more would have been nice'*. Encouragingly, most of the professions did recognise this as a gap in current practice, and one that required further consideration.

7.6 Conclusion

While prioritising the experiences of children and young people, this chapter draws on a range of first-hand accounts to examine children's participation in family court processes. It demonstrates an expressed commitment to Article 12 (UNCRC) among many professionals. That is, an understanding of the value of engaging with and listening to children when making decisions about their family life. However, age, capacity, concerns for children's welfare, and practices that were not conducive to supporting children and young people to express their views, limited the extent to

which their ‘true voices’ were collected. Importantly, the data demonstrates a disconnect between the claimed practices of professionals in terms of preparation, engagement and enhancing voice and the lived experiences of children and young people. Despite some good practice identified by children, parents, ISWs and CCOs, most children and young people in this research felt their views had not been adequately accessed, nor had they influenced decision making. Analysis of decision-making processes revealed a range of factors that might dilute the influence of children’s views – their age, concerns about their capacity and/or parental pressure/manipulation. While some professionals were concerned about parental influence against contact, some children felt that professionals influenced them towards contact. While the majority of children and young people did not feel listened to, those tasked with collecting and taking account of children’s views, were resolute that they did so. The divergence in accounts may reflect the lack of clear and consistent explanation to children and young people about how decisions are made, and the lack of feedback on why certain outcomes were decided upon. It may also reflect a lack of trust in children’s views and a tendency towards decisions in favour of contact, no matter the child’s wishes.

Chapter 8:
IMPACTS OF FAMILY COURT PROCESSES ON ADULT VICTIMS/SURVIVORS AND CHILDREN

8.1 Introduction

This chapter explores the impacts of family court processes on adult victims/survivors and on children and young people. It is structured in two separate sections: the first focusing on adult victims/survivors, and the second on the impacts on children and young people. This structure reflects that adult DVA victims/survivors and children/young people experience and are affected by DVA and the family courts in different ways, and that each group has distinct needs in its own right, despite the overlap in the shared nature of (at least some of) their experiences. At the same time, parents and their children will have a reciprocal influence on one another, meaning that the impact on one will, at least to some degree, shape the experience of the other. For example, the extent to which a non-abusive, residing parent (victims/survivors of DVA themselves) is able to respond supportively to their children's needs can operate as a protective factor for the child's wellbeing. Conversely, if a parent experiences significant stress or mental ill-health as a result of court processes, their ability to be emotionally or practically available to their children in the ways that they would wish, may be diminished. This overlap/interaction between adult/parent and child impacts is primarily addressed in the paragraphs on the impact on parenting (explored in the adult victim/survivor section) and the impact on family relationships, dynamics and home life (in the children's section).

8.2 The Impacts of Family Court Processes on Adult Victims/Survivors

Adult victim/survivors described a wide range of impacts as a result of their experiences in the family court which was reported by many to have '*taken over their life'* for significant time periods. This section draws primarily on individual interviews and focus groups with adult victims/survivors themselves supplemented with material from interviews/focus groups with child/victim advocates, Court Children's Officers (CCOs) and Independent Social Workers (ISWs).

It should be noted that for many victims/survivors, the impact of the family courts was layered on top of the impact of DVA, which was not explored in detail in this study but is an important backdrop to understand and take into account. For many, the experience of DVA was already reported to have '*changed their lives'* with significant mental health diagnoses and symptoms for some:

> *I've been diagnosed with PTSD… It's [the DVA], it's changed my life… It's definitely changed… I was terrified, I really was… I cry. That's one thing. I cry. My shakes start.* (Victim/Survivor)

Interestingly, a number of female victims/survivors reported how their experiences of family court processes were actually *'worse'* than their DVA experiences:

> *… as much as the relationship was toxic… Court was a thousand times worse.* (Victim/Survivor).

> *So, I think the whole thing has really - the abuse has been awful. It's been horrific... I think he [ex-partner] would have killed me if I would have stayed in that house. But what the family courts put me through and the solicitors and all that, all that experience was worse than any abuse that I ever endured in that house.* (Victim/Survivor)

This gives some indication as to the extent of impact on victims/survivors given the protracted and contested nature of family court proceedings over many weeks and months and even years. While acknowledging the overlapping impact in one area of one's life on other aspects of life and wellbeing, for the sake of clarity this section has grouped primary impacts, based on participant accounts, in the following way: impacts on adult victims/survivors' health and wellbeing; impact on recovery from DVA; impact on parenting and relationships with family and friends; and financial implications. How family court proceedings are experienced as traumatic and secondary victimisation have been explored in Chapter 6.

8.2.1 Parent Health and Wellbeing

Adult victims/survivors spoke at length about the significant and long-term impact on their own health and wellbeing due to the protracted family court processes. During interviews, many described the '*massive'* impact of the stress of the family courts which they reportedly coped with by putting on '*a brave face'*, accompanied by times of great distress:

> *Massive, like, the psychological stress is very difficult. And like, I'm… naturally quite a strong-minded person. I always was able to compartmentalise things from trauma from my own childhood… I don't know how you cope with it… just constantly trying to put on a brave face and then going off into the next room completely breaking down.* (Victim/Survivor)

Efforts '*to hold it all together'* and continue to parent children as well as juggling other commitments and necessities, such as work and finances, were noted by many:

> *… I probably was having a bit of a mental breakdown myself because of all the stress, you know? It has to go somewhere. But, as I was trying to hold myself together, and be a mum and do all the things that you have to do, make money and keep a job, and, and on top of all that you're fighting for your kids, do you know what I mean?* (Victim/Survivor)

Participants spoke of the physical and mental health manifestations of such prolonged periods of acute and chronic stress, including loss of appetite and weight, and turbulent emotions, including anger, emotional distress, hopelessness and

worthlessness. Several spoke of the long-lasting feelings of shame, guilt and humiliation of being involved with the Family Court and Social Services. The immense and ever-present fear of losing their children in the court processes or that the children could be harmed or even killed was reported by many adult victims/survivors as their '*worst nightmare'*. One victim/survivor described the elongated, unpredictable and stressful nature of the family court proceedings as a form of '*slow'* '*torture':*

> *…it [the family court] blows everything in your head, you know? … it's very slow and it's almost like, it's torture. It's actual torture… It made me very angry. Very angry and very emotional…. I couldn't eat properly... I lost a load of weight, just with the stress of it all, with the courts specifically.* (Victim/Survivor)

Some victims/survivors noted the impact of the cycle of court appearances. One spoke of being on '*constant overdrive'* when going through the family courts, while others noted the effect on their blood pressure and fears about having a stroke. One participant described the impact on their sleep with '*nightmares'* before court hearings and heightened states of anxiety and distress at seeing their ex-partner/abuser in the court arena and living with the ongoing fear of violence if judgements did not go in their favour. It should be noted that these were not arbitrary fears, but rather based on their former partner's history of violence:

> *I wouldn't have slept the night before [the family court]. I would have had nightmares... really, really, really anxious. Crying. And just always afraid of what he was going to do. … I still have that fear... But my worst fear is that he'll get a no contact order and then he will go nuts… I know something is going to happen. So, we were in court… he actually attacked his new partner and ended up being arrested. So, I was right that once a no-contact order was submitted… that fear was justified because actually he attacked her then, within a fortnight of family court proceedings finishing. I kind of thought it was going to be me, but… it was her, yeah.* (Victim/Survivor)

One victim/survivor described how she would be left with an '*emotional hangover'* for three days after the family court to the point that she struggled to get out of bed and get on with everyday life. This was then reportedly followed by an intense period of preparation for the next court hearing:

> *… so, there's a court hearing once a month. So, you get out of court and you have almost like an emotional hangover for at least three days afterwards where you can barely, sometimes you can't, like you struggle to get out of bed. Like because you're just so heavy. And then once your three-day hangover ends, you're immediately into the whole, right let's prepare for the next court hearing. So you're just constantly going and going and going up until that court hearing and then after that there's another hangover… you're in a constant cycle. Like I feel like I'm constantly in fight or flight.* (Victim/Survivor)

While the type and level of impact was unique to each participant, the reports of the toll on participants' mental health and energy was a shared experience, expressed by

all. One male victim/survivor spoke of the '*mental exhaustion'* associated with '*constantly documenting*' all communication with his ex-partner, in spite of his uncertainty as to whether it would be '*taken seriously'* in the family court:

> *… it's just mentally exhausting… you're having to constantly document and even though you do that, it feels sometimes as though it's not taken seriously…. at the very beginning it's just so intense because there's so much correspondence back and forth and, you know, your solicitor's doing and sending to the other side and then you're receiving something back and then you're having to respond to that and it's, like I could show you my phone, I don't know how many emails there are just through solicitors from the very beginning. It's just…nonstop. Yeah… Absolutely mentally draining.* (Victim/Survivor)

This state of '*exhaustion'* (mental, physical and indeed financial) was also remarked upon by court professionals, leading to some victims/survivors reportedly '*giving up*'. In victim/survivor accounts, there was a strong sense of the cumulative personal impact of the family court having '*taken its toll'* over extended periods of time. One spoke of how the family court proceedings had '*aged'* her, leaving feelings of '*anger'* and '*bitterness'* at how the judicial system was continuing to fail women:

> *... So honestly… I would say over the last few years, [the court process] has taken its toll on me more than when I was in that house, you know?... I think it's aged me. I think it's aged me, it's, I think it's made me quite bitter and angry. There's a lot, I have a lot of anger, you know, because of it. I'm very, I'm angry against the system… it just makes me so angry that it's not changing. Because I keep reading that these women time and time again, we're all different, we come from different cultures, different countries, but we're all going through the same crap in the family court. They're just, what is, what is it that they're not learning from this? Is it because we're women? Is it patriarchy? I don't know, but there's somebody needs to change it.* (Victim/Survivor)

8.2.2 Impact on Recovery from DVA

The uncertain nature of court proceedings was reported by child/victim advocates to leave women '*on edge'* never knowing what the outcome was going to be. Such uncertainty, coupled with times of acute stress and distress, were reported to detrimentally impact women's recovery from DVA, putting them '*back to square one*', with some struggling with even simple everyday tasks:

> *So it is understandable how a woman can be so frustrated. And even at that moment, when they are so on edge, waiting to see what has been the outcome of the court meeting. So… they can progress on their healing and recovery from the relationship, but then when they hit the court system and they face all these challenges, they can be brought them back to square one… Mum is on edge. She's okay one day, but the next day because all of this, she will be very unwell*

and just not coping with everyday things, like… making dinners and washing. (Child/Victim Advocate)

Other victims/survivors spoke of having to *'bury'* their own trauma in order to put the children first:

… I felt I had my own trauma to deal with but the kids came first and I've sort of buried that to put, you know, to put the kids first…but then, it's a vicious circle… you need to be the best version of yourself for your kids so to deal with all of that is so mentally exhausting. (Victim/Survivor)

Even when the court case was closed, victims/survivors spoke of the fear still '*hanging over*' themselves and their children that '*it could start again'* should their ex-partner lodge another application:

And for the first six months, I just waited for that court letter to drop back through. I still live in fear of getting that family court letter that we'd be back in that situation, do you know?... But yeah, that still hangs over us that that's still a possibility… I suppose it doesn't, the fear of it happening again, having to go back to court doesn't leave. (Victim/Survivor)

8.2.3 Impact on Parenting and Family Relationships

Victims/survivors noted the **'***ripple effect'* of the stress of attending the family court and the uncertainty of contact arrangements on close family and friends, with supportive relationships reported as worn down by the experience:

It's a ripple effect really. It just doesn't go away, and I don't know when, when it does… I think even [my sister] is, because she's been through it with me, you know? And we're very close. And I think she's sick of it as well. (Victim/Survivor)

My mum and dad obviously have watched me and [child's name] suffer. It's breaking them watching us go through it… They can't do anything about it. They're powerless…They're powerless to help… it damages your whole entire unit around you. (Victim/Survivor)

One victim/survivor reported their guilt at endangering '*their whole family'* after moving in with her sister and children to escape their abusive relationship and receiving a death threat from her ex-partner with everyone reportedly '*terrified'*.

… like there was a death threat with me before my first appearance in court… And [the policeman] said basically there's a threat on your life and your sister's life. Just check your cars before you go out and make sure you're aware of your surroundings … Well we were terrified… we were all terrified… I had moved in with my two [children], like I was putting a threat on… their whole family. (Victim/Survivor)

Accessing childcare was reported as an additional source of stress and barrier for victim/survivors attending the family court. Some victims/survivors spoke of relying on

the goodwill of extended family members to look after children or pick them up from school at short notice, not knowing when court proceedings would end:

> *... we could be sitting the whole day. Do you know you go to court nine o'clock in the morning… But you're just waiting for your case to be called. And I don't know why, but ours always seem to be nearly the last one in the afternoon. But then you were hitting panic stations because it was coming up to school collection time. So, then it was, you know, ringing about. I was really lucky that I had extended family who I was able to call upon to go and get them at short notice, but I know so many other people didn't have.* (Victim/Survivor)

Victims/survivors spoke honestly and openly about the impact of the protracted and contentious family court processes on their thinking, wellbeing and capacity for parenting. Many noted their profound isolation in the court arena and the progressive wearing down effect on their wellbeing and the induced negativity which, as one participant put it, doesn't do anything for '*the nurturing side of being a mother'*. Cumulatively this led this mother to the conclusion that the family courts are '*designed to pick on the victim/survivor*' echoing the strong sense of injustice expressed by others:

> *I got to a stage… whenever the courts and all was going on at that time, I remember one day going up and thinking, I nearly felt, here I am sitting here again and his kids, his kids... I nearly got so negative about it all, that the kids weren't worth the hassle. He was causing this, I was left with his kids. Well, they're my kids, not his. You know? But it nearly turned you know my brain into thinking, here I am sitting here for them again. So, it doesn't actually do anything for your nurturing side of being a mother…. [the court process] must be designed to pick on the victim/survivor.* (Victim/Survivor)

Feelings of guilt and regret were also expressed where victims/survivors reflected on the long years of '*just living in limbo'* or almost '*wishing their lives away'* in the hope that things would become easier when the children were older and could decide about contact arrangements themselves:

> *Like I have a lot of guilt, which I know isn't mine to carry, but around how difficult everything was for them [the children] and they were so wee. Do you know, it's their young years, when it should be so carefree… So that was two years of our lives that we felt we were just living in limbo. Do you know?* (Victim/Survivor)

> *Because I've had children with him. So, if you have that link it's hard to, having children with an abuser is, is awful. Because, and I wished their life away because I kept thinking the older they are, the closer they are getting to the stage where they can decide.* (Victim/Survivor)

Many victims/survivors noted how the Family Court experience also affected their ability and confidence in '*being a mum'*. One participant noted how she initially tried to be '*super mum*' when coming out of the abusive relationship, but the scrutiny of the family court left her '*scared'* and '*paranoid'*, fearful that her parenting would be

criticised if she had a glass of wine in front of children or if the children didn't do well at school. This participant recounted how you '*can't be yourself*' and you '*can't be happy'*, with all aspects of '*normal'* life affected:

> *Well, you're very paranoid. You spend your life, you know, you're already, when you come out of a relationship where you've been abused… you're trying to be a good mum, as best, you're trying to be super mum…. I mean… I was scared to even have a glass of wine in front of my children because it was like oh, if they say they seen me having a glass of wine?...Do you know what I mean? But I couldn't live normally, so that affects everything. It affects you being a mum, because you can't be happy if you can't be yourself. So, everything was being affected you know, I was just paranoid all the time. Even at school, you know, with homework and everything… Because the kids don't have good grades at school, is that because you're not a good mum?* (Victim/Survivor)

Feelings of personal '*failure'* seemed to have been exacerbated by court proceedings which left victim/survivors feeling judged and treated with some suspicion despite not having done anything wrong themselves:

> *I always just felt guilty just to even be in the court proceeding. Do you know… that kind of sense of being watched and monitored and everything… the time when [child] broke her arm, we went to the hospital and I remember the girl very apologetically saying to me, 'look, I'm really sorry we have to ask this to everybody, is there any social work involvement?' And me saying 'yes, there is actually' and her… like everything took a little 'ooh', you know, you can nearly see her saying 'I wasn't expecting that'. But I couldn't say… you can't explain yourself. And actually, 'I've not done anything wrong, but it's because of my ex-husband, because of domestic abuse'* (Victim/Survivor)

Other victim/survivors echoed this loss of confidence in their parenting which had been impacted by the constant fear of saying or doing '*the wrong thing*' and '*getting into trouble*' which might lead to accusations of parental alienation in the family court. Some described a tentativeness around their children, unsure what they were allowed to speak of and sometimes even seeking permission from professionals. Such tentativeness meant that there was often a lot unsaid or unspoken between parents and children:

> *… you hear so much of parental alienation, of women being accused of parental alienation… I was always so conscious of, you know, not ever saying anything bad about [ex-partner] to the children or in front of the children, not allowing anybody else to say anything bad in front of them. And trying to reassure them, you know that, 'yes, daddy loves you' … just being afraid of saying or doing the wrong thing… I was afraid of getting into trouble. Do you know?... part of that was a fear that I didn't ever want anybody interviewing them, you know. There's lots of things I would have liked to have said but wouldn't have said because I didn't ever want anybody to come back and say they only think or feel like this because of you.* (Victim/Survivor)

8.2.4 Financial Implications

In 2022 the financial eligibility rules were waived for respondents in family court proceedings under Article 8 of Children (NI) Order 1995 (i.e. proceedings relating to contact, residence, specific issues and prohibited steps orders). The waiver applies when the respondent is a victim/survivor of DVA, and the applicant is their abuser. Some of the experiences recounted in this section relate to experiences prior to the waiver, whilst others are more recent and speak of victims/survivors unable to access the waiver. There is evidence elsewhere of the low numbers of applications by solicitors for the waiver. Concerns have been raised about the low level of awareness among legal professionals of the waiver and the high threshold for those applying for it to evidence they have been a victim/survivor of abuse (CJINI, 2024).

The financial implications for DVA victim/survivors attending the Family Court were spoken of by participants as frequently '*overlooked'* by many legal professionals and other agencies. The financial burden of attending court included not only the legal fees but also the need to take time off work, pay for travel or childcare in order to be present in court or to facilitate contact:

> *They're [the Court] just saying, you know… a day off work to get to a court and then arrive and then it being adjourned or something and then ... Not thinking of the finances of it… the poverty aspect of it… they're not thinking of the cost to the individual of just literally transport, care arrangements, all of that.* (ISW)

Victim/survivors and their advocates spoke of the significant financial implications for women – and sometimes their families – of going through the family court and the worry they faced that they might not be eligible for legal aid. Some women in such circumstances were reported to have incurred '*masses of debt'*. Concern about the financial repercussions of having to go to court were reported to continue even after the case was closed, given the possibility of a new application:

> *… I was terrified of having to, like, the thought of having to go back through [the family court]… I was also lucky because I was getting legal aid, so I didn't have to pay for it. But there was always that fear of not qualifying. Like I couldn't have afforded to have gone to court and done all of that. And I know women that I went to Women's Aid with, who have racked up masses of debts. … I think because I was a single parent working part time at the time my income threshold… I'm now with a new partner and live with him, so I do worry about the fact that if he [ex-partner] takes me to court now, could I afford actually to do that? Do you know, I don't have lots of money just sitting, do you know? So, there is a financial implication to it too. So that is something that I have worried about.* (Victim/Survivor)

One victim/survivor, who was not entitled to legal aid, spoke of the financial burden of attending court, including the cost of solicitor letters, estimating that she had spent

approximately £20,000 on court cases. She reported how she had been fortunate to be able to rely on financial support from her family in order to manage demands:

> *My ex-husband is very, very well off financially. He's left me with nothing. You know I rent private rent, and, so for me to try and fund legal fees is, it's pretty bad. My family have really helped me. Without their support… I wouldn't have been able to pay the solicitor. And you have to pay a lot of it up-front because they're not going to go to court for nothing, it's their job… for that last letter… it's cost me £90 I didn't have. And that letter was just… a reminder basically. It's a reminder which he [ex-partner] will just throw in the bin, to tell him he shouldn't be coming to my home… it was £90 I might as well have thrown out the window. But I had to do it under advice, but she said there was no point in trying to do legal aid with it.* (Victim/Survivor)

Other participants felt that victim/survivors were not always being made aware of their entitlements by their solicitors or supported to apply for legal aid, often incurring '*very large legal bills'* as a result:

> *… we do know that the legal aid waiver in the courts in relation to both non-molestation order and contact proceedings is widely underused and…solicitors are not informing parents of what they are entitled to. So, there's thousands of pounds, you know, being missed… we're saying 'ask your solicitor about the domestic violence waiver.' It's not been brought up from the solicitors.* (Child/Victim Advocate)

> *"… it's an absolute minefield… even solicitors having knowledge of [waiver] and using that. In that last year I had a woman I supported who had tried to apply for legal aid. [She] had been denied legal aid, because she had a little bit of savings before Christmas. And then whenever I came… to support her, [I] provided her with all the information about the waiver. Her solicitor… wouldn't even respond to the emails that she was sending… She ended up paying thousands out privately until maybe four or five months down the line where she pushed it so hard that they did apply for it. She was granted it, as she should have been. But she still has a very large legal bill because they wouldn't apply for it previously.* (Child/Victim Advocate)

For victim/survivors in such situations, there was a strong sense of injustice, with the family courts seen as facilitating DVA perpetrators to continue to financially abuse their ex-partners by applying for small revisions to their contact arrangements:

> *… women [are] being brought back to family court time and time again for really minor adjustments, to cause financial abuse… So, perpetrators will take that woman through court just to cause financial abuse… They will openly admit it, like 'I will rinse you. I will rinse you dry'. (*Child/victim advocate)

8.3 The Impacts of Family Court Processes on Children and Young People

While it is difficult to disentangle the impacts of DVA in the home, contact, and the family court process itself, the following is an account of the issues discussed in direct response to questions about the impacts of family court processes on children and young people. While prioritising the children and young people's data, the views of parents (adult victims/survivors) and various professionals are also reflected in this section. Although there is evident cross-over, the impacts are discussed below under the themes of: lives disrupted and interrupted; friendships and social life; family relationships and home life; education and school life; and, physical and mental health.

8.3.1 Lives Disrupted and Interrupted

Overall, children and young people spoke about changes to their lives that impacted on a sense of stability and routine, and as some would go on to discuss, their physical and mental health (see below). '*Being … disorganised all the time'*, '*waking up in different places*', '*rushing around*' and the '*constant breaking of what's going to happen*' led to confusion, and in one young person's experience, a sense of '*chaos'*. For some, this was felt more long term over what appeared to be lengthy and hostile family court proceedings. For others, it was in the early stages of the process when parents separated, and contact was yet to be formally agreed. Others still, recounted the intrusion happening at particular moments – when a court date was coming up, or changed, or in discussions about contact – and how these interrupted 'normal' routines and activities. In the children and young people's accounts, a picture emerges of the multiple and layered impacts of disruption to everyday life - uncertainty, lack of routine, and parent agitation. In the words of one young person:

> *It's impacted my … free time and being [able to] do nothing almost. You can't, when something like that's happening, you know*? (Child/Young Person)

Adult participants also spoke of the disruption to children and young people's lives, recognising the distress this could bring and the importance of routine and stability for child wellbeing. Child/victim advocates noted the particular impacts of disrupted routines for children with autism, and one young person in our study with ADHD attested to this. Some court processes, child/victim advocates noted, could also last for years with children's lives in an ongoing state of uncertainty and flux - caught between parental disagreements, changes to contact arrangements and having to engage with what could be experienced as '*scary'* or '*random strangers*' (e.g. police, CCOs and/or solicitors). Likewise, victims/survivors and child/victim advocates lamented the disruption to children's lives, recognising that they could be living in a state of '*limbo'* for prolonged periods while the parent they were residing with was '*just about holding on too*' (Victim/Survivor). Some of the children in our study also appeared to experience multiple family court processes, when arrangements broke

down and what may have felt like a period of relative stability and new routine, was once again disrupted.

8.3.2 Friendships, Free Time and Social Life

Children and young people, much more so than the adult participants, spoke about the impacts of family court processes on friendships and social life. The relative absence of this in adult discussions points to a blind spot in their understanding of what is important and meaningful for children and young people and is a reminder of the need to engage directly with them in examining impacts, needs and responses.

Several young people spoke of the specific impacts on friendships, social life and free time. As routines were disrupted, so too were friendship networks and leisure activities. Some friendships were broken or weakened as children moved to new locations or felt disconnected from existing friends, unable to share their experiences for fear of being judged or because their experiences had led them to mature in a way their friends had not. Reminiscent of premature/forced maturity, one young person explained how they had lost the '*glassy, happy kid filter'* which many of their friends still had:

> *… you start to feel a bit ostracised from kids your age. Because I know back then I just stopped caring about relationships with like my school mates. … because I gained a lot of emotional maturity so fast, I started seeing how they're not actually really friends with me. Like how I'm treated different…. I don't know how to explain it, but you sort of realise at that age that a lot of things are different than how you actually thought. That glassy, happy kid filter, it's like, no way, you're in the adult world*. (Child/Young Person)

On the other hand, new friendships were formed or forced, built around the resident parent's support networks or commonality of experience. One young person recollected the lack of choice they had, encapsulating the feeling that adults do not understand what friendship means to young people, and that it is not simply based on commonality of age:

> *… I remember being like, taken away from my friends. Like I'd have really random friendships. I'd just be told, 'you're now friends with such and such. Oh, I trust their mum [for you] to be at their house' … There was one boy .... It was just, it was convenient. My mum trusted his mum. … Yeah, 'a kid around the age, okay brilliant. They're your friends'.* (Child/Young Person)

For others, and often on the basis of disconnection from existing friends, new friendships were formed. Described as '*trauma bonding'* (Child/Young Person), this entailed finding young people whom they could connect with, whose parents were also divorcing/separated or who had also experienced violence in their home.

New contact arrangements, concerns for children's safety at particular points in time, and a lack of ability to engage socially due to the stress of the process (see below), all impacted on the leisure routines and opportunities of young people. Free time was

squeezed out to make space for time with both parents separately. Unable to continue with existing activities or to take up new opportunities, particularly at weekends, was often impacted by contact arrangements. The following accounts from children/young people and child/victim advocates are illustrative:

> *... if children are being invited to birthday parties and maybe it's Dad's contact weekend they're being told 'no, I'm not taking you to that … you do that it on your time, not on my time. So, children are being prevented to go to social occasions.* (Child/Victim Advocate)

> *… that's like a big thing I've just realised. Free leisure time. So [day/time] I have to call my dad. So, I can't do like anything … for school I really wanted to do [sport] … But he wouldn't let me do [sport] because it was on a Saturday and he wasn't going to drive me up.* (Child/Young Person)

Further discussion of the impacts of contact arrangements on children from their own perspective, adult victims/survivors and child advocates are discussed in Chapter 10.

More broadly, young people described how issues related to, or consequences of, court processes could interrupt their lives at any time. These could intrude into their social lives, changing the mood, pulling young people back to the difficult realities of their family lives:

> *It's like, if we are with our mates and we get a message saying like, 'oh sorry love, court cancelled this month'. Just starts spatting on about solicitors and all, like, that'll just put down our mood. Like, we don't want to hear about that. We're [references young ages].* (Child/Young Person)

8.3.3 Education and School Life

Evident of the upset to children's routines, all participants spoke of the impact on school life. School moves due to relocation, changes to routine due to contact arrangements (e.g. not being able to attend homework club or after-school activities) and the stress of the court process impacting children's ability to concentrate or desire to attend school, were well understood by adult victims/survivors. Several parents and child advocates spoke of school avoidance/refusal and children's accounts shed light on some of the feelings and emotions which may lead to this.

For children and young people, the main impacts discussed were in relation to difficulty in concentrating - in class, to complete school/homework or to undertake exams. While a specific issue related to the court process could interrupt a 'normal' school day (a visit by a social worker, change to contact arrangements, a text from a parent), several young people described it as ever present and '*hard to shut out'*, thus making it difficult to fully engage with learning over a sustained period:

> *… in second year when it started to get like bad, like hearing about it all the time. 24/7. Blah, blah. … It was like, in class I couldn't like … focus on work, because … first thing in the morning, getting a message from my dad saying like about*

court and all, that would affect me through my whole day. Or like, just thinking about it in general (Child/Young Person)

The situation was so difficult for another young person that they were unable to engage with school at all. At times when they did attend, and there were threats from their father, they were taken out of school or school became an unnatural environment, one of almost total surveillance. The change of routine at home, in social life and at school had led to a form of disorientation for this young person where they described '*having no concept of time'*.

As might be expected then, some young people spoke of the negative impact on their performance in school/exams:

… that lack of understanding and the chaos that the whole process brings with it can then have an impact on you mentally. Which then means you're not going to like perform as well in school. (Child/Young Person)

It is noteworthy, however, that in discussing the impacts on their education, a number of young people, and parents (victims/survivors) spoke of the understanding and support provided by schools. For children, this included: not being forced to attend; putting additional safeguards in place within the school; being referred to the school counsellor; or being provided with daily respite in a sensory room. Child advocates also noted that during family court processes the residing parent often reached out to school counselling support for the child/ren. While provided on some occasions, waiting lists and staff shortages mean that all children cannot of avail of this service in school. One parent explained their experience as follows:

[My child] have very severe anxiety throughout it [the family court process] … The school were phenomenal. They were very good with him. Now I'm saying it as a school, it was actually the individual teacher. Because when I went to look for counselling from them, from the school, it wasn't available. (Victim/Survivor)

Indeed, there is no requirement for schools to be aware when children are involved in private law family court processes. Support may not, therefore be made available, and teachers may not understand the context of children's behaviours - '*the impact of … trauma and stuff going on. And how it affects their [children's] learning [and] them achieving their learning potential*' (Child/Victim Advocate).

8.3.4 Family Relationships, Dynamics and Home Life

Unsurprisingly, many participants spoke about the impact of family court processes on family and home life, and on child-parent relationships. As a young person reminded us, the home '*interlocks with all of it … family … is where it's happening really'*. Two themes emerged in the data, one of heightened care, compassion and concern for parents/a parent and/or siblings, and the other of difficult or diminished relationships. Both speak to the ways in which the strain and hostility of court processes (preparation

for cases, collection of information, discussions about contact etc.) can engulf family life, even when parents attempt to shield children from the experience. As outlined previously, some children spoke of not being fully informed or of feeling '*lied to*'. While the intentions of parents may have been genuine, the outcome could be a lack of trust, confusion and anxiety for children.

Several children spoke of recognising that throughout the process the parent they resided with (usually the mother) '*wasn't [their] usual self'*, they were regularly '*upset'* or '*stressed out*'. Seeing the pain and strain of the process on their mother, one young person explained: '*I felt really bad for her all the time*'. Some victims/survivors were acutely aware of this, noting (often with regret) the impacts of their fear or stress on their children's wellbeing, and on their parenting e.g. being over-protective. The following extracts exemplify both the transference of pain/stress, and the guilt some parents carry because of this:

> *Well my kids were very clingy to me because of the abuse, but whenever it got to family courts, it affected all of us in so many ways. Because they were very clingy. I was very stressed out. [They] didn't want to leave me. … If I was worried about anything, they just felt it. They've always felt it, … the kids really, really suffer. Because of the stress.* (Victim/Survivor)

> *My son was aware I was going to court, and… I have noticed his behaviours, he was obviously picking up on my fear, trying to keep it together in the house, but I'm only human too.* (Victim/Survivor)

Some children and young people carried the additional burden of witnessing the impacts on younger siblings who did not fully understand the process, and whom they tried to give additional care to. These children, however, tended to describe how despite the difficulties, after the court process was complete and things were more settled, they felt closer to that parent or sibling.

For others, the home they resided in and the relationship with one or both parents, was strained or '*really tense*'. These young people tended to attribute this to parents saying negative things about each other, children being given contradictory information by each parent and feeling they were being asked to take sides. The impact was confusion, a lack of trust in one or both parents and in some cases, tension between the child and parent/s. For the young person in the following extract, the situation at home/ between parents impacted every area of their lives. They describe a complete reversal of previous parent-child relationships:

> *… there was stuff being said really to try and demean the other side, really. Which can get really confusing, really. Because you're being told two different things. And for a young child, it can be really difficult because your parents would be the people you would trust most often, like. But then they're being turned almost upside down then with all that.* (Child/Young Person)

Another, who also described the experience as all-consuming, likened themselves to '*a rope in a tug of war'*:

Like the routine. Just listening to my parents yap on and on and on about how much they hate each other even though they apparently have never said they hate each other but still call each other names. (Child/Young Person)

Describing the impact, this young person said '…*it's almost become like a weighted blanket'* they have simply gotten used to carrying.

Some children (see below) and a number of adult participants also spoke of non-resident parents manipulating or putting emotional pressure on children to influence contact decisions. Adult victims/survivors and child/victim advocates gave multiple examples of efforts to damage the relationship between the child and the resident parent:

… the first letter that he sent to them from when he was in prison … he would have, you know, said things that was only for my benefit. There was things that weren't relevant to the children to know. How sorry he was and how much he regretted and how much he missed mummy. And he hoped that one day we could be a family again. (Victim/Survivor)

… she [mum] wouldn't have just brought them out places without saying, you know, making a big deal out of that. You know, 'daddy can't even be bothered to be here. You know, she was turning them against me. … the impact on them I remember from the start was that 'sure you don't take us anywhere. You don't do anything with us' (Victim/Survivor)

[child's] wee mind was tormented listening to his constant, 'I've got such and such a bill and it's alright for your mum, she doesn't have to pay ...' (Victim/Survivor)

Similar to the last example above, and suggesting these are techniques used in many abusive relationships, a young person in their interview provided many examples of what their father (non-resident parent) had told them about their mother (how she was taking them to court unnecessarily, the impact of court costs, the 'real' reason for the break-up). It was evident from their account that this, at least in part, was influencing their view of, and relationship with, their mother.

These, and other issues, could lead to strained or volatile relationships between children and the residing parent. A number of adult victims/survivors and child advocates for instance, spoke of how the stress of meetings with CCOs, discussions about contact arrangements, and/or contact decisions could manifest in aggression (see Chapter 10). The resident parent was also often at the receiving end of the outworkings of upset and trauma when the court decision was different to what the children had wanted. With decisions usually being communicated by the resident parent (typically the mother), they were associated with influencing the decision or not supporting the child (see also Chapter 7):

… the child almost is blaming mum. You know, blaming Mum … because it's not the court standing there at the front door with a screaming child who's refusing to go. It's mum, and mum's forcing a child to get in the car and begging and pleading

and you know it causes friction and resentment in that relationship. (Child/Victim Advocate)

Finally, trust and close bonds between siblings could also be damaged. Child/victim advocates spoke of the difficulties when siblings within a family had different experiences of DVA and thus wanted different contact arrangements. Not only could this cause friction between siblings but a sense of total alienation for the child who did not want contact as:

> *… often what you'll find is, if one sibling goes to contact and the other sibling doesn't, then the sibling that goes will get absolutely bombarded. Presents, sweets, all the rest of it. And then the sibling who doesn't go will get punished and they'll not get anything.* (Child/Victim Advocate)

Linked to this were situations in which one sibling pressurised another in relation to contact or residency arrangements. Speaking of one such instance, a child/victim advocate explained the impact was that the child was pulled in '*three directions as opposed to two*'. They also described tensions between siblings as a consequence of one sibling being manipulated, treated as the '*favourite child'* in order to '*get one as their ally and to try to, just be horrible to mum or try to just get information of what the woman is doing'*. Such experiences were supported in children and young people's accounts. One young person, for instance, described a parent pitting themselves and their sibling against each other in a custody battle. Another explained how their sibling was manipulated by their father to pass on information about them and the parent they resided with – '*he was plotting us against each other, and we didn't realise that until after*'. Sibling relationships could, therefore, be fraught under the strain of family court processes. In other cases, they were lost or diminished, especially if siblings were separated, or as was the case with one young person, older siblings moved out of the family home leading to reduced contact.

8.3.5 Child Health and Wellbeing

Almost all children and young people identified their health and wellbeing as being negatively affected by family court processes. This was also a major theme in discussions with victims/survivors and child/victim advocates. In discussions with children, the sense of confusion and not fully understanding what was happening was again vocalised. This, alongside the impact of disruptions to routines, parental stress and/or disagreement, provisional contact arrangements, and the sporadic intrusion of issues related to the court process, all affected children's sense of wellbeing. As noted above, some of those who supported children over lengthy periods spoke to the distress experienced as a result of court processes that '*dragged on'* and a lack of long-term agreement among parents. A child/victim advocate spoke of the following case as illustrative of those that were lengthy or appeared resolved, only for parents to return to court, and of the impact on children:

He [young person] was getting moved to be from one house to another house. … it only got settled there I think a month ago. … that's just over a year since he finished with me. And he had been seeing me for six months. So he … would have said so many times and nearly every session: 'Why can't it just not get sorted? Why can't it not just get sorted? Why can they just not agree?' … They [children] are sitting there, you know, worrying about the court date. 'What will happen? What will the judge decide?' … that has dragged on for two or three years, his routine was changed endless times in six months. Back and forward, back and forward. (Child/Victim Advocate)

Mental-ill health, particularly anxiety and low mood, was a major focus of discussion with the sense of mental distress palpable in some young people descriptions:

> *Like I was stressed. Like, I don't know how to process it. Then I just couldn't understand everything, didn't know what it all meant, and it was just corrupting my head.* (Child/Young Person)

Some children, as well as adult participants, attributed this to a combination of factors:

> *… I feel like when I was really young, I got anxious and it's not really normal. Just with like the solicitors and social workers and stuff like talking to me and then conflict between my mum and dad.* (Child/Young Person)

Adults also reflected on the anxiety children experience when faced with unknown professionals in their lives – e.g. CCOs, solicitors, counsellors, police - especially as there is little preparation and support for this (see Chapter 7). Speaking of a recent experience with a child they support, a child/victim advocate told us:

> *I was out with a family … and the child was going for an interview with a CCO that day, and she was terrified. Terrified. She had no idea what, why she was going in the first place. … she was only nine. She had very little understanding of why she was going, whenever she had very clearly said to everybody that would listen to her, that she didn't want any contact with her daddy*. (Child/Victim Advocate)

Similarly, a parent detailed the distress experienced by their child who did not want contact with their non-resident parent but who felt forced to meet with the CCO to discuss residency and contact arrangements. While they understood this was necessary in order to respond to the other parents' desires, they felt there was a lack of understanding of the impacts on children. Child/victim advocates spoke of how such experiences could be '*retraumatising'*. As detailed in Chapter 7, however, it is not necessarily meeting/engagement with a CCO in itself they found harmful, but the lack of child-focused and needs led approach.

The lack of support after these difficult meetings for the children, and for the residing parent in supporting the child, was a major issue. As '*there's no decompression after*' (Victim/Survivor), the anxiety such meetings could induce can manifest in anger, upset or mistrust towards the resident parent. Negative experiences with professionals at this time could also have longer term impacts such as willingness to engage with

professionals in the future, including those who may be able to support their mental wellbeing.

Children also spoke of how specific events, like a text message or phone call could change their mood leading to stress, an inability to sleep, or even engage in 'normal' activities. The following is illustrative:

> *I for some reason was up at half five and just checked my phone. Saw a random voicemail [from father]. Listened to it. Didn't sleep. Went to my brother's before [an outing] in an awful mood. … it didn't ruin the weekend, but it didn't help at all. … we were out for dinner with my sister, and she got a call [from father] and answered it. … I couldn't eat. I couldn't have a normal conversation with my siblings*. (Child/Young Person)

While some parents attempted to keep details about court dates and processes from children, others, it appeared, used these as an excuse to make contact, garner sympathy or to blame the other parent. Speaking of their children, an adult victim/survivor told us:

> *… They hate the word lawyer. … And [their father is] constantly on about lawyers. And they have both individually told him that they don't want to talk about lawyers, but he continues to do so. …… I done my best to keep court away from them. It impacted them listening to [father] going on about court. And on about lawyers*. (Victim/Survivor)

Children and young people also spoke of the anxiety caused by the weight of making decisions about contact arrangements – feeling these were final, feeling a sense of obligation to both parents and/or feeling torn by the love and fear of a parent who is abusive. One father (victim/survivor), for instance, noted their concern that their child was saying they '*hated'* the other parent, and again spoke of the lack of support as families went through the family court process:

> *I'm worried in case she's trying to, is it that she genuinely hates her [mum] or is she trying to people please me kind of thing. So, it's trying to get your head around that, you know, it's hard to deal with kids that way. But there's no support*. (Victim/Survivor)

Similar to the young person above who described feeling pulled in different directions, child/victim advocates conceptualised the emotional struggles that some children shared with them as '*loyalty conflict'*. This referred to not wanting to hurt or let down either parent, holding secrets to protect a parent and/or agreeing to things they did not really want, such as contact with an abusive parent. Decisions that the child felt responsible for could lead to guilt, and those they had little say in (e.g. safeguarding) could lead to self-blame, thus demonstrating how in almost all scenarios, the child's wellbeing is negatively impacted:

> *… then we get the blame and the guilt and the shame. … when it gets more toxic, you know, guilt turns to shame. It's turned inwardly on them*. (Child/Victim Advocate)

For one young person, discussions about contact led to them '*re-thinking everything over again. Because like my mum was like, "do you want to see your dad?", [and it] kind of just brought everything back up'*.

Interestingly, a number of young people spoke of and recognised the physical manifestations of heightened anxiety that many adult participants also discussed – loss of appetite, weight loss, not sleeping, fatigue and on occasions physically vomiting. The disruption of routine for a young person with ADHD was particularly disorientating, leading to emotional breakdowns and vomiting. A further two young people providing accounts akin to their bodies shutting down. The following extract captures the mental and physical toil on one young person:

> *… I remember like being really sick all the time and I would always have a cold or something or I couldn't walk because I was so exhausted. I was really mentally exhausted all the time. I could never, I would stutter a lot. I could never, like, think straight. … I lost my appetite, like I wouldn't eat for a while. … there was … a year, during, when they were in court. Because everything was so dispersed. I like didn't eat. I couldn't. … it wasn't like I was like in bed all the time sick, but I was just so exhausted from everything. I was like, I was confused. I was being told different things. I wasn't being told anything. I was being moved round. … I couldn't keep any kind of structure so then my health was like declined a lot.* (Child/Young Person)

Adult participants discussed a range of other behavioural changes and impacts. In addition to some of the emotional impacts noted above by children themselves, some adult victims/survivors spoke of their children experiencing outbursts or '*explosions'* of violence or aggression towards others, or violence towards themselves in the form of self-harm. Mood changes following meetings with professionals, sleep disturbance and nightmares were also identified by adult participants as some of the impacts of court processes on children. A child/victim advocate expressed their frustration at the lack of understanding of these as trauma responses which could have longer term consequences:

> *… there's this phrase of like, 'oh they're not old enough to know. And I think even … when kids are seven, eleven, they're old enough to know. And I just want that gone from like family court. Children's court stuff. Because I just think it is so not getting how much trauma even in pre-verbal children, will change their brains and the rest of their lives if ignored.* (Child/Victim Advocate)

A similar point was also made by a young person who noted that children develop differently, with some developing emotional maturity early as a result of their experiences. Their words are a reminder for professionals not to make assumptions about understanding, capacity and impact on the basis of age:

Because younger kids still talk with that little funny kids' accent … no one would expect them to understand like proper emotions … It's like maybe, the kid's going to learn maybe I shouldn't talk about that properly in how I know and how I feel. It's like you got to be careful because you don't know what age kids start remembering and stop forgetting. (Child/Young Person)

8.4 Conclusion

This chapter lays bare the multiple and layered impacts of engaging in family court processes for adult victims/survivors and children/young people. While it is not possible, or useful, to disaggregate and compartmentalise the specific impacts of courts from those of DVA, the data demonstrates the extent of impact on victims/survivors and their children. It is clear that the protracted and contested nature of family court proceedings takes a significant toll on the physical and mental health and wellbeing of the resident parent/victim/survivor and each child in unique and intertwined ways. Everyday lives – routines, school, work, friendships, free time, social life, available finances - are interrupted and disrupted, placing an inevitable strain on individual lives and wellbeing, as well as home life, parenting, sibling relationships and extended family dynamics.

Parents and children must adapt to new and shifting circumstances, both separately and in interconnected ways, with substantial stress reported. Parents (victims/survivors) describe a loss of confidence in their parenting, fearful of being negatively judged or accused of alienation in court. Children are also fearful about repercussions following their contact with court professionals and the potential impact on decision-making and must find ways to manage the ongoing uncertainty and unpredictability of contact with their non-resident parent. Such complexity means that often much goes unsaid between resident parents and children, with recovery from the impact of prior DVA stalled as they navigate – albeit differently – the family court and the outcome of any of its decisions.

Chapter 9:
EXPERIENCES OF POST-SEPARATION CONTACT

9.1 Introduction

Participants – legal professionals, judiciary, CCOs and child/victim advocates – noted that some level of contact was usually granted by the courts and it was *'very rare'* that courts would give a no contact ruling, even in cases where there is a history of DVA. As discussed in Chapter 5, this was often due to a recognition of the benefits to children of maintaining a relationship with both parents, weighed against an assessment of the potential risks posed to children. This chapter presents the several concerns raised by children, parents and professionals about different forms of contact arrangements. The chapter describes the impacts that forms of contact can have both on victims/survivors - who are primarily responsible for facilitating contact – and children and young people who experience multiple and varied forms of contact. Participants often described phased stages of contact and professionals, typically, emphasised safeguards put in place, such as forms of indirect contact and supervised contact, to protect victims/survivors and children from potential harm. Experiences demonstrate, however, that all forms of contact, whether direct or indirect, can have harmful, lasting impacts on both children and their resident parent. The analysis thus raises questions about an assumption of contact (in practice), particularly when we also consider the motivations for seeking contact and the lack of repercussions when contact arrangements are breached or parents disengage from the relationship with their child.

The chapter identifies the multiple and varied impacts of contact on children and young people before discussing the lack of repercussions for perpetrators who breach contact arrangements or who eventually disengage from the relationship with their child.

9.2 Phased Contact Arrangements

Several participants – including some victims/survivors and children/young people – supported some form of contact or recognised that the court ruling in favour of contact was inevitable. One child/victim advocate explained that most mothers they worked with tended to support some degree of relationship between the child and non-resident parent:

> *…my experience in here would be that most women want their children to see their father, regardless of all the other stuff that goes on. So that would be quite unusual for, you know, when you hear, 'oh she's hostile or aggressive or obstructive. Holding things back'...but generally speaking women want their children to maintain a relationship with their father. They don't necessarily want to see them.* (Child/Victim Advocate)

Support for contact, however, came with some caveats in that it should be phased, be in line with the child's wishes, the child would be kept safe, and that the victim/survivor did not have to have direct contact themselves with the perpetrator. In most cases, participants spoke of contact arrangements which built up gradually, perhaps starting with some forms of indirect contact – through letter communication, emails, video calls – followed by gradual in-person contact starting with supervised visits in a contact centre building up to unsupervised (including overnight) visits at the perpetrator's home. Such arrangements were put in place as a means of safeguarding children where risk assessments had raised potential concerns related to, for example, a perpetrator's substance use, mental health diagnoses or anger management concerns. One legal professional described the gradual process:

> *And that is to ensure that the appropriate safeguards are in place and that can be by a court children's officer observing contact and supervising contact. Potentially moving on to contact centre where there are eyes and ears, but perhaps not fully supervised. And also, the use of extended family members as well, as potential supervisors of contact. And that in my experience, you know, is taken slowly to make sure that there is assessment at each stage of 'what is the level of risk?'* (Legal Professional)

A number of professionals noted the importance of taking time to prepare children for contact and that it should not be something that happens immediately subsequent to the court ruling. Some children and young people, however, impacted by the memories of witnessing and experiencing abuse at home and the effects on them and their family, were adamant that they did not want contact and felt *'forced'* into such arrangements. One young person explained that whilst contact arrangements had started with limited hours on alternate weekends, they felt this escalated rapidly, against their wishes:

> *And I didn't really want to go see my dad, because I always remembered why they split up. And I just didn't want to see him. And then the first thing that came out of the courts was that we were seeing him in a contact centre. So it was only for, I don't know, a couple of hours every Saturday or every other Saturday or something. … and they said about, like us going to stay with our dad for the weekend. And I said I didn't want to, and then he was just like, the solicitor, he kept like just trying to kinda get me to say yes to something. You know, like we were just meant to have one night instead of a whole weekend or just a couple of hours during the day. And just, not really listening to what I was saying.* (Child/Young Person)

Even though contact centres were viewed by some as an appropriate means of implementing gradual contact and safeguarding children whilst assessments of risk continued, a lack of resources meant that suitable third parties were not always available for supervision, or contact was only supervised for short periods. In some instances, participants described when family members could be asked to act as the third party. Some professionals noted, however, that this may not be appropriate where they cannot assess any risks that might be posed to the child:

> *But if it's going to be supervised it's got to be supervised by somebody who's properly trained to pick up the risk and the nuances of language with the child.* (ISW)

Additionally, victims/survivors raised concerns in relation to the risk posed to their safety, or that of their family members, where they had been requested to supervise contact:

> *… at one point they had got me to agree to his parents supervising contact. They had asked if I would supervise at one point and I said no because I'm terrified of him and I don't think I would be safe. And then they had asked about like one of my family … But he had been tormenting my mum…He'd been set and parked outside my mum's house. You know, there has been a lot directed to my family, so it wouldn't have been, I don't believe they'd have been safe. And also it needed someone who was going to be able to stand up to him in the event that he did decide to try and take off with them.* (Victim/Survivor)

Contact centres were also viewed by some as an unnatural environment for relationships to develop. Child advocates noted that children often did not like the feeling of surveillance, even if it was their parent who was being monitored:

> *Contact centres are not conducive to helping relationships improve. And then sometimes it's supervised contact, so you have some stranger standing there watching, say, the mum and the child together. You know, it's not a natural environment. So, then you find sometimes that a lot of the children don't want to go to the contact centre… they want to see their parent but they don't enjoy the contact centre. They don't enjoy somebody standing over watching and listening to what they're saying, you know, which you can understand.* (Child/Victim Advocate)

Such experiences point towards a need to continue consultation with children beyond the point of deciding on contact more generally and engaging them in discussions about how they would like contact to happen in terms of frequency, place and level of contact. One ISW noted, for example, that the safety of the contact centre should not be assumed by the mere presence of a third party and that a more detailed exploration of their views should take place:

> *There has to be an assessment before that can happen. There has to be an assessment of the child's experience, what they've experienced with that parent. Do they feel safe? Do they not? What else is going on internally for that child? Because often that's the go to, it'll be agreed in court, sure we'll get that agreement. And it goes on. The child is safe because physically there's someone else there. That does not lend itself at all to have insight into what's going on for the child. And also the child feeling there are people…How's this stranger going to protect me if something's going to happen, you know.* (ISW)

Further, child/victim advocates suggested that regular check-ins with children to gauge whether wishes and feelings had altered during contact experiences, or whether

children are happy to transition to contact out of the contact centre. In a similar vein, one member of the judiciary highlighted the importance of the continued engagement with children's views, but also noted the resource implications:

> *I would like somebody to speak with that child and ask them what would make them feel comfortable in having contact. ... I mean the strange thing is that as a society we pay a lot of lip service to the children's voice until we don't, until we hear something we don't want to hear. Or we think, you can stop talking now child. And then suddenly the child's, the value of the child's wish to see the parent is diluted. … And in truth, if we'd more social workers you know across the piece, if we'd more social workers who were available to do, you know, the transitional work, it would make a difference. But we just don't have them.* (Judiciary)

9.2.1 Experiences of Indirect Contact

Several participants referenced indirect contact arrangements where initial moves towards contact with the non-resident parent avoided direct engagement – through letters, emails, sending of presents – or remote engagement – through video calls. Indirect contact was viewed positively by some in terms of providing children with an element of control, allowing them to accept the communication once received, discard it or save engaging with it until they felt ready. In relation to contact via online calls, CCOs explained that various options would be provided to children in terms of having control of the device, being able to turn the volume up or down and being able to remove their image or their parent's image from screen. This offered children some control on the terms of engagement:

> *You know, so you're trying to say, 'look', in a very disempowering situation, 'you're protected. You can decide how much or how little, you know that you want'. So, it's not one-size-fits-all at all.* (CCO)

At least, several professionals noted, where a child did not wish to engage with forms of indirect contact at that time, it was a means of letting them know that their non-resident parent was thinking of them, something which might have been helpful for them in later years.

There were, however, several issues and concerns highlighted by all groups of participants in relation to indirect contact. Members of the judiciary recognised, for example, that whilst indirect contact may be the only way to safely facilitate a relationship between parent and child, the receipt of letters and emails could be triggering for the child or resident parent. One member of the judiciary described a common practice to allow some forms of indirect communication at significant points in the calendar such as birthdays and at Christmas. At the same time, such events could trigger traumatic memories of violence and abuse in the home:

> *But a very infrequent, indirect contact may be centred around three monthly or in an individual case it could be around birthdays or Christmas. Though sometimes you have to be careful with that, because you know, those can actually be*

triggering events for a child or for a parent. So you have to be careful about picking those. But something that's given at that level, maybe with a card, or a short letter. Content has to be monitored. You can't just produce this, but you have to make sure that what's being said is appropriate. Sometimes children are not ready for an indirect contact, so that indirect contact could be to receive it and put it in a memory box so that the child can look at that at a later stage and know that the absent parent was there and wanted to be part of their lives. (Judiciary)

Echoing some of the concerns expressed here, one young person questioned content they received in a birthday card from their father which contained '*adult humour… that's not appropriate*'. Another young person noted that they felt *'pressured'* to agree to letter communication from their father and described becoming uncomfortable as the focus of the letters turned to other members of the family:

… he would ask me one question about 'how was rugby?', and then it would be his dogs or his car or then mum … Or my other brother or my sister or even my granny. And I wasn't comfortable with that, and I said that to the Children's Court Officer. And he was like, if letters aren't really suiting, we could maybe try Facetime. And I'm like, which felt like a step up rather than what I wanted, a step down. And I was like, 'no, really I don't want that'. And then in the end I think by the third meeting (with the CCO), I stopped all contact with him. (Child/Young Person)

The impacts of forced engagement with indirect contact could be significant, with professionals describing children '*in a spiral'* after receiving forms of unwanted communication, potentially leading to complete disengagement, as recounted by the young person above. Some explained that the content of letters and emails was, in fact, not directed at children and was rather for the benefit of their resident parent. Indeed, in many circumstances indirect contact provided opportunities for perpetrators to open up a channel of communication with victims, where their assistance was required to engage with the child. Several professionals explained, for example, that young children and those with learning needs would require assistance in reading communication whilst many children will not have access to devices to receive video calls. In these cases, resident parents had to arrange voice calls and read various forms of communication. Child/victim advocates explained how this could facilitate abuse and control, even where non-molestation orders had been put in place. One victim/survivor described the stressful impact of knowing that the perpetrator was *'always there'*:

Really, really stressful. Because like my solicitor was saying to me, 'don't worry, the worst scenario is this'. But you're still like, at that time I was high, you know, with stress and on high alert with him as well. You know, because I was, even though I had been out of the relationship for so long, he was still always there. He was still through my son, you know, messages and stuff and threatening messages. (Victim/Survivor)

Children and young people were also aware of how their resident parent could be brought into contact with their abuser, some noting how non-resident parents could also push the boundaries of what the court ruling had provided for. One young person, for example, explained how email contact with their father, facilitated via their mother's email, opened up a line of communication that was used inappropriately, with excessive emails being sent by their father:

> *Yeah, so I now get two emails a year and my mum sends them to my dad about my wellbeing, and I think like my interests or something like that. … he's allowed to send two back like confirming he's got them or something like that. Or what he's been up to. … I think my mum's had fifteen or twenty or emails and … she sent one like the one mandatory one. … Yeah. And now it's like, can I say to the Court Children's Officer, I don't want anything? And if, because I know whenever she gets that email, she's not right for a week. Which is what he wants. So how, I just want my mum to be okay so how can I stop this?* (Child/Young Person)

Resident parents also spoke of requests from non-resident parents to receive videos of their children reading letters or receiving presents – and receiving abuse when videos were not of a desired standard. They were also careful of *how* they communicated with the non-resident parents, with one male victim/survivor noting he took a *'business-like'* tone, aware that anything he said could be used as evidence in court. Some victims/survivors also described breaches of contact orders where perpetrators decided to deliver letters and presents by hand, disregarding the 'indirect' nature of contact provided for in the court ruling. Such practice has required victims/survivors to take responsibility for their own safety where the potential threat has not been formally acknowledged:

> *It was indirect contact, so it was letters at Christmas and birthdays, a small present. But he ignores that, and he comes to my home and delivers them by hand. Now thankfully the children have never answered the door, or, but that's a constant, so quite recently I've had to get a, I can't get a non-molestation, because he doesn't live here. So, because he's not always here, so he's not a direct threat to me, but when he comes and I, I got a Ring doorbell camera, so I've seen him on it. Then I contact the police, and I contact my solicitor.* (Victim/Survivor)

9.3 Onus of Contact Arrangements Lying with Victim/Survivor

Like indirect contact arrangements, where direct contact arrangements were ordered –supervised in contact centres or public settings and non-supervised in the perpetrator's home – the onus of facilitating contact and bringing the child to the point of handover often lies with the victim. This could be a particularly challenging and stressful task for parents whose children were reluctant to attend contact. Several participants spoke of strategies to try to convince children to attend contact, including having to *'bribe'* children with sweets and presents to go to see their non-resident

parent. One victim/survivor recounted that whilst she was not in support of contact, she adopted several attempts to encourage her daughter to attend:

> *… I am saying 'your daddy brings you nice presents' like 'he brings stuff up to you whenever you're down there'. 'You play with play dough'. Like I am, it goes against every fibre of my being to promote this, but I am doing everything in my power to encourage her to go. And she's not wanting to go. I am telling her I'll buy her this, I'll do this, I'll get her this. And nothing.* (Victim/Survivor)

Indeed, children could express their wishes quite clearly, often through attempts to physically challenge those who were attempting to facilitate contact. One male victim/survivor described having to physically *'peel'* his daughter from his body for her to attend contact with her mother. In such cases, the resident parent may be resented or blamed by their children for bringing them somewhere they feel is unsafe. Participants noted that anger was typically directed at the resident parent and that getting them to attend could ultimately have longer-term impacts on the parent-child relationship:

> *… so, me saying to her you know, got to go, you've got to go to contact. And like she was getting to the point of then taking her anger out on me. Hitting me, kicking me, screaming saying she hates me ... she's looking at me crying out to me. Like 'mummy are you, like is there something wrong? Like you know what has happened. … my mummy, who knows these things that have happened to me, is telling me that I have to go and I'm saying I don't want to go'. You know. That was very, very, very confusing for her.* (Victim/Survivor)

Such experiences at handover were particularly stressful as resident parents were acutely aware of potential repercussions if it was perceived they were not putting in sufficient effort to facilitate contact between a child and the non-resident parent. One mother explained the struggles she had with her young daughter to bring her to the contact centre and the threat issued by the courts:

> *I was taking my daughter to the contact centre, driving her up there ... and the social worker meeting us there. So, the social worker witnessing all of this. My daughter at five years old, squealing, having herself upside down, kicking the roof of my car, refusing to get out of the car, peeing herself. So tried that for weeks and being told if I don't do this, if I don't try to force her into thing, I could lose residency. They would reverse residency. … because my child is so traumatised she doesn't want to be near him. So, they want me to force my daughter. So, this went on for weeks.* (Victim/Survivor)

There are also practical implications of contact which disproportionately affect the resident parent who are often responsible for preparing children for the visit and transporting them to the point of handover. For some, this will have financial implications related to travel costs and requirements to take periods off work. In contrast, one child/victim advocate perceived the relative ease for the non-resident partner to facilitate contact arrangements:

He literally needs to jump in the shower and pop down to the contact centre in his car or the bus, whatever he does. She may have three or four children to get sorted out. To get there with no money. And it drives me absolutely insane the injustice of that. Because what we hear a lot of the times from social services is women need to be motivated enough to go to contact arrangements with the children in their car. But I've never ever heard anybody say men need to be motivated enough to make the effort to go and see their child. It's usually the children are brought to him. The closest facility that he's in. (Child/Victim Advocate)

9.4 A Mechanism of Further Control and Abuse

The requirement on victims/survivors to have a degree of contact with abusive ex-partners provided a mechanism for control and abuse to extend beyond the point of separation. Child/victim advocates expressed concerns about the impacts on those who had managed to '*escape'* abusive partners when they are subsequently '*brought back into this relationship*'. They noted that such arrangements requiring contact demonstrated a '*complete disregard for women's previous experiences*', even where non-molestations orders had been put in place. Arrangements around handover points were described by victims/survivors and those supporting them as particularly fraught, with ex-partners attempting to exert control in relation to timing and place. One victim/survivor explained a lack of compromise in selection of handover point:

…And he had, he couldn't let go of control, so he had to arrange where the handover was going to be and what was going to happen and, you know. And I kept going 'no, I'm going to come down and pick her up and you just hand her over to me outside your [relative's home]'. No. Wouldn't do that. He had to keep control. It ended up being at [town area]. He told me I had to go to and telling me I had to stop at a shop and on the way down to there. (Victim/Survivor)

In fact, a number of participants, both professionals and victims, noted that the application for contact and subsequent arrangements were not motivated by a genuine wish on the part of the non-resident parent to maintain a relationship with a child. Rather, in some cases, the perceived motivation was to further control and abuse the victim:

He didn't want contact with me, by the way, to help with the kids. He wants to be in control and to be able to annoy me. (Victim/Survivor)

Now, even to this day, eight years later, I am still controlled, to a degree, by this person, you know, because of my children. Because I've had children with him. So, if you have that link it's hard to, having children with an abuser is awful. (Victim/Survivor)

Perpetrators could also exert control through non-cooperation in relation to children's needs, requiring victims/survivors to make alternative arrangements or burden financial consequences. One male victim, for example, noted that his former partner

would retain clothes and other items his child required for school and activities which then had to be purchased - perceived as a form of financial abuse.

Several victims/survivors expressed fear for their own safety at handover, contemplating potential repercussions if ex-partners were to *'kick off'*. They described times where they felt threatened and intimidated by the perpetrator's behaviour, particularly in arrangements with no third-party supervision. Some noted how their concerns were dismissed by professionals who considered it possible that victims/survivors could supervise contact or could manage their own safety despite being subject to a MARAC. Two mothers described the level and reality of their fear:

> *I don't think people get the level of fear. Do you know, even being asked to do handovers or supervised contact with someone that you're terrified of, do you know? Like it wasn't the court, it was a social worker who asked early on if I would be able to supervise contact and thinking, no. How would I be able to stand up to him if the contact wasn't going well? Knowing that he could just kick off, do you know?* (Victim/Survivor)

> *... us being on a MARAC, assessed as being at risk of him killing me, and judges putting court orders in place that I have to go meet him in person. Even my legal team, their response was 'well sure, you can just wear a body cam'. Sorry what? … the reality of it is them enforcing this, at any one of those times of me going in my car with my daughter to meet him at that garage, he could have done anything to me. At any of them times… and they know that he would not care doing those things in front of our daughter. And that has to be stopped.* (Victim/Survivor)

Fears at the point of handover also extended to perpetrators' family members who could often accompany the non-resident parent as a means of intimidation. One male victim/survivor described his fear when his ex-partner attended handover with known *'paramilitary'* members at a place where there were no cameras for surveillance:

> *She actually brung paramilitary figures to the drop off point. Her and her father came in one car and when me and my dad were pulled in before they pulled in, there was another paramilitary figure on the other side of me. So, it was just intimidation, like, they were trying to intimidate me … I had intimidation to deal with, along with the stress of not been able, you know, under so much control by her, and nobody said 'boo'.* (Victim/Survivor)

9.5 Impacts of Contact on Children

Several accounts spoke of the impact of contact arrangements on children. All victims/survivors expressed their fear for their children's safety during contact arrangements, fears that were grounded in past experiences of DVA in the home. Children and young people, child/victim advocates and victims/survivors described multiple impacts relating to the effects of manipulation and controlling tactics, the emotional toll and changes to children's behaviours.

9.5.1 Fears for Children's Safety

Several victims/survivors noted that their main concern about contact related to the safety of their child/ren. While a number noted that they recognised the value to their children of seeing the non-resident parent, at the same time, given the history of abuse and having witnessed the impacts on their children, they also worried about the welfare of their children, particularly in non-supervised contact arrangements. One mother noted that she needed guarantees that her children would be safe before she could support contact arrangements:

> *I know the best ideal thing here is that [child] probably has contact with her daddy. And in an ideal world, that's what I would love. But I need youse to tell me that she'll be safe and you know. So, it was nearly like you had to be reasonable. I'm not ever saying I don't want to have contact ever, but I want somebody to be able to give me guarantees that my children will be safe.* (Victim/Survivor)

Others, including male victims, spoke of the fear of '*not knowing'* what would happen during contact arrangements and the anxiety that could trigger. Such fears were based on previous experiences of abuse and harm caused within the home. Victims/survivors referenced their anxieties around whether their former partner would be drinking alcohol while having the children in their care or whether aggressive *'mood swings'* would surface at the children's bedtime like they had done so often in the past. Others spoke of risks associated with the non-resident parent's families or new partners who had not been subject to a risk assessment. They also thought of specific experiences of violence they had been subjected to and were concerned that their children would similarly suffer:

> *But in my case, when you're terrified and you think that your husband is going to harm you or, you know could kill your children the next time he pushes them into the fireplace. Is he going to kill them next time? Or is he going to push them too far? Or are they going to choke on the food that he's forcing them to eat in the middle of the day?* (Victim/Survivor)

Child/victim advocates also expressed their concerns about the abuse of a child once in the care of the non-resident parent. One explained the tendency for abusive and manipulative behaviours to continue during contact arrangements:

> *Well, I don't think it's in any child's best interests to go back into an environment that is being controlled, manipulated and is extremely violent or abusive, either physically or emotionally, you know. I mean a person just doesn't stop being abusive when they're separated from their partner... they're still always going to be an abusive man. You know, a controlling man. A manipulative man. … that child, even just going for contact is still going to be subjected to some level of emotional or physical abuse.* (Child/Victim Advocate)

9.5.2 Experiences of Control and Manipulation

Participants noted that contact arrangements often aligned with the non-resident parent's schedule and commitments and that the courts did not sufficiently consider a child/young person's routine when ruling on contact. With this level of control, non-resident parents can use the opportunity to manipulate children, requiring them to fit in with their schedule and sometimes suffer disruption to their own lives. One young person spoke of their desire to maintain a sense of routine:

> *I know, especially for me, my views on just everything wanting to stay the exact same because I'd grown used to this routine and I don't want to be out of routine. It's just a weird thing.* (Child/Young Person)

Additionally, some children and young people described tendencies by the non-resident parent to issue ultimatums in relation to contact if conflicting with a young person's social commitments. Others spoke of manipulation and emotional abuse that made them feel guilty for not wanting to see the non-resident parent:

> *Because like my dad would have us from Friday to Sunday, and … I used to go to like this teen nightclub, and it was always on the Friday night. So, I wanted to go with my friends, and I wanted to be able to do homework and stuff, during the weekend as well, but then my dad wouldn't like cooperate sort of… But he said I would have to come on the Friday or like he wouldn't see me at all.* (Child/Young Person)

> *So, then me and my brother both decided we didn't want to see him anymore. … he was sending messages and stuff and it just really upset me. … just messages with like hinting and like, it was just really manipulative … saying 'oh I miss you so much, I wish you would come back and see me' and stuff. And it was like just really emotional.* (Child/Young Person)

Contact with children could also be used by perpetrators to intimidate or *'get at'* victims/survivors and/or undermine the relationship between the child and their resident parent. In this way, children and young people spoke of feeling manipulated by parents and professionals referred to them being used as a *'weapon'*. Several participants spoke of tactics by non-resident parents to gain favour with their children, regularly buying children presents and toys, particularly those not usually allowed, and the relaxation of rules during the short periods they were in their care. This was described by one child/victim advocate as pitting *'bad mummy'*, who is trying to ensure boundaries for the majority of the week they are in her care, against *'superdad'* who does not have the responsibility of engaging in *'real'* parenting. It was facilitated, another noted, by the lack of direction from courts in terms of rules surrounding contact:

> *... and they want to see their daddies because he lets them sit up all night and there's no real boundaries and he can eat what he likes and he doesn't really have to go to school and it's, so there's all that complicated bit of it too. Where she's trying to instil boundaries… it is so frustrating for kids to try and navigate… a lot of*

the time if dad is engaging with contact, it'll be like daddy fun time. Where there's no boundaries, they're getting bribed with toy shopping, beach days and everything is amazing. And then they're having to come back home and mum's trying to instil, okay, you do have to do your homework. And you do have to go to bed at a reasonable time. And there's well we don't do that at daddy's. And it's just makes that, even if he's only seeing them for one day a week, it makes those other six days so much harder for mum. Because it starts then, then the kids start to not understand that there's different rules in different places. And a lot of the time that's not enforced in the contact order. You know, it's not enforced that he has to have specific rules, or he can't take them specific places. And he knows that. So, he just maintains that control by making the rest of her week absolutely awful. (Child/Victim Advocate)

Children and young people also spoke of abusive parents (and their family members) *'talking bad'* of victims/survivors, advising them '*don't believe your mum, she's always manipulating you*'. This left children feeling '*uncomfortable'* and '*confused'* during contact periods. The impact of such messaging on the child's relationship with their resident parent could also be reinforced with messages sent to the victim/survivor that aimed to undermine the relationship:

… the whole time he had my daughter he kept sending me messages saying she doesn't want to see me. She's scared of me... he's an absolute liar. Like my daughter was constantly glued to me, you know? ... just sending me messages saying she's not even crying for you, she doesn't want you, she doesn't want to come home (Victim/Survivor)

At the most extreme, efforts to manipulate children could result in physical violence directed towards their resident parents: '…*where some of our children are encouraged to kick and spit at their mothers and beat them.'* (Child/Victim Advocate)

9.5.3 Emotional and Behavioural Impacts on Children

Contact arrangements could often take an emotional toll on children and young people, particularly those who had expressed a wish not to see their non-resident parent and were then subject to certain engagements. Handover points were also described as stressful for children where they observed tense interactions between their parents and were further exposed to abusive behaviours. Strategies used to maximise distance between parents and protect the resident parent could be confusing for children whilst *'acrimonious'* interactions were upsetting:

You could maybe start off where, you know, the mum maybe stays in the house, and the dad stays outside, you know, because of the court order or non-molestation or whatever… You know, so depending on the level, it's a sliding scale as to how close he parks to the house, you know, so that in itself for the child is difficult. … Then you get it sliding even more where there, there's maybe not an, a non-molestation order in place but things are very acrimonious at the doorstep and then the child, maybe if they haven't witnessed anything, starts to see things at maybe the handover. (Child/Victim Advocate)

Viewing their parents in a different context, some children and young people described a responsibility for how the parent felt as a result of the outcome of the proceedings or due to the wishes they had expressed. One young person, for example, spoke of the confusion of not wanting to see their father and realising how hurt their father now felt:

… And I guess I just felt really guilty about it because, I had to keep seeing him and at this point he was becoming a lot more emotional because he wasn't seeing his children and I had to see that and it just made me feel really shit about the decisions I'd made. The things that I'd said. And it made me doubt myself as well and what I'd been through. It felt like I was exaggerating and he wasn't that bad. But like, looking back now, he obviously was. But I couldn't rationalise that to myself at the time and I think that was because of having to see him in that state that he was in. (Child/Young Person)

The burden of that weighed heavy for some – particularly in the context of the manipulation of children's feelings as described above. The same young person spoke of the impact on their emotional wellbeing and ability to cope with their eating disorder during times of contact:

***…** because it was only one day a week, while it was harder on that day, specifically to deal with my condition (anorexia nervosa) and stuff, what was I going to say? The rest of the week was a little easier because I didn't have this constant looming fear that my dad was around, criticising what I was going to eat, or anything like that.* (Child/Young Person)

Emotional impacts of contact were also evident in accounts where children had been directly abused in the past. Contact with an abusive parent could trigger memories of past traumatisation resulting in children wanting to disengage from the relationship. One victim, for example, recounted that her daughter's father had threatened to bring her to the place where she had been sexually assaulted by a family member:

So, when she was coming home she was panicking and telling me this is what's being said to her. And telling me 'Mummy, I don't want to go. I don't want to go there'. Me contacting social worker. Social worker coming out. Speaking to her. Then going out and speaking to him, and him admitting that he was telling her and trying to justify it and saying he was going to take her down there… Her being

scared and confused why her daddy is like… 'My daddy knows now what was happening to me.' (Victim/Survivor)

Several parents also spoke of the behavioural and physical impacts that contact with the non-resident parent had on their child. They recounted that the fear and anxieties associated with contact days were evident in the development of speech impediments, bed wetting, social withdrawal and angry outbursts. Some noted a general reluctance and fear among children to get into a car, even when not contact days. Two mothers described developments out of character for their daughters which manifested during contact arrangements:

... she'd started to withdraw into herself again so, so badly that the play therapist from Women's Aid that had been working with her ended up saying like she has regressed so badly. We can't continue doing this work with her because it might affect her worse. This was within a short time of her being forced back into contact with him. (Victim/Survivor)

My child has completely, like, she was such a happy, loving, caring wee woman. She never would have raised her hands to me. She never would have, now in all fairness it's only during contact that she does this behaviour. But has like, the fear in things. She started to, she developed a stutter. She has begun wetting the bed. She lashes out in ways that I can't even describe why the behaviour is like it is. It is desperate. (Victim/Survivor)

For children who had personal experiences of being abused, contact with non-resident parents could be particularly traumatic and could, again, manifest physically. One young person described the conflict between wanting to see their father '*because he was my dad*' and the impact that this had physically:

I didn't really understand what was happening. I was still like, obviously wanted to see my dad because he was my dad. But then at the same time I was coming home after seeing him and I was collapsing and crying and couldn't speak. I couldn't go to school. Like, it took me a while when I was younger to kind of realise that he was the reason why that was happening. But I was like, it was more like physical. … There was a period of time when I didn't see him and I was like better but then I had to go back to see him …But like, I didn't understand I was being abused or whatever. It was just like he's my dad. (Child/Young Person)

Concerns were also raised in relation to impacts for children diagnosed with neurodiversity and the extent to which their needs were recognised by the courts and non-resident parents. This impacts how children experienced periods of contact where certain needs were overlooked. Members of the judiciary did acknowledge specific needs in this regard in terms of identifying appropriate spaces for contact to take place. They also acknowledged, however, that non-resident partners could be '*in denial'* of a child's diagnosis or were unaware of how to respond to their needs in terms of feeling safe and their learning needs. For example, one child/victim advocate noted that

abusive fathers denied neurodiverse diagnoses and as a result routines and preferences were not catered for:

> *And some dads that we are aware of are very, like, what's the word, they just completely don't acknowledge that the child maybe has autism. You know, they'll just be like 'he's fine, that's just your mum's nonsense'. And then that child actually gets quite distressed because their routine isn't respected or, you know, their food preferences or whatever it is.* (Child/Victim Advocate)

9.6 Breaches of Contact Arrangements and Disengagement from Children

In addition to using contact to further abuse victims, participants also noted that perpetrators could push the boundaries or breach the terms of contact arrangements, potentially putting children and victims/survivors at risk. A number of victims/survivors described where contact arrangements had been breached by direct contact being made where only indirect contact had been approved by the courts. One victim/survivor, for example, described that her ex-partner had followed her children into a shop and they were *'terrified'* when they came face-to-face with their father, requiring '*a lot of work*' with their social worker *'to help them deal with what they had just been through*'. Another victim/survivor described the risk posed at contact where no third party was in place for surveillance and her ex-partner implied on several occasions he planned to take their daughter away with him. Putting herself at risk, she described being responsible for confronting him to take her daughter home:

> *It was basically me pulling up outside [child indoor play area], letting my daughter out of the car to go over to him for him to take her in, by himself, and then bring her out afterwards. And throughout that time, like I have videos and different things of him coming out, walking past my car, and just walking off with her. Like purposely parking his van, not even in the car park of the thing, but across the road in a different thing, so he could just come out and just walk away with her and stuff. … Continuing to try to take my daughter. To the point, me having to get back in my car after recording him doing this and drive up to the other car park to be like no, give her back. There shouldn't have been any contact between me and him at all at this stage. But this is what they consider to be safe.* (Victim/Survivor)

Other breaches of contact arrangements included turning up to contact under the influence of substances or having failed a hair follicle test. Implications for perpetrators of such breaches, in contrast to the threats faced by victims/survivors when they struggled to facilitate contact, appeared to be minimal. Several victim/survivors and child/victim advocates outlined the lack of repercussions for perpetrators in these contexts:

It's enforced for mum to be doing all this stuff, but if the perpetrator doesn't do something or you know, he fails a hair follicle test or something, that is really clearly stipulated in the contact order, there's no like repercussions for him. And he can just sort of come back, you know, maybe he'll drop out and not do contact for six months, a year, and then he'll come back and say, 'actually I do want contact'. (Child/Victim Advocate)

Equally lacking in repercussions were examples of perpetrators who eventually disengaged from the relationship with their child/ren and no longer turned up to contact arrangements. In such instances, there was some scepticism among professionals in terms of motivations of the non-resident parent to have contact with children. Rather than motivated by maintaining relationships with their children, it was perceived that the main motivating factor was to further abuse and manipulate the victim/survivor through the court processes and once this was achieved, accounts described parents who disengaged in different degrees from their children. Participants spoke of, for example, fathers who left young children to travel home from contact by themselves or fathers who did not show up for the contact arrangements they had fought so hard for, having achieved their goal to *'get'* at their former partners. Similar to breaches of contact arrangements, such failure to follow through on contact did not tend to yield any penalty. Again, one legal professional explained what they perceived as inequity in the way that victims/survivors and perpetrators were treated when they did not comply with contact arrangements ruled by the court:

… dad decides I don't want to have a relationship with this kid. Or I can't be bothered. Or I just don't turn up. What happens? Is any father fined? Are they ever imprisoned? … No, it's just literally, well, you know, he's useless. He doesn't want to have a relationship with his kid, the end… I do feel that this sort of internalized misogyny, which is, you know, if you're a woman, you just have to do as you're told. And if the father wants contact, even if you don't think that's the best thing, you better do it or you're going to be in big trouble. (Legal Professional)

9.7 Conclusion

The chapter started with emphasising that several participants – including victims/survivors and children and young people – supported some form of contact between children and their non-resident parent and that, for some, contact arrangements that increased in stages allowed a gradual (re)building of important relationships. However, the majority of accounts spoke to experiences of contact where victims/survivors and/or their children were put at risk and experienced fear and harm, with safeguards put in place – such as granting indirect contact only or requiring supervised contact visits – often insufficient to protect them from such impacts. Several accounts illustrated that whilst the purpose of contact was to establish or maintain a relationship between the child and their non-resident parent, the practical implications meant that contact was also required between the perpetrator and victim/survivor. The analysis demonstrates that this creates the opportunity for further

post-separation control and abuse, with physical contact (particularly at points of handover) instigating fear among victims/survivors about the risk of violence. Several accounts spoke of the impact of contact arrangements on children, to the extent that resident parents spoke of the fears that they had for their child's safety. Accounts demonstrate the potential for children to be used as a tool in the manipulation and abuse of their resident parent, particularly where motivations for seeking contact were questioned as not genuine and linked to a desire to engage in further abusive behaviour rather than establish a relationship with a child. The emotional toll of contact on children was evident in a number of accounts, and often took on a physical dimension, visible through several behavioural changes among children. The analysis therefore emphasises the importance of taking children's views in relation to contact seriously, particularly where they express a reluctance, sometimes through physical challenge, to attend contact. It notes the need to not only consult children and young people at the time of decision-making, but to continually engage with their views and experiences of contact as it progresses.

Chapter 10:
IMPROVING EXPERIENCES

10.1 Introduction

Drawing primarily on data from adult study participants, including victims/survivors and the range of professionals interviewed, this chapter outlines suggestions to improve the experiences of the family court. It should be read alongside Chapter 7 on children's participation where ways to enhance children's engagement are specifically addressed. This chapter sets out participants views on a range of potential short- and longer-term improvements to family courts proceedings, including comprehensive consideration of DVA allegations via enhanced multi-agency and cross-court information sharing, alongside efforts to slow down the application process and promote greater transparency in the family court. Enhanced understanding of DVA and post-separation abuse is recommended for all court professionals with more advanced specialist training for different disciplines or services. Potential changes to the family court infrastructure are examined as a means to enhance the protection and safety offered to victims/survivors, as well as proposals for a range of specialist support and information services available for victims/survivors and children as they navigate the family court process. The availability of DVA perpetrator programmes is discussed alongside participants' views on alternative justice models operational in other comparable jurisdictions. The chapter concludes with the case for short- and long-term resourcing and investment if such improvements are to be realised.

10.2 Improvements to Family Court Proceedings

10.2.1 Slowing Down the Application Process

As described in earlier chapters, victims/survivors spoke of the deep anxiety and fear elicited from the beginning of family court proceedings, indicating how the impact of proceedings took its toll right from the outset. Some legal professionals spoke of the potential to slow down or impose some restrictions on how non-resident parents could initiate family court proceedings for child contact in the context of suspected or confirmed DVA. For example, one judge described how completing a relatively simple mandatory parent education programme *prior to* making an application, might slow down the application process and at the very least '*hammer home the idea'* that as a non-resident parent '*you've responsibilities as well as rights'*:

I do honestly think that something as modest as a parent education programme for some of the thorny issues around contact so that if you're applying for a contact or applying for a contact application, that you have to self-certify that you've been to place X and you've watched this or you've downloaded it or something. I think if people had to actually show that they had tried to acquaint themselves better with the issues, before they're allowed to be in court, would be good. If nothing else, it would hammer home the idea that you've responsibilities as well as rights. (Judiciary)

Judges were clearly aware of the potential for litigation abuse and lamented that they could currently do little to stop someone with parental responsibility applying to the court for contact, even when it was clear that there was a vexatious context to the application. '*Red flag'* cases were cited where applications were made the day after a restraining order was issued or when applicants had bail conditions prohibiting any form of contact. Such applications were described as '*a kind of power play'* as a means to continue the abuse. One judge suggested that in these circumstances, additional legal safeguards could be put in place where, for example, applicants would need to seek permission to issue an application for contact such as, for an example, an amendment to their bail conditions.

10.2.2 Greater Transparency – The Case for an Open Court

When speaking of ways to improve the actual court process itself, many victims/survivors and child/victim advocates noted the need for the family court to move from a closed, in-camera arrangement to that of an open court as a means to promote transparency and bring the court process out from '*behind closed doors:*

I know that in England they are now having the open courts, and they're allowed to be reported on. I think that absolutely has to be the case that family courts have to be open… It can't just be done behind closed doors. People need to be able to see what is going on in there. (Victim/Survivor)

Several benefits of an open court were cited including that such a shift would automatically allow those supporting and advocating for victims/survivors to be in the actual court itself, witnessing proceedings and thus reducing, at least to some extent, the reported stress and loneliness of the experience. In addition, it was noted that opening the court would reduce the perceived 'secrecy' of proceedings and bring a level of public scrutiny to family court proceedings, thus reducing the potential for abuse:

I also think that family court should be opened up to public court like the same way Criminal Court is… It's done in secrecy, and I don't think that the wider public see the abuse that goes on through the family courts unless they've been through it themselves… It should be a way… to kind of hold these judges and perpetrators of the abuse more to account that actually this is a public arena. (Child/Victim Advocate)

It was proposed that opening the family courts to the public would enable DVA perpetrators to be held to account for their actions, as well as making '*the misuse'* of judicial power less likely with some participants reporting prejudicial and threatening behaviour by the judge in the private court arena:

> *… see the privacy thing, that needs to stop. I do not believe that the judges would be able to get away with saying the things they do and not properly looking in cases if it was not [in camera]… They would not be doing and saying the things that they're doing.* (Victim/Survivor)

There were some concerns expressed, however, about a *'hostile phase*' of reporting on the family courts and one member of the judiciary noted the potential for '*inadequate accounts*' of the court dynamics and the production of '*mini-dramas'* if media reporting of family court proceedings were allowed.

10.2.3 Putting DVA at the Centre through Information Sharing

One of the strongest messages emerging from interviews with victim/survivors and child/victim advocates was the need for greater attention to be given to DVA allegations within court proceedings with DVA put '*back on the agenda*' (see Chapter 5 for detailed account). Participants called for family courts to look '*more holistically'* at '*the bigger picture*' and '*everything that's going on*', including the applicant's previous history, for a fuller assessment of whether the perpetrator is '*safe and healthy'* to parent children:

> *I just think, you know, [assessing that] someone is safe and healthy to be around children and parent children, they have to look at everything that's going on. You know, it can't just be my statement and his statement. There has to be more of an opportunity for the courts to look at the bigger picture, to know how… many times has [the applicant] been arrested? What convictions does he have? What's currently going on? Has the police been called?... what's happening with finance?... So, I ended up going through bankruptcy. Like none of that is in the best interest of his children. So, I think there needs to be some kind of wider, they're able to look more holistically at everything.* (Victim/Survivor)

Many participants argued that there was a lot of potentially relevant information that was currently overlooked but would result in more informed decisions about the safety of child contact and assessments of the child's best interests. Child/victim advocates, in particular, spoke of the information available as a result of a victim/survivor's contact with several agencies relating to police reports, non-molestation orders and breaches, social services investigations etc. Yet the time, they argued, is not taken to collate and assess such information which is essentially '*ignored*' by family court proceedings:

> *There's loads of stuff sitting there about him [perpetrator]. There's also a load of stuff sitting there about her [victim/survivor] and the number of reportings she's made to different people. … if there was a way that as a family came to the court… there could be a marker that says… this family has a domestic abuse history… so it's not investigative. It's not trying to prove it or disprove it. Because the abusers always think that there hasn't been any domestic abuse… there's so much background, you know, that there is so much elsewhere that's not being considered.* (Child/Victim Advocate)

Whilst participants understood that the family court system – and many interfacing services – were '*overly stretched'* and that court professionals had '*heavy caseloads'*, victims/survivors noted that better practice would require additional resources to '*pull all the information*' together in the context of DVA allegations:

> *… I know it's fine detail and they've got a heavy caseload. It's people's lives… And they should be dealing with the fine detail. And see if they don't have the capacity, then they need to be spending money to put more staff in place.* (Victim/Survivor)

It was thought by many participants that information sharing between agencies and the family court would make '*a huge, huge difference'* to the experience of victims/survivors, positively impacting reports of not feeling 'heard' or 'believed'. Participants went on to call for the systems to be '*joined up'* with greater multi-agency engagement and information sharing at the outset of flagged DVA-related family court proceedings:

> *There's absolutely a lack of multi-agency engagement within it. I think the police could do a hell of a lot more to provide more investigative intelligence.* (ISW)

For those victims/survivors who had experience of the criminal courts as well as the family courts, there was also a strong plea for these courts to avoid working '*in isolation'* from one another:

> *I think the Criminal Court and Family court can't work in isolation. They have to be part of the same, there has to be lots and lots and lots of sharing of information between the two…. I know that it's a Criminal Court and a family court and private law… but that doesn't matter. Do you know they're all working under laws and legislation. So, it needs to be, they have to work together.* (Victim/Survivor)

The potential for better sharing of information between court jurisdictions was also put forward by legal professionals who could not identify legal reasons for not having a formal sharing protocol put in place.

10.2.4 Court Children's Officer Service – Resourcing, Uncertainty and Delay

The Court Children's Officer (CCO) service was reported by many legal professional participants as a service under significant pressure and in need of further resources:

> *The court children's officer service is a very heavily used resource, and they have been under significant pressure over the last couple of years and that is an area where we can see further resources would assist to try to progress private law cases.* (Legal Professional)

Despite its critical role in progressing large numbers of cases through the family court, the CCO service was described as the '*Cinderella' or 'poor cousin'* of the family justice system because of the perceived lack of immediate risk of harm:

> *I would just say that for a long time, I think we've been deemed sort of like the poor cousins in the court children services… you know, well, you're not dealing with immediate risk of harm. It's not public law where, you know, you need to remove a child.* (CCO)

This was thought to place considerable pressure on '*one person*' to do a '*very difficult job'* with not the statutory authority as child protection services:

> *It's a very difficult job [CCO]... the private law courts can't survive without them, and they really can't. I think it does, it needs as much financial support. I almost feel that they are probably the Cinderella of the family justice system. Even though there's more private law cases go through than public law cases, and it's just that one person… we [legal representatives] do our very best, but we don't have anywhere near the same sort of access to… information that our colleagues in child protection have.* (Legal Professional)

With increasing caseloads and decreased resources – some CCOs referred to a reduction in service due to long term sick or personal leave – some victims/survivors felt that individual cases were not being adequately dealt with:

> *They [CCOs] do not look at the full picture and I don't really care that they've got massive caseloads because that's not my problem. My problem is how you deal with my situation, and they did not deal with it well.* (Victim/Survivor)

The insufficient resourcing in the service was acknowledged to lead to delays with legal professionals describing waiting up to six months for a CCO to be assigned to a case. In other cases, where DVA was not deemed serious, a CCO may not be assigned, impacting children's opportunity to access the main channel to have their views expressed to the court (see Chapter 7). The impact of delay was acknowledged by one judge in terms of the extended stress on victims/survivors and indeed their children:

> *…I think resources is a major issue. Because there are a lot of agencies who are there, who could provide the service, but there's just, there's not funding in place. So go back to CCOs, social workers, and other specialist workers… there's not enough there to be able to take on cases in a timely way. And that delay is never going to be good in a family case.* (Judiciary)

CCOs themselves spoke openly of their uncertainty about the future of the service which appears to have been under threat for a considerable time, with a perceived

lack of value placed on the service in spite of their work thought to divert '*hundreds of cases*' from the child protection system. This was thought to have inevitable impact on staff morale and turnover:

> *… the axe falling down is something that has followed our team since we were ever in it and there's no foresight there and understanding that we deflect hundreds of cases going to child protection.* (CCO)

10.3 Changes to Court Infrastructure – Increased Protection and Support for the Victim/Survivor

As outlined in previous chapters, many victim/survivors reported how attending the family court was often a traumatic experience in its own right which exacerbated and continued their previous DVA experiences, due to the proximity to their perpetrator, ongoing intimidation and fear, as well as their overwhelming sense of powerlessness and loss of control in the court. A number of improvements to the court infrastructure and scheduling were put forward by study participants to address or mitigate these challenges.

10.3.1 The Need for a Trauma-Informed Environment

The trauma experienced by victims/survivors in the family court was widely acknowledged by the different professional participants interviewed. Some noted how the family court was a 'trauma triggering' environment for DVA victims/survivors with a range of changes to the environment required to reduce victim/survivor anxieties, promote safety and participation, and avoid re-traumatisation. While such measures had been mentioned in the Gillen Review (2019), it was noted that little had changed in the intervening years:

> *There should be… an environment that recognises that these individuals are potentially being placed in a trauma triggering environment and try and mitigate against that. For me, that would be a beginning…So anything that can enable people to articulate themselves, to reduce their anxieties, that doesn't re-traumatise them in any shape or form, I certainly think we need to be thinking about it… the Gillen review acknowledged some of those issues for complainants. But you know, it hasn't gone anywhere near what you would hope or expect. Just even when you go to other jurisdictions and you see how courts operate in other jurisdictions. Even just the layout of it, you know, the carpet, even the carpet in a courtroom, it brings such a difference… what we have to experience is like this hall of justice that we go into. And you know if that's not triggering for someone, I don't know what would be.* (ISW)

At its most basic, participants acknowledged that the family court remained an unsafe place for DVA victims/survivors, with people '*herded shoulder to shoulder'* and many

victims/survivors forced to share small waiting areas with their abusers for long time periods with little to no protection provided:

> *A woman is standing face to face, ten feet apart from the perpetrator of her abuse. Some of these perpetrators have tried to take these women's lives. And they're still made to go stand against them and fight for their children in front of them…and there's so little protection provided for them to do so.* (Child/Victim Advocate)

Participants were aware that not having separate doors, waiting areas or toilets meant that such common '*cramped spaces'* could be used to intimidate the victim/survivor, further increasing their anxiety and feelings of insecurity. While these may seem like '*small'* or '*tiny, petty things'*, they were thought to have enormous significance for the wellbeing of victims/survivors with child/victim advocates and some solicitors making reported efforts to escort or '*smuggle'* DVA victims/survivors into and out of the family court:

> *It's just, not even having different doors… it seems like such a small thing, or having a toilet that's not in the waiting area. It seems like such a tiny, petty thing. But they will use that to intimidate the woman, and she knows that.* (Child/Victim Advocate)

Many legal professionals, child/victim advocates and victims/survivors spoke of the need for separate consultation rooms where they could meet privately with their solicitor and barrister as a means to promote victim/survivor safety, privacy and dignity. The need for investment in court resources and facilities was identified by many participants, with the availability of private consultation rooms thought to be a *'simple basic thing'* to start with:

> *I think a very simple basic thing to start with is private consultation rooms for victims of domestic violence at court…. I think one of the things that we could be doing to improve the situation is investing in court resources…. there are not sufficient consultation rooms for victims of domestic violence in family courts… I think there's more that court services could do in terms of making facilities available.* (Legal Professionals)

However, some child/victim advocates reported that in addition to the availability of separate consultation rooms, there also needed to be attitude and practice shifts, with some legal representatives reportedly unhappy to go to the consultation room on a different floor, preferring the *'convenience'* of seeing victims/survivors in the waiting areas:

> *But very much legal teams, they don't encourage that [booking separate room on upper floor] because that means they have to travel up and down to. Yeah. So … they want it to be convenient for them… in the waiting rooms.* (Child/Victim Advocate)

The absence of refreshment facilities such as a tearoom or cafe to help make people feel comfortable and put them at ease in the context of having to 'd*eal with big*

decisions' was also a noted gap in provision. This was considered something that was easily addressed:

> *I don't think there's any courts that have like a tearoom, cafe anymore. You know, so there's very, and these are small minor issues, but, you know, people are dealing with big decisions. And so, things like preparing people, come with your tea, come with your coffee, do whatever you need to do to make yourself being most comfortable.* (Legal Professional)

10.3.2 Scheduling of Court Proceedings

As described in previous chapters, many study participants understood just how traumatic it was for victims/survivors to sit for many hours in the small family court waiting area, often in close proximity to the perpetrator with limited access to private facilities. In order to address this, a number of legal and other court professionals proposed that practical scheduling measures could be taken to give victims/survivors specific times for their court hearings after which they could leave:

> *… people should be given a time when their case is going to be heard and they're there for that time and they're away again…so, I think specific times for family courts. I know they're busy places.* (ISW)

One victim/survivor went further and recommended that both parties (perpetrator and victim/survivor) should be facilitated to attend the family court on different days, in recognition of the profound fear/terror and ongoing intimidation experienced by many victims/survivors:

> *I think there has to be a recognition of the fear of a woman coming into family court … when the Court are aware there has been domestic violence and this is a violent person bringing somebody else to court. I don't know if there's a facility to have both parties in court on different days so that physically she [victim/survivor] doesn't have to be in the building, just that even coming to and from [the court] was terrifying.* (Victim/Survivor)

Perhaps more manageable is the suggestion by legal professionals who recommended that different arrangements should be explicitly made for DVA victims/survivors to arrive early or by a separate entrance (when such was available):

> *If someone is a victim of domestic violence, there should be arrangements made for them to arrive earlier or separate entrance, or that type of thing.* (Legal Professionals)

10.3.3 Extension of Special Measures to Include Video Links

Whilst special measures had previously been available to the court, their inclusion in the Domestic Abuse and Civil Proceedings Act 2021 was seen as a positive step by legal professionals. They also noted that members of the judiciary are receptive when

requests to introduce such measures are made. A number of participants, however, noted how much more could be done remotely to avoid victims/survivors having to enter the family court and come into contact with their abuser, thus mitigating to some extent the risk of further traumatisation. A number of legal professionals and child/victim advocates, for example, highlighted that individuals in criminal law cases are afforded opportunities through the use of video link which is not current practice in the family courts:

> *…in criminal cases, the complainant might give their evidence via video link from a designated room. Or you might have it where they're cross examined via video link. Or where their evidence is pre-recorded. You know, we don't have that in the family court. And maybe those are things that we should consider.* (Legal Professional)

The use of video-link had been introduced into family courts during the Covid pandemic and was spoken of positively by several child/victim advocates who reported how you could '*see the difference'* in victims/survivors when they were able to give their evidence remotely:

> *Walking in the same entrance. Going through the same security. Same lift or set of stairs as he's [ex-partner] going to be. Same waiting area outside the court… but if it could be done that a woman didn't have to go to that building. Court's daunting, regardless of what, you're there for. If she didn't have to go to that building, the remote evidence centre is there. They have all the Sightlinks into court… You can see the difference. We see the difference of women giving the evidence or going down to the remote evidence centre, compared to walking into [name of court].* (Child/Victim Advocate)

However, the opportunity for remote attendance was discontinued after Covid restrictions were lifted and individual requests did not appear to be supported. One CCO, for example, described the courts refusing requests for remote engagement due to judicial preference to 'see' an individual in person:

> *I know in the in the higher courts, people have asked could they go on the link, the Sightlink, the judges don't like that. Just, they like to see people, look into their eyes because it's better for them to make decisions when you can actually physically see and speak to somebody….* (CCO)

Several participants described their disappointment that such practices were discontinued, given the evident benefits for victim/survivors with the court itself recognised to cause '*a lot of fear*':

> *… during lockdown, a procedure was put in for these applications to be made like administratively. So, you put in your statement, and it went to the judge and the judge read it without hearing oral evidence. And I thought that was excellent… But then it kind of moved that they had to be on Sightlink, so from your office, which again, I felt that that was a mitigation… I was really pushing, and I know Women's Aid as well were pushing for that to be retained after Covid. And the court service haven't retained that, and I think that that was a mistake… in the domestic violence cases… there are benefits to not having to be in court every time your case is dealt with. Because even being somewhere where a potential perpetrator is, really causes a lot of fear. And then court itself causes a lot of fear. And most people have never been to court before. So, I can see the benefits of that.* (Legal Professional)

However, a small number of participants were concerned that remote engagement might not be preferable for everyone, thus emphasising a need for choice to be offered to victims/survivors. One legal professional wondered whether some clients might feel they are '*missing out':*

> *… it's double edged - sometimes granting clients leave not to come to court is a big relief to them, where they don't have to come to certain reviews. But…others then, do they feel that they miss out? Or… I'm not coming straight out of court and reporting to them and going back in.* (Legal Professional)

10.4 The Need for Enhanced Understanding of DVA

As noted in Chapter 5, despite a developing awareness of DVA in recent years, there remained several concerns about assumptions and understanding of the dynamics and complexities of DVA which shape practice within the family courts. In particular, limited understanding was identified in relation to post-separation DVA; barriers to leaving relationships; the impact of the effects of DVA on parenting and on how a victim/survivor or child may present. As a result, whilst the majority of professional participants referenced training opportunities that they had availed of, several also highlighted the need for continued training of all relevant professionals working within the court system. It was proposed that such training should be mandatory, rather than based on personal interest, and include all professionals including judges. This was identified by many as a key area for service improvement:

> *I do think that there should be mandatory domestic abuse training throughout the court system, especially for judges. I think that a lot of judges lack insight into actually what is going on and the emotional impact and the fear and terror that's caused.* (Child/Victim Advocate)

It was noted that such mandatory training needed to be up-to-date and regular, incorporating more recent developments with regard to stalking and coercive control legislation:

I think that first training for professionals, training for judges and for solicitors, I do think there should be mandatory training and that it should be something that's done every few years to be up to date… you know, we had the coercive control laws come in 2022. We had the stalking laws come in, you know, up to date on all these things. (Child/Victim Advocate)

CCOs also recognised a need for specialised more advanced training within their own profession, noting that whilst they had received general DVA training, there were gaps in understanding and practice '*specifically in relation to children'.* At the same time, they expressed concerns about the availability of, and investment in, training - *'the training budget has just shrunk beyond what you can imagine'* - and budget restraints thus meant limited opportunities:

There's no real specific training available for CCOs… one of the challenges then comes in terms of funding… We're now all told that we need to refresh our basic domestic abuse training and we need to be looking out for the Level 2 and the Level 3 and the homicides and all the other specialist domestic violence training. [Colleague] has tried to get a couple of experts in the court arena to come in and to give us some additional training but that hasn't happened on the ground. (CCO)

It was also argued that those working within the courts needed to develop a better understanding of the implications of the perceived pro-contact culture, particularly in relation to the impact of DVA on victims/survivors and children and the challenges of post-separation contact in such circumstances *with* precedence given to children's needs rather than parental wishes:

… [this] top down policy needs to change in relation to pro-contact... training for those sitting in the courts and really take into consideration the impact of domestic abuse on victims and children. And decisions being made from there. And… bring it back to the needs of the child are paramount. I think that just gets overlooked. (Child/Victim Advocate)

Some participants argued for critical gender and race awareness to be embedded within such training with professionals being *'open to learning'* and being challenged. Alongside the recognition that abuse can be perpetrated by either sex and in homosexual as well as heterosexual relationships, the majority of participants were cognisant of the large predominance of male violence toward women and girls in N. Ireland and internationally. In addition, it was noted that the profile of the judiciary in Northern Ireland, is largely '*male, pale and stale*' and '*of a certain age'*. Such professionals, it was noted, would have grown up – and indeed benefited from - the privilege and power afforded to men in a '*male-dominated*' society. To counter such experiences, a '*deep level*' of DVA training was therefore thought necessary, given the enormous power professionals hold with regard to decisions about the lives of women (the large majority of DVA victims/survivors) and children:

Judges really need to have appropriate training in terms of domestic violence and the impact, not just on children but on women and a really… deep level of training around that. I mean, because if you look at the judges, they're all kind of a certain age, you know, male, pale and stale. Most of them…. And they come from a generation where you know, it is very male dominated and men make all the decisions and, you know, it is black and white. But actually, it's not. And you know, they're the ones that's making the decisions, so they really need to be more open to learning… they need to want to be in a position to learn as well. You know, because they are making decisions about children's lives and women's lives." (Child/Victim Advocate)

10.4.1 Extension of Trauma-Informed Training to all Staff within Family Courts

A number of social work professionals spoke of the need to work toward the family court becoming a trauma-informed environment, with everyone, from the security personnel to the court professionals, understanding DVA victims/survivors' experiences and working toward trauma-informed engagements where children and victims/survivors could 'feel safe'. While small improvements were noted in this regard, it was recognised that there remained a long way to travel to reach such goals with training for *all* staff identified as an important first step:

… there's been improvements, but I think there is definitely still a need for training. Still a better understanding of victims experience, a better understanding of trauma-informed engagements by all, everyone. And the courts are not trauma informed environments. They remain an incredibly anxiety-provoking place for everyone in these instances…. I'd like to see best practice models, where you're enabling… victims to feel safe, children to feel safe in those places. The measures that have been introduced are very, very limited, you know. So, there's a long way to go I would suggest before we get into a trauma informed family court system … I'm talking about everybody from the security right through is alert and aware about what trauma looks and feels like and what a trauma aware environment should be…. as a professional, when I go into those environments and I've been in court my whole working life, it still triggers an anxiety for me, you know. And I'm familiar with it. So… why do we not get that for others? (ISW)

Such sentiments were echoed by legal professionals who recognised the need for training for security staff to be alert to DVA and its implications for DVA victims/survivors entering the family court:

*I don't know what training security staff in court buildings get in terms of dealing with victims of domestic violence. You have some very astute members of staff who are very experienced and can identify very quickly if somebody's very nervous or they're unsettled or whatnot. But I'm not actually sure whether they have any training in terms of… managing victims of domestic violence. (*Legal Professional)

10.4.2 Specialist Tailored Training for Different Professionals

While noting the need for common, shared DVA training which incorporated a trauma-informed understanding of DVA and its implications for service engagement, participants were also aware of the need for specialist training, tailored to the specific needs of the different professional disciplines and tasks represented in the family court system. Some victims/survivors noted how they had felt '*judged'* and '*under the spotlight'* by the questioning of some social workers and wondered what training social workers receive in this regard with social workers advised to remember that '*the mother of the children'* is '*very important too'.*

> *I don't even know how trained social workers are to a degree for these things. Because the questions they ask, it depends what social worker you get. Some of them are better than others…. I don't know how much they're trained on domestic abuse and coercive control… how they see them [victims]. You know? And how they should question them differently, you know, not as if they're under spotlight, do you know what I mean?... I felt like I was in a police station with a swinging lamp or something… I know they're there to safeguard the children. That's their priority. But the mother of those children is very important too… Their mother is important because she's the one bringing them up and trying to protect them. That's why she's doing this.* (Victim/Survivor)

During interviews, social workers themselves noted their own lack of insight into some aspects of DVA. One ISW was aware of their lack of understanding of why women might return to abusive relationships, and seeking out further information, education and research in this regard:

> *I struggle with 'he says he didn't, she says he did'… even the education on women that revert and go back into relationships where there has been that kind of a dynamic… I'm trying to get more information. I'm reading more research. I'm trying to learn more and understand more about that. Because there is a real lack of insight into that… I'm aware of my own lack of information and education on that. But I find that difficult.* (ISW)

CCOs too lamented the lack of specialist training for their specific role available to them via the Health and Social Care Trusts, with some organisations in the voluntary sector perceived to offer better training opportunities:

> *… we need better training… there isn't much. There's no decent training [through the Trusts]…There's training coming through for [voluntary sector organisation]. They get great external trainers in. There's stuff out there, and we don't get access to it.* (CCO)

Some CCOs felt that the *'enormity'* of their challenging role was neither *'truly valued*' or *'understood'*. They too noted the critical importance that their training for such a specialist task was '*up to date'*, taking account of contemporary developments in neuroscience, developmental psychology and the use of technology, in order to fully

understand and represent children's views and make informed recommendations to the family court:

> *… our job is, I think, it's not truly valued or understood, the enormity… that's why our training is vital, to be up to date. We have to read ourselves and whatever. But that's why our training is vital. You know, you're being aware of current developments, you know, in developmental psychology and neuroscience, everything, just everything. Technology is expanding so quickly now as well which is putting huge pressures on the system and children… the world is changing and… the services need to be put in there, the training needs to be put in there, in order to ensure that everybody moves at the same pace and these children's voices are being met adequately.* (CCO)

10.5 Support and Information for DVA Victims/Survivors and their Children

Victims/survivors (both women and men) all spoke strongly of the need for different forms of independent support (court advocacy/navigation, emotional support, parenting support) to help navigate the family court system which had been completely unknown to them prior to their ex-partner/abuser's application for child contact. The need for a range of supports for victims/survivors and children as they progressed through the family court was corroborated by many of the other study participants. For those who had benefited from the support offered by Women's Aid, this was spoken of in the highest possible terms with women extremely appreciative of the advice and support received over extended time periods (weeks, months, years) including the in-person support when waiting for long periods in the actual family court. The two male victims/survivors also spoke appreciatively of the support offered by Men's Action Project and Men's Alliance throughout their family court experience. There appeared to be a scarcity of dedicated DVA services for children, particularly where financial cuts had impacted the provision of children's services within DVA organisations. As a result, children tended to engage with school-based interventions or general therapeutic services, rather than specialised support tailored to children navigating family court processes. Additionally, the funding of services provided by the community and voluntary sector was remarked upon by many study participants with frequent reference to services closing or not being available due to long waiting lists or cuts to funding. Specialist DVA organisations like Women's Aid spoke of the challenges of having less funding with support services for victims/survivors and their children inevitably detrimentally impacted:

> *Having less funding, it always affects every aspect of our Women's Aid work… we used to be able…to do school support maybe more than we are now. Because also… we always are short everywhere.* (Child/Victim Advocate)

Such funding challenges clearly need addressed if DVA victims/survivors are to receive the necessary range of specialist support.

10.5.1 Court Advocacy and Navigation

Victim/survivors described the importance of having support available to help them navigate a complex legal landscape. For women in the study, Women's Aid provided them with this crucial support, explaining court processes, listening to women's fears and helping them with the practical aspects of being within the court environment:

> *Women's Aid, have been the incredible help throughout all this. There's nobody else in these situations … there doesn't seem to be anybody (else), you know, at the start of this that is able to say 'Right, this is what you need to do. And this is how we're going to get support', or, and 'this is how the court's going to happen, and this is how the police processes work'. There is none of that.* (Victim/Survivor)

> *Well, without Women's Aid, I don't know what I would have done because it was [support worker] that said that you could go to a separate part of the court to sit. Whereas if I had of been going myself, I would have been walking in and he was just sitting there with his new girlfriend and the both of them giving me evil eyes. You know, I'd have been sitting right opposite them. If I didn't know about that other room…* (Victim/Survivor)

Such guidance could help mitigate, to an extent, the impact of the legal proceedings and foster the sense of a more secure environment for victims/survivors. Child/victim advocates also raised that such support not only helped victims/survivors understand legal processes, but also ensured they would not be '*bulldozed*' into making decisions:

> *… it's also an advocacy role that Women's Aid or any support workers provide because it is about giving them the courage to question what is being decided. And you can say, right … do you understand fully… what this agreement is? Do you want a couple of minutes? Can we have a couple of minutes just before making that decision and things? Whereas I'm going to guess that…it will just be bulldozed in a sense… because they don't know what their options are…* (Child/Victim Advocate**)**

Others also spoke of a reliance on informal supports through peer networks with shared experiences of family courts. One male victim/survivor, for example, explained his fear of '*taking a wrong turn or step*' and described the benefit of a '*support network*' when his legal representation did not provide him with guidance:

> *And sometimes you don't know, because… you're scared of taking a wrong turn or step. You know, looking badly on you then. So that's the bit that's hard, you know? The solicitor doesn't really provide you with a lot of guidance. You're sort of left up to your own. And that's where you know other support groups, with other parents who are in similar circumstances comes in handier, you know. You can really get the help and advice through communication with each other. (Victim/Survivor)*

Whilst positive aspects of support were noted above, all victims/survivors and many professional participants identified a gap in formal service provision and suggested the need for a court advocacy/navigation service, akin to that provided by Victim Support in the criminal courts, where an appointed person would be there to '*act as an advocate*' and '*explain the process*' to DVA victims/survivors through their family court trajectory (described as similar to an Independent Domestic Violence Advisor (IDVA) available in other parts of the UK):

> *The family court is so different even to the Criminal Court… I know with the Criminal Court, you know, you have Victim Support. You were able to get court support and there was a courtroom. And there was a court officer that would give you the familiarisation visit. And they would take you round. There's nothing like that for the family court even to let you see what family court looks like, or to know who's going to be in the room or…* (Victim/Survivor)

It was noted that this independent navigation and advocacy service needs to be available to DVA victims/survivors right from the start, as soon as the court papers were served, in order to help prepare adult victims/survivors for the court process:

> *I think it begins with preparation time… making those adult victims aware of… what this whole process looks and feels like would be a start.* (ISW)

The need for formal funding for such a service was also noted. While Women's Aid had provided a service of this kind, given cuts to funding, they were not always in a position to do as much as was needed, or, for example, free up a worker to be with the victim/survivor in the family court, often for a considerable part of the working day:

> *… We're short of staff in refuge and on the floating support, so sometimes going to do court supports, it will take your whole day, from 10am to 2pm - and we sometimes, we cannot afford sending the staff away for the whole day. So obviously for a woman having to go, if they don't have family or friends, having to go on their own, that is just horrendous for them.* (Child/Victim Advocate)

The need for similar supports to provide advice to children and young people on what was required from them was also identified with several participants – child/victim advocates and children – identifying a need to be advised on the processes and being adequately prepared:

> *Maybe someone from like the court just kind of going in like explaining to me like this is what's going to happen and like, how do you feel about this, and what would you like me to say for you, as kind of like, an advocating part… I think like someone else that isn't a social worker like, completely different, who is like hey, so this is what's going to happen and this, how do you feel about this. And what would you like us to do for you type of thing. I think that would have been helpful.* (Child/Young Person)

10.5.2 Emotional Support

As described elsewhere in this report (see Chapter 6 for further detail), victims/survivors experienced 'fear' and 'terror' throughout their dealings with the family court, as well profound feelings of distress and powerlessness. Some spoke of feeling 'helpless':

> *There needs to be some sort of support for people… everybody deals with the stress of all that in their own ways… I know there's been times where I feel helpless. Never mind how somebody else worse off might feel.* (Victim/Survivor)

Such testimony points firmly to the need for emotional support services which DVA victims/survivors can avail of when needed. Many victims/survivors in this study spoke positively of the emotional support provided by specialist DVA organisations such as Women's Aid, Men's Action Project and Men's Alliance which were identified as critical to maintaining their wellbeing throughout the family court journey. They explained the importance of feeling 'heard' and 'understood' through such support as well as potential to reduce the emotional burden associated with the impacts of the process. One woman explained, for example, how support from Women's Aid allowed her to envision the end of proceedings and hope for a more positive future:

> *Women's Aid were amazing, too. Like, they were probably lifesaving for me. I think they were… because… there was times when I thought I just can't, do you know. When it just seemed to be never-ending. There was no break from it. (It) just didn't seem to be stopping, [ex-husband]'s behaviour in court and everything, and I remember times thinking if it wasn't for [children], I wouldn't want to be here. But they were, it was definitely going to Women's Aid and doing all of the work with them that gave me that hope that actually this is all going to end and get better someday.* (Victim/Survivor)

In addition, some spoke of the important support provided by family and friends as well as informal peer support from other parents in similar circumstances whom they had met via respective DVA support organisations. Victims/survivors spoke of the benefits of having friends and family attending court with them, offering them moral support and being on their *'side'* in what they described as a *'lonely'* experience:

> *It's quite a lonely, frightening experience even just sitting there. And I was so lucky. I have a friend who came to every single-family court appointment with me. And do you know, some days… you'd be there for an hour and be sent away again. And there was quite a lot of that. … So, the amount of times that I had to physically…go to court took so much of just trying to put yourself together trying to build the courage. It took everything out of me. But this one friend came to every single, she knew before I did. Do you know? Right. You're in court next week…" (Victim/Survivor)*

It is of note that not everyone had the support of family and friends, with DVA victims/survivors known to become isolated from family and informal support networks over time:

> *…one of the very basic things that I think gets totally missed. Do you know, if you understand domestic violence, you understand the level of isolation that that woman's experienced. So, she doesn't have anybody in her corner. … And it means she doesn't have anybody in her corner supporting her emotionally.* (Child/Victim Advocate)

This is another important reminder of the need for a range of timely and accessible forms of emotional support to counter such deep feelings of aloneness, fear and hopelessness – including the possibility of allowing victims/survivors to be accompanied by advocates within the courtroom. Opening the courts to support workers did not appear problematic to those working within the system and they viewed the benefits to victims/survivors being able to filter what was happening through someone in a supporting role.

Children's experiences of formal emotional supports were varied, with some referencing programmes or play therapy through third sector organisations and others accessing counselling support through schools which, whilst often described as beneficial, was not specialised to experiences of DVA. Some children and young people, however, struggled to engage with formal supports, particularly where they were overwhelmed by having *"spoken to so many people"* during the family courts process. One mother, for example, explained how their child's interactions with the CCO and other professionals had discouraged them from engaging with other supports:

> *So, because they've had to speak, and whatever reaction they've had from them (CCOs), or questions have been asked, or how they've been directed, has put them off so much that they won't actually speak to the people who could be therapeutic and help them. That's what I want to say because of all that experience of too many people having to come speak to them, um, that has put them off. And they won't go now to someone who can actually help them. And that, that is something that I have to try and get sorted for them… (Victim/Survivor)*

Like adults, several children referenced the informal support of family members – often extended family members such as aunts, uncles and grandparents – who they described as people they could *'trust'* and with whom they felt *'comfortable'* opening up about how they were feeling about the impacts of court processes. Some young people spoke of the reassurance received when their feelings and actions were validated:

> *They were really supportive, and they would just tell me what I needed to know. And like, they were just really nice to me all the time. When they'd give me advice, they would be like 'Oh, it's okay. You can react like this. You can say this'. You know? Reassuring. So that was really nice."* (Child/Young Person)

Others spoke of the benefit of being able to speak to extended family members, knowing that what they had said would not '*get back*' to their parents, pointing to a

need for children and young people to have a source of support outside of the immediate family, even where relationships with parents might be considered close.

10.5.3 Support with Parenting

Adult victims/survivors also spoke of the need for ongoing support with parenting as they navigated the family court process. It is of note that they and their children had already lived through complex experiences of DVA in different ways which were still being processed by both in their new situations prior to the family court application. As the resident parent, victims/survivors spoke of having to work out how to respond supportively to their children's different expressions of anxiety, distress and uncertainty about what was going to happen as a result of the family court process, in spite of not knowing themselves what the outcome would be and conscious of not wanting to '*tell them lies*' as the children had already had experiences that led them to be mistrustful of adults:

> *I remember [child] at different times has been really anxious and really afraid and getting upset about, you know, what happens if they, you know, who will take us and will daddy…? Having questions like that to answer. And just hoping that I was telling [child] the truth because I wasn't sure either what was going to happen, do you know. So, you're not really sure if you're telling them lies or not.* (Victim/Survivor)

Managing *'awkward'* or *'difficult conversations*' with the children in ways that were open, honest and supportive was noted as challenging with victims/survivors reporting how they had sought advice from Women's Aid and other support organisations as issues emerged. In addition, managing communication with the perpetrator (where necessary) in '*high conflict*' situations and in the court arena where it was feared that '*everything could be twisted*' against you, meant that expert advice was necessary and appreciated:

> *I think it's around those awkward conversations… whether it's through difficult conversations with kids and how to do that, or correspondence with your co-parent…. How to do that in a business-like way with no emotion and suitable, court safe, and suitable [language]… you know, [you're] in a high conflict situation.* (Victim/Survivor)

Victims/survivors also faced some practical parenting challenges, particularly in relation to accessing childcare so that they could attend court. Child/victim advocates explained that childcare can be a '*huge challenge*' particularly where perpetrators have isolated victims/survivors from friends and family, thus closing down a potential avenue for support:

… if they have to go to court and if they don't have anybody to look after their children. … That will be a huge impediment… and a huge challenge because even being in refuge, they cannot leave the children here. We cannot look after the children if Mum is not present. … usually, whenever women are at that stage, it's very common that all the relationships have broken down because of the abusive relationship. So usually, the perpetrator will have cut [off] all those relationships with family and friends. So, they will be isolated and they will be at the point where they are on their own with the children. (Child/Victim Advocate)

In addition, a number of victim/survivors spoke of the challenges of getting children to attend contact with their ex-partners/DVA perpetrators in spite of their concerns, and often under duress from the family court itself. Navigating such diverse and ongoing parenting challenges was noted as important to the resident parent-child relationship which was likely still in recovery from previous DVA experiences.

10.5.4 Education Resources and Information for Separating Parents and Those Impacted by DVA

A number of legal and social work participants spoke of the lack of education resources for parents who were separating, with regard to co-parenting or contested separations. One judge noted, that while there is a myriad of leaflets and resources to support parents in the early years of a child's life, there is limited support for children's later years which might give some '*simple steps*' and promote *'better ways of doing things'* particularly in the context of contested separations and co-parenting, before they might enter the family court:

Again, it's about this issue of education. You know, some posters, some material that's readily accessible. Just promoting better ways of doing things. I mean, when you're a parent of a newborn, there's any amount of leaflets telling you how to breastfeed better and burp them better and nappy better and so on. And I can't help feeling we could do a wee bit more with the four to eleven sort of bracket… it's not even an accusatory thing. It's not even to say you could do this better as in, if you took these simple steps this could be amazing. (Judiciary)

In addition, CCO participants noted that there were increasingly very limited services that they could refer parents to which could provide support and education in relation to *'parenting apart'* or '*the impact of parental conflict on children*'. Many community and voluntary sector organisations, who would have previously provided such courses, were reported to have lost their funding and were no longer in operation in their local area. This was described as *'frustrating'*, leaving CCOs with no services to refer to, in order to work toward better co-parenting arrangements and the possibility of safe contact for children. This was noted to be of particular significance for parents with limited financial means. Overall, this absence of education and support services was thought to lead to *'stalemate'* with limited progress possible:

And more education, I think more education again because the resources have been cut, we used to refer to [name of organisation] and it has been cut, and it used to provide great courses that you could refer families to… Sometimes there's [courses] 'parenting apart', 'impact of parental conflict on children'… we don't have time to do all the education…. we can't really access services because… they're not involved with social services. So, they can't access. We can't access because we're court services. They [parents] can access if they can pay for it. It's so frustrating. And then if we're making recommendations and those recommendations can't be met because the services aren't out there, then what happens? Stalemate. (CCO)

It is noteworthy that DVA was not explicitly mentioned by participants who spoke of such support services, which may give an indication of the continuum of cases seen in the family courts – from contested and acrimonious separations to those where DVA has occurred or is alleged. This draws attention to the need for different types and foci of support services which may be needed to address the different circumstances of parents going through the family courts, with a clear gap in available support services with a specific focus for victims/survivors on parenting in the context of DVA and post-separation contact.

10.6 Access to DVA Perpetrator Programmes

Some professional participants (legal professionals and social workers) argued that in addition to increased support for DVA victims/survivors, there was also a need for greater access to programmes for DVA perpetrators as well as those accused of DVA. Such programmes were reported to be extremely limited and currently only available to people via the Probation Board for Northern Ireland.

One legal professional argued that victims/survivors also want programmes for perpetrators as they often have continued contact with their ex-partner/perpetrator through their children and are interested in them taking responsibility for their behaviour and making *'change'* that is *'enduring'* which in the long-term creates '*a safe environment for the children*':

I would be a proponent of early intervention perpetrator programmes. I think there are not enough in Northern Ireland… [for] victims, you know, there is a continued level of… contact with this person or an element of contact through their children. And I think what they want, and whilst they need support, but what they want I suppose is for that person to make change, like that is enduring... I think what victims really, really want is to know that there is an acceptance by the perpetrator and that they're trying to really do something really in depth to kind of deal with their issues… that means then that there would be a safe environment for children. (Legal Professional)

There was recognition by a number of professionals that some perpetrators have themselves had complex traumatic backgrounds and require specialist '*intense and*

therapeutic' programmes to change their behaviour. It was also acknowledged that many perpetrators may go on to have other children with different partners, with further Social Services involvement, creating what was described as a *'vicious circle':*

> *…nobody wants to be a perpetrator either. And they have probably issues in their past or maybe different traumas… it's very difficult if you have been accused and are even found guilty of these things, to… seek the appropriate anger management treatment that is so intense and therapeutic… what you find too is that, those individuals can then go into another relationship and you know, have more children and… then social services are involved with the next child… and it is like a vicious circle.* (Legal Professional)

It was argued therefore that running perpetrator programmes *'in parallel'* with family court proceedings would save money in the longer term:

> *… I just think, for children… if a parent [DVA perpetrator] is able to be open to that and identify that they did those things and is able to move forward, like that's the best all round. You know, rather than spending two years in court, I think that those programmes, you know, if they were identified at the start and could run in parallel, [that] would save a whole lot of money.* (Legal Professional)

CCOs, too, spoke with frustration about the lack of provision for parents accused of DVA (mostly fathers) going through the family courts, highlighting that there was *'literally nothing'* available to refer people to. This was perhaps of particular importance to CCOs as they were often tasked by the court, in light of the presumption of contact, to make recommendations for how safe contact with the children could be facilitated in the context of previous DVA. CCOs reported that they had previously referred to the Probation-led Promoting Positive Relationships programme, a bespoke programme for DVA perpetrators but this was no longer available for referral:

> *There's no resources out there. I mean, we are looking at, you know, very basic anger management courses… there's literally nothing. We cannot access anything…. We used to have access to a programme called PPRP, which is Promoting Positive Relationships Programmes, and they are very, very intensive domestic violence, anger management programmes. They're very bespoke and they're tailor-made for one person to go through. ... we don't have that anymore…. … But I would have been saying no contact until Dad goes and does this I.* (CCO)

10.7 Views on Alternatives Justice Models and Processes

10.7.1 Mediation – Diversion out of the Family Court

Whilst victims/survivors (and some legal professionals) expressed several concerns regarding the practice of mediation and feeling *'forced*' at times to engage in conversations – direct or remote – with their former partners (see Chapter 5), other participants – including judges, legal representatives and child/victim advocates – spoke of the potential advantages of such mediation, for example to avoid the

adversarial contexts of court proceedings. One judge noted how they tried to push parents to *'give proposals'* for conciliation rather than simply *'saying no':*

> *… trying to get mediation as opposed to going to court. That's been on [the agenda], I go back as [far as] the 1970s… I inquire to see the pre-action correspondence in the initial papers and so I do scrutinise, you know, what's the tone? What's the thrust of the opening letters? which can have such an impact on the mood of the case, to try to get it to be conciliatory. Give proposals, instead of saying no, let's have your proposals, otherwise I'm going to court… Should there be some other way of, you know, conciliation meetings? How might that work at the early stage? Balanced against… how long it takes to get all the relevant facts into court."* (Judiciary)

Reflecting on the lack of resources as '*a major issue',* members of the judiciary in particular emphasised alternatives to entering the court arena to have better opportunities to process cases in a *'timely way*'. Another judge who was interested in diverting cases out of the family court, noted a forthcoming *'family resolution pilot'*. In their experience, many cases do 'resolve' and proposed that there needed to be a *'more structured way'* of doing some form of mediation:

> *There is proposed… a family resolution pilot…, looking at some kind of a resolution, mediation type process to see what cases maybe could be diverted out of the court system… personally speaking, I think that's a very welcome step forward, to see if cases can be taken out of the arena… I'll be saying [to parents] 'look, if you can go out and agree this, something that you can agree is much more likely to have traction than something I impose on you as a relative stranger to your life and to your circumstances…. It may not be perfect for either of you but if you can go off and find something that works, you're much more likely to not have to be back in here again and we can move this forward.' And an awful lot of cases do resolve. But I think if there was some more structured way of doing that, that might be something that might help the parties.* (Judiciary)

It is noteworthy however, that in both these examples, the additional complexities emerging from a DVA history and post-separation abuse, were not spoken of.

10.7.2 Integrated DVA Courts

A number of study participants spoke of the potential for integrated DVA courts, where criminal and private law proceedings could be heard in parallel so that information could be easily shared. While victims/survivors who had experience of the criminal court as well as the family court argued strongly that both courts need to *'work together'*, there were mixed views represented amongst the legal professionals interviewed.

Overall, there was a general consensus that *'a certain amount of integration*', specifically in relation to information sharing, would be welcome, particularly to ensure that pertinent information in relation to the seriousness of the situation could be

shared. The fact that information from the criminal case was not proactively shared, leaving the family court reliant on whatever information the alleged DVA perpetrator provided was acknowledged as *'a miss'*:

> *… we do miss out on the fact that, you know, we may all be at court and nobody really knows except what the father tells us what's happened in the criminal case… and you sort of think, well, surely there must be a way for the family court not to direct father to go and provide [the information], but actually to get that information because that's information that's within the courts' domain, you know. So I do think a certain amount of integration would be really useful. And I also think it would remind the court of the seriousness of what's going on…. a judge in the court next door has just said what you've done is heinous and all the rest… so certainly integration would be definitely something worthwhile looking into*. (Legal Professional)

However, reservations and tensions were also noted by legal professionals in particular related to the different standard of proof in each of the courts, as well as some caution as to whether evidence in one court might not be *'helpful'* in the other. Such challenges were identified as having the potential to *'cause problems*':

> *"[integrated DV courts] It is difficult, and there's a tension between the two. Because obviously there a different standard of proof in the two different jurisdictions. But also, there's a wariness that evidence given in one environment might not be helpful in another environment. And there are safeguards that are built into the legislation to some degree. But they're not, it doesn't mean exceptions can't arise about disclosing for example, evidence that's given in a family case to a criminal court. So those can all cause problems.* (Judiciary)

The *'workability'* of such integration was thought to need '*an awful lot more research*' with some concern expressed about the *'balance'* of the criminal and civil burden getting '*mixed up a wee bit*', with the family court tasked to consider the best interests of the child '*as opposed to guilt or innocence':*

> *I actually don't know how it would work … whilst I think it sounds attractive… I'm sort of like just trying to think how does that work? And it might work if the cases aren't as serious… I think there would have to be an awful lot more research into it as to whether the workability of it…. sometimes I do worry about whether the balance probably, you know, the burdens will get mixed up a wee bit… how does one judge then apply criminal burden to one thing and then the civil burden in the other… in the family court… it's all about what's in the best interest of the child as opposed to guilt or innocence… I can see when it comes to information sharing, it's really good. But ultimately then when you're applying the different tests, how does that happen?* (Legal Professional)

For some, it was thought that there was complexity to the work undertaken in the family court with much '*more nuance*' as compared to that of the criminal court:

I almost think the new legislation has meant that the criminal judges… maybe their jobs, [are] less complex. Maybe all they have to do is say 'what you did was awful and here's your sentence'… whereas it's much more nuanced what a family judge has to do and what family courts have to tackle… oh, there was a conviction. There's no meat to the bones of that. (Legal Professional)

10.7.3 Specialist DVA Courts

Study participants spoke with varying levels of awareness of the difference and potential value of specialist DVA courts such as the Pathfinder courts in England and Wales. While the potential for doing things differently was generally acknowledged, there were also reservations expressed about the challenges of implementation in different jurisdictions and concern that such models, in spite of best intentions, may not '*actually make a difference'*, pointing to the need for ongoing research and evaluation of whatever approach is adopted:

The Pathfinder is good, I mean I like to think that there will be some movement. But sometimes when you make a change you then discover, what was all that about? Because it doesn't actually make a difference. (Judiciary)

Indeed, whilst some legal practitioners were aware that '*initial indications*' seemed *'positive'* in relation to Pathfinders courts, they were also conscious that, at the time of interview, the courts had only been rolled out in a limited geographical location and the complete findings of the pilot evaluation were not available. Some legal professionals were unclear as to the added benefit of Pathfinders courts, given the role of CCOs already at the early stages in the process and the ways in which they link with other agencies – *So I'm not sure what else the Pathfinders reach out to beyond what the court children's officer service do* (Legal Professional). Others spoke positively about the potential of *'flipping everything*' so that the *'first picture'* the judge received was about the child, rather than becoming *'entrenched'* in parental statements and counter allegations. In this way it was thought that the child would remain *'front and centre'* with one person (the CCO) tasked with undertaking all the *'safeguarding investigations'* with the legal authority to gather the information.

Other participants noted the advantages of specialist courts having judiciary who were knowledgeable, experienced and trained in attending to cases where DVA featured. It was thought that such specialism would inevitably lead to greater consistency across the different courts in Northern Ireland:

In regards to a court dealing with cases where there has been a history of domestic abuse, it would be appropriate to then have a judge who is very, very attuned, very highly trained in regards to all of the issues surrounding domestic abuse... that's then going to give a very, very consistent approach to all of those cases where domestic abuse is a feature so that you're not then beholden upon any of the variances in any of the different courts due to the knowledge and understanding of the particular judge that may be involved. (CCO)

Similarly, it was thought that the use of special measures might become more available in specialist courts, offered as standard practice or *'second nature'* rather than dependent upon the individual preferences of different legal professionals:

> *Now the special measures are there, special measures are in place, but very rarely have I ever, you know, I don't know whether legal representatives are advising their clients that the special measures are there, the special measures can be used, but if you had an independent court, specifically looking at that, it would become second nature for those special measures to be put in place, rather than it being again dependent on particular legal advisors saying, 'oh by the way, you can have this, this and this in terms of, you know, how you give your evidence or how it can be presented or whatever', so that that might be one thing looking forward.* (CCO)

While specialist DVA courts were thus deemed to have potential value, it was also considered that implementation would require a '*huge sea change*' and '*huge amount of money'* if it were to be effective:

> *… the Pathfinders thing… the whole idea of just flipping everything and putting the whole focus on, on the child… the first piece of work [that]… the judge will receive is the report coming in from the CAFCASS officer, which is all purely on the child. Before people start getting entrenched into their statements of evidence. … the whole idea of the CCO is the one who does all the safeguarding investigations, checks some of the hospitals, with the school, with the police, you know, with child protection… as well as then spending time with the child. So, the first picture that the court has is not the incidents about each other, each parent are alleging or accusing the other one of doing. It is all about the child. And the child remains front and centre… it would be great, but obviously that requires a huge sea change and a huge amount of money… but it basically had that one person was able to do…all that information gathering. And they had the ability, and you know, obviously legally were able to ask various different people for information.* (Legal Professional)

Indeed, several participants emphasised the *'problem'* with implementing a new approach will be *'money'*, pointing out the current lack of resourcing and limited pool of CCOs across different Trusts.

10.8 The Need for Resourcing and Investment

Resources and the lack thereof were frequently mentioned by all types of study participants as barriers to bringing change to the family court system and improvements for DVA victims/survivors and their children. For those who spoke of the alternative models of family court systems (explored above) and the need for specialised courts, all mentioned the need for funding, with the success of whatever model was chosen thought to be dependent upon resourcing and investment:

> *I think the initial indications are positive enough from Pathfinders, but I think it would be interesting to see what resources have had to be put in to try to implement that system… it's like anything, you know. It will be dependent upon resources. And about how much investment could be put into anything like that.* (Legal Professional)

Other measures discussed in this chapter, such as a trauma-informed court environment and enhanced facilities for victims/survivors were also noted to *'cost money'*, with frequent statements that there was *'no money'* for even small changes or for essential victim/survivor support services (outlined above) or indeed early intervention DVA perpetrator programmes. As one CCO put it:

> *There's plenty of money to do these scoping exercises. They produce these reports and these wonderful recommendations that come out of these reports. But it's a bit like there's money to do assessments, but there's no money for interventions…. So… we know what needs to be done. We need the money for the interventions, please… we know what happens in the past. They make these recommendations, and they sit on the shelf and are not implemented.* (CCO)

Also lamenting the lack of resource, one judge spoke of *'realistic'* short term and long-term changes and the need to consider what could be done with existing resources:

> *Well unfortunately, anything that I ever think of involves resources and I don't think, being realistic about it, I can't see any more resources becoming available. So, I keep coming back to this thing of well, what can we do with what's in the cupboard already?* (Judiciary)

10.9 Conclusion

Drawing on a wide range of participant data, this chapter has set out a range of short term and longer-term strategies which have the potential to improve the experience of the family court of DVA victims/survivors and their children. These include changes to family court proceedings themselves, from ways to slow down the application process to efforts to increase transparency and openness in the family court system. Early and comprehensive consideration of DVA allegations is recommended alongside ways to enhance multi-agency and cross-court information sharing. A review of the presumption of contact in the context of DVA is proposed as well as suggested improvements to the various distinct services within the family court such as the CCO service and legal representation, including a need for enhanced understanding of DVA and post-separation abuse across the court system. Potential improvements to the court infrastructure are outlined as a means to increase the protection and support available to the victim/survivor. The range of specialist DVA support and information services needed for victims/survivors and children are explored, as well as the need for the availability of programmes for DVA perpetrators. Participants views on alternative justice models are discussed with the chapter concluding on the critical

need for resourcing and short term and long-term investment if any improvements are to be realised.

Chapter 11:
CONCLUSION AND RECOMMENDATIONS

This research study aimed to better understand the experiences of domestic violence and abuse (DVA) victims/survivors and children engaging with private law family court processes in Northern Ireland. Views and experiences of those working within and alongside the legal system in NI, as well as those attempting to navigate the system, echo many of the concerns and barriers to justice that were identified in the review of international literature and a comparative analysis of different legal systems.

Whilst a developing understanding of DVA was acknowledged across participant groups, several gaps in understanding remain among those working within and alongside the system. Such gaps have shaped the ways in which victims/survivors and their children have experienced the system, with the manifestations and impacts of coercive control and post-separation abuse, in particular, still largely unacknowledged in consideration of allegations of DVA before the court. Similarly, experiences of DVA considered 'historic' or not impacting children directly tend to be disregarded in assessments of risk, and with evidence not readily available, often victims/survivors are left feeling unheard, with their fears and concerns dismissed or minimised by the process.

The analysis also highlights the challenges of navigating family courts processes for victims/survivors where a lack of formal support, limited information and inconsistent communication act as barriers to their full participation in the processes. Expectations for victims/survivors to engage in mediation presented particular challenges where even remote mediation arrangements neglected to appreciate the ongoing impacts of control and abuse. Moreover, several accounts spoke to the secondary victimisation and (re)traumatisation experienced by victims/survivors, where they are not believed by those in authority and their accounts and claims were interrogated through invasive questioning and met with false counter-allegations. Victims/survivors can feel judged, monitored, threatened and on trial themselves, including where they are making efforts to protect their children from a coercively controlling parent. Indeed, the potential for counter-allegations and reapplications to the court to be used by the perpetrator as a further form of abuse was raised by many (including victims/survivors, judiciary, legal professionals and child/victim advocates). Further trauma is generated by the court environment itself due to perpetrator proximity and experiences of fear, intimidation and a lack of privacy, while proceedings elicited profound feelings of powerlessness and loss of control as well as ongoing fear and uncertainty.

The analysis demonstrates an expressed commitment to a child's right to participation (Article 12, UNCRC) among many professionals and the value in engaging with and listening to children was acknowledged across all groups of adults in the study. However, when we apply the Lundy (2007) model of participation to children and young people's experiences, the analysis highlighted several practices that were not

conducive to supporting children to express their views and have those views heard. That is, there was a disconnect between professionals' understanding of participation and how this was experienced by children and young people. Additionally, the influence of children's views are somewhat diluted – almost automatically due to age as well as in light of considerations of their capacity and potential for parental influence. With no formal duty or mechanisms in place, a key gap related to feedback, where children are not regularly informed about the decisions made by the court – despite their expressed need to understand why decisions were made, to help them accept outcomes, particularly when they are not in line with their wishes.

Whilst there is no statutory presumption of contact in Northern Ireland, the analysis, nevertheless, demonstrates an assumption of contact that operates in practice – with several participants noting their concerns where contact was ruled even in cases where there had been serious violence, a perceived continued risk and/or where children had expressed a clear wish not to see the abusive parent. Although those working within the system refuted claims of 'contact at all costs' several followed this assertion with an acknowledgement of the rarity of a 'no contact' ruling and by emphasising the importance of a child having a relationship with both parents. Working backwards from contact as the starting point, the question posed by the system appears to be 'why should contact *not* happen?', rather than starting from an assumption of no contact and asking 'why *should* contact happen?'. Perhaps a subtle difference in wording, yet it shifts the onus from the victim/survivor to establish their concerns on to the perpetrator to establish that it is appropriate and safe for them to have contact with their child.

The analysis also demonstrates that a presumption towards contact, and a risk assessment that focuses narrowly on the potential impacts on the child, neglects to consider the practical implications of contact (including indirect) between perpetrator and victim/survivor, creating the opportunity for further control and abuse. Those assessing the risk of contact also need to better appreciate the potential for children to be used as a tool in the manipulation and abuse of their resident parent and the detrimental impact this can have on the wellbeing of both the child and parent. They also need to further appreciate the ongoing emotional toll of contact for certain children and young people which may manifest in many ways such as in their withdrawal from supports, disengagement from education, poor physical and mental health and physical challenges to family members attempting to bring them to contact arrangements. This emphasises the importance of not only taking children's views seriously at the point of deliberation on contact, but that these views are revisited as children and young people continue to experience the impacts of contact upon their everyday lives.

In sum, the research points to a need for responses to disclosures of DVA to be met with visible and tangible compassion from professionals, grounded in an enhanced awareness of the cumulative impacts of DVA. Meaningful reform will require a decisive and adequately funded shift towards trauma-informed, victim/survivor and child-

centred processes. Chapter 10 presents participants' views on potential improvements to the family courts system and associated processes whilst Chapter 7 identifies potential improvements to better facilitate children's participation. Many of these are used to inform and frame the recommendations below which are supported by the preceding analysis. The recommendations also echo and expand upon those contained within Outcome 5 of EVAWG Strategic Framework (e.g. in relation to supports, training, reduction of delay, information sharing, provision of perpetrator programmes) and the analysis provides supporting evidence for these priorities to be addressed.

11.1 Recommendations

Training: Mandatory training on DVA, delivered by qualified/accredited experts in the field, is required for all members of the judiciary and legal professionals, as well as CCOs and ISWs, who are working within the family courts. Training should to be up to date and needs to address current gaps including: understanding of coercive control, its impacts and how impacts can influence victims/survivors' presentation/behaviours; understanding of post-separation abuse and the potential for contact – both direct and indirect – to increase opportunities for such abuse; specialist training on the experiences and impacts of DVA on children and young people; trauma-informed practice; the implications of gendered assumptions; and, the impacts of accusations of implacable hostility.

Evidence and Information Sharing: Formal mechanisms need to be established to allow for more timely sharing of information and evidence related to allegations of DVA. Consideration should be given to a sharing protocol between criminal and family courts. Clear processes and procedures need to be established for information sharing between agencies and departments holding relevant evidence such as the PSNI, PPS and Social Services. Information should also be sought and considered from supporting organisations who have valuable insights into the experiences and impacts of DVA on individuals, including children.

CCO Capacity and Practice: Timely participation to ensure children's views are heard early in the process requires an increase in the number and capacity of Court Children's Officers across all Health and Social Care Trusts in Northern Ireland. CCO practice is also in need of review, support and enhancement to acknowledge the complexity of the task given the disjuncture between how CCOs define their practice (as child-friendly) and how children and young people experience it. This should include the provision of advanced specialist training to ensure regional consistency and best practice in the context of DVA allegations. The review of practice should apply the Lundy (2007) model of participation to consider the barriers and enablers to effective participation. A review of the CCO role and best practice with residing parents and applicants in the context of prior DVA should also be undertaken.

Enhancing Children's Participation: Processes should operate on the presumption that all children are capable of sharing their views, providing a greater opportunity for them to be heard in all proceedings. A resource for children and young people, co-designed by children and young people should be provided to advise: what family court proceedings are, who is who, what they will be asked and, how information will be used and decisions made. Children and young people should also be consulted on their preferred modes of communication to the court, including consideration of more direct lines of communication to the judge/court. Formal mechanisms to provide feedback to children should be embedded in the process. Given lack of established practice in this area, this, too, requires consultation with children and young people and could also draw on emerging practice in neighbouring jurisdictions such as the children/judiciary co-produced letter writing toolkit for judges (McFarlane, 2025) –

consideration should also be given to the potential role of CCOs in this regard. Guidance and information should also be provided for parents to help better prepare children and young people for participation.

Alternative Family Law Models: Consider alternative family law models which increase the possibility of applying a DVA lens. This should: include a full consideration of DVA allegations at the outset; facilitate more efficient, timely sharing of information and evidence; adopt trauma-informed approaches to service delivery; place children's voices at the centre of the decision-making process; have specialist judiciary and CCO services with expertise in DVA (and specifically its impacts on children); and, a wide range of supports for victims/survivors and children.

Presumption Against Contact: A presumption against contact should operate in the courts in cases were DVA is established. This requires an important shift in focus towards perpetrators establishing why it is safe and appropriate for them to have contact with their child. This presumption should also include indirect contact, given its potential to establish controlling behaviours and its impacts on some children. Where contact is agreed/ruled upon, this needs to be revisited regularly with victims/survivors and children to gauge ongoing impacts and children's wishes which are susceptible to change.

Mediation: Ensure that mediation is not offered to victims/survivors and perpetrators in cases of DVA as a first-stage means to expedite a 'resolution' around contact, given the challenges for victims/survivors to engage with mediation and shape outcomes in the context of an abusive and controlling relationship.

Restricting Potential for Litigation Abuse: Consideration should be given to further restrictions beyond Article 179(14) of the Children's Order to limit perpetrators' ability to make a further application for a period of time, with the potential to bar further applications indefinitely in certain circumstances.

Legal Aid Waiver: All victims/survivors should be advised of the possibility of applying for the Legal Aid Waiver as respondents in Article 8 Children's Order cases. Support and training should also be provided to relevant legal professionals in advising clients and to those who may be called upon to provide sources of evidence of DVA for applications for the waiver. Consideration should also be given to review the high threshold for victims/survivors to establish evidence of DVA.

Court Infrastructure: A review should be conducted of courts' spaces with a view to providing increased provision for victims/survivors to avoid any contact with perpetrators. This should include separate entrances, separate waiting areas/floors, toilet facilities and increased provision of private consultation rooms.

Supports: Provision of formalised support provided to victims/survivors to assist them in navigating the court system and processes, including increasing their awareness and requests of special measures, is required. Additionally, consideration should be given to opening the courts to, at least, allow DVA support workers and family

members to attend with victims/survivors as important sources of support. The possibility of attending hearings remotely via Sightlink should also be reintroduced.

Funding is also required for specialised DVA child support workers, to support children in preparing for engagement with family law processes as well as providing post-engagement support to assist with accepting the outcomes of proceedings. This is especially important given the limitations on CCO time and their capacity to support children pre/post engagement.

Perpetrator Programmes: Reintroduce DVA perpetrator programmes that can be referred to/accessed without a criminal court adjudication of guilt, with a potential referral route from fact-finding hearings and from CCOs.

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