



Scottish Law Commission
promoting law reform

Children and Domestic abuse: Are we getting it right for every child?

Professor Gillian Black, Commissioner
Scottish Law Commission

@scotlawcom

www.scotlawcom.gov.uk

The Scottish Law Commission

- Established by statute – Law Commissions Act 1965
- Independent of Government
- Make recommendations to modernise and simplify the law
- Consultation is at the heart of our work

Civil Remedies for Domestic Abuse

- Reviewing the current law: exclusion orders, interdicts, non-harassment orders
- Discussion Paper:
 - Sets out the current law and problems
 - Makes proposals for reform
 - Asks questions: seeks your views on these proposals
- Ch 7: Domestic abuse and children
- ***** Closing date: 22 January 2025 *****



Domestic abuse: the stats

In 2022-23, **Police Scotland** recorded **61,934** incidents of domestic abuse:

- **81%** involved a female victim and a male suspected perpetrator
- **16%** involved a male victim and a female suspected perpetrator
- **2%** involved a female victim and a female suspected perpetrator, and
- **2%** involved a male victim and a male suspected perpetrator

Police Scotland, 2022-23:

39% of incidents included at least one crime or offence:
61% therefore constituted domestic abuse not involving
criminal conduct

COPFS statistics, 2023-24:

A statutory child aggravation was recorded against 382
(21%) of the charges under the 2018 Act

Children's Hearings, 2022-23:

10,748 referrals: of which 2,036 (19%) were on the
section 67 ground that the child “has, or is likely to have,
a close connection with a person who has carried out
domestic abuse”.

How do children experience domestic abuse?

- In their **household**: abuse perpetrated by one parent against the other
- In their **own peer-to-peer relationships**:
 - SWA research from 2022 (YWCA Scotland and Young Women Rise): 479 participants aged 12-25 across Scotland: 36% were in/ had been in an abusive relationship
 - “the data suggests the levels of high severity abuse may be highest for the youngest age group” (SafeLives)
- In **child contact disputes**



The impact of domestic abuse on children

“Children who are exposed to domestic abuse experience increased levels of fear, inhibition, anxiety and depression compared to their peers. Increased risk of mental and physical health problems continues into adulthood.

Exposure to domestic abuse can severely impact a child’s neurological development, speech, language and communication and result in behavioural issues, including aggressive behaviours.....

...Domestic abuse can undermine the relationship between children and the parent who is also the victim of abuse.

Victims' parenting of their child may be controlled or undermined by the perpetrator, while their usual parenting capacity and emotional availability can be eroded by mental ill health and trauma resulting from abuse.”

(The Domestic Abuse Commissioner for England and Wales, 2023)

A misleading focus on violence?

“The children and domestic violence field tends to be grounded in the physical incident model of domestic violence...

This framing renders invisible children’s experiences of non-violent, control-based abuses in their homes.”

(Emma Katz, 2016)

Child Contact: the legal framework

The Children (Scotland) Act 1995

Three fundamental principles:

- The best interests of the child are paramount
- The voice of the child:
 - “[the court] taking account of the child’s age and maturity, shall so far as practicable - give him the opportunity to indicate whether he wishes to express his views; if he does so wish, give him an opportunity to express them; and have regard to such views as he may express.”
- The “no order” principle



Children (Scotland) Act 1995, s11(7A)-(7E)

Section **11(7B)** requires the court to have regard to:

(a) the need to protect the child from—

- (i) any abuse; or
- (ii) the risk of any abuse,
- ...

(b) the effect such abuse, or the risk of such abuse, might have on the child;

- (c) the ability of a person— ... who has carried out abuse ...to care for, or otherwise meet the needs of, the child

Children (Scotland) Act 1995, s11(7A)-(7E)

Section **11(7D)**:

Where:

- (a) The court is considering making an order... and
- (b) ... two or more relevant persons would have to **cooperate** with one another as respects matters affecting the child,

the court shall consider whether it would be appropriate to make the order.

The problems

- A focus on contact at any cost: a “pro-contact philosophy”
- A mistaken belief that, on separation, domestic abuse is “in the past”
- Insufficient weight given to the views of the child
- Insufficient consideration given to the safety of the parent who is the victim

Possible solutions?

Recognise children as victims of domestic abuse within the household, alongside their parent: “**adjoined victims**”:

- This would recognise the **shared** harm they suffer from the abuser’s conduct;
- Being recognised as an adjoined victim would give them enhanced legal recognition and status in the justice system:
 - Re civil protection orders **and**
 - Re child contact

Possible solutions?

- Make the safety of the child **AND** the parent an explicit factor for the court to consider in reaching any decision re contact;
- Require the court to give written reasons for a s11 decision where there is a history of domestic abuse;
- And of course... more training for the judiciary and legal profession



Scottish Law Commission
promoting law reform

gillian.black@scotlawcom.gov.uk

[@scotlawcom](#)

www.scotlawcom.gov.uk