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LIVING IT

CHILDREN, YOUNG PEOPLE AND JUSTICE

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Children and young people experiencing domestic abuse

Anni Donaldson asks “are we getting it right”?

HESTER famously described the challenges of protecting children experiencing domestic abuse in the interstices of three, often conflicting, professional ‘planets’: domestic abuse, children protection and child contact (Hester 2012). The case she makes is clear. The gendered nature of domestic abuse, the abuser’s pattern of coercive control and the best interests of children living with domestic abuse as understood on the ‘domestic abuse planet’ are often distinctly at odds with the professional cultures and priorities of the other two. These key differences, backed by a substantial body of evidence from research and practice, can result in inappropriate and unsafe professional practice, the diversion of attention away from the perpetrator and re-victimisation of the non-abusing parent, usually the mother, resulting in poor outcomes for the very children systems are designed to protect. Hester acknowledges that professional cultures, in England and Wales, still appear unwilling to recognise the key issues in domestic abuse cases. Are things any different in Scotland?

Domestic abuse policy in Scotland

The Scottish Government acknowledges that domestic abuse is a gendered crime (Scottish Government 2014). Domestic abuse is priority business for Police Scotland with more than 60,000 incidents reported in 2012-13, accounting for 15% of all violent crime and 20% of police time. Over 81% of victims in these incidents are women. Eleven women were murdered by a partner or ex-partner in Scotland in that year (Scottish Government, 2013).

Significant numbers of children are living with domestic abuse in what constitutes a ‘widespread, serious and chronic social problem’ (Humphreys et al 2008). Domestic abuse is still largely under-reported and while there is no national incidence or prevalence data for Scotland on the numbers of children and young people living with domestic abuse, studies indicate that the problem is also widespread here. Across Scotland, children living with domestic abuse are over-represented in referrals to children and family social work teams, represent

up to two thirds of cases seen at child protection conferences and comprise a significant proportion of those referred to the Children’s Hearings system. Domestic abuse is also a common factor in the lives of many looked after and accommodated children.

Children and young people experiencing domestic abuse

Scotland has made great progress in championing children’s rights since devolution. For years young victims and survivors of domestic abuse, and their advocates, have called for the impact of domestic abuse on children and young people to be recognised in law, policy, services and professional practice. Campaigns such as Voice against Violence have ensured that young survivors’ voices were finally heard at the heart of policy making. Innovations have prioritised the need to protect children from the impact of living with domestic abuse and to have their voices and opinions heard in decisions regarding their best and future interests.



The combined effects of the Family Law (Scotland) Act of 2006, the National Domestic Abuse Delivery Plan for Children and Young People 2008, the Children and Young People (Scotland) Act 2014, the Children’s Hearing (Scotland) Act 2011 and 2014 and revised National Child Protection Guidance 2014, now ensure that domestic abuse is considered in all decision making by child protection specialists, family courts and Children’s Panels. To its credit, the Scottish Government has also put its money where its policy is by investing £34.5m in tackling violence against women overall during the period 2012-2015. With a strong focus on the co-ordination of community responses, services for children and young people also benefited from specialist provision including CEDAR (Children Experiencing Domestic Abuse Recovery), Women’s Aid Children’s Services and ASSIST (Advocates, Safety, Support Information Services Together) Children’s Advocacy Services.

Scotland's 'domestic abuse planet' is beginning to look like the United Nations Convention for the Rights of the Child in action. However, the grim realities of domestic abuse and its impact on too many Scottish children persist. Crucially, for those who regard domestic abuse as gender based, there are two main challenges: keeping children's perspectives to the fore and demonstrating that the focus of all interventions should remain firmly on the domestic abuse perpetrator as a parent or someone with significant involvement in the child's upbringing.

Child protection and domestic abuse

Child protection in Scotland is rightly concerned with the best interests of the child. However, its traditionally gendered standpoint still places responsibility for the protection of the child with the mother, irrespective of the source of harm. By focusing on a mother's 'failure to protect' in the context of domestic abuse, the system fails to recognise that there is an adult *and* a child victim. For children and young people, the impact of domestic abuse can be profound both physically and emotionally and vary according to their age and gender. It is most positively influenced by the quality of their relationships with their mother with available support from friends, family members and others and, most importantly, to the frequency, form and length of exposure to violence in the home.

For children and young people, the impact of domestic abuse can be profound both physically and emotionally and vary according to their age and gender

Coercive control can isolate the family and undermine or rupture the mother-child bond. Recent research by Katz and others shows that many mothers and children devise effective protective strategies, support each others' recovery and are excellent judges of what is best for both (Katz 2014). It is therefore in the child's best interests, wherever possible, for their mother to be protected too and for the strengths in their relationship to be preserved. The child protection system's own 'failure to protect' *both* victims may itself constitute service-generated risks by failing to hold the abuser to account, prolonging the impact of the abuse, inhibiting recovery and reducing mothers and children's chances of living a safe, healthy and fulfilling life.

Child contact

The messages from children and young people experiencing domestic abuse are clear. They want the abuse to stop, for someone to listen to their concerns, to be believed and taken seriously. Their perspectives are crucial in post-separation contact disputes as the family court arena can provide a vehicle for abusers to maintain control over their estranged family. However, the child contact system regards even separated parents as a unit, that ongoing contact with both is in the best interest of the child and does not regard a history of domestic abuse as a barrier to a father's chances of gaining regular contact.

The provisions of the Family Law (Scotland) Act 2006 give children the right to have their views taken into account in contact disputes and to instruct a solicitor. Mackay's research into the working of the Act found that the majority of children do not have their views taken into account during such disputes. In almost half of all contact cases surveyed there were allegations of domestic abuse. It appears that for many children, their wishes not to have contact with an abusive parent were infrequently considered by court decision-makers (Mackay 2013).

The cross-cutting nature of domestic abuse presents a challenge to society's views regarding gender roles, parenting and to professional cultures. Scotland has made substantial progress in ensuring children's rights are embedded in law and policy, and is recognised for its progressive strategic approach to both defining and preventing all forms of gender based violence. The needs of this vulnerable group have been successfully publicised and provided a focus for some innovative policy and practice developments. However, there is still a way to go before such innovations become fully integrated across those sectors concerned with children.

Until child protection policy and practice recognises that there are two victims, families will continue to be ill-served by the system. Until court personnel in contact disputes consistently fulfil their obligations under the law to take children's views seriously and act upon them, harm may continue during contact visits. Children and young people have provided practitioners with the best evidence to support continued change. With young people's rights now firmly enshrined in Scottish law and policy, advocates are optimistic that the voices of children and young people can no longer be ignored by those making decisions about their future.

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Voice Against Violence: <http://www.voiceagainstviolence.org.uk/>

UK Justice Policy Review:

Volume 2

6 May 2011 to 5 May 2012

UK Justice Policy Review:

Volume 3

6 May 2012 to 5 May 2013

By Richard Garside, Arianna Silvestri
and Helen Mills

UK Justice Policy Review:

Volume 1

6 May 2010 to 5 May 2011

By Richard Garside and Helen Mills

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UK Justice Policy Review: Volume 1 (May 2010 to May 2011), *UK Justice Policy Review: Volume 2* (May 2011 to May 2012) and *UK Justice Policy Review: Volume 3* (May 2012 to 5 May 2013) are now online and available to download from: www.crimeandjustice.org.uk/project/uk-justice-policy-review