



## Research article

# Hearing children's voices? Including children's perspectives on their experiences of domestic violence in welfare reports prepared for the English courts in private family law proceedings

Gillian S. Macdonald<sup>1</sup>

School for Policy Studies, University of Bristol, UK

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## ABSTRACT

This research examined Children and Family Court Advisory and Support Service (Cafcass) reports prepared for private family court proceedings in domestic violence cases in England. The research found that in cases where children's accounts identified them as victims of violence, these disclosures regularly disappeared from report recommendations. Particular discourses regarding 'child welfare' and 'contact' were identified, which routinely impacted on the ways in which children's voices were taken into account. Whilst culturally there has undoubtedly been an influential move towards including children's perspectives in decision-making that affects them, how these views are interpreted and represented is subject to adult 'gate-keeping' and powerful cultural and professional ideologies regarding 'child welfare' and 'post-separation family relationships'. This research found that the unrelenting influence of deeply embedded beliefs regarding the preservation or promotion of relationships with fathers continues to have the effect of marginalising issues of safeguarding, including children's voiced experiences of violence, in all but the most exceptional of cases. Rather, safeguarding concerns in respect of domestic violence and child abuse were persistently overshadowed by a dominant presumption of the overall benefits of contact with fathers.

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## 1. Introduction

This article<sup>2</sup> is based on research which examined Children and Family Court Advisory and Support Service (Cafcass) section 7 (Children Act 1989) reports prepared for the family courts in child arrangement disputes in domestic violence cases (in England). Content analysis of reports was used to investigate how information about domestic violence was presented in reports, how children's voices were included and what impacts these representations had on recommendations made to the courts. In addition to content analysis, critical discourse analysis (CDA) of a small sub-sample of reports was used to examine discursive practices in-depth. Critical discourse analysis identified pervasive ideologies about child welfare and

*E-mail address:* [g.macdonald@bath.ac.uk](mailto:g.macdonald@bath.ac.uk)

<sup>1</sup> Present address: Department of Social and Policy Sciences, University of Bath, UK.

<sup>2</sup> Based on a presentation given at the 13th ISPCAN European Conference in Dublin, September 2013.

contact with non-resident fathers, which impacted on how and to what extent domestic violence and children's voices were represented and taken into account in report recommendations.<sup>3</sup>

This paper focuses on the inclusion of children's voices part of the analysis. The paper will begin by outlining the legal context relating to child arrangements post parental separation, followed by consideration of the literature related to hearing children's voices. A summary of the research methodology, including detail of the analytical methods, is then provided. Key findings from both the content analysis and CDA are presented in relation to how children's voices were represented in reports and the impacts these representations had on recommendations. Findings are then discussed, concluding that dominant ideologies and ideals concerning 'child welfare' and 'post-separation family relationships' shape and restrict the ways in which children's voices are included in legal decision-making. This, it is argued, has detrimental impacts for effective safeguarding in domestic violence cases. The implications of this for policy and practice are discussed.

## 2. Legal and policy context

### 2.1. Post-separation arrangements for children

If parents cannot agree on arrangements concerning children following separation they can apply to the courts for an order under section 8 (s8) of the Children Act 1989. Applications usually concern issues of contact and/or residence. As a result of amendments made by the Children and Families Act 2014 'contact' and 'residence' orders are now referred to as 'child arrangement orders'.<sup>4</sup> If the parental dispute cannot be resolved and/or issues of child welfare have been raised, the judge will ordinarily request a welfare report under section 7 (s7) of the Children Act 1989. An s7 report is normally undertaken by a Cafcass Children and Family Reporter (CFR). Cafcass' primary aim is to safeguard and promote the welfare of children subject to family court proceedings. A primary function of this role is to represent children's voices, usually by consulting with a child and presenting their views within the S7 report. In general, S7 reports should consider the disputed issues, the options available to the court and, where feasible, make a recommendation to the court concerning future action, including consideration of whether an order should be made. The court will make a decision based on consideration of this report and any recommendation made, and other specific or expert information where requested.

The imperative to include children's perspectives in legal proceedings affecting them and to take these perspectives into account, dependent on the child's age and maturity, is enshrined in Article 12 of the United Nations Convention on the Rights of the Child (United Nations, 1989) and in the Welfare Checklist at s1(3) of the Children Act 1989.<sup>5</sup> The importance of including children's perspectives has also been restated in Munro's (2011) review of child protection services and the Family Justice Review (Moj & DfE, 2011). There is no legal prescription regarding the age at which children should be consulted and have their wishes and feelings taken seriously. However, there is evidence that even very young children are capable of expressing a view if provided with the right environment and tools to meet their particular communication needs (Clark & Moss, 2011; O'Kane, 2008; Winter, 2010). Therefore, it is generally considered good practice to meet with and at least attempt to elicit the wishes and feelings of any child deemed capable of expressing a view of some sort.

### 2.2. Presumption of contact

Contact with a non-resident parent following parental separation or divorce is a complex legal matter, with no set rules on how much or what form contact should take (Coy, Perks, Scott, & Tweedale, 2012). However, the United Nations Convention on the Rights of the Child (United Nations, 1989) makes it clear that children have the right to maintain 'personal relations and direct contact' with parents from whom they are separated, 'except if it is contrary to the child's best interests' (UNCRC, Article 9). This principle has been reinforced in case law.<sup>6</sup> However, a legal presumption of contact has principally been established on the basis that contact promotes child welfare and is 'almost always' in the interests of the child.<sup>7</sup> This presumption is reflected in official government statistics which show that contact is denied in less than 1% of all contact application cases (DCA, 2004, 2006; Moj, 2012).

Behind the legal presumption of contact is a heteronormative vision of families and harmonious family life. This vision is supported to an extent by a body of empirical evidence concerned with the impact of divorce/parental separation. Influential small-scale studies, first in the USA and then the UK, found direct links between better outcomes for children post-parental

<sup>3</sup> In almost all cases the non-resident parents were fathers

<sup>4</sup> The recently enacted Children and Families Act 2014 has replaced the legal terms 'Contact' and 'Residence' with the broader term 'Child Arrangements Order' to refer to any order regulating arrangements relating to any of the following – (a) with whom a child is to live, spend time or otherwise have contact, and (b) when a child is to live, spend time or otherwise have contact with any person (s12 Children and Families Act 2014). However, the terms contact and residence are used when describing data to reflect the period in which the empirical research was undertaken.

<sup>5</sup> Whilst there is no legal definition of welfare, the welfare checklist (s1(3) Children Act 1989) provides the legal criteria the court and Cafcass must have regard to in family court proceedings, including,

The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding). (S1(3) Children Act 1989)

<sup>6</sup> For example, *Re A.v.Y (Child's Surname)* [1999] 2 FLR 5

<sup>7</sup> *Re O (A Minor) (Contact: Imposition of Conditions)* [1995] 2 FLR 124.

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