**Scottish Law Commission Discussion Paper on Civil Remedies for Domestic Abuse (DP No. 178)**

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***46. Should a child under 18 be recognised as an adjoined victim/survivor of abuse perpetrated by or against a parent or connected adult in their life?***

Yes, we agree that a child under 18 be recognised as an adjoined victim/survivor of abuse perpetrated by or against a parent or connected adult in their life. As we argued in our 2022 article, intimate partner coercive control is inherently ‘triadic’ where children live in that environment.[[1]](#footnote-1)

We acknowledged in our 2022 article that there are challenges when it comes to capturing children’s status as victims terminologically and reflecting this in the law. We consider adjoined victim the most appropriate term to use for the reasons given in our 2022 article; and we support the Commission’s inclusion of the word survivor.

In our 2022 article, we flagged some of the key limitations that exist in relation to other terminology that has been used in this area.[[2]](#footnote-2) For example, describing children as ‘secondary’ or ‘indirect’ victims of intimate partner domestic abuse tends to position children as ‘collateral’ victims who ‘witness’ or are ‘exposed’ to ‘adult’ coercive control. [[3]](#footnote-3) These terms risk downplaying the severe impacts of coercive control on children andobscuring the perpetrator’s responsibility for the harm caused to them. By contrast terms such as ‘distinct victim’ or ‘victim in their own right’ risk implying that a child’s victim status in relation to intimate partner domestic abuse can arise even if the adult victim did not experience abuse.[[4]](#footnote-4)

The Commission also discusses the term ‘co-victim’ in its Discussion Paper and concludes it is not workable because “[t]he parent is the victim/survivor of the domestic abuse: the child is the victim of experiencing (often intensely) that abuse perpetrated against a parent. The abuse they experience is different, and they are not co-victims in that sense.” We agree with this and would further add that co-victim is used in criminological literature in a way that is similar to, or interchangeable with, ‘secondary’ or ‘indirect’;[[5]](#footnote-5) for example, a “‘co-victim’ of an act of violence is anyone who is harmed as a direct result of witnessing the act of violence that resulted in the injury or death of the primary victim”.[[6]](#footnote-6) The term co-victim is used in homicide literature to refer to surviving family members of homicide victims,[[7]](#footnote-7) who are indirectly victimised.[[8]](#footnote-8) While we therefore see the appeal of the term co-victim because of its simplicity, we are a cautious of using a term that already has an association with ‘secondary’ or ‘indirect’, and with a different context, in the context of intimate partner domestic abuse. By contrast we have recommended ‘adjoined victims’ as a specialist term to refer specifically to children who experience intimate partner domestic abuse. We note the term has been picked up by other researchers in this context.[[9]](#footnote-9)

We consider that recognising children as adjoined victim/survivors of abuse is vital for several reasons. Researchers have identified that there is limited understanding amongst legal practitioners working in the Scottish civil justice system of the nature and characteristics of domestic abuse and how coercive control impacts children.[[10]](#footnote-10) Concerningly, Burman and others recently found, “there remains a belief that domestic abuse against a parent does not necessarily have any impact on the child”,[[11]](#footnote-11) suggesting that risks to children are being downplayed in Scotland.[[12]](#footnote-12) Recognising children as adjoined victim/survivors in the civil law could lead to a cultural shift in how children’s experiences are viewed and responded to in law. It would validate children’s lived experience; and directly challenge traditional adult centric conceptualisations of domestic abuse in law and the resulting marginalisation of children’s experiences.[[13]](#footnote-13) As we discuss in our answer to question 48, this marginalisation is particularly problematic in child contact cases. Recognising children as adjoined victims, and having concrete legal consequences flow from this, would also help to ensure Scots law is compatible with the UNCRC, for the reasons given in the SLC Discussion Paper. As the Discussion Paper also describes, state failure to act in relation to domestic abuse against a parent can breach a child’s human rights under the European Convention on Human Rights. We discuss human rights considerations to a fuller extent in our response to later questions.

The Discussion Paper notes that the proposal to treat children as ‘adjoined victims’ would lead to a different approach in civil law to that in criminal law under the Domestic Abuse (Scotland) Act 2018 (known as DA(S)A). The fact that there will be a difference in approach between the civil law and criminal law should not, in our view, be viewed as a negative. Indeed, during the passage of Scotland’s landmark criminal domestic abuse legislation (DA(S)A), the failure to recognise children as victims was a key issue amongst stakeholders. Indeed, those with knowledge and understanding of how children experience domestic abuse were clear that children should be recognised as victims of intimate partner domestic abuse. [[14]](#footnote-14) Houghton and other’s research conducted with victim/survivors into their experiences of court since the introduction of DA(S)A has found that child and adult participants still “felt that the perpetrator was not held sufficiently accountable for harm to children nor was it adequately recognised that they experienced abuse together”.[[15]](#footnote-15) We note too that DA(S)A came before the incorporation of the UNCRC. Therefore, there is an important opportunity to take a different approach in the civil law which does more for children. Recognising children as adjoined victims in the civil law, and ensuring legal protection flows from that status, is crucial. This would not only improve the civil law response to domestic abuse but also strengthen the argument for that recognition in the criminal law. We continue to advocate for the introduction of a parallel offence of ‘abusive behaviour towards partner or ex-partner and adjoined child’ into DA(S)A as we proposed in our 2022 article. [[16]](#footnote-16)

***47. Should a civil protection order be available for a child who is an adjoined victim/survivor:***

1. ***As part of a civil protection order/DACPRO sought by the victim/survivor***

Yes, we consider a civil protection order should be available for a child who is an adjoined victim/survivor as part of a civil protection order/DACPRO sought by the adult victim/survivor. While recognising children as adjoined victims has significant symbolic value, it is essential that this legislative recognition comes with meaningful legal consequences and protections. The inclusion of children within the scope of the order is also in line with the criminal law approach where children can be covered by a Non-Harassment Order following a conviction for domestic abuse.

Domestic abuse is a highly gendered crime. This understanding underpins Scottish policy, and the Scots criminal law approach.[[17]](#footnote-17) It also informs the approach taken by the Commission in its Discussion Paper.However, it is clear that it is not yet widely understood across the civil law context in Scotland – for example Burman and others found in their recent research with legal practitioners that in child contact proceedings domestic abuse is “considered as a point of contention between parties, and not as a (gendered) crime characterised by the imposition of power and control”.[[18]](#footnote-18) There is a clear to improve understanding of coercive control across the civil law context.

As we argued in our 2022 article, reconceptualising children as adjoined victims enhances and promotes a gendered understanding of domestic abuse.[[19]](#footnote-19) This is because the highly gendered nature of caregiving and the centrality of attacks on the mother/child relationship in coercive control. Supporting the mother/child relationship is regarded as central to safety and recovery from domestic abuse.[[20]](#footnote-20)

We are firmly of the view that it is essential that children can be covered by the order sought by the adult victim. Research in England and Wales has shown that victims of domestic abuse want civil orders as it enables them to retain some control over applying for an order;[[21]](#footnote-21) and for civil orders to be a useful and meaningful tool for (typically) women it is essential that their children can be covered. Indeed, the starting point should be that children can be covered because, simply put, they are also trapped in the regime of domestic abuse together with their parent/caregiver/connected adult. As we emphasised in our 2022 article, contemporary research highlights the importance of recognising and managing coercive control as a shared experience of interlinked harms caused by a single perpetrator.[[22]](#footnote-22)

However, while children are also trapped in the regime of domestic abuse – and share in and experience directly the distinct and cumulative harms - it is important to be mindful that adult victim and children do not have identical experiences. Recognising children as adjoined victims recognises that they are, as we describe in our 2022 article, “agents within a triadic relationship”.[[23]](#footnote-23) And as Morrison and Houghton put it, “as well as connections there are points of difference - while children’s and women’s rights to protection and provision may be linked, they are not synonymous or proxies for one another.”[[24]](#footnote-24) Therefore while it is essential that children can be covered by the order sought by the adult victim, it is equally essential that children’s views are heard as part of this process, as the SLC Discussion Paper acknowledges.

Hearing children’s views is necessary for compliance with the UNCRC, with Article 12 establishing the right of children capable of forming their own views to express those views freely in all matters affecting them, with their views being afforded due weight in accordance with their age and maturity. Attaching greater weight to children’s views is in line with the general direction of travel in Scots law, for example the Children (Scotland) Act 2020 will remove any age-based presumption in relation to children’s ability to give a view and recent case law decisions show increased attention being paid to children’s views.It is vital that children’s participation is properly facilitated because the evidence shows “there is inherent value in the contributions children make to assessment and decision-making”, including around violence and risk.[[25]](#footnote-25) It is also recognised that involving children in decision-making that affects them enhances their sense of empowerment and self-efficacy.[[26]](#footnote-26) We would like to emphasise that children’s views need to be heard separately. As we noted above, domestic abuse is not a uniform experience. As others have pointed out adults, including parents and carers, do not always represent children’s interests sufficiently:[[27]](#footnote-27) “the experiences, needs and interests of children do not necessarily coincide with those of their parents and so need to be heard separately”.[[28]](#footnote-28)

***(b) If sought by the adjoined victim/survivor themselves, where they have capacity;***

Yes, we consider a civil protection order should be available for a child who is an adjoined victim/survivor where that order is sought by them where they have capacity. As we emphasised earlier while recognising children as adjoined victims has significant symbolic value, it is essential that this legislative recognition comes with meaningful legal consequences and protections.

In our 2022 article, we argued that reconceptualising children as ‘adjoined victims’ of intimate partner domestic abuse in their living environments would disrupt the traditional adult minimisation of the impact of domestic abuse on children and recognise children’s agency.[[29]](#footnote-29) As others have identified the law has, traditionally, been ambivalent towards children as legitimate legal subjects;[[30]](#footnote-30) and indeed, the treatment of children as objects rather than subjects has continued to be a core problem with the civil law responses to domestic abuse.[[31]](#footnote-31) We consider that “[r]ecognising children as adjoined victims would validate their experiences of harm and assign them proper legal subjecthood”.[[32]](#footnote-32)

We support the SLC’s proposal because it recognises the child’s agency in a situation where they are in an environment where there is a domestic abuse. We agree with the SLC’s statement in the Discussion Paper that, “Enabling a child to seek a civil remedy would recognise the capacity and autonomy of the child and would respect their rights under the UNCRC. A number of those with whom we have engaged during this project have emphasised how important this is to children, to be able to take control.”

The SLC will need to consider the situation whereby a child wishes to seek a civil protection order, but the adult victim/survivor of the abuse does not. It is quite plausible that this situation will arise because, as we emphasised earlier, the experiences of children and their parent or connected adult will be linked yet different.

The decision to seek an order is a complex one and it is possible that in some situations an adjoined child may wish to seek one where the adult victim/survivor of the abuse does not because, for example, they fear reprisal or because they do not recognise the behaviour as abusive. Furthermore, as Morrison and Houghton describe, “[w]hile women may try and protect children from abuse taking place this is not always possible, and they may underestimate children’s awareness of abuse or the impact it has on children. Not all children want to be supported by their mothers, and not all mothers are able to support their children*”*.[[33]](#footnote-33)While inmany circumstances a child will develop a closer relationship with the non-abusing adult as way of coping with the abuse, this will not always be the case, and we can therefore envisage circumstances where a child would want or need to apply on their own.

Two types of situations might arise a) where the child seeks an order in circumstances and the connected adult is not opposed to this; and b) where the child seeks an order in circumstances and the connected adult is opposed to this. One question that will need to be addressed is whether and how the order a child applies for can impact upon the connected adult. And if so, would the SLC envisage that the adult be given the opportunity to be heard?

Some may question whether the very notion of permitting a child to apply in either of these circumstances is consistent with their status an adjoined victim, questioning how the child can be an adjoined victim if the adult is not seeking an order. However, we consider it is entirely consistent with the adjoined victim concept. The child is still an adjoined victim of intimate partner domestic abuse, irrespective of whether the adult victim wishes action to be taken. To give practical effect to the recognition that intimate partner domestic abuse is triadic in nature where a child lives in that environment, it is vital to validate the child’s agency by allowing them to apply for an order.

The Commission in its Discussion Paper is clear that it is important that there no requirement on the adult victim/survivor of domestic abuse to pursue action (civil or criminal). This is in line with an approach that recognises protective orders which are imposed without victim consent can have a disempowering effect. This concern is typically raised in the context of state-initiated action (e.g. prosecution and protection orders in the criminal sphere). We do not think this concern could be used to deny children the opportunity to act where they are also living with that experience of domestic abuse, because they are also a rights-bearing agent living in that environment. We are of the view that the child should be able to apply for an order and have it granted irrespective of the views of the adult victim/survivor, where that order is in the child’s best interests.

Some might point out this seems different to our recommendation for a parallel offence in the criminal law of ‘abusive behaviour towards partner or ex-partner and adjoinedchild’, as that offence could not be used just for a child. However, the contexts are markedly different. In the context of the criminal law, the decision of whether to prosecute does not rest with the victim but with the state (a complex issue itself). It is almost impossible to conceive of circumstances where the offender could be prosecuted by the state for engaging in intimate partner domestic abuse towards the adjoined child but not the adult victim themselves, given the obvious criminality involved. If conduct was only directed at a child (and not the intimate partner) this would be prosecuted as a child abuse offence. Therefore, it makes sense in this context that a parallel offence could not be used just for a child. By contrast, pursuing remedies in the civil law relies on victim-initiated action; and there is no requirement for the adult to act. But as we argued above the child is still an adjoined victim of intimate partner domestic abuse, irrespective of whether the adult victim acts and therefore it is logical that they can seek an order independently.

Finally, it will be essential that children have access to appropriate support when seeking such an order – for example, in terms of legal aid and assistance. We are aware of the burden – emotional and otherwise – that applying for an order against the abuser in their life would have on a child, and consider the Scottish system should do all it can to support them.

***(c) If sought by a parent/guardian on their behalf?***

In our view, this effect of recognising children as adjoined victims is potentially controversial.

There are two potential situations which arise in relation to this and the SLC Discussion Paper does not distinguish between them.

Situation 1: A child does not have capacity. A parent/person with Parental Rights and Responsibilities (PRRS) has the right and responsibility to act as the child’s legal representative under sections 1(1)(d) and 2(1)(d) of the Children (Scotland) Act 1995. So, when a child does not have capacity themselves, logically anyone with PRRS would be able to apply on the child's behalf/as the child's legal representative. Clearly there are situations where it would be in the child’s best interests for someone to apply on behalf of the child; and doing so is clearly necessary from a child protection perspective.

Situation 2: A child has capacity. Would a parent or guardian of the adjoined victim still be able to apply in such circumstances? Such an approach risks undermining the agency of the child. One concern is that allowing an adult to apply where the child has capacity but does not wish to apply reinforces the notion that domestic abuse is an ‘adult concern’. Consideration needs to be given to how such an approach would fit with other issues around children and capacity in Scots law e.g. medical treatment and the UNCRC; and how to achieve an appropriate balance between child protection concerns and respecting children’s agency where they have capacity.

While allowing parents/guardian to apply in situation 1 is not controversial, allowing them to do so in situation 2 is potentially controversial. It is possible that the SLC only envisage a parent/guardian being able to seek an order on behalf of the child where that child lacks capacity, but that is unclear.

In either situation, some may argue that there is a risk of this option being used for by the parent/guardian in pursuit of their own agenda. In the example provided by the Commission (p 178 of the Discussion Paper), for example, it is possible that the child’s mother could apply for a civil protection order for the child to support their position in ongoing contact/residence proceedings with the father. We are very hesitant to overstate this risk as we are acutely aware that claims of alienation/manipulation are presently used to foreclose consideration of domestic abuse; and that there is limited evidence of women/mothers trying to manipulate the system in this way. Arguably a more pressing risk is that this option is misused by abusive men/ fathers, who might seek to weaponize this option against women/ mothers by, for example, applying for a protective order on behalf of the child arguing they are an adjoined victim because they allege mother is abusive to e.g. their new partner. Unfortunately, ‘systems abuse’ such as making false reports of child maltreatment can be a common tactic deployed by perpetrators of coercive control.[[34]](#footnote-34) The Commission will need to consider these issues.

More generally, we would emphasise the point that – for numerous reasons - parents and guardians do not always represent children’s interests appropriately. If the Commission recommend that parents/guardians can apply on behalf of a child, we would emphasise that it is imperative that the the court hears the child’s views and hears them separately.

***48. Do you agree that the Children (Scotland) Act 1995 should be amended so that:***

1. ***the court is required to provide written reasons for making an order under section 11 (such as a contact or residence order), where there is a history of domestic abuse?***

We are pleased to see this proposal, which is based on a suggestion made by Dr Cairns as part of her review of the draft Discussion Paper. We strongly agree that the court should be required to provide written reasons for making an order under s 11 where there is a history of domestic abuse. A significant shift in legal practice is required in order to challenge the current minimisation of domestic abuse in family law proceedings. Despite sections 11 (7A) – (7E) of the 1995 Act, it is clear that the Scottish courts struggle to fully appreciate the relevance of domestic abuse to issues of child welfare.[[35]](#footnote-35) Requiring written reasons when contact/residence is granted despite domestic abuse would further underscore the relevance of domestic abuse to a child welfare assessment under s 11 and would, if applied properly, ensure that the courts directly consider the link between domestic abuse and harm/risk of harm to the child in individual cases.

The effectiveness of this requirement may depend on specific wording. For example, careful consideration will need to be given to what counts as a ‘history of domestic abuse’. Would the requirement only apply if there was a past prosecution or conviction for domestic abuse, a police report, or when it had been raised in the proceedings for the first time? We would support it applying in all of these circumstances as in most cases the abuse will not have been reported to the police.[[36]](#footnote-36) Given the importance of the relevancy issue referred to above, and the familiarity of courts with relevancy assessments, the Commission might also give thought as to whether the requirement should explicitly require the court to explain why they do not consider domestic abuse to be relevant, or sufficiently relevant, to the welfare assessment and the granting of a section 11 order. The requirement should be framed in a manner that prompts the court to identify and reflect upon specific factors that justify the granting of an order despite domestic abuse being raised in the proceedings e.g. they consider the domestic abuse to be historic or a ‘one-off’ incident, they consider there to be insufficient evidence, they consider that the root cause of the perpetrator’s behaviour has been addressed. The language of ‘safety’ or ‘risk’ might also be incorporated (see b) below) into the requirement.

Although we are very supportive of this proposal, we are also wary of the time and resource pressures that the family courts are under and think there is a risk that the giving of reasons could come to be regarded as a simple formality or ‘tick-box’ exercise without meaningful expansion of the reasons why an order is being made. We are also wary of the limits of legislative change alone and strongly agree with the Commission’s view that judicial training is required to ensure effective implementation of any changes. The accessibility of the written reasons is another matter to consider. Who will the written reasons be made available to beyond the parties themselves? Given the lack of data and information in this area, which impedes full analysis and understanding of how the law is working, it would be very helpful if the reasons were published or made available to researchers. We acknowledge that this issue may be outwith the remit of the SLC.

1. ***the safety of the parents should be considered by the court as part of the consideration of the child’s welfare?***

We are firmly persuaded that the safety of the parents should be considered by the court as part of the consideration of the child’s welfare. As explored in our 2022 paper, research clearly demonstrates the interconnectedness of the harms experienced by adult and child victim/survivors and the effects of a caregiver’s physical and psychological wellbeing on the child’s welfare. This proposal is therefore entirely consistent with the adjoined victim concept. It is also consistent with international human rights. The Discussion Paper refers to Article 31 of the Istanbul Convention, however the ECHR is also relevant here. Recent cases have stressed the importance of good risk assessment during contact proceedings and confirmed that the human rights of both the child and victim/survivor may be breached if proper risk assessment is not carried out and contact/residence is granted in a manner that does not adequately take safety in to account (see, for example, *Luca v Moldova*; *IM v Italy; Bizdiga v Moldova*).[[37]](#footnote-37) These cases underline the importance of safety to a welfare assessment and lend strength to the above proposal. Legislative recognition of adult safety in this context would, hopefully, not only factor into the court’s decision about whether to grant contact/residence at all, but also prompt consideration of how to ensure contact arrangements/handovers are safe. To ensure that adequate safety/risk assessments are carried out, we would again emphasise the importance of robust judicial training.

***49. Are there any other ways of ensuring the safety of the child and of the victim/survivor is considered by the court in making orders under section 11 of the 1995 Act? (Paragraph 7.141)***

As noted above, recent ECrtHR cases have made clear that courts risk breaching the human rights of victim/survivors (adults and children) if they do not adequately take protection and safety into account in family law cases involving domestic abuse. In addition to Article 8, Articles 3 and 14 may be relevant (*Luca v Moldova).* In our view, this justifies a legislative focus on these issues and would not unduly infringe on the Art 8 rights of the other party. At present, the balance is tipped too far the other way and urgent reform is needed to ensure that greater weight is attached to issues of safety and protection in contact/residence disputes.

The Commission might therefore also give thought as to whether the legislative requirement to provide written reasons (discussed in part a) above) should explicitly reference safety (in addition to or instead of relevance). For example, a court granting a section 11 order could be required to demonstrate how they have reached the conclusion that the child and caregiver will be safe despite domestic abuse being raised in the proceedings.

At para 7.117, the Commission notes that ‘recognising children as adjoined victim/survivors of domestic abuse for the purposes of civil remedies against such abuse could act as further impetus for the family courts to recognise domestic abuse as a critical factor in its assessment of the child’s best interests in decisions about contact.’ As we suggest in our 2022 paper, recognising children as adjoined victims is critical part of ensuring that domestic abuse is placed front and centre in assessments of what is in a child’s best interests, and therefore to bringing about change in this area. At present, all available evidence, in Scotland and elsewhere, suggests that courts view the perceived benefits of contact to the child as outweighing the risks[[38]](#footnote-38) and that children’s voiced experiences of abuse are marginalised.[[39]](#footnote-39) This is of great concern given that researchers have pointed out that concerns about domestic abuse are behind many if not most contested contact cases that go to court.[[40]](#footnote-40) Moreover, given the documented risk of harm to the child, it is extremely concerning to us that courts do not regard domestic abuse as antithetical to a child’s best interests and more robustly probe reports of domestic abuse. Redressing the imbalance in this area will, in our view, only occur when the harms caused to children by domestic abuse are properly recognised and taken seriously. Legislative recognition of children as adjoined victims, and the attachment of meaningful legal consequences to this status, would represent a direct challenge to the notion that domestic abuse is an adult matter and make it more difficult to minimise the risks to the child of contact with a perpetrator of domestic abuse.

We note that the Discussion Paper provides limited detail on how non-harassment orders granted by a civil court may apply to children and wonder whether there is scope for any legal reform here. One potential reform, for example, would be to amend section 8 of the Protection from Harassment Act 1997 to reference to children. This may not be hugely significant in practice, given that Scots law is already clear that that non-harassment orders *can* cover children,[[41]](#footnote-41) but such a change would be in line with the push to make domestic abuse legislation more inclusive of children and could be used as an opportunity to codify existing law and practice. The Commission may also want to consider whether to mention non-harassment orders when referring to the civil orders that an adjoined victim could apply for (paras 7.49 – 7.52).[[42]](#footnote-42)

1. I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p. 921. [↑](#footnote-ref-1)
2. See I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p.920-921. [↑](#footnote-ref-2)
3. See I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p.920-921. [↑](#footnote-ref-3)
4. I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p.920-921. [↑](#footnote-ref-4)
5. A McKinley and C Rogers, ‘Police, Victim and Co-victim Interaction: Insights from Australia’ (2024) 7(1) Journal of Victimology and Victim Justice 94, p. 98. [↑](#footnote-ref-5)
6. A McKinley and C Rogers, ‘Police, Victim and Co-victim Interaction: Insights from Australia’ (2024) 7(1) Journal of Victimology and Victim Justice 94, p. 98. [↑](#footnote-ref-6)
7. See e.g. by the Office for Victims of Crime (part of the U.S. Department of Justice) - see Centre for Victim Research, *Losing a Loved One to Homicide: What We Know About Homicide Co-Victims From Research And Practice Evidence* (Centre for Victim Research, 2019), p. 3. [↑](#footnote-ref-7)
8. See e.g. E Brown and J Crego, ‘Homicide co-victims: confidence in the criminal justice system’ (2019) 5(3) Journal of Criminological Research, Policy and Practice 240; J Connolly and G Ronit, ‘Co-victims of homicide: A systematic review of the literature’ (2015) 16(4) Trauma, Violence, & Abuse 494. [↑](#footnote-ref-8)
9. See e.g. E Stark and A Gruev-Vintila ‘Domestic violence: criminalising coercive control in France could bring more justice to victims’, *The Conversation*, 16 January 2024. [↑](#footnote-ref-9)
10. M Burman and others, *Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings* (SCCJR, 2023). [↑](#footnote-ref-10)
11. M Burman and others, *Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings* (SCCJR, 2023), p. 51. [↑](#footnote-ref-11)
12. M Burman and others, *Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings* (SCCJR, 2023), p. 52. [↑](#footnote-ref-12)
13. I Cairns and I Callander, "‘Gold Standard' Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018."  (2022) 31(6) Social & Legal Studies 914. [↑](#footnote-ref-13)
14. See discussion in I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022 (2022) 31(6) Social & Legal Studies 914, p. 922-924. [↑](#footnote-ref-14)
15. C Houghton and others, *Domestic Abuse Court Experiences Research: the perspectives of victims and witnesses in Scotland* (Scottish Government, 2022), p. 34. [↑](#footnote-ref-15)
16. I Cairns and I Callander, ‘‘Gold Standard' Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022 (2022) 31(6) Social & Legal Studies 914, p. 930-932. [↑](#footnote-ref-16)
17. For discussion see M Burman and O Brooks-Hay, ‘Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control’ (2018) 18(1) Criminology and Criminal Justice 67. [↑](#footnote-ref-17)
18. M Burman and others, *Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings* (SCCJR, 2023), p. 51. [↑](#footnote-ref-18)
19. I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p. 934. [↑](#footnote-ref-19)
20. See discussion in F Morrison and C Houghton, ‘Children’s human rights in the contexts of domestic abuse and COVID-19.’ (2023) 27(9-10) The International Journal of Human Rights 1353, p. 1355. [↑](#footnote-ref-20)
21. L Bates and M Hester, ‘No longer a civil matter? The design and use of protection orders for domestic violence in England and Wales (2020) 42(2) Journal of Social Welfare and Family Law 133. [↑](#footnote-ref-21)
22. See ‘‘Gold Standard' Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’  (2022) 31 (6) Social & Legal Studies 914. [↑](#footnote-ref-22)
23. I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p. 926. [↑](#footnote-ref-23)
24. F Morrison and C Houghton, ‘Children’s human rights in the contexts of domestic abuse and COVID-19.’ (2023) 27(9-10) The International Journal of Human Rights 1353, p. 1356. [↑](#footnote-ref-24)
25. G Macdonald, ‘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’ (2017) 65 Child Abuse and Neglect 1. [↑](#footnote-ref-25)
26. Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases Final Report* (Ministry of Justice, 2020), p. 69. [↑](#footnote-ref-26)
27. F Morrison and C Houghton, ‘Children’s human rights in the contexts of domestic abuse and COVID-19.’ (2023) 27(9-10) The International Journal of Human Rights 1353, p 1355-1356. [↑](#footnote-ref-27)
28. Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases Final Report* (Ministry of Justice, 2020), p. 68. [↑](#footnote-ref-28)
29. I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p. 920. [↑](#footnote-ref-29)
30. C Smart, ‘A history of ambivalence and conflict in the discursive construction of the ‘child victim’ of sexual abuse’ (1999) 8(3) Social and Legal Studies 391. [↑](#footnote-ref-30)
31. J Nelles, ‘Losing sight of the abuse: how and why women’s and children’s rights are violated in child contact decisions after intimate partner violence in Europe’ (2024) 28(6) The International Journal of Human Rights 1030. [↑](#footnote-ref-31)
32. See I Cairns and I Callander, ‘‘Gold Standard’ Legislation for Adults Only: Reconceptualising Children as ‘Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018.’ (2022) 31(6) Social & Legal Studies 914, p. 933. [↑](#footnote-ref-32)
33. F Morrison and C Houghton, ‘Children’s human rights in the contexts of domestic abuse and COVID-19.’ (2023) 27(9-10) The International Journal of Human Rights 1353, p. 1356. [↑](#footnote-ref-33)
34. See e.g. H Douglas and E Fell, ‘Malicious reports of child maltreatment as coercive control: Mothers

    and domestic and family violence’ (2020) 35(8) Journal of Family Violence 827. [↑](#footnote-ref-34)
35. M Burman and others, *Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings* (SCCJR, 2023). [↑](#footnote-ref-35)
36. F Morrison, E KM Tisdall & JEM Callaghan, ‘Manipulation and Domestic Abuse in Contested Contact – Threats to Children’s Participation Rights’ (2020) 58(2) Family Court Review 403, p. 407. [↑](#footnote-ref-36)
37. *Luca v Moldova (55351/17) unreported 17 October 2023 (ECHR); IM v Italy (25426/20) unreported November 2022 (ECHR); Bizdiga v Moldova* (*15646/18) unreported 17 October 2023 (ECHR).* For discussion, see J Nelles, ‘Losing sight of the abuse: how and why women’s and children’s rights are violated in child contact decisions after intimate partner violence in Europe’ (2024) 28(6) International Journal or Human Rights 2023. [↑](#footnote-ref-37)
38. We refer to the evidence cited in paras 7.100-7.12 of the Discussion Paper. [↑](#footnote-ref-38)
39. F Morrison, EKM Tisdall and JE Callaghan, ‘Manipulation and domestic abuse in contested contact–Threats to children's participation rights’ (2020) 58(2) Family Court Review 403; see also Macdonald, ‘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’ (2017) 65 Child Abuse and Neglect 1. [↑](#footnote-ref-39)
40. F Morrison, EKM Tisdall and JE Callaghan, ‘Manipulation and domestic abuse in contested contact–Threats to children's participation rights’ (2020) 58(2) Family Court Review 403. [↑](#footnote-ref-40)
41. For full discussion see R McPherson, ‘Unintended consequences of non-harassment orders: child contact decision-making’ (2022) 44(4) Journal of Social Welfare and Family Law 495. [↑](#footnote-ref-41)
42. [↑](#footnote-ref-42)