



**S 7 REPORTS AND DOMESTIC ABUSE:
ADDITIONAL CONSIDERATIONS; UNDERSTANDING PD12J
AND APPLICATION TO THE REPORT TEMPLATE**

THE STARTING POINT

1. The cross-government definition of domestic abuse, stalking and harassment is: any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to abuse which is psychological, physical, sexual, financial and emotional.

2. 'Controlling behaviour' means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. 'Coercive behaviour' means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim. This definition, includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.¹

¹ Home Office (2013) *Domestic violence and abuse*, Available at: <https://www.gov.uk/domestic-violence-and-abuse>, (Accessed on: 01.11.2017).

THE SIGNIFICANCE FOR THE CHILD'S WELFARE

3. When the Court is considering arrangement orders for children, the child's welfare is the paramount consideration (s.1(1) CA 1989). The family court presumes that the involvement of a parent in a child's life will further the child's welfare, only so long as the parent can be involved in a way that does not put the child or other parent at risk of suffering harm. The view of the Court and primary legislation is unequivocal that domestic violence and abuse is harmful:

“Domestic violence and abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to violence or abuse, or witness one of their parents being violent or abusive to the other parent, or live in a home in which violence or abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with violence or abuse, and may also suffer harm indirectly where the violence or abuse impairs the parenting capacity of either or both of their parents.”²

4. S31(9) of the Children Act defines harm so as to include “ill-treatment or the impairment of health or development”. ‘Development’ means physical, intellectual, emotional, social or behavioural development; ‘health’ means physical or mental health; and ‘ill-treatment’ includes sexual abuse and forms of ill-treatment which are not physical. The potential risk of harm for children exposed to domestic violence has been recognised in statute in England and Wales. **Section 120 of the Adoption and Children Act 2002 extends the definition of ‘significant harm’ to include ‘impairment suffered from seeing or hearing the ill treatment of another’.**

LEGAL FRAMEWORK: PRACTICE DIRECTION 12J

5. In any case in which it is alleged, admitted, or there is other reason to believe, that the child or a party has experienced domestic abuse perpetrated by another party, or that there is a risk of such abuse the family court is required to consider domestic abuse and its harmful impact on children.
6. Those advising the Court must have regard to the Family Proceedings Rules, Practice Direction 12J- Child Arrangements and Contact Orders: Domestic Violence and Harm.

² Para 5, PD 12J

Practitioners should familiarise themselves with this practice direction in any relevant private law proceedings.³ Key provisions are set out in this guide.

7. PD12 J requires that the Court should determine as soon as possible whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic violence or abuse –
 - (a) in order to provide a factual basis for any welfare report or for assessment of the factors set out in paragraphs 36 and 37 (below);
 - (b) in order to provide a basis for an accurate assessment of risk; or
 - (c) before it can consider any final welfare-based order(s) in relation to child arrangements; or
 - (d) before it considers the need for a domestic violence-related Activity (such as a Domestic Violence Perpetrator Programme (DVPP)).

Establishing the basis of any assessment- fact finding hearings

8. Where the Court considers that a fact-finding hearing is necessary, it must give directions as to how the proceedings are to be conducted to ensure that the matters in issue are determined as soon as possible, fairly and proportionately. The burden of proving the allegations lies on the party making them. The standard of proof is the balance of probabilities. Findings must be based on evidence, including inferences that can properly be drawn, not on speculation.
9. The Court should, wherever practicable, make findings of fact as to the nature and degree of any domestic violence or abuse which is established and its effect on the child, the child's parents and any other relevant person. The court shall record its findings in writing, and shall serve a copy on the parties. A copy of any record of findings of fact or of admissions must be sent to any officer preparing a report under Section 7 of the 1989 Act.
10. Subject to the seriousness of the allegations made and the difficulty of the case, the Court shall consider whether it is appropriate for the child who is the subject of the application to be made a party to the proceedings and be separately represented.
11. As reporting officers to the Court, social workers need to be assertive in voicing the need for fact finding hearings where appropriate.

³ https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j

Requests for S7 reports – what the court should provide to the report writer

12. If the Court directs that there shall be a fact-finding hearing on the issue of domestic abuse, the Court should not request a section 7 report until after this hearing.
13. The Court should also consider whether it would be assisted by any social work, psychiatric, psychological or other assessment of any party or the child (such as an expert risk assessment), and if so make directions for such assessment to be undertaken and for the filing of any consequent report.
14. A transcript of the judgment or any record of findings of fact or of admissions must be sent to any officer preparing a section 7 report. Any request for a section 7 report should set out clearly the matters the Court considers need to be addressed.
15. Upon receipt of a request for a section 7 report those reporting should consider whether or not they have been provided with sufficient information available from the proceedings (including the judgment as to findings) in order to conduct the necessary analysis, and if necessary identify to the Court any perceived gaps in the information required to complete .

COMPLETING THE TEMPLATE FOR S7 REPORTS: SPECIFIC CONSIDERATIONS

Understanding the function and requirements of the report

16. When deciding the issue of child arrangements the Court should ensure that where abuse is admitted or proven, that any child arrangements order in place protects the safety and wellbeing of the child and the parent with whom the child is living, and does not expose either of them to the risk of further harm.
17. In every case where a finding of domestic abuse is made, your report should expressly address each of the factors set out in PD12J, as described below. An understanding of the risk and impact of post-separation abuse (including stalking and harassment) is critical to the safety of child contact arrangements. The primary function of your report will be to provide the Court with an informed and balanced assessment from which you can make child focused recommendations.
18. In your report you will refer to the issues identified in the welfare checklist with reference to any findings of fact by the Court, without the need to list the elements of the checklist separately.

19. To assist social workers in the assessment of domestic abuse in private law proceedings Cafcass have published a [Practice Pathway: a structured approach to risk assessment in Domestic Abuse](#). In addition, local authorities will have professional support and additional guidance available to social workers which can be accessed.

Section 2: Summary of Application and Main Issues

20. Identify as issues the significance of the domestic abuse which have emerged from the court's findings and your enquiries, and the impact upon the welfare of the child and the parent who has been the subject of abuse. In nearly all cases, there is not one single static factor but several dynamic factors combining, so the issues are nearly always about whether harmful factors for children can be sufficiently mitigated.

Section 4: The Relevant Chronology

21. The chronology should evidence any patterns of domestic abuse, stalking and harassment and where findings are made these should be inserted into the chronology, and sourced accordingly.

Section 5: Child Impact Analysis

22. There remains concern that children's voices are not properly heard within the court arena and that they are marginalised in professional practices and assessments.⁴ Children's experiences of domestic abuse and its impact on them should always be listened to, fully considered in your report, and inform your analysis.

23. The child impact analysis should identify any harm which the child and the parent with whom the child is living has suffered as a consequence of identified violence or abuse.

24. Your report must consider the conduct of both parents towards each other and towards the child and the impact of the same; in particular you must address:

(a) the effect of the domestic violence or abuse on the child and on the arrangements for where the child is living;

(b) the effect of the domestic violence or abuse on the child and its effect on the child's relationship with the parents.

⁴ Birchall, J. and Choudhry, S. (2018) "What about my right not to be abused?" Domestic abuse, human rights and the family courts, Bristol: Women's Aid.

25. Children's experiences are closely related to those of their resident parent/carer. Moreover, children are rarely passive bystanders but "experience domestic abuse as subjects and not objects".⁵ Domestic abuse is a major source of adversity for substantial numbers of children who experience abuse.⁶ Consider the extent to which the child/ren are affected by domestic abuse, not just in terms of direct emotional impact but other consequences such as the experience of perpetual criticism of their parent/carer, social isolation, frequent moves of home and school and sources of support.
26. The report should consider the potential and actual impact of experiencing domestic violence in relation to children's developmental outcomes, including emotional, social, psychological and behavioural responses with short and longer-term implications.

Section 6: Professional Judgement

27. This part of the report allows you to provide a balanced assessment considering strengths and risks, the capability of the child's parent/carers, or any other person the courts find relevant, to meet the child's needs (so addressing section (f) of the welfare checklist). The analysis should identify any harm which the child and the parent with whom the child is living, is at risk of suffering if a child arrangements order is made.
28. The best interests of the child are intimately connected with the welfare of the resident parent/carer. The assessment should therefore not focus exclusively on the child, but must also address the ongoing need to protect against controlling or coercive behaviour against a parent.
29. In order to reflect the required considerations of the court pursuant to PD12J, the report should expressly consider:
- (a) whether the applicant parent is motivated by a desire to promote the best interests of the child or is using the process to continue a pattern of violence, abuse, intimidation, stalking, or harassment or controlling or coercive behaviour against the other parent;

⁵ Callaghan, J., Alexander, J., Sixsmith, J. and Fellin, L. (2015) Beyond "witnessing" children's experiences of coercive control in domestic violence and abuse. *Journal of interpersonal violence*. {e-journal }pp 1-31. Doi: [10.1177/0886260515618946](https://doi.org/10.1177/0886260515618946).

Clark, P. and Wydall, S. (2015) 'From 'rights to action': Practitioners perceptions of the needs of children experiencing domestic violence,' *Child and Family Social Work*, 20, pp. 181-190.

⁶ Hughes, K., Lowey, H., Quigg, Z. and Bellis, M. A. (2016) 'The relationship between adverse childhood experiences and adult mental well-being results from an English national household survey', *BMC Public Health*, 16, pp. 2-22.

(b) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and

(c) the capacity of the parents to appreciate the effect of past violence or abuse and the potential for future violence or abuse.

30. The impact of the abuse identified upon the abused parent/carer in terms of their ability to parent should be taken into account when considering the continuing role of abusive parent/carers in children's lives. Research has described domestic violence as an attack on mothering and the mother-child relationship.⁷ Abuse, stalking and harassment before, during and after child contact should be drawn to the court's attention and inform your assessment.

31. Where there have been continuing threats or contact proceedings which appear to you to be used to protract conflict, or impede the parent/carer's recovery, set out the significance of this for the parent/carer and their child. Sometimes the use of the court process by an abusive parent amounts to a form of stalking, harassment and abuse, a means to perpetuate coercion, and regain control. The court must be satisfied that any contact ordered with a parent who has perpetrated violence or abuse is safe and does not expose either the child or other parent to the continued risk of harm arising from domestic violence or abuse.⁸

32. Sturge and Glaser identify the following as being necessary preconditions to contact:

(a) some (preferably full) acknowledgment of the violence;

(b) some acceptance (preferably full if appropriate i.e. the sole instigator of violence) of responsibility for that violence;

(c) full acceptance of the inappropriateness of the violence particularly in respect of the domestic and parenting context and of the likely ill effects on the child;

(d) a genuine interest in the child's welfare and full commitment to the child i.e. a wish for contact in which he is not making the conditions;

⁷ Radford, L. and Hester, M. (2015) 'More Than a Mirage? Safe Contact for Children and Young People Who have Been Exposed to Domestic Violence' in Stanley, N. and Humphreys, C. (eds) *Domestic Violence and Protecting Children*, London: Jessica Kingsley Publishers.

⁸ Birchall, J. and Choudhry, S. (2018) "What about my right not to be abused?" Domestic abuse, human rights and the family courts, Bristol: Women's Aid.

- (e) a wish to make reparation to the child and work towards the child recognising the inappropriateness of the violence and the attitude to and treatment of the mother and helping the child to develop appropriate values and attitudes;
- (f) an expression of regret and the showing of some understanding of the impact of their behaviour on the ex-partner in the past and currently;
- (g) indications that the parent seeking contact can reliably sustain contact in all senses.'

- 33.** Without a - f above report writers should consider the risk to the child`s general well-being and emotional development. Sturge and Glaser⁹: "Without these we also see contact as potentially raising the likelihood of the most serious of the sequelae of children`s exposure, directly or indirectly, to domestic violence, namely the increased risk of aggression and violence in the child generally, the increased risk of the child becoming the perpetrator of domestic violence or becoming involved in domestically violent relationships and of increased risk of having disturbed interpersonal relationships themselves."
- 34.** Research has indicated a risk of neglectful care during contact.¹⁰ Consider the extent of the interest and involvement in the child/ren's care prior to separation, and the familiarity of the parent/carer with their child/ren's developmental needs.
- 35.** Report writers should also familiarise themselves and address any specific issues arising for black and minority ethnic (BME) children and BME victims of domestic abuse.

Section 7: Recommendations

- 36.** In this section you will be considering the range of options available to the court (per section (g) of the welfare checklist). In proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary. In cases of domestic abuse however the court must consider carefully whether the statutory presumption applies, having particular regard to any allegation or admission of harm by domestic abuse to the child or parent or any evidence indicating such harm or risk of harm **The welfare of the child is the Court's paramount consideration.**

⁹ Contact and domestic violence – the experts' court report, Family Law, 30, Sept.2000, pp. 615-629

¹⁰ Radford et al., 1999; Harrison, 2008; Kaye et al., 2008; Thiara and Gill, 2012

- 37.** Specifically when deciding the issue of child arrangements, the court should ensure that any order for contact will not expose the child to the risk of harm, be safe, and will be in the best interests of the child.
- 38.** Any risk of harm arising from arrangements for the child must be highlighted explicitly. In making any recommendations for contact you should consider if the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during, and after contact.
- 39.** Practitioners should consider whether the following risks of direct contact apply:
- Failing to meet and actually undermining the child's developmental needs or even causing emotional abuses and damage directly through contact or as a consequence of the contact.
 - Escalating the climate of conflict around the child.
 - Direct abusive experiences, including emotional abuse by denigration of the child or the child's resident carer.
 - Continuation of unhealthy relationships such as dominant or bullying relationships, those created by fear, bribes or emotional blackmail, by undermining the child's sense of stability.
 - Unresolved situations, where the contact was unreliable and the child frequently let down.
 - Where there was little prospect for change such as wholly implacable situations.
- 40.** The purpose of the proposed contact must be overt and abundantly clear and have the potential for benefiting the child in some way. You should always explain how you have concluded that the arrangements recommended are safe and beneficial for the child. Sturge and Glaser (2000) viewed beneficial contact as being to:
- Help build or maintain a meaningful and beneficial relationship.
 - Provide a foundation for the healthy emotional growth of the child.
 - Allow the child, family and parent to share cultural and historical knowledge and information (particularly relevant to BME) families
 - Allow parent and child to repair difficult relationships.
- 41.** Recommendations should have in mind and address the requirement under PD12J that where the court has made findings of domestic violence or abuse but, having applied the welfare checklist, nonetheless considers that direct contact is safe and beneficial for

the child, the court should consider what, if any, directions or conditions are required to enable the order to be carried into effect and in particular should consider –

- (a) whether or not contact should be supervised, and if so, where and by whom;
- (b) whether to impose any conditions to be complied with by the party in whose favour the order for contact has been made and if so, the nature of those conditions, for example by way of seeking intervention (subject to any necessary consent);
- (c) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period; and
- (d) whether it will be necessary, in the child's best interests, to review the operation of the order; if so the court should set a date for the review consistent with the timetable for the child, and shall give directions to ensure that at the review the court has full information about the operation of the order.

- 42.** In particular consider provisions for safe pick up, handover and use of third parties to minimise the risk of further abuse, stalking and harassment when child arrangements order are made.
- 43.** Where you do not consider direct contact to be appropriate, you should go on to consider whether it is safe and beneficial for the child to make an order for indirect contact.
- 44.** As well as considering arrangements for the child in terms of contact and where they are going to live, it may be appropriate to consider the implications of the domestic abuse identified in relation to the future exercise of parental responsibility.
- 45.** S 3(1) of the Children Act 1989 defines parental responsibility as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.' The courts have repeatedly emphasised that in most cases it is in a child's best interests for both parents to have and exercise parental responsibility for the child, and in particular the vital importance of encouraging the exercise of parental responsibility by fathers. However the courts have also made clear that the concept of parental responsibility describes an adult's responsibility to secure the welfare of their child, which is to be exercised for the benefit of the child not the adult.

- 46.** In this context an option available to consider is that the court makes a prohibited steps order pursuant to s 8 of the Children Act 1989 to prevent a parent from exercising what would otherwise be their right. For example in one case¹¹ the Court prohibited a father convicted of setting fire to the family home and soliciting offences against the Mother from receiving an annual school report, because there was an appreciable risk that the provision of information to the father from the children's schools would result in the inadvertent disclosure to the father of the family's whereabouts.
- 47.** The reference in the template to post-proceedings support is so that it is clear what support is needed to sustain any significant change in family dynamics or functioning and to ensure that the court order you proposed is effective. This is important as what you are proposing could well involve a substantial change programme for the child, the success of which will require the people around the child to think and behave differently. Such a level of change is difficult to make in the first place and difficult to sustain. That is where the support comes in. Support may be informal, or through a locally available programme or service. You should make yourself familiar with local available programmes, particularly Domestic Violence Perpetrator Programmes and signpost or refer, depending on circumstances at the time.

Domestic Abuse Perpetrator Programmes

- 48.** These are Court Ordered Activities in private law cases in the Family Court. DAPPs are designed for use in some types of cases where domestic violence/abuse has been identified as a concern related to an application for a Child Arrangements Order in a family proceedings case.
- 49.** Some level of motivation is required to be present for the perpetrator to access the programme. Insufficient motivation will result in the person being assessed as unsuitable for the DAPP. The reporting officer must consider the risks to the child in the context of an untreated perpetrator and make robust and clear recommendations for safe child arrangements orders.
- 50.** The programme is designed to help participants:
- ensure, as far as is possible, their use of violence and abusive behaviour towards a partner is not repeated;
 - develop safe, positive parenting;

¹¹ HVA (no.1) [2015] EWFC 58 (Fam)

- increase their awareness of themselves and the effect of the domestic violence on their ex- partner and children;
- resolve conflicts in intimate relationships non-abusively.

51. Remember there may be cases where the Suitability Assessment demonstrates that the DAPP will not be effective as an intervention to benefit child arrangements.

52. Where participation in a DAPP approved by the Ministry of Justice is ordered in private law cases, the cost will be borne by Cafcass acting on behalf of the Department.

53. Where the Local Authority are holding the private law case and completing the section 7 report **all** responsibilities relating to Cafcass as specified in the 'Cafcass Process Guidance Domestic Abuse Perpetrator Programmes' are passed to the Local Authority.