

Domestic Violence, Safety and Family Proceedings

Thematic review of the handling of domestic violence issues by the Children and Family Court Advisory and Support Service (CAFCASS) and the administration of family courts in Her Majesty's Courts Service (HMCS)

October 2005

HM Inspectorate of Court Administration

In April 2005, Her Majesty's Courts Service (HMCS) was established under the Courts Act 2003 creating a unified court administration across England and Wales. At that date, Her Majesty's Courts Service Inspectorate (MCSI) ceased to exist and became HM Inspectorate of Court Administration (HMICA). Its aims and responsibilities encompass those of MCSI, but also extend them to the higher courts.

HMICA's duties to inspect court administration and CAFCASS are set out in the Courts Act 2003 at Section 59(1) (as amended), which states:

It is the duty of inspectors of courts administration to:

- (a) inspect and report to the Lord Chancellor on the system that support the carrying on of the business of the courts;
- (b) inspect and report to the Secretary of State on the performance of CAFCASS functions;
- (c) discharge any other particular functions which may be specified in connection with –
 - (i) the courts listed in subsection (2), or
 - (ii) CAFCASS functions or related functions of any other person in a direction given by the Secretary of State.

HMICA reports to the Department of Constitutional Affairs (DCA) Ministers on HMCS and to the Department for Education and Skills (DfES) Ministers on CAFCASS.

The Inspectorate is not empowered to inspect persons making judicial decisions or exercising any judicial discretion (Courts Act 2003, section 59(5)).

Acknowledgements

Advisory Group, HMCS and CAFCASS

HMICA's work in undertaking the thematic review which led to this report *Domestic Violence Safety and Family Proceedings* was greatly assisted by an Advisory Group whose members were:

John Baker, The Justices' Clerks' Society;
Jo Bewley, Department for Education and Skills
District Judge Helen Black, Principal Registry of the Family Division
Jane Booth, CAFCASS
Sheridan Greenland OBE, HMCS
Joan Hunt, University of Oxford
Davina James-Hanman, Greater London Authority Domestic Violence Project
Margaret McGlade, Director of Social Services, Derby City, and representing
the Association of Directors of Social Services
Jan Salihi, HMCS
Peter Sloman, Magistrates' Association Family Proceedings Committee
Lesley Warrender, Her Majesty's Inspectorate of Constabulary.

The views expressed in this Thematic Review are HMICA's and are not necessarily shared in full by the Advisory Group.

HMICA is very grateful to members of the Judiciary, HMCS staff and CAFCASS staff for their co-operation throughout the Review and for the Women's Aid Federation of England for facilitating group discussions with survivors of domestic abuse.

HMICA staff involved in the review visits to CAFCASS, care centres and magistrates' courts in April and May 2005, and the production of this report, are listed below:

Andy Allan, Julie Barnes, Lori Buckley, David Clitheroe, Chris Foley, Geoff Gurney, Steve Hunt, Patience Lusengo, Harriett Mather, Sarah Merchant, Dick O'Brien, Arran Poyser, Caroline Wilson and, on secondment from CAFCASS, Claudia Crawley and Elizabeth Hall.

Copies of this report may be obtained from:

HMICA Secretariat
8th Floor, Millbank Tower
Millbank
London SW1P 4QP

Telephone: 020 7217 4346
Fax: 020 7217 4357

Or via our website at <http://www.hmica.gov.uk>

Chief Inspector's foreword

Although definitions of domestic violence and estimates about its prevalence vary, the essential facts are inescapable. Domestic violence blights the lives of countless numbers of adults, as well as having traumatic consequences for the wellbeing of children. The link between domestic abuse and harm to children is well established.

While it is the role of the criminal courts to deal with prosecutions involving domestic violence, family courts and CAFCASS frequently deal with similar allegations. Typically, these arise in disputed applications between parents, including those regarding the future arrangements for their children's residence and contact.

This inspection looks at how family courts handle such issues in their administrative arrangements, particularly from the perspective of court users. We also report on CAFCASS strategic management and its frontline practice when dealing with similar cases.

This report finds an inherent danger arising from the current policy emphasis on seeking mediated agreements between parents in ever larger numbers of disputed family proceedings. We conclude that ensuring the safety of both children and adults receives insufficient consideration – this was a strong and consistent message from the women survivors of domestic violence who we consulted. We consider that arrangements for assessing the risks associated with allegations of domestic violence need markedly strengthening.

I am pleased to report examples of good practice in both Services. But, the overall picture is far less satisfactory. Both HMCS and CAFCASS need significantly to improve safety within their service delivery and the report's eleven recommendations are designed to assist that process.

We also need to recognise how emotionally wearing it is for the wide range of professionals who have to deal with domestic violence on a near daily basis. As this inspection shows, there is a risk that individuals within agencies sometimes find it easier to down-play or even ignore the presenting signs of domestic violence. Its seriousness, and corrosive effects on both survivors and children, require that HMCS and CAFCASS implement robust strategies to guide staff in how to handle cases where domestic violence is alleged, or is proven to be an issue, in the context of family proceedings. These are essential steps towards achieving improved sensitivity and effectiveness in service delivery for some of society's most vulnerable people.



Eddie Bloomfield

**Chief Inspector
Her Majesty's Inspectorate of Court Administration**

October 2005

Contents

Summary	7
Recommendations	11
1 Introduction and background	
Domestic violence and the wider policy context	13
HMICA’s thematic review	15
Her Majesty’s Courts Service (HMCS)	16
The Children and Family Court Advisory and Support Service (CAFCASS)	16
Involvement of HMCS and CAFCASS	16
Complexity and minimising risk	16
Numbers of children who may be affected by domestic violence	17
Some terms	17
Taking forward key messages	18
2 CAFCASS – the views of service users	
Taking part and being heard	19
Being informed about CAFCASS	20
Safety issues: the CAFCASS approach to assessing risk to children and adults	21
Being interviewed by CAFCASS	22
3 CAFCASS – domestic violence, practice matters and management issues	
Practice matters	26
<i>The narrative approach</i>	<i>27</i>
<i>Presumption of contact</i>	<i>28</i>
<i>Practice skills</i>	<i>30</i>
<i>Risk assessment</i>	<i>31</i>
<i>Safety planning</i>	<i>32</i>

	<i>Duplication of work by CAFCASS</i>	32
	<i>Attention to domestic violence issues</i>	33
	<i>Conciliation sessions at court</i>	35
	<i>Diversity</i>	37
	<i>Reporting and key messages</i>	37
	<i>Access to information and information exchange</i>	38
	<i>Findings of fact</i>	39
	Management issues	40
	<i>Policy, procedures and practice standards</i>	41
	<i>Accountability issues</i>	42
	Continuous professional development	43
	Inter-agency liaison	45
	Concluding comments	45
4	Court administration and domestic violence	
	Experiences of court users	47
	<i>Preparing for court</i>	47
	<i>Being at court</i>	49
	Management issues	49
	<i>Strategy and planning relating to the administration of domestic violence cases</i>	50
	<i>Status of parties and impartiality</i>	52
	<i>Risk management and service standards</i>	54
	<i>Management information</i>	55
	<i>Management of facilities</i>	56
	<i>Relationships with other agencies and the wider community</i>	57
	Concluding comments	58
	Annexes	
	Annex A Responses from HMCS and CAFCASS to the Recommendations	
	Annex B Inspectorate methodologies	
	Bibliography	

Summary

Focus

The Review evaluates evidence about how well Her Majesty's Courts Service (HMCS) family court administration and the Children and Family Court Advisory and Support Service (CAFCASS) deal with cases involving domestic violence in family proceedings.

The Review reports on:

- the experience of users of CAFCASS and HMCS family court administration, including their attendance at CAFCASS offices and court buildings
- the use of information by CAFCASS and court administration to identify any necessary safeguarding measures for children, or other CAFCASS or court administrative actions
- the adequacy of policies, practice, procedures and other developmental issues.

The wider context

The Government's proposals for dealing with domestic violence were set out in its report *Safety and Justice* (2003) and followed up by its National Plan (2005).

HMICA's Review complements two inspections on arrangements in and around the criminal courts. The reports were published in 2004 by, respectively, the Crown Prosecution and Constabulary Inspectorates and the Probation Inspectorate.

Earlier this year, the Crown Prosecution Service (CPS) highlighted that domestic violence is an aggravating rather than mitigating factor because of the abuse of trust. The CPS offered a further warning when it stated: *"We know that domestic violence can have a devastating effect not only upon the victim but also upon families and especially upon children who witness and suffer directly the consequence of that violence"*.

HMICA's Review stresses that domestic violence is not a factor in all family proceedings cases dealt with by HMCS and CAFCASS but it is considered to be significant in a proportion of cases. Because estimates of prevalence vary, the number of children affected each year by domestic violence is not accurately known. HMICA also points out that this is further complicated by the varied ways that statistics are collected by CAFCASS, HMCS and other agencies, such as local authorities.

Although there is the phenomenon of false allegations about domestic violence, Inspectors consider that there is still an overriding need to ensure that parties can safely attend CAFCASS and court buildings in order to take part in the proceedings.

Key review findings

The user perspective

In three long discussions with women who had been involved with CAFCASS, Inspectors found that the perception of a presumption of contact in domestic violence cases is experienced by women as dangerous to themselves and their children.

Because CAFCASS does not yet have in place a systematic risk assessment process, its focus on agreement-seeking is judged by women as out of balance because it does not pay proportionate attention to safety issues in domestic violence cases.

There is a strong concern that not only does CAFCASS not give enough attention to user views, but also it does not help women to participate fully in decisions involving their children.

CAFCASS practice

In direct observation of practice, Inspectors found unacceptably wide variations in quality and consistency.

Recent training about domestic violence is commendable but a system to improve standards of practice overall has not yet been implemented, although important development work has been undertaken. There remain weaknesses in CAFCASS's internal arrangements that cover service delivery accountability.

Inspectors found that the CAFCASS approach does not make best use of available resources. Because of inefficient information systems, staff often unnecessarily duplicate the work of other agencies, such as local authorities.

Inspectors conclude that the nature of domestic abuse is not sufficiently understood by most CAFCASS practitioners. Routine ways of working do not assess risk and some are dangerous where, for example, there is a lack of attention to safety planning. The role of CAFCASS as advisor to the family courts causes it concerns because, although some assessments can reliably be informed by judicial findings, in other cases the crucial issue of whether domestic violence has occurred remains undecided. This also confuses service users.

CAFCASS management

Key challenges need to be resolved by CAFCASS, such as the need for it to introduce effective systems of accountability and continuous practice development.

The Review shows that CAFCASS uses liaison arrangements with partnership agencies and stakeholders well in order to develop its policy and practice in domestic violence cases. Some key links are missing, such as with HMCS and Domestic Violence fora.

Inspectors agree that the concept of post-separation shared parenting for children is desirable. However, this can only occur if the residence and contact arrangements are safe for both children and adults. In order for the welfare of children to remain paramount, the current emphasis on agreement-seeking in the family justice system needs to be recognised as a valuable secondary achievement, rather than the primary goal.

Court administration and the experience of users

Survivors of domestic violence do not receive sufficient appropriate help, including information, to enable them to engage fully in the legal process within the family courts.

There are different approaches by family courts administration to domestic violence. Survivors view the family courts as generally unsympathetic and lacking awareness of the fear and anxiety they can experience being in the court building with their abuser.

Some court buildings offer good arrangements to survivors, such as secure waiting areas, separate entrances and an allocated usher to accompany them. In others, the facilities are more limited and dependent on availability and other court use, and those for children are also few and are rarely child-friendly or secure. A common theme voiced by those suffering domestic violence is that they are not made aware in advance of their arrival at court of what facilities may be available. Generally, information for those experiencing domestic violence is not helpful in preparing them for court.

Court administration and management

From a user perspective, those experiencing domestic violence are at a disadvantage in accessing the family justice system. This is because the needs of this vulnerable group have not been recognised and given priority. There has been insufficient strategic thinking or relevant management information to develop policies, drive change and improve service standards.

The needs of those suffering domestic violence are met by HMCS family administration on a largely reactive basis, driven by local initiative. Frontline staff, in particular, commendably use their experience, skills and initiative, wherever possible, to assist those who experience domestic violence. However, they do so without enough formal training related to the care of this vulnerable group of people.

Now that HMCS can begin to rationalise the use of its buildings, there is considerable potential for sharing resources and facilities across magistrates' courts and county courts and for improving service standards.

Court staff are concerned to ensure even-handedness between parties but this approach is made more complicated when issues such as false allegations about domestic violence are taken into account. This kind of dilemma sometimes obstructs service improvement.

There are no clear guidelines about information sharing, either within HMCS or between agencies. Instead, there is local practice that widely differs across the country.

Recommendations

Five recommendations are made to CAFCASS to help improve its service to children and families with particular relevance to domestic violence. These are:

- devising and disseminating information about family proceedings
- using risk assessment, safety planning and best practice guidance
- putting in place national standards and competencies and ensuring a focus on safeguarding rather than a presumption of contact
- developing multi-agency protocols for information exchange and inter-agency liaison
- providing training in risk assessment and working with children.

A further six recommendations are made to HMCS to help improve its care of court users, again with particular relevance to domestic violence in family proceedings. These are:

- making information about court facilities available to vulnerable parties before they attend court
- developing and implementing policies that address the availability and use of facilities for vulnerable or intimidated parties
- ensuring an appropriate balance is maintained between safety and service delivery, through the use of robust risk assessment procedures
- identifying, collecting and using relevant management information
- developing links with national and local community groups working with survivors of domestic violence
- providing training for court staff.

Recommendations

Recommendation 1

That, in order to improve its service to children and families, CAFCASS should with other agencies, stakeholders and service users devise and disseminate a comprehensive information pack about family proceedings with particular reference to issues relevant to the needs of children and their families in domestic violence cases.

Recommendation 2

That, in order to improve its service to children and families, CAFCASS should:

- ensure that all cases, including conciliation at court, are subject to risk assessment and liaison with other agencies
- devise best practice guidance and procedures for preparing reports in domestic violence cases
- ensure safety planning is undertaken for all cases.

Recommendation 3

That, in order to improve services to children and families, CAFCASS should:

- implement a strategy to ensure improved practice in domestic abuse cases
- devise national standards and competencies for work in domestic violence cases
- ensure compliance with the new domestic violence policy and toolkit
- create domestic violence champions throughout CAFCASS
- ensure that the focus on safeguarding is integrated into the casework process and takes priority when considering contact and agreement-seeking in domestic violence cases.

Recommendation 4

That, in order to safeguard children and adults, CAFCASS should agree and implement a clear multi-agency protocol regarding information exchange and inter-agency liaison in domestic violence cases.

Recommendation 5

That, in order to improve services to children and families, CAFCASS should provide training:

- in assessment and risk assessment skills
- on communication skills for direct work with children in domestic violence cases
- in domestic violence for all staff and, where possible, do so on an inter-agency basis.

Recommendation 6

That, in order to improve its care of family court users, HMCS should ensure that the information sent to family court users before they attend court includes details of the facilities that may be available for vulnerable parties such as survivors of domestic violence.

Recommendation 7

That, in order to improve its care of family court users, HMCS should develop and implement domestic violence policies that address the availability and use of facilities for vulnerable or intimidated parties in family law cases.

Recommendation 8

That, in order to improve its care of family court users, HMCS should take steps to ensure an appropriate balance is maintained between safety and service delivery through the use of robust risk assessment procedures.

Recommendation 9

That, in order to improve its care of family court users, HMCS should:

- identify the management information required to establish:
 - the number of cases that involve domestic violence
 - the demand for support from survivors
- identify how such information will be used to improve service delivery
- collect and use the information systematically to improve service delivery.

Recommendation 10

That, in order to improve its care of family court users, HMCS should develop organisational links with national and local community groups to improve its understanding of the particular difficulties faced by survivors of domestic violence from ethnic minority backgrounds in accessing the family justice system.

Recommendation 11

That, in order to improve its care of family court users, HMCS should provide appropriate training to assist staff in gaining a greater understanding of domestic violence and its impact on survivors.

1 Introduction and background

Chapter 1 summarises the wider context within which HMICA's thematic review *Domestic Violence, Safety and Family Proceedings* was undertaken. The scope of the review is outlined, as are the respective functions of HMCS and CAFCASS.

Domestic violence and the wider policy context

- 1.1 Domestic violence is recognised as a particularly serious issue. As the Crown Prosecution Service (CPS) has pointed out,¹ its domestic nature is an aggravating, rather than a mitigating, factor because of the abuse of trust. Victims know and often live with, or have lived with, their abuser. Moreover, there is often a continuing threat to the victims' safety and, in the worst cases, the victims' lives and the lives of others, including children, may be at risk.
- 1.2 CPS also states: "*We know that domestic violence can have a devastating effect not only upon the victim but also upon families and especially upon children who witness and suffer directly the consequence of that violence*".
- 1.3 The Government's proposals for addressing domestic violence were set out in *Safety and Justice*². Following public consultation, the Government's summary response, published by the Home Office in November 2003, included its programme of work encompassing both legislative measures and non-legislative proposals. More recently the National Plan³ has been published.
- 1.4 The findings and recommendations of HMICA's report *Domestic Violence, Safety and Family Proceedings* are but one part of a complex and interlocking set of developments. They reflect many of the same concerns that were highlighted in the Home Office report of 2003, including:
 - raising awareness
 - providing information
 - assessing risk factors
 - improvements to the civil and criminal law and the way the courts operate
 - support available for victims
 - information sharing between agencies
 - child contact issues.
- 1.5 A definition of domestic violence was agreed in 2004 by the Inter-Ministerial Government Group with the aim that this should replace a range of definitions used by departments and agencies. This was needed to improve joint working practices and monitoring. The definition is: "*Any incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial or emotional] between adults who are or who have been intimate partners or family members, regardless of gender or sexuality*".

¹ *Policy for Prosecuting Cases of Domestic Violence*: CPS (February 2005).

² *Safety and Justice: the Governments Proposals on Domestic Violence*, Cm 5847 (June 2003).

³ *Domestic Violence: A National Report*, Home Office (March 2005), www.crimereduction.gov.uk

It is the definition that was used by HMICA during this thematic review. Inspectors note that the CAFCASS draft Domestic Violence Policy uses a wider definition⁴ which is strengthened by the specific inclusion of children and through its reference to examples of abusive behaviours.

- 1.6 HMICA's decision to undertake a thematic review of domestic violence in family proceedings was influenced by inspections on domestic violence in criminal proceedings. Particular influences were the Crown Prosecution Inspectorate (HMCPIS) and the Inspectorate of Constabulary (HMIC) joint thematic inspection *Violence at Home* (February 2004) and the Probation Inspectorate (HMI Probation) thematic report *Reducing Domestic Violence* (July 2004).
- 1.7 Other developments in 2004 and 2005 also have significant links with how aspects of domestic violence are addressed in family proceedings and are therefore relevant to the work of both HMCS and CAFCASS. These include, for example:
- strengthening the enforcement of powers through the Domestic Violence, Crime and Victims Act 2004⁵
 - the Constitutional Affairs Committee report on the operation of family courts⁶
 - widening the legal definition of harm to children to include, for example, "*impairment suffered from seeing or hearing the ill-treatment of another*"⁷
 - the introduction of new application forms for commencing Children Act family proceedings that seek to highlight information about domestic violence⁸
 - the general thrust of the Government's policy in private law disputes, as set out in 2004
 - in *Parental Separation: Children's Needs and Parents Responsibilities*⁹ and *The Private Law Programme*¹⁰

⁴ CAFCASS defines domestic violence as: "Any behaviour which is characterised by the misuse of power and control by one person over another within a family context and/or with whom s/he has been in an intimate relationship. This behaviour can be overt as in threatened assault or actual assault or harassment. It can also be subtle such as the imposition of social isolation on a partner and/or her/his children. It can thus take the form of emotional, financial, physical, psychological or sexual abuse or any combination of these".

⁵ For example, by making a criminal offence the breach of civil non-molestation orders made under the Family Law Reform Act 1996 and making common assault an arrestable offence. These powers had not been brought into force at the time of HMICA's review.

⁶ *Family Justice: the operation of the family courts* HC 116-1 (March 2005).

⁷ In January 2005, Section 120 of the Adoption and Children Act 2002 came into force. It amends the meaning of 'harm' as set out in section 31 of the Children Act 1989.

⁸ The C1A forms are discussed in more detail later in this report.

⁹ *Parental Separation: Children's Needs and Parents' Responsibilities*, Cm 6273 (July 2004); *Parental Separation: Children's Needs and Parents' Responsibilities: Next Steps*, Cm 6452 (January 2005).

¹⁰ *The Private Law Programme – Guidance Issued by the President of the Family Division* (January 2005) states that the overriding objective is "... to enable the courts to deal with every (children) case:

(a) justly, expeditiously, fairly and with the minimum of delay;

(b) in ways which ensure, so far as is practicable, that:

a. the parties are on an equal footing

b. the welfare of the children involved is safeguarded; and

c. distress to all parties is minimised;

(c) so far as is practicable, in ways which are proportionate:

a. as to the gravity and complexity of the issues

b. to the nature and extent of the intervention proposed in the private and family life of the children and adults involved"

- Joint Committee on the Draft Children (Contact) and Adoption Bill¹¹ and the subsequent Children and Adoption Bill that is currently before Parliament¹²
- the new disclosure rules in Family Proceedings.¹³

HMICA's thematic review

- 1.8 HMICA's thematic review set out to consider how well HMCS administration and CAFCASS deal with cases involving domestic violence in family proceedings. The review reports on:
- **the experience of users** of CAFCASS and HMCS administration, including their attendance at CAFCASS offices and court buildings
 - **the use of information** by CAFCASS and court administration to identify any necessary safeguarding measures for children or other CAFCASS or court administrative actions, such as the protection or separation of parties, at its premises or elsewhere; or to give guidance to CAFCASS or court staff safety procedures
 - **the adequacy of policies, practice, procedures** and other developmental issues; CAFCASS reporting and recommending where domestic violence is a key issue; arrangements for follow-up, safeguarding, inter-disciplinary working and data collection; the impact of new statutory application forms in family proceedings which also seek information about domestic violence.
- 1.9 HMICA defined the review criteria for assessing the aspects of service delivery in HMCS administration and CAFCASS covered by the thematic review. These are set out in summary form in **Annex B (Methodologies)**.

¹¹ Volume 1: Report HC 400-1 (April 2005). This procedure offers an early opportunity for Parliament to examine key issues in forthcoming legislation.

¹² The Explanatory Notes accompanying the Bill, as published in June 2005, state that its purpose is intended to assist in the implementation of the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*. In particular:

- the Bill adds to the powers of courts when dealing with cases involving contact with children
- during the proceedings a court may, even if it does not make a contact order, direct a party to take part in an activity that would promote contact with a child. It may make similar provision by means of a condition in a contact order
- the courts' powers in cases involving breach of a contact order are increased by adding:
 - a power to make enforcement orders imposing an unpaid work requirement
 - a power to order one person to pay compensation to another for financial loss caused by a breach
- these powers are in addition to their powers as to contempt and their ability to alter the residence and contact arrangements as regards a child
- provision is also included to reform the courts' existing powers to make family assistance orders.

¹³ *Disclosure of Information in Family Proceedings Cases Involving Children: Response to the public consultation*, Cm 6623 Department for Constitutional Affairs (July 2005). The rules (SI 205/1976) that come into force on 31 October 2005 update the circumstances where information about the family proceedings may lawfully be shared; for example, between a parent who is not legally represented and his/her advisor or Member of Parliament.

Her Majesty's Courts Service (HMCS)

1.10 HMCS came into being on 1 April 2005 under powers in the Courts Act 2003. HMCS brought together the Courts Service, which included the High Courts, Crown Court and county courts, and the 42 Magistrates' Courts Committees, which were responsible for the magistrates' courts in England and Wales. It is important to note when reading later chapters of this report that, at the time of the review fieldwork, HMCS had been in existence for only a few weeks.

The Children and Family Court Advisory and Support Service (CAFCASS)

1.11 CAFCASS was established as an executive non-departmental public body in April 2001. The Department for Education and Skills (DfES) has departmental responsibility for CAFCASS and its main functions are set out in section 12 of the Criminal Justice and Court Services Act 2000. These are to:

- safeguard and promote the welfare of children
- give advice to any court about any application made to it in family proceedings
- make provision for the children to be represented in family proceedings
- provide information, advice and other support for the children and their families.

Involvement of HMCS and CAFCASS

1.12 Readers of this report will find it helpful to appreciate the wider context within which HMCS and CAFCASS deal with children and family proceedings. Both are services that respond to external demand. Most applications in family proceedings are made either by the children's parents or by a local authority. CAFCASS becomes involved at the formal request of the courts, although increasingly its staff may offer advice and support to families, both before and after any family proceedings are dealt with in court.

Complexity and minimising risk

1.13 The Constitutional Affairs Committee¹⁴ noted that the way courts deal with child residence and contact is an extremely complex subject and many of the issues raised are subject to heated debate. The Committee was sent many submissions relating to the safety of children and the threat to them represented by one parent or another, as well as the threat of violence between parents. The Committee also stated that: *"the problems relating to domestic violence, and in particular, the threat to children, produced some of the most difficult evidence during our inquiry."* HMICA's evidence, summarised in this report, confirms the complexity of the issues.

¹⁴ *Family Justice: the operation of the family courts*, HC 116-1 (March 2005), paragraph 2.

Numbers of children who may be affected by domestic violence

1.14 It needs to be stressed that domestic violence is not a factor in all family proceedings cases dealt with by HMCS and CAFCASS but is considered to be significant in a proportion of cases. How large that proportion is has been variously estimated¹⁵ as up to 70% or more. This means that the number of children affected each year by domestic violence is not known with any precision. There are a number of reasons for this, including the varied ways that statistics are collected by CAFCASS, HMCS and other agencies, such as local authorities. For example:

- Judicial Statistics¹⁶ include both applications and orders made and refused; these may cover one or more children; more than one application, or order made, in respect of the same children in any one year. There is no separate category for orders made involving children where domestic violence is alleged
- CAFCASS's Annual Reports also include both application numbers and the total of children dealt with but there is no separate category where domestic violence is alleged
- Child protection register statistics¹⁷ similarly do not separately categorise domestic violence.

There is also the phenomenon of false allegations, which is discussed further in Chapter 4.

Some terms

1.15 Throughout this report, HMICA's use of certain phrases should be understood as set out below:

- **Court users** – members of the public involved in family proceedings
- **Service users** – members of the public receiving a service from CAFCASS
- **Survivors** – adults who consider themselves to have been subject to domestic violence, whether or not any allegations have been put before, or upheld by, a court.

¹⁵ In a survey of 300 cases the National Association of Probation Officers (Napo) found allegations of domestic violence made against the male partner in 61% of cases and against the female partner in 16% of cases. Napo *Contact, Separation and The Work of Family Court Staff* (April 2003). Anecdotally, CAFCASS practitioners place the incidence of domestic violence in the region of 90% or more of cases they deal with. From an audit of over 600 cases, HMICA found domestic violence in 38% of reports.

"We know that domestic violence is a serious public health issue and that the statistics are shocking. For women aged 19-44 domestic violence is the leading cause of morbidity (and).....89% of the victims who suffer sustained domestic violence are female; however, we also know that domestic violence can affect.....male victims", Ministerial foreword *Domestic Violence: A National Report* Home Office (March 2005) www.crimereduction.gov.uk

¹⁶ Reported annually to Parliament by the Department for Constitutional Affairs.

¹⁷ DfES 2004: registration as at risk of harm are under the following categories: Neglect (39%); Physical Abuse (19%); Emotional Abuse (18%); Sexual Abuse (10%); Mixed categories (15%).

Taking forward key messages

- 1.16 This review gives examples where practice in HMCS administration and CAFCASS in handling domestic violence can seriously put at risk the safety of adults and children involved in family proceedings, and CAFCASS and HMCS staff. Conversely, the review also shows how better, thought-through practice can help to minimise such risks.
- 1.17 HMICA has made recommendations that we believe will help improve the delivery of frontline services where domestic violence is a key issue. To the greatest extent possible, we hope that these will be considered and implemented as a co-ordinated and collaborative venture by HMCS and CAFCASS.

2 CAFCASS – the views of service users

This chapter reports on how well CAFCASS handles domestic violence cases from only the service user's perspective. As such, their specific concerns have not been corroborated by HMICA. However, as reported in Chapter 3, Inspectors found that the range in quality of service provision in domestic violence cases was unacceptable.

This section covers the views of 30 women¹⁸ who had recently used CAFCASS. We asked them to talk about:

- taking part and being heard by CAFCASS
- being informed about CAFCASS
- safety issues: the CAFCASS approach to assessing risk to children and adults
- being interviewed by CAFCASS.

Summary

The perception of the presumption of contact in domestic violence cases is experienced by women as dangerous to themselves and their children. In the absence of systematic risk assessment, the CAFCASS focus on agreement-seeking is out of balance because it does not pay proportionate attention to safety issues in domestic violence cases.

CAFCASS does not give enough attention to user views and does not help women to participate fully in decisions involving their children.

CAFCASS does not currently provide a good enough service to women whose cases involve domestic violence.

Taking part and being heard

2.1 In the discussion groups, the women service users said that they experienced CAFCASS as disempowering. The groups said that they did not feel that CAFCASS worked in partnership with them or dealt with the individual and unique features of their case. Instead, they felt that CAFCASS was itself a system with a process of its own that they were subjected to, rather than participated in. They felt strongly that they *“had to do what CAFCASS said, even if it was against our wishes”*.

¹⁸ HMICA set out to obtain, through facilitated group discussions, the views of both men and women about their direct experience of CAFCASS and its handling of domestic violence issues. This was successfully achieved for women with the assistance of Women's Aid Federation, England. However, the fathers group approached by HMICA did not respond and, much to the regret of Inspectors, it was not possible to gain direct evidence about this important dimension, within the inspection timetable. However, the views of some men were gained through the service user survey and Inspectors observed men being interviewed by CAFCASS practitioners.

- 2.2 Examples given to HMICA include the requirement to have a joint meeting with their abusive ex-partner against their wishes or allow the child's father into the mother's home for an observed visit. One mother said that, because of her experience of domestic violence, she was *"terrified of going out of the house"* but *"CAFCASS insisted that I did, to keep an interview at the CAFCASS office"*.
- 2.3 Group members said they felt bullied by practitioners into doing things that they did not want to: *"you've been bullied by your ex and then feel you've been bullied again by the system and by CAFCASS"*. The women did not feel that they were given an informed choice in the decision-making process but that the system put pressure on them to *"go along with CAFCASS wishes, decisions and processes"*.
- 2.4 Criticism was levelled at the way the system worked as a whole, not just the way CAFCASS worked in it¹⁹. Some legal representatives were accused of exerting undue pressure by stating that: *"the court would take a dim view if contact was not agreed"*. Women said that having agreed to contact, under pressure from all sides, *"it was then assumed by the system that the violence can't have been that serious"* because they had agreed.
- 2.5 The women talked about the negative effect CAFCASS had on how they saw themselves as parents. They said that as mothers, the feeling of being disempowered as parents was made doubly so when practitioners told them that CAFCASS was there to help the court make the decision about the children, rather than that the decision would be made in partnership with the parents.
- 2.6 Inspectors appreciate that CAFCASS does not set out to make service users feel disempowered; in fact, practitioners try to enable parents to take responsibility for their own decisions. However, the women reported that the opposite occurred because they felt that CAFCASS used its power to take over their parental responsibility and did so without their consent.
- 2.7 It is important for service users that CAFCASS not only understands that the whole experience is usually very stressful for everyone involved but also takes appropriate action. It should better appreciate that the experience of service users may be very different from that intended by service providers and ensure that the service offered is more responsive to the needs and views of children and families.

Being informed about CAFCASS

- 2.8 The groups shared a lack of understanding about how the family justice system worked in general, and the particular functions of CAFCASS within it. They wanted explanations about what the CAFCASS practitioners did and why they did it: *"I didn't know what the point of the meeting was"*. They wanted to fully understand each part of the process: *"I didn't know that my son would be seen on his own without me and I had assured him that I would be there with him"*.

¹⁹ Some research indicates that parents felt courts worked to formulae and that individual cases did not receive careful enough consideration. Sawyer 2000, Cantwell *et al* 1999; Davies & Pearce 1999a & b cited in Smart Carol, May Vanessa, Wade Amanda & Furniss Clare with Kaveri Sharma & Jason Strelitz *Residence and Contact Disputes in Court Volume 2*, DCA Research Series 4/05, June 2005, page 28.

- 2.9 Where one service user had a very positive experience of CAFCASS, she said there was still unease and misunderstanding about what happened: *“I felt terrible because I wasn’t sure of the outcome. I even thought the practitioner had got on my side to get the information out of me. Because of that, I didn’t know whether it was a good or poor report”*.
- 2.10 The groups identified the need for an information pack that explained the whole process of family proceedings, including the part played by CAFCASS. They advised that packs should also provide information about services for children, for survivors and for perpetrators of domestic abuse.
- 2.11 Having information is one key part in being able to participate and make informed choices. It is important that the CAFCASS system becomes more transparent and understandable to children and families. HMICA agrees that an information pack is a worthwhile idea and Inspectors advise that the good information²⁰ currently provided by CAFCASS and others should be enhanced by, for example:
- better **attention to safety issues** for children and families in domestic violence cases throughout all the information provided. Information should be responsive to user views about their experience of CAFCASS
 - an **explanation** about the process and timescales, setting out **what happens and why** at each stage of CAFCASS involvement
 - a flow chart of the process, setting out where:
 - there are **opportunities** to express concern about, or disclose, domestic violence
 - **informed choice to participate or not** can be exercised, such as at conciliation hearings, joint interviews or mediation.

Recommendation 1: That, in order to improve its service to children and families, CAFCASS should, with other agencies, stakeholders and service users, devise and disseminate a comprehensive information pack about family proceedings with particular reference to issues relevant to the needs of children and their families in domestic violence cases.

Safety issues: the CAFCASS approach to assessing risk to children and adults

- 2.12 Women were concerned that safety planning²¹ had not been done: *“The way the room was set out, I had to push past my ex to get out of the room”*. Inspectors are aware that CAFCASS takes steps that try to safeguard children and families, such as separate waiting areas or staggered arrival and departure times. These are not sufficient. Service users gave many examples about where and when they had been followed home from meetings at CAFCASS offices and from contact centres: *“After the contact sessions at CAFCASS and at the contact centre, he followed us and came into contact with me twice and tried to run me over – nothing about that was put in the report”*.

²⁰ The CAFCASS website was awarded *Plain English Campaign Website of the Year 2003*.

²¹ The CAFCASS Domestic Violence Policy includes standards for safety planning, such as staged arrival and departure times, alarm systems, interview room layout, separate waiting areas.

- 2.13 Women from one CAFCASS region told Inspectors that it is standard practice to send out a letter to both parties, including the time and dates of the interviews for all parties. HMICA saw these letters and raised the safety issue with the region, which has since instructed staff to cease this practice.
- 2.14 All the groups said that they did not believe their case had been through a risk assessment by CAFCASS or any other agency²². Since risk assessment is a crucial element in safeguarding, it is unacceptable that CAFCASS does not yet²³ use a standardised procedure and assessment tool.

Being interviewed by CAFCASS

- 2.15 All the groups said that CAFCASS practitioners were ill-prepared for their interviews. They gave examples where practitioners had not read the papers in advance of the meeting and were unaware that their ex-partner had been violent and abusive: *“Some of the basics were missed like being on time, being prepared, making you feel welcome, knowing the children’s names”*.
- 2.16 The groups said that practitioners did not understand some of the key issues involved in domestic violence cases and the behaviours of both men and women were actually misinterpreted by CAFCASS: *“My upset reaction to the stress of the circumstances was interpreted as having issues and a need to calm down”*.
- 2.17 The groups said that CAFCASS practitioners misunderstood the behaviour of violent men: *“He turned on the charm with the practitioner and I came across as an hysterical woman”*. They wanted CAFCASS to understand and recognise perpetrator behaviours, such as their use of seduction and charm. This would not be easy, as they themselves knew from their own experience. All the women said they subsequently found out that their ex-partners had been violent to previous partners²⁴: *“CAFCASS need to be able to recognise intimidatory actions and body language”*. HMICA believes that there is also a need to point out and challenge such behaviours where it is safe to do so.
- 2.18 The women talked about not being believed by CAFCASS about the alleged abuse and the HMICA observation of interviews found that a sceptical approach by practitioners was common: *“During all this disbelief, you feel like you are not right in the head, so you are unsure if you’ve said the right things to CAFCASS. If they don’t believe you, why should you trust them?”*

²² Formal risk assessment was not undertaken in any of the 56 interviews conducted by CAFCASS that were observed by Inspectors and are assessed in Chapter 3 of this Review.

²³ The CAFCASS Domestic Violence Policy includes two risk assessment tools but does not cover any practice implications that might arise from the assessments.

²⁴ Previous assault by the perpetrator is *“one of the most robust, simple and straightforward risk factors for domestic violence”* Walby & Myhill. Separation is the point of highest risk of physical violence, sexual assault or murder, as violence that continues after separation tends to be more serious and obsessive. Websdale N, *Understanding Domestic Violence* (1999); Johnson and Hotton *Losing Control* (2003).

- 2.19 The women also said that CAFCASS did not take steps to gain further information that might corroborate or disprove the allegations: *“I was not asked if there was anyone else who could provide evidence to support me. There were health records they didn’t follow up. . . because they didn’t try to get any, I just thought they couldn’t get other information”*.
- 2.20 Another consistent view was that the alleged violence was ignored by CAFCASS: *“My son even drew a picture of the violence but this was all dismissed”*. The effect of violence on the child was not assessed: *“CAFCASS saw the way my daughter was after the visit to her father; she was very upset but it wasn’t in the report”*.
- 2.21 All three groups of women gave examples of unacceptably poor practice:
- *“My daughter didn’t want to see her dad but CAFCASS got me to go shopping in the local supermarket at 4pm so we could bump into her father and see how they got on”*
 - *“I had to get away from my ex; I had to up and off and come to this city. I had nowhere to live. The CAFCASS man said ‘this would be an easy one’, he didn’t class verbal abuse and mental stuff as domestic violence. At first I thought the CAFCASS man was listening to me until he said the case would be easier than he thought. He expects me and the father to make decisions about our children together but I can’t even speak to my ex – CAFCASS don’t understand the effect of domestic violence”*.
- 2.22 The groups said that CAFCASS did not pay attention to diversity issues. For example, one of the woman said: *“they could have asked me a bit more about my culture and given me the opportunity to say that these are my concerns”*. The lack of attention by CAFCASS to diversity issues was corroborated by Inspectors in the observed interviews.
- 2.23 The groups expressed the view that CAFCASS practice was out of date and out of touch with recent better understanding about domestic violence: *“Up-to-date training is needed to understand the domestic violence and get rid of the wrong attitude to it and to survivors”*.
- 2.24 Reports were not seen in advance of court by any of the group members. Consequently, at court there was insufficient time to discuss the report contents. In the women’s view, abuse was screened out of them. Most women said they were told by CAFCASS that domestic violence was not relevant to the **outcome** of their case. However, in the absence of a transparent assessment, no-one in the groups understood just how such conclusions were reached, other than their view that evidence of abuse was ignored or dismissed: *“There is poor assessment by CAFCASS, they give their own personal view, not a proper assessment using assessment tools with proper criteria to assess and then make a decision”*.
- 2.25 The groups were disappointed by the way their children were dealt with by CAFCASS, in particular that meetings were brief and so were not child focused: *“They need to get to know the children before interviewing them”*. They reiterated that practitioners did not understand what abuse did to the lives of their children and all the women said that their children had been part of the domestic violence: *“My child can remember her father squeezing her face when she was fifteen months old”*. *“It was the most horrendous journey of my life but CAFCASS doesn’t realise that my child has gone through this too”*.

- 2.26 HMICA is concerned that the evidence from the observed sessions by Inspectors show that these interview practices appear to be common in CAFCASS.
- 2.27 The group members felt that all these practices were the result of assumptions made by CAFCASS about the principle of contact²⁵. They all said that CAFCASS had assumed that contact **would** happen before they had even met them or their children: *“Practitioners gave the impression that they had made up their minds that the child would see her father irrespective of the violence”* and *“no contact was not an option”*.
- 2.28 The women also said that the presumption of contact and pressure to reach agreement with their violent ex-partner was a common theme throughout the interviews. They felt that practitioners really did not understand the enduring nature of domestic violence and its effect on families: *“When contact is ordered, you are straight back in that domestic violence situation again. You can’t control what happens the moment he comes through the door”*.
- 2.29 The groups were very critical of the push by CAFCASS for the women to mediate with their ex-partner who had abused them. They felt that the family justice system assumed there was always merit in attempting mediation, without assessing or thinking through whether it was appropriate or safe in each case. The groups experienced a pressure to have joint meetings and go to mediation. In the majority of these cases, mediation was suggested by CAFCASS *“irrespective of the violence”*.
- 2.30 The above views about CAFCASS were negative. However, one of the 30 women who met with HMICA was very positive about the support she received from CAFCASS and other aspects of her experience of that Service. Her key messages were that CAFCASS should:
- provide a service that fits the case rather than fit the case into the traditional CAFCASS approach: *“CAFCASS treated my case as unique – they didn’t make assumptions about me or presume contact. I was treated as an individual, not a case”*
 - be prepared for interviews: *“The practitioner really listened to me. She had read all the information in advance and was prepared”*
 - take time to explain: *“The practitioner gave me information about the whole process and explained that information – she explained what she was doing and why she was doing it”*
 - remember how stressful the process can be for some service users and take steps to support survivors of domestic violence: *“I was allowed to have someone there in the interview to support me and I think children should bring a friend along, too”*
 - ensure that the voice of the child is heard and reported on: *“CAFCASS was the only agency that wanted the child’s viewpoint”*
 - complete a thorough assessment of all the issues: *“There was a check into the mental abuse of the children, not just the physical abuse”*
 - be proactive about understanding diversity issues in relation to identity: *“CAFCASS covered the needs of my mixed-race daughter and helped me think about the move to (this city) and my daughter’s identity and black heritage”*

²⁵ The Government’s Green Paper *Parental Separation: Children’s Needs and Parent’s Responsibilities* reiterates the value of shared parenting *“a child’s welfare is best promoted by a continuing relationship with both parents as long as it is safe to do so”*, page 7.

- not try to mediate in advance of risk assessment: *“There should not be joint meetings in domestic violence cases”*
- provide information and choice: *“CAFCASS should ensure that [users] understand their rights [and responsibilities] including choice and consent to decisions made during contact with CAFCASS; it should offer a choice of the gender of practitioner in abuse cases”*.

At the end of one meeting with HMICA a woman said, half jokingly:

“CAFCASS doesn’t realise that if the father was okay then we would allow contact, it would be time off and babysitting for us!”

3 CAFCASS – domestic violence, practice matters and management issues

Practice matters

In this part of Chapter 3, the service delivery provided by CAFCASS practitioners as observed by Inspectors in three CAFCASS regions is assessed as well as an audit of public and private law reports dealing with domestic violence cases.

In this section we were looking for how well CAFCASS is able to demonstrate that:

- the CAFCASS process of assessment, response and reporting safeguards and promotes the welfare of children and adults
- staff listen and respond appropriately to children and young people and adults about their experience of domestic violence.

Overall assessment

The range in quality and consistency of the practice observed was too wide to be acceptable. Although the quality of recent training about domestic violence is commendable, a system to improve the standard of practice overall has not been implemented and accountability for service delivery is deficient throughout CAFCASS.

There is a disconcerting culture of rush and hurry in CAFCASS but practitioners do not make best use of the time available. Where information systems are inefficient, CAFCASS often duplicates, unnecessarily, the work of other agencies.

The nature of domestic abuse is not sufficiently understood by most CAFCASS practitioners; the routine approaches used by CAFCASS do not assess risk and some are dangerous.

There is a worrying lack of attention to safety planning throughout CAFCASS and little attention is given to the importance of diversity issues.

This section evaluates 12 key aspects of the CAFCASS process of assessment, response and reporting in domestic violence cases:

- the narrative approach
- the presumption of contact
- practice skills
- risk assessment
- safety planning
- duplication of work by CAFCASS
- attention to domestic violence issues
- conciliation sessions at court
- diversity
- reporting and key messages
- access to information and information exchange
- finding of fact hearings.

The narrative approach

- 3.1 Inspectors found that there was a standard approach to private law cases which HMICA describes as the 'narrative approach'. Using this approach, practitioners invite service users to tell, or in many cases to retell, their own version of their relationship. Sometimes this was done through straight narrative where the practitioner took a record of what was said without comment. Alternatively, use was made of a genogram²⁶ or drawing a family tree²⁷.
- 3.2 Where there were statements, parties were invited to comment on the allegations made by the applicant or respondent. This approach in interview invited the response of '*he said, she said*' which was then reflected in the style of the report written²⁸. Whether there were statements or not, and irrespective of the needs of the case, the emphasis seemed to be on gaining information from parties. Consequently, there was no provision in the observed interviews to evaluate the information or understand what it might mean in terms of safeguarding children.
- 3.3 Inspectors appreciate that interviewing involves gathering new information, confirming what is already known or filling in what might be missing. However, there needs to be an assessment, as well as a narrative part to interviews, and assessments should be conducted in collaboration with service users.
- 3.4 Inspectors support practice that is focused on assessments that are shared with children and families. In one of the observed sessions, the practitioner used the welfare checklist²⁹ well as an assessment tool and discussed each section with the service user. However, this was not a common approach. Inspectors observed very few interviews where practitioners used any assessment tool or discussed their assessment with the parties. Consequently, a collaborative style of interviewing was not common. This corresponds with service users' views that they did not feel they were participants in the assessment process.
- 3.5 Most of the observed interviews did not get much further than reciting allegations and counter-allegations. The value added by this approach was not apparent to Inspectors. However, there were examples of good practice where assessments were made about the effect of parental conflict on the children which were shared with parties in interview, such as the following feedback to a father about patterns being repeated and the effect of violence on the child.

"I've seen a description of the [alleged] incidents, I've no comments about the issues but I've a picture of two little lives going to pieces with the adults they see as their protectors. What other distressing things have they seen?I'm very interested in how you deal with your daughter dealing with conflict, as it seems to me very like how you and your wife deal with conflict."

This example was not simply an information gathering interview but it went further and explored what the information **might mean**.

²⁶ A genogram is a diagram that sets out relationships among individuals to help practitioners and service users identify patterns in family history.

²⁷ A family tree resembles a genogram but is usually confined to a map of relationships with one person rather than within whole family histories.

²⁸ See '*Reporting*' later in this chapter.

²⁹ Children Act 1989 section 1(3) sets out what is known as the welfare checklist. The Adoption and Children Act 2002 adds to the welfare checklist by extending the definition of harm within the meaning of the Children Act 1989 to include harm suffered from seeing or hearing the ill-treatment of another such as harm caused by witnessing domestic violence.

- 3.6 Practice seemed to place too much emphasis on the **reporter** role rather than **advisor** or **evaluator** role. This might be a reflection of the complexities involved in domestic abuse cases. Rarely are such cases straightforward with clear evidence about the nature or veracity of the alleged abuse. Consequently, in the absence of clear evidence about domestic violence and the need to remain impartial, practitioners in the main tended to report the stories as told by either side without offering a commentary or assessment of what they had heard. Inspectors doubt whether this is the most efficient and effective practice methodology.
- 3.7 However, there are other ways of working and some practitioners had a clearer view of the purpose of their role in private law family proceedings, such as:
- **making links** between parental behaviour and its effect on the child: *“I favour gathering evidence about the effect of the parent’s behaviour on the children and what’s in their best interest”*
 - **assessing** whether contact is always best for children: *“In private law we have to be realistic about the time constraints. It is a very brief intervention. We need to have the confidence to say we don’t think this contact is in the child’s best interest.” “We can’t be categorical about domestic violence but we can draw on the children’s behaviour and advise the court about what we have observed. We can assess the parties and the children’s behaviour and concerns”*
 - **analysing** the complexities involved in safeguarding children in private law proceedings: *“We need to recognise the enormity of what we are asking parents to do when we ask them to admit to harming their children”.*

Presumption of contact

- 3.8 Practitioners and managers told Inspectors that, whilst they might not always agree with it, private law practice is driven by what is known as *‘the presumption of contact’*. The Children Act 1989 encouraged parents, post-separation, to recognise that they have a joint, ongoing responsibility for their children. The Government has recently reiterated the importance of shared parenting in its Green Paper *Parental Separation: Children’s Needs and Parent’s Responsibilities* which states: *“A child’s welfare is best promoted by a continuing relationship with **both** parents as long as it is safe to do so”*.³⁰ HMICA notes that safety is a crucial qualifying feature to shared parenting.
- 3.9 The presumption of contact was evident in all the practice sessions observed during this inspection and there was consistent evidence that inappropriate assumptions about contact were made, rather than assessments about whether there was any risk associated with domestic abuse cases. Inspectors were told by practitioners that *“the presumption of contact is so strong. It makes it difficult to challenge and we don’t give adequate attention to the continuing impact of the abuse on the child.”* The presumption of contact drives and constrains practice³¹. One practitioner summed this up: *“It is very hard to propose ‘no contact’ because of the amount of time given to collect information – we look for compromise knowing that the court will presume contact. CAF/CASS can be confident where there is clarity about the*

³⁰ Page 7, Smart *et al*, 2005, op cit.

³¹ *“Case law that establishes that contact is almost always in the interests of the child is a serious problem as it leads judges to overlook the reality of domestic violence. One cannot escape the fact that in 2003 an estimated 16,000 cases involving domestic violence came before family courts but only 601 contact orders were refused.”* Hilton Dawson MP, House of Commons, December 2004, Hansard.

violence, perhaps a finding of fact. But in most cases there is ambiguity, with insufficient evidence for courts or for that matter CAFCASS, so the ‘rule of optimism’³² is applied”.

3.10 This last comment summarises three interrelated issues that drive and constrain practice by CAFCASS in domestic abuse cases:

- given the extent of the demands on CAFCASS and the current practitioner approaches to how the work is done³³, there is insufficient time fully to assess domestic abuse cases. Consequently, the focus is on reporting what parties say rather than assessing what it might mean for children
- the family justice system focuses on trying to get disputing couples to make their own agreements in private law cases³⁴. Inspectors identify a tension between this ‘agreement-seeking’ focus and a ‘safeguarding children’ approach. HMICA reported on this fully in the Thematic Review *Seeking Agreement*³⁵
- the organisational and political context of current thinking and debate about the merits of presuming contact.

3.11 Whilst it is not for CAFCASS to make ‘findings of fact’,³⁶ it is also insufficient merely to present each party’s own version of events without any corroboration, analysis or comment on what the practitioners had been told³⁷.

3.12 CAFCASS practitioners point to the tensions inherent in a system that asks the process of law to tackle very complicated social and intimate issues. They say that *“the court relies too much on CAFCASS coming up with solutions to the problems inherent in domestic violence cases”*. *“Some mothers really believe that they and their children are going to be harmed if*

³² In 1983, Dingwall, Eekelaar and Murray asserted that under the ‘rule of optimism’ practitioners applied overly positive interpretations to the cases they were assessing.

³³ *Tackling Delay* July 2004. In this report, Inspectors identified five key features that needed to be addressed to tackle the issue of managing demand and dealing with delay. The five features are Capacity (people and productivity); Demand (the regulation of demand through agreed protocols with key stakeholders); the nature of the case and practitioner responses; Stakeholder activity and the interplay within the family justice system; and Access to specialist resources. In the absence of attention to each of these features through agreed protocols and clear practice standards, it remains difficult for CAFCASS to meet demand consistently.

³⁴ King poses the question as to whether the resolution of conflicted family disputes is the role of law and what a psychologist or social worker might define as ‘best for a child’ might not necessarily be enforced by the law. (King 200:532 cited in Smart, op cit, p42). Smart goes on to say: *“He argues that law requires pre-determined formulas on which to base its decisions which perhaps makes it impossible for the courts ever to take an individualised approach to disputes over residence and contact as the parents wish. Because of this, it looks doubtful whether the law can really deliver what parents want from it; that is ‘common sense’ decisions tailored to each individual case. This could either be an argument for removing these conflicts from court or for changing the nature of family law. The former alternative is probably more likely”*.

³⁵ *Seeking Agreement: A Thematic Review of CAFCASS schemes in private law proceedings* MCSI December 2003. At paragraph 5.7 Inspectors reported that they were *“of the view that any focus on settlement seeking should not be at the expense of safeguarding children and adults from risk of harm”*.

³⁶ *“It is no more for the judge to tell Children and Family Reporters [CAFCASS practitioners] how to go about their inquiries than it is for the CFR to intrude on the judicial function by making findings of fact”* extract from the judgment of Wall J in the case *Re M (Disclosure: Children and Family Reporter)* [2002] EWCA Civ 1199, [2002] 2 FLR 893 cited in Prest C and Wildblood S, *Children Law – An Interdisciplinary Handbook*, page 850, paragraph 84.

³⁷ Under FPR 1991 rule 4.11, CAFCASS has the duty to investigate, to advise and to *“provide the court with such other assistance as it may require”*.

contact is ordered but the court does not take this fully into account. If the children want contact, we have to work with mum but if the children don't, then we can recommend indirect contact. In some cases, mothers can provide no evidence to support their allegations that would satisfy a court, but they still want to protect their children".

- 3.13 HMICA considers that CAFCASS practitioners should, in all cases, make a clear assessment of the effect of the parents' dispute on the child, whether domestic abuse is present in the case or not. Although there is obvious merit in seeking agreement where possible, we conclude that risk assessment is the priority and agreement-seeking might be a secondary consideration, only when, and if, safety is assured and informed consent to mediation or conciliation is given freely.

Practice skills

- 3.14 Inspectors were concerned by the evidence of poor practice in many of the observed sessions where some of the most basic skills were missing. Most practitioners have been doing this work for many years and, because of this familiarity, there seems to be little appreciation that the whole process might be new to the service user. Consequently, no use is made of a standard introduction that explains, for example:
- what happens in the interview
 - the timescales involved in the process
 - what is expected of service users
 - the rights and responsibilities of service users.
- 3.15 Inspectors saw examples where distress was handled with sensitivity and anxiety was alleviated. However, unacceptable practice was also observed, including where practitioners:
- did not take steps to put anxious people at ease
 - did not respond to people who were clearly distressed
 - were late for interview
 - had not prepared for the meeting or read the case papers.
- 3.16 In conciliation sessions at court, there was rarely any information for CAFCASS use and in none of the observed sessions was any contact made by CAFCASS with other agencies involved with the children or family.
- 3.17 Practitioners often seemed unduly hurried and ill-prepared, with a lack of reference to previous information. The fast pace that CAFCASS worked to was disconcerting but the narrative approach which concentrates on information collection seems to be an unnecessarily time-consuming method. There is likely to be a connection between this busy culture and the service users' views of their experience of CAFCASS.
- 3.18 In one observed session, the practitioner did not know what had happened at the finding of fact hearing in the case. He said that he did not have a copy of the previous CAFCASS report because *"only the original practitioner would be able to find it"*. However, he said the fact that the previous report ordered 'no contact' with the father *"told him enough"*. One practitioner pointed to why these practices were common when she said: *"The issue is that where we have little information in the system about the parties, there is a desire to get them together to get a result"*.

3.19 HMICA concludes that CAFCASS could use its resources more effectively if it made better use of information where it is already available and concentrated more on making an assessment than reporting what parties said. Whilst the CAFCASS processes are familiar to practitioners, it is important that they remind themselves that the experience is likely to be new to the service user. Practitioners should ensure that they do not proceed as if the court decision about contact has already been made. They should remember that each case is unique to a specific child and their family at a particular time in their life.

Risk assessment

3.20 Some service managers saw domestic violence as an integrated part of the formal assessment of risk under the CAFCASS *Child Protection Procedures*. However, there was no consensus view about this and managers were unclear to what extent formal procedures were followed by practitioners and when. Some managers said:

“Practitioners only fill in the risk form when there is an identified risk, rather than as a tool to identify risk. The Child Protection procedures are not sufficiently bedded into the service and managers are not sufficiently bedded into the risk assessment culture”.

3.21 However, managers also said that some *“practitioners see domestic violence as within the ‘child in need’³⁸ dimension and therefore made risk assessments within a child protection framework”*. Nevertheless, managers acknowledged that most assessment was informal and individual: *“Instinct, experience and intuition are used instead of any formal risk assessment. Practitioners use tests such as ‘can the children talk freely?’ ”*.

3.22 No formal risk assessment was undertaken in any of the observed interviews. Inspectors are not satisfied that any standardised criteria are being used systematically to inform the recommendations made by CAFCASS. Inspectors appreciate that these are very difficult cases to deal with emotionally and practically – when one party says one thing and the other says something completely different. In the absence of findings of fact, the cases present considerable challenges to practitioner judgements where there are conflicting views from the two parents about domestic violence. In the absence of a risk assessment tool, these challenges are doubly difficult.

³⁸ Section 17(10) Children Act 1989 defines a child in need.

Safety planning

- 3.23 Whilst the CAFCASS Health and Safety policy includes procedures for personal safety planning, HMICA found that most CAFCASS practitioners did not undertake safety planning in cases. CAFCASS practitioners were very relaxed in giving attention to their own safety and this might be reflected in their similarly relaxed attitude to risk in general and to service user views about safety³⁹. Where alarm systems were fitted, practitioners were either unaware of them or did not know what the response procedure should be. There was a worrying lack of attention to safety planning in almost all the observed sessions. Even the most basic Health and Safety considerations, such as seating arrangements, were ignored by practitioners. In the observed sessions, only one practitioner took adequate steps to look after her own safety by carrying a portable alarm. Inspectors note that the *CAFCASS draft domestic violence policy* sets out standards for safety planning⁴⁰.
- 3.24 For example, in one of the courts visited, the interview room available for CAFCASS could not have been arranged safely whilst in another, safety issues were clearly addressed. In another court, the Inspector was told by a practitioner that when she had been cornered by a service user, she called for assistance from the court usher. Despite this experience, the practitioner continued to seat herself furthest away from the exit in the interview room.
- 3.25 There was evidence that some cases had been seen by service managers but in one region the actions required by the manager (such as requesting the practitioner to complete checks with the local authority and other agencies) had not been followed up. There was also no provision for manager comments to be marked on the file, so there was no indication of any oversight, risk analysis or quality check exercised by the manager. However, in another region, there was evidence that some service managers undertook a risk assessment before the case was allocated: *“In private law, I see all cases and highlight domestic violence, mental health or other such issues. All police and social service checks come to me and I mark the file if either have been completed”*. The wide variation in practice throughout CAFCASS risks inconsistent service delivery and discrimination.

Duplication of work by CAFCASS

- 3.26 Inspectors are concerned by the volume of duplication of work by CAFCASS in cases that are already known to the Local Authority Social Services Department and where children are on the protection register. There were examples where the practitioner was not aware of this until the interview with the service user was under way. In other examples, where it was known, CAFCASS did not contact the local authority even when a section 7 report had already been prepared by social services. In the observed sessions, there was no co-ordination of information or even simple steps being taken, such as telephoning other agencies before beginning work on cases.

³⁹ See also previous section on user views and Chapter 4.

⁴⁰ CAFCASS draft Domestic Violence Policy & Standards, section 5.3.

- 3.27 In conciliation hearings at court, Inspectors found that there was considerable duplication of the work of other agencies. In one example, the CAFCASS practitioner spent over an hour on a case before the judge decided that it could not proceed without the social worker being present. However, the CAFCASS practitioner had not made basic enquiries of the local authority from the outset and her best efforts and CAFCASS resources were not used efficiently. This was a common finding in these court-based systems.⁴¹
- 3.28 One senior manager cast doubt on the need for the proposed increase in resource given by CAFCASS to in-court work: “Solicitors are doing more mediation and this is screening out many cases that used to come through in-court conciliation schemes. The intractable cases left are not suitable for in-court conciliation”⁴².

Attention to domestic violence issues

- 3.29 In the 56 cases that were observed, the methods used by practitioners and their approach to domestic violence cases was no different where domestic violence was alleged from those cases where domestic violence was not.⁴³ There was no evidence of routine screening or risk assessment by practitioners. Consequently, CAFCASS practitioners have an undifferentiated approach to all cases.⁴⁴
- 3.30 From our observations, domestic violence is treated as just one factor, equal with others but not a ‘weighted’ factor in the case. Consequently, domestic violence is not explored in detail, even when it is evident⁴⁵ and this is illustrated in the following two case examples.

Case one

The father had a previous conviction for violence which had led to a prison sentence. The practitioner had told him that she wanted to explore an alleged assault on the maternal grandmother but did not do so in interview; instead, she said: “I want to do something different, I want to do a family tree so that we can share it with everyone”. The assault was not returned to, nor was the impact of the domestic violence on the child assessed.

⁴¹ *Seeking Agreement*, MCSI, December 2003.

⁴² Herring (2003) expresses a similar concern in the article *Connecting contact: Contact in a private law setting* in Bainham, Lindley, Richards & Trinder (eds) *Children and their families: Contact, rights and welfare*. Oxford: Hart Publishing.

⁴³ In studies of survivor’s views, women consistently reported that they wanted to be asked about violence and were more likely to disclose domestic violence when asked specific questions: Mirrlees-Black, C. *Domestic Violence Home Office Research Study 191* (1999) Mullender, A. & Hague, G. (2001) *Women Survivor’s Views* in Taylor-Browne (2001).

⁴⁴ HMICA first reported on this undifferentiated approach in the *Inspection of CAFCASS South East Region report* March 2003: “a differentiated approach would seek to promote attention to the particularity of the case (what is best for this child) rather than general (what was traditionally regarded as best for most children)”, page 7, paragraph 1.10.

⁴⁵ Saunders Hilary *Twenty-nine child homicides: Lessons still to be learnt on domestic violence and child protection Women’s Aid* 2005. This report compiled details of 29 children in 13 families who were killed between 1994 and 2004 in England and Wales as a result of contact arrangements (in one case residence). Domestic violence was involved in 11 of the 13 families. Walby S & Myhill A conclude that there is ‘robust evidence’ of co-occurrence of child abuse and adult domestic violence (2001) ‘New survey methodologies in researching violence against women’ 41 *British Journal of Criminology* 502-522. Department of Health figures show that 75% of children on the ‘at risk’ register live in households where domestic violence occurs. Bossy J & Coleman S, 2000 cited in *A Research and Literature Review: Protection and Accountability* (2004), HMCPSI, page 22.

Case two

Using the family tree, information was collected about three relationship breakdowns. None of these was explored by the practitioner to assess whether violence was a factor. The family was known to the Social Services Department and sexual abuse was alleged by the mother, who said: *“the Social Services Department and police were involved but the sister who had been abused clammed up and wouldn’t say anything, so they couldn’t take it any further. The sister went to live in foster care. I’ve told the solicitor and the court and the social services but they’ve done nothing about A”* [who still lives with B, whose son allegedly sexually abused A].

HMICA concluded that this case should not have been dealt with by CAFCASS but the assessment of the risk to A should have been undertaken by the Social Services Department.

- 3.31 There were many examples where practitioners reported statements made by parties without reference to supporting documents or other corroborative material. Claims and behaviours were not challenged systematically.

Case three

Domestic abuse and sexual violence was alleged by the mother against the father. The 90 minute interview focused on collecting the history of the couple’s relationship and domestic violence was covered only briefly as follows:

Practitioner: *“You said he was physically violent”*

Mother: *“Before M was born he would hit me and push me saying ‘go to England’. He would do it in front of the children.”*

Practitioner: *“The court has asked us to do a report on residence and contact. The children have lived with you most of their lives. Dad would have to come up with a good reason for them not to continue living with you. It is important for the children to see their Dad if it is safe and then we could see how it goes. He can’t take the children. Was he violent to the children?”*

Mother: *“No, he shouted if they were crying”*

Practitioner: *“Are you afraid of him?”*

Mother: *“Since I’ve been to court, I’m afraid of him taking the kids. He hit me in Pakistan but that happens in married life, it’s natural”*

Practitioner: *“It’s not natural, it’s wrong to hit someone”.*

However, despite this supportive intervention with the mother, in the subsequent interview with the father, the practitioner seemed collusive with him. There was no rigorous exploration of his claim that his behaviour had improved – rather, his word that he *“had changed”* was accepted. The practitioner had a discussion with the father about his alcohol use. It was alleged that, when drunk, the father had threatened his son (aged 10) with a large kitchen knife but this was not addressed in the interview. There was no reference to any documents or risk analysis or analysis of the units of alcohol consumed by the father. The practitioner relied on the father’s self-report of his progress with the Alcoholics Anonymous group.

The practitioner did not explore the four children as individuals or the frequency of their hospitalisation or the nature of the alleged violence or the alleged knife attack. There was no challenge or exploration of the father’s statement that his ex-wife was *“too easily scared of him”* and that she *“needed help”*. This was despite the indication that the father had not understood the significance of the domestic violence for the mother.

Inspectors were concerned that there was still a presumption of contact, despite the history of domestic violence in this case.

3.32 Not only was there a presumption of contact in the observed sessions, but there was also a reluctance to challenge perpetrators about their behaviour. Instead of discussing allegations or directly commenting on abusive behaviours, domestic violence was dealt with obliquely, if at all.

Case four

The father was seeking contact. He had breached a non-molestation order and further abuse was alleged. Twenty-eight days' imprisonment had been followed by the court making the father subject to a conditional discharge for damage to the mother's property. The CAFCASS practitioner prioritised the importance of contact over the assessment of risk, despite the history of violence and the mother's ongoing fears. The father agreed to keep to the conditions of a further non-molestation order but there was no direct statement by the practitioner about 'significant harm'. When the mother voiced her concerns about leaving the court alongside her ex-partner, there was no clear statement from anyone that the father should stay behind after the case had ended until his ex-partner was safely away from court. Instead, the violence was not discussed with the father directly and the practitioner said to the mother: *"we'll organise ten minutes to get you away; I'll make an excuse and keep him back"*.

Conciliation sessions at court

3.33 The pressure in the court system means that decisions are taken very quickly and, under those circumstances, little opportunity is available or is taken to adequately explore whether the parties' consent to joint meetings has been given freely and is fully informed.

3.34 Inspectors observed that some of the parties who were interviewed jointly with their ex-partner, did so reluctantly and were clearly uncomfortable. In many of these rushed interviews, it was evident that children had seen or heard violence between the adults but these issues were not explored by CAFCASS in the conciliation session.

Case five

The practitioner conducted a joint interview at court. There were serious allegations of domestic violence in this case that the practitioner was not informed about. When the case was called into court, the judge made it clear that he viewed the allegations made about domestic violence to be sufficiently serious for a report to be needed and that conciliation was not appropriate in this case. In the event, the conciliation session should not have gone ahead. Work done by the CAFCASS practitioner was wasted and, in the joint interview, the parties were exposed to confrontation that could have been avoided. This included the recitation of the mother's previous experiences and the father having his expectations raised unrealistically.

In this case, the practitioner demonstrated clear mediation skills (she was a trained mediator) but, in the circumstances, her skills may have contributed to her being optimistic about what could be achieved. Without her knowing the basic information about alleged abuse, her attempts to broker an agreement proved to be speculation and, in the absence of such knowledge, the *'rule of optimism'*⁴⁶ was applied and a potentially dangerous agreement was reached.

⁴⁶ Dingwall et al, op cit, p37.

- 3.35 Without clear protocols about access to information and basic triage (to identify which cases are suitable for court schemes), resources in the family justice system are wasted and people are placed at potential risk.
- 3.36 Practitioners told Inspectors that they knew that the quality of practice and attitudes in domestic violence cases varied considerably. They said that there was a wide variation in the skill base of their colleagues, as well as a lack of awareness and understanding about domestic violence issues: *“Some practitioners do things well and they know a lot about domestic violence and others don’t. There are very different views about domestic violence in CAFCASS.”* Some practitioners emphasised to Inspectors that practice development only happened if particular individuals took responsibility to raise the profile and understanding of domestic violence issues in their area or team. HMICA agrees and recommends the selection of ‘champions’ to improve practice in domestic violence issues⁴⁷.
- 3.37 Practitioners thought there was insufficient opportunity for in-depth supervision or coaching about working with domestic violence, although there were opportunities for peer discussion of cases. However, Inspectors conclude that peer discussion is no substitute for demonstrably accountable practice through supervision, appraisal, case review and audit against standards.
- 3.38 The work of practitioners is rarely, if ever, observed by their managers. Inspectors are concerned that there is no systematic means to reflect on or identify best practice. Poor practice remains unchallenged at best, or is invisible at worst. CAFCASS does not yet have a systematic process to improve practice, although some promising development work has been achieved with the production of a *Performance Framework*.⁴⁸
- 3.39 In discussion with Inspectors, one practitioner set out some of the best practice issues that she used with children and families:
- undertake **initial screening** in all cases to establish whether abuse is an issue: *“I don’t ask about allegations but I ask how the relationship works. I recognise the high number of cases in the family court that have domestic violence allegations, so I ask all parties if domestic violence is a feature within the relationship. The answers to that question help me to assess whether I am working with a pattern of abuse. The answer has lots of implications, of course”*
 - build up a picture about the **nature of the abuse** in the case, its frequency, duration and overall effect: *“I try to get parties to give a comprehensive picture. Did domestic violence feature at the beginning or towards the end of the relationship, or was it ongoing?”*

⁴⁷ The Crown Prosecution service has created Domestic Violence Co-ordinators responsible for developing and taking forward strategy and implementation of all issues relevant to domestic violence. In his paper *Lost Opportunities: Domestic Violence, Social Work and Form 78 Reporting DVIP July 2005* Neil Blacklock argues that *“Social work and domestic violence has been an arena where competing theories and practices have contributed to the slowness with which multi-agency work has developed”*; he contrasts this with better progress made in the criminal justice system where because *“such barriers have not been present, numerous developments have resulted”*.

⁴⁸ *Delivering Quality Services for Children : our performance framework*, CAFCASS, 2005.

- help survivors to **disclose** the abuse more fully: *“If people don’t disclose, we need to be able to ask the right questions to enable disclosure, if necessary. For example, sexual abuse is rarely revealed and women find it hard to disclose this; in fact, it’s harder than disclosing that they are being hit”*
- give the **information** that is needed about how CAFCASS works: *“I explain the purpose of the report and what’s going to happen in terms of the process”*
- **understand** the complexities and behaviours that are involved in domestic abuse cases: *“Survivors seem to fear that disclosing will reflect on their parenting and that they might lose their children. Perpetrators, on the other hand, have a motive for saying things that make it seem like the children are at risk from the resident parent”*
- use an **assessment tool**: *“I use Sturge and Glaser⁴⁹ to make my assessments”*
- learn from **best practice** models and inter-agency work: *“perhaps learn from social services who look at domestic violence every day and they **are** assessing risk. CAFCASS is not good at using best practice from other agencies”.*

Diversity

3.40 Diversity issues were not handled well in any of the observed interviews and diversity forms were not followed up or used in those interviews. This is another area that needs urgent attention by CAFCASS.

Case six

Identity issues were not explored, even where the diversity form contained crucial information for the child’s identity because the mother had died.

Case seven

The father was black and the mother of mixed race. The practitioner did not discuss identity issues with the mother or assess their relevance to the case. This was despite opportunities to do so when the mother said that her social worker had thought she was white, and that the local authority thought the child should live with the father because he was black and so was the child.

Reporting and key messages

3.41 Currently, CAFCASS spends most of its practitioner resource on producing reports for the court. As such, CAFCASS will be disappointed with the results of this audit of reports⁵⁰. Over a third of the reports did not meet the minimum standard.

⁴⁹ Re L, (contact: Domestic Violence) Re V, (contact: Domestic Violence) Re M (contact: Domestic Violence) & Re H (contact: Domestic Violence) [2000] 2 FLR 334. This case was before the Court of Appeal in June 2000. It drew on the work of the Children Act Sub-Committee LCD Advisory Board on Family Law and on a specially commissioned report by Dr Claire Sturge and Dr Danya Glaser. *Contact and Domestic Violence – The Experts Report* sets out principles about contact, including where there has been domestic violence. Doctors Sturge and Glaser’s report emphasises that whether as witnesses or as victims, children are affected as much by exposure to violence as by being involved in it.

⁵⁰ In regions, 67 recently completed private law court reports about domestic violence cases (Children Act 1989 section 7) were inspected. The audit results of domestic violence reports compare less favourably with the data aggregated from audits conducted in previous inspections. In addition, 19 public law reports (Children Act 1989 section 31) were read, as noted in Annex B of this report.

Key messages from the report audit of 67 private law reports where domestic violence issues were present in the case:

- In a quarter of reports, the court was not provided with full information about the case
- In over a third of the reports, the impact of domestic violence or the risk of future harm to children or adults was not assessed, with consequent potential risk to their safety
- In one in ten of these cases, the children were not seen by CAFCASS
- Social Services Department checks were not completed in a fifth of cases; police checks were completed in only two-thirds of cases
- Significant facts were not verified in nearly a third of reports
- A recommendation to the court was not made in a quarter of the reports
- The majority of reports did not cover diversity (or identity) issues
- The most common observation of reports made by Inspectors and CAFCASS staff⁵¹ was that they were long on description and short on analysis.

Access to information and information exchange

3.42 There was a very wide range in the working arrangements for access to information and information exchange between agencies. This included different practices in courts. In some courts, judges read out information from the form C1 to CAFCASS practitioners, whilst in others CAFCASS had direct access to the court file with advance notice of court lists. Some courts provided CAFCASS with information in advance, including an initial indication of the level of risk. However, as noted for example in case five above, in some courts and offices, Inspectors observed practitioners commencing work without any information about the children and families.

3.43 Inspectors were told by CAFCASS that some police areas were prepared to provide information⁵² on parties whilst others were not, unless a section 7 report had been ordered. Some police areas, post-Soham⁵³, were prepared to provide ‘softer’ information but others were not.⁵⁴ In one part of one region, co-operation and information exchange was described as “*extremely helpful and the police are good at disclosing what they’ve got*”. This was due to the “*strong links that exist at a local level*”. Whilst this might work at a local level, it is far better for agencies to have agreed systems that work on a general level.

⁵¹ The report audit was undertaken by Inspectors with CAFCASS managers and practitioners.

⁵² The Police/Family Disclosure Protocol was set up as a Pilot Project commencing December 1st 2004. The pilots will “*aim to test the practicalities and effectiveness of using the agreed Protocol and Standard Forms for early request of information, response, standardised orders and effective service of court orders on those responsible for dealing with the information requests.*” The Pilot will be conducted by police forces on the Northern Circuit and the Metropolitan Police Service Area. Subject to the findings and evaluation of the pilots, it is anticipated that the Protocol will be implemented across England and Wales in the autumn of 2005.

⁵³ *The Bichard Report: An independent inquiry arising from the Soham murders* was chaired by Sir Michael Bichard and reported in June 2004.

⁵⁴ “*Full, timely and reliable information is required to enable prosecutors to carry out proper and continuous review. They need to consider not just the incident in question, but the totality and long term aspect of any domestic violence suffered by the victim and any children of the family. For example, some defendants will have committed domestic violence in more than one relationship.*” *Violence at Home: A Joint Thematic Inspection of the Investigation and Prosecution of Cases Involving Domestic Violence*, section 2.39, page 41, HMCPSI and HMIC, February 2004.

3.44 Inspectors observed time wasted in many cases because there was no prior knowledge that interpreter services were needed. With better information collection and exchange, such poor use of costly resources could be avoided. At the time of the inspection, a protocol for the exchange of information between CAFCASS and Social Services Departments had been introduced. It had been agreed with the Association of Directors of Social Services that, in those cases where domestic violence was alleged, the local authority would be **informed** through information exchange. The case would only be **referred** for action by the local authority where the need to do so was assessed by CAFCASS. In one region, there was confusion as to the how the procedure might work. The local authority was responding to all notifications as if they were referrals and in some cases were undertaking home visits. While this may be part of 'bedding in' a new policy, further clarification may be necessary and Inspectors note that the protocol and guidance are due for review in autumn 2005.

Findings of fact

3.45 In 1999, the Lord Chancellor invited the Children Act Sub-Committee (CASC) of the Advisory Board on Family Law to consider the effect of domestic violence on applications for contact by the non-resident parent. Following a period of consultation, CASC issued a report with guidance⁵⁵. In March 2000, the Court of Appeal heard the cases of *Re L, V, M and H*⁵⁶ and the judgments gave some general guidance on domestic violence cases. Writing in *Family Law*, the, then, President of the Family Division, Dame Elizabeth Butler-Sloss, set out *"four points which, among others, are in my view of particular significance in an application for contact:*

- *the extent of the violence*
- *the effect on the primary carer*
- *the effect upon the child*
- *the ability of the offender to recognise his behaviour and attempt to change it".*

3.46 Where violence is alleged, it is for the court to decide whether the allegations should be tested in what is known as a finding of fact hearing. Such hearings are held to determine whether or not on the balance of probability any allegations of violence are proved. If proved, it is a matter for the court to decide whether *"that violence **would be relevant to the issue of contact.**"*⁵⁷

3.47 In the Green Paper *Parental Separation: Children's Needs and Parent's Responsibilities*, the Government sets out its policy to promote shared parenting provided it is safe to do so. Where issues around domestic violence are disputed and are central to the safety of arrangements for children and families, finding of fact hearings have a crucial function. Family Courts, for a range of practical reasons including delay, cannot adjudicate through such hearings on every allegation of domestic violence.

⁵⁵ The CASC report and the guidance in section 5 can be found at www.open.gov.uk and www.familylaw.co.uk

⁵⁶ Op cit.

⁵⁷ Barter, S. *Domestic Violence and Contact Applications* (December 2001) is a note to clarify the practical application of the guidance given by the Court of Appeal in *Re L*.

3.48 Inspectors were told by CAFCASS that courts operate from different starting points on finding of fact hearings. As a consequence, in similar situations involving allegations of domestic violence, CAFCASS assesses safety issues in two different ways. One is based on a finding of fact and the other without the benefit of any judicial finding. CAFCASS staff say they are concerned by this different approach which occurs even within the same CAFCASS region. This may partially explain why some CAFCASS reports are unable to make a firm recommendation that takes into account domestic violence issues. Service users also report concerns, including a belief that allegations of domestic violence are ignored, particularly where there is no judicial finding.

Recommendation 2: That, in order to improve its service to children and families, CAFCASS should:

- ensure that all cases, including conciliation at court, are subject to risk assessment and liaison with other agencies
- devise best practice guidance and procedures for preparing reports in domestic violence cases
- ensure safety planning is undertaken for all cases.

Management issues

In this section we were looking for:

- clear and effective policies, procedures and practice standards about domestic violence that safeguard children and adults
- accountability systems to ensure and assure compliance with CAFCASS policies and procedures
- evidence that Domestic Violence is incorporated into a system of continuous professional development
- evidence of systematic inter-agency liaison on domestic abuse issues.

Overall assessment

The *Domestic Violence Assessment Policy and Toolkit* provides CAFCASS with an excellent opportunity to make positive improvements to service delivery and change attitudes about domestic abuse across the organisation. How effective it becomes will depend on the extent to which:

- CAFCASS introduces effective systems of accountability and continuous practice development
- it is required practice, or whether its use is voluntary.

Whilst CAFCASS is taking appropriate steps to best use liaison arrangements with partnership agencies and stakeholders to develop policy and practice in domestic violence cases, some key links, such as with HMCS and Domestic Violence Fora, are missing.

Post-separation shared parenting is a desirable aim, but only if the residence and contact arrangements are safe for children and adults. In these circumstances, the welfare of children should remain paramount and the emphasis on agreement-seeking in the family justice system should be a secondary goal.

Policy, procedures and practice standards

- 3.49 CAFCASS has produced a valuable new policy⁵⁸ on domestic violence which incorporates a ‘toolkit’ to inform best practice⁵⁹. Alongside sections on definitions, assessment and risk, the toolkit has chapters covering the child’s experience of domestic violence and its impact on child development. As it stands, the policy and toolkit could provide sufficient information and best practice guidance to improve service delivery but only if it is implemented in full.
- 3.50 As noted at paragraph 1.5 above, the Inter-Ministerial Group agreed a definition of domestic violence with the aim that it should replace a range of definitions⁶⁰ used by Government departments and agencies. As noted already in this report, CAFCASS uses a different definition of domestic violence which is strengthened by reference to children.
- 3.51 There has also been an important change to how harm is defined. Section 120 of the Adoption and Children Act 2002⁶¹ extends the definition of harm within the meaning of the Children Act 1989 to include harm suffered from seeing or hearing the ill-treatment of another, such as harm caused by witnessing domestic violence. Recent research states: *“There is now a body of research that supports this definition and maintains that children can be harmed not only through direct violence but also through witnessing violence between, for example, their parents”*.⁶²
- 3.52 HMICA notes that practice guidance about the implications of this widened definition will be issued by CAFCASS. However, without it, Inspectors consider there is a risk of inconsistent practice, with implications for safeguarding children.
- 3.53 HMICA was told by CAFCASS that there is protected finance for the roll-out of the policy. Whilst this is an appropriate first step, Inspectors are concerned that CAFCASS does not propose to issue the policy as practice procedures with a set of national standards that must be followed⁶³.

⁵⁸ CAFCASS *Domestic Violence Assessment Policy and Toolkit*, 2005.

⁵⁹ Research highlights eight indicators of good practice in domestic violence issues (1) defining domestic violence (2) monitoring and screening for domestic violence (3) developing policies and guidelines for communication within and between organisations (4) prioritising safety (5) training (6) evaluating initiatives (7) developing a multi-agency strategy (8) drawing up guidelines for working with domestic violence survivors. Humphreys C, Hester M, Mullender A, Abrahams H, Lowe P (2000) *From good intentions to good practice: Mapping services working with families where there is domestic violence*.

⁶⁰ “a review of government publications in 2001 identified 14 different definitions of domestic violence” Paradine and Wilkinson, op cit, page 3.

⁶¹ In section 31 of the 1989 Act (care and supervision orders), at the end of the definition of “harm” in subsection (9) there is inserted “including, for example, impairment suffered from seeing or hearing the ill-treatment of another”.

⁶² Smart, op cit, page 14.

⁶³ This contrasts for example with the Standard Operating Procedures© for domestic violence issued by the Metropolitan Police Authority (2004) London for its use.

- 3.54 The section on standards is weak, compared with the excellent quality of most of the document. Consequently, HMICA recommends that CAFCASS should issue a set of procedures and national standards that practitioners will be accountable for delivering. This is because:
- the quality of most practice in domestic violence cases is weak
 - current practice is focused more on adult than children's needs
 - service users are dissatisfied with the service they receive from CAFCASS
 - CAFCASS needs to focus better on, and prioritise, the assessment of risk before agreement-seeking in domestic violence cases.

Accountability⁶⁴ issues

- 3.55 Practitioners talked about the difficulties involved in working with domestic abuse cases and made links to the availability of support and guidance through good quality supervision⁶⁵: *“Staff do get affected by domestic violence work if they are not supported. Good supervision helps, but we have moved away from casework supervision and some managers are ill-equipped or don't have the time to supervise. Discussing personal stuff in supervision now seems to be ‘taboo’ and therefore these issues, the effect of the work, are not acknowledged. There is a lot of fear about domestic violence on a lot of different levels and lots of different attitudes in CAFCASS and other agencies to domestic violence itself”.*
- 3.56 One service manager summed up a general view about accountability issues that was held by many service managers: *“I worry that service managers are being taken further away from practice issues. I end up doing much less on practice than I need to because of all the other tasks I am required to do”.*
- 3.57 There were similar comments expressed by service managers about their own supervision: *“I think our own supervision should enable us to focus more on practice development to improve our product”.*
- 3.58 CAFCASS does not yet have a supervision policy but it is currently working with the idea of proportionality. This means that practitioners would be supervised in relation to their assessed need for supervision, based on their experience. HMICA has reservations about the CAFCASS approach to supervision and its proposed link to the principle of proportionality. Inspectors consider that, on the basis of evidence gathered in this Review, the way CAFCASS deals with domestic abuse needs closer, rather than less, attention.
- 3.59 Inspectors also found that the idea of proportionality in supervision was criticised by many managers and practitioners when handling complicated cases. *“It means that the more experienced you are, the less supervision you will get and therefore the less support you will get on difficult cases”.* However, there is no consensus view about accountability across CAFCASS. Service managers in one region agreed that, where practitioners want to circumvent supervision and quality assurance processes, then they can do so: *“There is resistance from some established practitioners to the examination of their work and there really is a need for a performance management system”;* *“CAFCASS does struggle around consistency and demonstrating a management culture committed to audit, review and appraisal”.*

⁶⁴ Accountability systems include supervision, appraisal, national standards and quality assurance.

⁶⁵ Supervision incorporates support, development and accountability.

- 3.60 Inspectors agree with those managers who view current peer review systems as insufficient for accountability and practice development: *“Peer gate-keeping is outside the managerial grasp”*. HMICA appreciates that the senior management and Board have only been in place since April 2004 and that their inheritance presented multiple complicated challenges. Even so, the continuing lack of robust CAFCASS systematic accountability systems⁶⁶ is of ongoing concern. As this and previous inspections have shown, CAFCASS is not yet able to assure itself about the quality of service delivery in domestic violence cases⁶⁷.
- 3.61 A Corporate Business Plan covering the two years to 2007 will be issued shortly, alongside a framework to improve performance across the organisation. The *Performance Framework* will strengthen appraisal, contract management, supervision, competencies and quality assurance. It will also include guidance for the observation of practice.
- 3.62 HMICA welcomes the development of a Performance Framework. As with the Domestic Violence Policy, its value will be determined by its application, implementation and acceptance throughout the organisation.

Recommendation 3: That, in order to improve services to children and families, CAFCASS should:

- implement a strategy to ensure improved practice in domestic abuse cases
- devise national standards and competencies for work in domestic violence cases
- ensure compliance with the new domestic violence policy and toolkit
- create domestic violence champions throughout CAFCASS
- ensure that the focus on safeguarding is integrated into the casework process and takes priority when considering contact or agreement-seeking in domestic violence cases.

Recommendation 4: That, in order to safeguard children and adults, CAFCASS should agree and implement a clear multi-agency protocol regarding information exchange and inter-agency liaison in domestic violence cases.

Continuous professional development

- 3.63 HMICA recognises that senior managers in CAFCASS now have a clearer focus on the need to improve service delivery and have incorporated responsibility for domestic violence issues into its safeguarding structures at Director and Board level. Similarly, there is a growing understanding at a senior level that best practice needs to be identified from the various practice models currently used: *“Private law is complicated, practice varies and we do want a better sense of what we do best. We are trying to ‘bed in’ a different way of working”*.

⁶⁶ Inspection report of CAFCASS *Training and Quality Assurance for Service Delivery* (July 2004), MCSI.

⁶⁷ Alongside this inspection, CAFCASS has proposed a series of positive developments including: (a) a more structured approach to risk; (b) national standards for work in domestic violence cases; (c) associated training with this new policy; (d) new appraisal arrangements; (e) an overarching strategy for safeguarding children, including the domestic violence policy.

- 3.64 This new way of working includes a more realistic approach to risk assessment and a greater recognition of the limitations of assessing domestic violence in cases at conciliation hearings: *“Risk assessment needs to become routine but it can’t be done properly in a forty-five minute dispute resolution meeting”*.
- 3.65 There are also early signs that senior managers are beginning to recognise the value in adopting a way of working that differentiates between cases and provides a service based on the needs of the particular case, rather than generalised features across most cases. There is an acceptance at senior level of the dangers inherent in *“habitual practice and practitioner resistance to change”*.
- 3.66 Alongside these welcome developments is a desire to raise the voice of the child and hear the views of users: *“In the noise from the parents, the voice of the child can get lost. We need to use Every Child Matters for each child and better understand how the service is perceived by users”*.
- 3.67 Inspectors commend CAFCASS for the quality of the recent training in domestic violence issues. The course content was commissioned from Royal Holloway College by the CAFCASS Practice Development and Quality Assurance department. To date, 139 CAFCASS staff have been through the training module. However, plans for future training are unclear. HMICA takes the view that the course could be further improved by clearer training on what to do and say in interviews, to enhance the current elements of raising awareness about domestic violence.
- 3.68 Although it is a foundation course, some practitioners thought it was too advanced, whilst others wanted more advanced training: *“Some of the training focuses mainly on providing information about domestic violence rather than what to do and skills development all round. For example, how to assess whether people are telling the truth – after all, some people do make false allegations”*.
- 3.69 However, this training has only been delivered to new staff and to practitioners who *‘opted into it’*. Since the quality of current practice is so variable across the organisation, HMICA concludes that it should be compulsory for all practitioners and managers and that relevant aspects of the training⁶⁸ should be available to other staff throughout the organisation.

Recommendation 5: That, in order to improve services to children and families, CAFCASS should provide training:

- in assessment and risk assessment skills
- on communication skills for direct work with children in domestic violence cases
- in domestic violence for all staff and, where possible, do so on an inter-agency basis.

⁶⁸ Of the separate domestic violence training courses undertaken by the Police, Crown Prosecution Service and National Probation Service, they each complete one domestic violence training module in common, namely – Centrex.

Inter-agency liaison

- 3.70** Safeguarding in domestic abuse cases is a responsibility across all agencies and stakeholders in the family justice system. Inspectors welcome the opportunities being taken by CAFCASS to use liaison arrangements with partnership agencies and stakeholders to develop best practice standards for domestic violence work. The recently formed Family Justice Council provides further opportunities through its sub-group for domestic violence issues. At a senior level, CAFCASS is negotiating about better information exchange and is linking into MAPPA⁶⁹ processes. HMICA welcomes these developments but also wishes to encourage CAFCASS to make a more systematic contribution to local Domestic Violence fora and Area Child Protection Committees⁷⁰.
- 3.71** Information exchange remains problematic, as does the tension between avoiding delay and assessing the risk of domestic violence. At present, this tension is being managed pragmatically through the notion of proportionality. This means that risk assessment depends on the quality of the information available. As there are significant limitations to information available in domestic violence cases, this proportionate approach is not sufficient for its purpose. It is much easier to state, with the benefit of hindsight, whether the time and effort spent on risk assessment and domestic violence has been proportionate.
- 3.72** HMICA takes the view that this tension needs to be better understood and managed by CAFCASS, with clearer practice guidelines and risk assessment procedures. The need for a common risk assessment in the family justice system is accepted by senior managers and CAFCASS is represented in some key groupings. CAFCASS is a member of a Joint Risk Assessment Group which is developing a multi-agency risk assessment for domestic violence. This work is informed by the Department of Health and the National Institute for Mental Health in England and involves the Domestic Violence Intervention Project, Women's Aid, and researchers. It is chaired by the Legal Services Commission.

Concluding comments

- 3.73** It is a difficult professional task to begin to understand and assess the complex issues that are involved where there is abuse in the family. Contemporary themes and debates converge in contact disputes involving domestic abuse. The arguments about the competing rights of adults remain unresolved and these debates are overlaid by issues concerning the rights of children.
- 3.74** Society is unclear about how best to help children maintain a meaningful relationship with the parent they do not live with and is unsure how best to resolve disputes between separated parents about their children. The argument is often polarised by either the focus on contact or the emphasis on safety issues. CAFCASS is in the middle of these complicated and competing points of view. These issues are also the focus of current draft legislation.⁷¹

⁶⁹ Multi Agency Public Protection Arrangements. Created by the Criminal Justice and Court Services Act (2000), the arrangements require police and probation to work together to manage the risks posed by dangerous offenders in the community. The report in 2003 by Lord Laming into the death of Victoria Climbié reiterated the importance of agencies working together.

⁷⁰ Under the Children Act 2004, ACPCs will be replaced by Local Safeguarding Children Boards.

⁷¹ *Draft Children (Contact and Adoption) Bill* (2005), Cm 6462. London HMSO.

- 3.75 In law, children's needs are paramount. But where the emphasis is on agreement-seeking, there is a risk that their views become marginalised as their parents' dispute takes centre stage. This is because children are not parties to proceedings unless made so through Rule 9.5⁷² which provides them with a separate and independent voice.
- 3.76 The practice of agreement-seeking seems to be confused with the idea of compromise. Compromises made when the powerful and less powerful come together in domestic violence cases can sometimes be mistaken for agreement. However, they might simply be submission. Enforced submission is a key factor in the nature of domestic abuse. HMICA concludes that safeguarding is, at all times, more important than agreement-seeking.
- 3.77 As a general principle, agreement-seeking might provide some useful guidance in certain cases. But as received doctrine, if applied to all cases, it presents significant risk. Without sufficient information, and in the absence of risk assessment or other safety screening, the admirable endeavour to seek agreement seems to offer children and families little more than a hopeful or optimistic view. This risks settling for agreements that are not safe and, whether they are reached by parents or by any other means, they remain unsafe. In such cases, children's needs are not paramount because the needs of the adults prevail.
- 3.78 HMICA does not suggest that each and every allegation of domestic abuse is true. Indeed, in the extremes of raw and primitive emotion unleashed during separation and divorce, neither parent will be at their most rational or fair. In some cases, allegations of violence will be made up or exaggerated. But in all cases, there needs to be an assessment of risk and an evaluation of the information available. A CAFCASS report restricted to what each party says is insufficient.
- 3.79 HMICA accepts that post-separation shared parenting is a desirable aim. However, the residence and contact arrangements for children and adults have to be safe. HMICA concludes that, in order for the welfare of children to remain paramount, the emphasis on agreement-seeking in the family justice system arguably has to take second place. CAFCASS should not seek, broker or mediate agreements unless and until it has been established that it is safe to do so.
- 3.80 HMICA recognises that this will require a shift in focus, together with improved practice and more thorough information collection, alongside risk screening and risk assessment.

⁷² Rule 9.5 of the Family Proceedings Rules 1991.

4 Court administration and domestic violence

Chapter 4 sets out the Review findings of the administration of family courts by HMCS in respect of domestic violence. It describes a range of issues that arise for those family court users who are survivors of domestic violence. Key management issues are also discussed.

Experiences of court users

In this section, we look at the challenges facing survivors of domestic violence in engaging in the family justice systems and the need for effective policies and procedures to help them.

This section covers the experiences of survivors of domestic violence attending court under the headings of:

- preparing for court
- being at court.

Overall assessment

Survivors of domestic violence do not receive sufficient appropriate help, including information, to enable them to engage fully in the legal process within the family courts.

The approach to domestic violence cases differs among courts. Survivors view the courts as generally unsympathetic and lacking awareness of the fear and anxiety they can experience being in the court building with their abuser.

Some court buildings offer good facilities to survivors such as secure waiting areas, separate entrances and an allocated usher to accompany them. In others, the facilities are more limited and dependent on availability and other court use. Even where facilities are available (for example, in newer court buildings) their availability is not generally publicised and much depends on the local management and staff approach. Facilities for children are also limited, rarely child-friendly or secure.

HMCS needs to be more responsive to the needs of its users and the facilities it provides for children when the court requires that a child be present for a hearing. What is common is that survivors are not made aware of what facilities may be available before they arrive at court. Generally, the information available to survivors is not helpful in preparing them for court.

Preparing for court

- 4.1 Attending court is, for most people, a nerve-wracking experience and it matters little whether they are attending the criminal or family courts. In the criminal courts, there is a general acceptance that children and some vulnerable victims and witnesses need support to attend court and to tell their story. HMCS has recognised that fact and has taken action to improve matters. Video suites that allow evidence to be given without the witness being in court; screens to hide the identity of a witness; and the arrangements with the Witness Support Service, run by the charity Victim Support, are some examples of the help available to those attending criminal courts.

- 4.2 The situation is different in the family courts. Those members of the public attending are there as parties in a family law dispute, not as victims or witnesses. In Children Act cases, the court is there to decide what is in the best interests of the child. In other cases, the aim, where possible, is to bring resolution to matters that the parties have been unable to resolve themselves. Although the differences between family and criminal courts are real and important, those attending family court hearings as parties can feel just as vulnerable and frightened as those attending a criminal trial as a victim or witness.
- 4.3 Among the people attending family hearings are those who are survivors of domestic violence. For such people, being in the vicinity of their abuser can be traumatic. Evidence collected by The Women’s National Commission and published in their report *Unlocking the Secret*⁷³ shows that the trauma suffered by such people can be sufficient to prevent them from engaging in the legal process. One survivor is quoted as saying: “*You have to confront them [men] even for childcare access. I was hiding in the toilet at courts and could not stop being sick. I could not appear in court. I would not come out of the toilet until I knew he was gone. The court was totally unsympathetic*”.⁷⁴ Others persevere, but at what can be considerable emotional cost.
- 4.4 Inspectors found that a number of courts have excellent facilities for court users who are intimidated or frightened. However, in other buildings facilities can be fewer, more basic or less secure. Waiting areas are often simply interview rooms adjacent to the main waiting area. Few have separate toilet facilities. As a result, survivors have to use those facilities that exist in the main waiting area where there is an increased chance of meeting their abuser.
- 4.5 Children are rarely expected to attend family court hearings. Courts have historically discouraged parents from bringing children into court buildings. As a result, few courts have facilities dedicated to children that are secure from access by unauthorised persons.
- 4.6 Inspectors found evidence of some local court managers recognising domestic violence as an important issue in the care of court users. Where that is the case, and facilities and resources allow, action is taken to improve the service to domestic violence survivors by, for example, providing separate waiting areas and access points. Other examples of support include:
- Middlesbrough Combined Court managers arrange for civil courts users who feel vulnerable or intimidated to use the Witness Support Service suite. The suite offers a number of discrete, comfortable waiting areas within a secure area. The court also offers alternative points of entry and exit. Posters are placed around the court indicating that such services are available
 - managers allocate an usher to accompany someone who is alone and feels intimidated
 - staff at Wells Street Family Proceedings Court in London encourage a duty solicitor scheme to support unrepresented parties. The scheme provides people with free advice and is funded by the solicitors themselves, and not, as is the case in criminal courts, by the Legal Services Commission.

⁷³ *Unlocking the Secret: Women Open the Door on Domestic Violence*. Finding from consultations with survivors, published by The Women’s National Commission 2003.

⁷⁴ *Unlocking the Secret*, page 23.

4.7 Although such help and facilities are sometimes available, Inspectors found little evidence of courts advertising the fact, either in the leaflets sent to users or in telephone conversations with them. Court users, or their representatives or friends⁷⁵, normally have to ask what facilities might be available before they are offered. By letting survivors of domestic violence know before they attend court the type of help or facility that might be available to them, HMCS will help a vulnerable group of people prepare for the experience.

Recommendation 6: That, in order to improve its care of family court users, HMCS should ensure that the information sent to family court users before they attend court includes details of the facilities that may be available for vulnerable parties such as survivors of domestic violence.

Being at court

4.8 For survivors of domestic violence, being at court is a source of considerable stress and anxiety, yet the court process often requires it. Whether a person is applying for an order or responding to an application, the normal rules of court require that both parties should be present for the hearing and to hear each other's evidence in the case. Survivors consider it to be oppressive and discriminatory and feel that they are being placed in a vulnerable position through:

- their abuser knowing where they will be and when on a particular day
- the possibility of meeting their abuser outside the court
- having to sit near or opposite their abuser in a waiting area, court or judge's chambers
- having to answer their abuser's questions, if that party is unrepresented
- the risk of being alone with them in the court building
- risking the abuser following them after the hearing to a previously undisclosed address, such as a refuge project.

These issues are addressed in Recommendations 10 and 11.

Management issues

This section covers a range of management issues related to the administration of the family courts under the headings of:

- strategy and planning relating to the administration of domestic violence cases
- status of parties and impartiality
- risk management and service standards
- management information
- management of facilities
- relationships with other agencies and the wider community.

⁷⁵ Women escaping an abusive relationship who have moved to a women's refuge project may be assisted by a worker from the refuge project, who acts as a McKenzie Friend. Where proceedings are held in open court, a litigant who is not legally represented has the right to have reasonable assistance from a lay person, sometimes called a McKenzie Friend – *McKenzie v McKenzie* [1970] 3 All ER 1034.

Overall assessment

Survivors of domestic violence are at a disadvantage in accessing the family justice system. The needs of this vulnerable group of court users have not been a priority for the courts and there has been insufficient strategic thinking or relevant management information to develop and set policies, drive change and improve service standards. As a result, access to family justice has been impaired for domestic violence survivors.

The response to survivors' needs has largely been reactive and driven by local initiative. In particular, frontline staff have used their experience, skills, and initiative to assist survivors, wherever possible, but without enough formal training related to the care of such vulnerable people.

At present, the HMCS estate is still mainly seen in terms of separate magistrates' courts and county courts, with little cross-usage. The potential for sharing resources and facilities, and so improving service standards, is considerable.

Concerns over even-handedness between parties and false allegations have, at times, acted as a barrier to service improvement and need to be addressed urgently.

The lack of clear guidelines regarding information sharing within HMCS and between agencies results in a pattern of local practices that differs across the country. Relationships between courts and other agencies tend to be good, but informal. Relationships with ethnic and other community groups are particularly limited.

Strategy and planning relating to the administration of domestic violence cases

- 4.9 Domestic violence has, in the last few years, become a matter of increasing concern across the political, legal and social spectrum. Not so long ago, an assault carried out in domestic setting, and particularly between intimate partners, was often marginalised by the agencies involved with the phrase "*just a domestic*". This contributed to domestic violence being treated as being of less significance than other violent crimes.
- 4.10 Attitudes are changing. As mentioned in Chapter 1, there is now a growing acceptance that domestic violence should be considered as, and treated as, more serious because of the breach of trust involved.
- 4.11 HMCS has responded positively within the criminal courts in a number of ways to the increased priority of domestic violence. For example, there is a stronger focus on supporting vulnerable victims and witnesses. Specialist domestic violence courts are being developed to deal with criminal offences.⁷⁶
- 4.12 Compared with the criminal courts, there is less focus on domestic violence issues in the administration of family courts. What seems to be less clearly understood within the administration of family courts, is the prevalence of domestic violence and the impact it has on those who suffer at the hands of abusers. One in four women, and one in six men, will be victims of domestic violence at some point in their lives.^{77 78}

⁷⁶ The domestic violence courts focused on the criminal aspects of domestic violence and were piloted in Croydon and Caerphilly. The final evaluation report was published in June 2005. To date, 18 HMCS areas have established, or are developing, specialist domestic violence courts.

⁷⁷ *National British Crime Survey 2001* indicates that 21% of women and 10% of men have experienced at least one incident of non-sexual domestic threat or force since they were 16. See also *Safety and Justice op cit page 14. Tackling Domestic Violence: providing advocacy and support to survivors from black and other minority ethnic communities*: Home Office Development and Practice report 35/2005.

⁷⁸ *Safety and Justice*: Op cit, page 14. This statistic refers to whole life experience.

- 4.13 Domestic violence is regularly a factor in family law and Children Act cases. Allegations are made by one or other of the parties for a range of reasons. Courts will sometimes seek to establish the truth behind the allegations and respond accordingly in the context of the application. However, this Review shows that the specific needs of survivors of domestic violence have not been a priority for HMCS or its predecessor organisations. There has been insufficient strategic thinking and there is an absence of national policies.
- 4.14 In reviewing the administration within the family courts, HMICA found that the focus on domestic violence at an operational level has typically come from individual initiatives by some managers and staff. In particular, it is the frontline staff – including ushers, list callers, court clerks in county courts and the security staff – that have the greatest awareness of, and sensitivity to, the anxiety of domestic violence survivors.
- 4.15 This awareness is seen in the ability of such staff to identify the physical indicators of anxiety, and the means by which people might intimidate or threaten another without resorting to physical violence, such as ‘eye-balling’ them – that is, continually staring at them. This comes from the experience of court and security staff, many of whom have worked together in the family court environment for some time, enhanced by a pattern of close working between them.
- 4.16 Inspectors found a genuine desire among all frontline court staff to help court users. Examples of this include:
- the security officer who intercepted a woman entering the courts who was showing considerable distress. Finding the reason to be fear of an abuser, the officer took her to a separate, quiet room away from the general waiting area and informed the court staff of her attendance
 - the usher who generated a reason for delaying one party after the hearing was completed to allow time for the other party to leave the vicinity of the court
 - security staff asking the operators of town centre CCTV to track individuals if they were concerned that there was a risk of violence after the parties left the court precincts, so giving additional confidence to the vulnerable party.
- 4.17 Some courts have entered into arrangements with local agencies that are aimed at benefiting survivors of domestic violence, directly or indirectly. One positive example of this is the relationship between Teesside Combined Court and the local Women’s Refuge Project. Staff from the Refuge Project are given guidance by a District Judge on the extent to which they can act as a Mackenzie Friend in court in support of women staying at the Refuge Project. Staff from this Refuge Project also hold training sessions for court staff on domestic violence.
- 4.18 A different example is the duty solicitor scheme at Wells Street Family Proceedings Court, where solicitors act on an unpaid basis to deal with specific issues before a court where the party is unrepresented.
- 4.19 Where staff initiate action, it is often because one or more individuals consider domestic violence to be an important issue. In none of the examples given in the paragraphs above is action taken as a result of court policy, practice guidelines or training. Rather, it is the initiative of managers and staff locally that makes the difference.
- 4.20 Where such local initiative is missing, the response of HMCS to the needs of this vulnerable group of people is predominantly dependent on users asking for help. It is not the result of a thought-through policy and proactive service delivery.

- 4.21 Interviews conducted with managers and staff as part of this Review show that there is no common view of what constitutes domestic violence or its importance in the scheme of things. Inspectors also found an expressed reluctance to acknowledge the importance of domestic violence because of the extra demands on time, people and resources that would result from such recognition.
- 4.22 For HMICA, the critical issue is whether survivors of domestic violence receive sufficient appropriate support from HMCS to enable them to engage fully in the legal process – particularly by entering court buildings, Judges’ chambers or courtrooms. In our assessment, they do not.
- 4.23 HMCS has been in existence as an organisation for only a few months. It is still in the process of developing national policies and procedures. It is therefore not surprising that there has been little co-ordinated effort, so far, to raise the profile of domestic violence or to establish organisation-wide policies. There is now an opportunity for HMCS to provide the drive from the top of the organisation to achieve the step-change that actions by local staff alone cannot deliver.
- 4.24 For this to be consistent and effective, HMCS needs to develop and implement national policy and associated procedures. This is the subject of our seventh recommendation.

Recommendation 7: That, in order to improve its care of family court users, HMCS should develop and implement domestic violence policies that address the availability and use of facilities for vulnerable or intimidated parties in family law cases.

- 4.25 In dealing with the Disability Discrimination Act,⁷⁹ HMCS encouraged staff to draw on the experience of people with disabilities to assess the service it provides. From comments made by staff, such exercises are both informative and salutary. HMICA believes that HMCS would benefit from conducting a similar approach with survivors of domestic violence. The appointment of a national promoter or ‘champion’ to co-ordinate action and encourage change throughout the organisation in dealing with domestic violence might also be considered.

Status of parties and impartiality

- 4.26 Central to any discussion within HMCS about domestic violence issues are:
- the status of the parties concerned, and
 - the need for the court to demonstrate clearly that it is neither biased against or in favour of one party.

The parties are usually the parents of the child – it is their case.

- 4.27 On a number of occasions, court staff cited the need for the courts to provide a ‘level playing field’ for parties in family proceedings as paramount in the interests of justice.

⁷⁹ *Disability Discrimination Act 1995*. The Disability Discrimination Act (DDA) aims to end the discrimination which many disabled people face. This Act gives disabled people rights in the areas of: employment; access to goods, facilities and services; buying or renting land or property. The employment rights and first rights of access came into force in December 1996; further rights of access came into force in October 1999; and the final rights of access came into force in October 2004.

- 4.28 The 'level playing field' argument was also mentioned by staff on a number of occasions as one reason for not being more proactive in providing assistance to survivors of domestic violence. Staff concerns centred on the interpretation that could be placed on such actions and whether the 'accused' party would be placed at a disadvantage before the case starts.
- 4.29 As the comment from a survivor mentioned above powerfully demonstrates, the reality is that it is the survivors of domestic violence who are at a disadvantage. They need the courts' help to establish a 'level playing field' for them to participate effectively in the family justice process, through provision of facilities such as secure waiting areas and separate entrances to, and exits from, courts.
- 4.30 Arrangements within the courtroom are also a matter of concern to domestic violence survivors. Court rules provide for the use in court of special facilities, such as screen and video links. It is for the judge in a case to decide whether to allow the use of such facilities. However, administrative staff could assist family court users by ensuring that information sent to them about their case made reference to the fact that an application can be made to the court for the use of such facilities, prior to the case being heard.⁸⁰
- 4.31 Inspectors understand the concerns of court staff, but believe that the courts do not consistently achieve a level playing field in respect of survivors of domestic violence.
- 4.32 An added factor is the strongly held views that allegations of domestic violence are sometimes made falsely with a view to gaining an advantage in a case – in effect, 'point-scoring'. It is clear from interviews that this adds to the concerns of staff in extending help of the type mentioned above to survivors of domestic violence. Inspectors accept that false allegations are made and that they must be addressed. But, as mentioned earlier, the evidence points to the considerable cost to survivors of being in the same environment as their abuser; and occasionally this is sufficient to prevent their inclusion in the legal process.
- 4.33 Clear policies and good communication are an important step in enabling court users to engage in the court process. HMCS needs to find ways to reassure court users that the use of facilities such as separate waiting areas does not indicate that courts accept as true any allegation of domestic violence made by parties, prior to such allegations being tested in court. Rather, that by making such facilities available, courts are seeking to ensure a level playing field by enabling the greatest possible number of parties to take part in the judicial process.
- 4.34 One aspect of communication is information. Notices are available in different languages from the Court Service website, but they are not always displayed in offices. Inspectors were made aware that a multi-lingual notice exists that identifies the main information leaflets available. The fact that such notices are available is not always made clear to court users, and needs to be.

⁸⁰ Under order 20 rule 8 of the County Court Rules 1981 and order 38 rule 3 of the Rules of the Supreme Court 1965, the court may, at or before the hearing of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order. This would allow the family court to use special measures type facilities such as screens and TV links where they are available and where **the judge** decides that they are required.

4.35 Inspectors found that unrepresented parties⁸¹ can be at a disadvantage where they are not the applicants in cases. While court information is regularly sent to applicants⁸², there is less consistency in the information sent to other parties, some of whom might be survivors of domestic violence. This is an area where practice guidance would be of benefit to court users.

4.36 Another aspect of communication is the sharing of information between criminal and family courts⁸³. There is, at present, no obligation on HMCS to share information on criminal proceedings with the family courts, even if the criminal court is aware that decisions taken in a case, such as bail conditions or conviction, might affect concurrent family law proceedings. For example:

- a party to a family law case could be convicted of assault on the other party without the family court knowing
- bail conditions could be imposed by the criminal court on a party that could affect issues such as an application for contact.

At present, the only way such information might formally be shared is by disclosure by the parties.

4.37 Inspectors were told of informal arrangements among court staff where such information is passed between courts but, again, it is a matter of local practice and not policy. The exchange of such information may have data protection and human rights implications and therefore needs careful consideration. Clear policies would help family courts deal with such issues.

Risk management and service standards

4.38 One aspect of court administration Inspectors found lacking is any formal assessment of the risks faced by survivors of domestic violence and by staff within the court environment. Where risk assessment does take place, it is often focused on the risks of violence to staff, the judiciary and other court users through aggression towards the courts as an institution.

4.39 Inevitably, such an approach leaves gaps, both in the protection provided by HMCS to survivors and to court staff. For example, in one court, parties leaving the chambers of the District Judge find themselves in a long corridor of shut doors, inside the secure area of the court. It is not uncommon for parties to leave these chambers unescorted, as the usher also has duties in the main waiting area. Although security cameras monitor the corridor, it is difficult for security staff to identify actions designed to intimidate or threaten if they stop short of obvious physical threats or violence. It is in such situations that survivors of domestic violence feel particularly vulnerable.

⁸¹ In family law cases, the person making an application to the court is referred to as the applicant. The person who responds to the application is referred to as the respondent. Both are parties to the case.

⁸² There is a concern that, in some cases, courts are relying on local solicitors to provide applicants with court leaflets but have no way of knowing the extent to which it happens.

⁸³ *Domestic Violence: A National Report* Inter-Ministerial Group on Domestic Violence March 2005 paragraph 55 refers to the proposals for integrated Domestic Violence Courts that would hear both the criminal and civil aspects of the same case.

- 4.40 Inspectors also found this to be a matter of real concern among managers and staff. As one staff member pointed out: *“Use of alternate routes [in and out of the court building] has not always been fully assessed for the danger members of staff may face in these situations”*. Other staff commented on their reluctance to offer private interview facilities when people come to the public counter, if the person was upset or behaved ‘emotionally’ and the interview facilities did little to protect staff. As a result, court users are sometimes put in the position of discussing the breakdown of their relationship and their experience and fears of violence in a place where others, including the perpetrator, may overhear what is being said. A comment from one survivor to HMICA was: *“I was upset with sharing space with my ex hearing everything; and all the other people knowing my business as he was trying to continue the abuse he dished out when we were together”*.
- 4.41 The risks also extend to those occasions when children are present at court. Although this is not frequent, their safety and welfare presents particular challenges. Such resources that do exist are under-used. Safeguarding children⁸⁴ in the context of domestic violence needs careful thought by HMCS, to ensure that children at court are not at risk of harm to themselves or through witnessing abuse of a primary carer.
- 4.42 There are also risks in interview rooms, the courtroom and Judges’ chambers. Although alarms are usually in place, the size of the chambers can be such that everyone sits in close proximity. Seating arrangements that place the abuser between the survivor and the exit or put parties opposite each other, provide opportunities for intimidation through eye contact. These are issues that can cause concern to survivors.⁸⁵
- 4.43 These examples highlight the challenge for HMCS. It has a duty of care for its employees and needs to take appropriate steps to protect them from harm. At the same time, it also has obligations to court users to assist them in using the family justice system. Such potentially conflicting aims highlight the need for policies to be underpinned by robust risk assessment procedures, to ensure an appropriate balance between safety of staff and the needs of domestic violence survivors is maintained. These issues are addressed in Recommendation 8.

Recommendation 8: That, in order to improve its care of family court users, HMCS should take steps to ensure an appropriate balance is maintained between safety and service delivery through the use of robust risk assessment procedures.

Management information

- 4.44 New versions of the application form (C1A) and acknowledgement form (C7) for family court cases were introduced at the beginning of 2005. The forms include a box that applicants and respondents can use to indicate whether domestic violence is a factor in their case.
- 4.45 Inspectors were told by HMCS that the numbers of forms on which the domestic violence indicator is marked have been few and this may be taken as indicating a lower incidence of domestic violence than published research suggests. However, it appears that many of the

⁸⁴ *Safeguarding Children in Family Proceedings*, HMICA, April 2005.

⁸⁵ See also Chapter 3 concerning the experience of survivors interviewed by HMICA.

forms are received from men as the applicant for an order. As men are more likely than women to be the perpetrators of domestic violence, it is arguably less likely that they will choose to tick the box. There is also some evidence from domestic violence support groups that suggests that some women are also reluctant to tick this box, as they are unsure how the information is subsequently used.

- 4.46 HMCS has started to use the new application forms to monitor the incidence of cases involving domestic violence, but the way the forms are completed by applicants, and the different systems used for monitoring the information, mean that there is still a lack of consistent information available to the organisation. Inspectors found no evidence that acknowledgement forms were being used by HMCS to monitor the incidence of domestic violence.
- 4.47 Another area where there is little useful management information is about waiting times at family court. As stated earlier, for domestic violence survivors, waiting in the same vicinity as their abusers, or simply waiting in anticipation of the hearing, adds to the strain of the occasion. The priority given to cases involving domestic violence survivors differs among the courts visited. In both the county courts and magistrates' courts, ushers, and those doing similar jobs, are important links in ensuring that those making judicial decisions about a case are aware of any concerns about domestic violence that may arise on the day of the hearing. Where ushers are not present, judges, magistrates and magistrates' legal advisors are at a disadvantage.
- 4.48 Information on waiting times may assist HMCS as it seeks to identify ways of helping survivors of domestic violence access the family justice system and in planning its resources.
- 4.49 With so little reliable management information available on the number of cases involving domestic violence, it is difficult for HMCS to know the real extent of the need presented by survivors of domestic violence and, therefore, to plan effectively this aspect of its service. There is a need for HMCS to identify the management information it needs to inform policy development and performance monitoring. This is the subject of our ninth recommendation.

Recommendation 9: That, in order to improve its care of family court users, HMCS should:

- identify the management information required to establish:
 - the number of cases that involve domestic violence
 - the demand for support from survivors
- identify how such information will be used to improve service delivery
- collect and use the information systematically to improve service delivery.

Management of facilities

- 4.50 Since unification of court administration in April 2005, magistrates and county courts have started to bring together their respective systems. In terms of making best use of the facilities available, there is little evidence yet of managers in an area looking at the court estate as a common resource. Were such a view adopted across the service, it would allow cases involving vulnerable people to be heard in the most appropriate location for the resources needed, rather than the resources available being dictated by the estate. The concept of special family centres that is currently being developed by HMCS will assist in taking these matters forward.

4.51 In managing its facilities, Inspectors encourage HMCS to give consideration to the needs of domestic violence survivors at the design stage of any new building project, as part of the risk assessment process.

Relationships with other agencies and the wider community

4.52 Inspectors found there to be good, but informal, relationships between HMCS and CAFCASS, and with other agencies such as women's refuge projects, charities, police, and solicitors. Unfortunately, these relationships do not always extend to local ethnic or other community groups. This means that HMCS misses opportunities to develop its understanding of the particular difficulties that may face people from other cultures using the family justice system, especially those from cultures where religion, family loyalty and honour are considered to be of high importance and where domestic violence is not discussed. Women from minority ethnic communities may have specific concerns regarding their immigration status. They may have been told that they face deportation if there is disclosure about domestic violence. Their passports may have been taken from them by their partners.⁸⁶

4.53 There is a need for HMCS to develop its understanding of such issues in respect of domestic violence and that is the subject of our tenth recommendation.

Recommendation 10: That, in order to improve its care of family court users, HMCS should develop organisational links with national and local community groups to improve its understanding of the particular difficulties faced by survivors of domestic violence from ethnic minority backgrounds in accessing the family justice system.

4.54 Court staff dealing with members of the public are trained in coping with abusive court users. But Inspectors found little evidence that such training or support includes guidance on how to deal with vulnerable clients, such as domestic violence survivors, or in differentiating between someone who is distraught and a person whose behaviour poses a risk to staff or other court users.

4.55 HMICA considers that additional training for staff to help them gain a better understanding of the nature of domestic violence – including its severity, duration, language and effect on people – may assist them in making these kinds of difficult judgements. This is addressed in Recommendation 11.

Recommendation 11: That, in order to improve its care of family court users, HMCS should provide appropriate training to assist staff in gaining a greater understanding of domestic violence and its impact on survivors.

⁸⁶ *Tackling Domestic Violence: providing advocacy and support to survivors from black and other minority ethnic communities*, Home Office Development and Practice report 35/2005, page 4.

Concluding comments

- 4.56 The Review shows that there is a strong desire in HMCS among some managers and particularly among frontline staff, to help survivors of domestic violence who need to use the family courts. The examples mentioned in the report come from local initiatives and not from organisationally driven strategies. This reflects the current lack of systematic, inter-agency planning around domestic violence. Mechanisms need to be established to improve, through joint working, the experience of court users who are also survivors of domestic violence.
- 4.57 HMCS, as a newly established national organisation, has the opportunity to take these matters forward by developing and implementing strategies to address the issues identified in this report in the administrative aspects of its work, and to do so taking into account the views of survivors.

Annex A

Responses from HMCS and CAFCASS to the Recommendations

HMCS

As Chief Executive of HMCS, I welcome this report. As the report acknowledges, when the fieldwork was undertaken in May 2005, HMCS had only been established for a matter of weeks. The establishment of HMCS and the recommendations in the report offer a sound basis on which to develop a strategic HMCS-wide approach to making the courts accessible to victims of domestic violence and ensuring that their needs are understood and, where possible, they are met.

I am pleased that the report praises the work undertaken in the criminal courts to address the needs of victims of domestic violence. The report also highlights good practice undertaken locally in family courts to ensure that victims of domestic violence feel safe when attending court. However, it is clear that a more consistent and effective approach to helping victims of domestic violence who attend family courts needs to be developed. We are committed to developing an Action Plan to address the recommendations in the report.

The Domestic Violence, Crime and Victims Act 2004, which received Royal Assent last year, and the Domestic Violence National Report and Delivery Plan, published in March 2005, highlight the government's commitment to tackling the pernicious crime of domestic violence. We must ensure that national policy initiatives are supported by practical support for victims when they attend court.

Sir Ron De Witt
Chief Executive, HMCS

CAFCASS

CAFCASS recognises the need to safeguard and support victims of domestic violence, including children, more rigorously. The joint inspection report highlights many areas of concern for us and we are committed to improving the experiences of victims of domestic violence who are referred to our service following relationship breakdown. The impact of domestic violence, both at the time and often after separation, is well brought out in the joint inspection report. The findings of this report will be built into our practice and into our quality assurance programmes. Within our Action Plan, we are developing a practice model based on sound risk assessments and clear case plans, rooted in a safeguarding approach. Domestic violence always needs a multi-agency recognition and response, and the lessons for ourselves and our partner agencies will be taken on board and given the highest priority, given the justifiable seriousness of the criticisms of us made in the report.

Anthony Douglas
Chief Executive, CAFCASS

Annex B

Inspectorate methodologies

Advisory Group – terms of reference

The Advisory Group, whose membership is listed at the front of the report, was appointed to support the Inspectorate's work in undertaking this thematic review by offering advice on:

- the intended scope of the review
- the methodologies to be employed, within available resources
- potential linkages with any other relevant inspectorate or related activity
- any possible recommendations from emerging findings
- the draft report.

Methodology: inspection of CAFCASS

- Inspections were conducted by teams consisting of up to four Inspectors, including two CAFCASS managers seconded for the duration of the fieldwork.
- CAFCASS was given six months written notice of the parts of CAFCASS selected for the inspection, the dates of the main fieldwork and the inspection standards used. CAFCASS provided HMICA with documentary evidence in advance of fieldwork.
- The inspection was undertaken in three CAFCASS Regions and CAFCASS Central office.
- In the three Regions, Inspectors obtained the views of the judiciary and legal representatives about domestic violence issues. Similarly, in three Local Authorities, social services and legal views about domestic violence cases were discussed with Inspectors.
- In Regions, the inspection teams visited up to three CAFCASS offices and up to four courts. Fifty-six interviews were observed by Inspectors, of which 34 were in CAFCASS offices and 22 in courts. The sessions were observed with the permission of adult parties and the courts.
- In regions, 67 recently completed private law court reports about domestic violence cases were inspected with the assistance of CAFCASS practitioners and managers. In addition, 19 public law reports were inspected and two public law cases were discussed in depth with the practitioners responsible for the cases. This is not reported on in the main body of the report because the sample size was too small from which to draw conclusions.

The analysis of public law reports was as follows:

- All the reports met minimum standards when describing the harm the child has suffered. However, where a contact order was being considered the issue of possible violence to the child was not addressed in a third of the reports.
- The majority reported the factual information available about domestic violence but one in seven did not.
- In over a quarter of the reports, the impact of domestic violence or the risk of future harm to children or adults was not assessed, with consequent potential risk to their safety.
- Children were seen in all cases.
- In a quarter of reports, a recommendation to the court was not made.
- Regarding diversity or identity issues, the minimum standard or above was met in the majority of reports across all indicators.
- Over a fifth of the reports fell below the minimum standard.

This analysis is not included in the main body of the report to avoid any possible confusion with the Review's focus on private law.

- HMICA met in three discussion groups with 30 women survivors of domestic violence who had recently used the CAFCASS service. The discussion groups were facilitated by a female consultant.
- Inspectors carried out a series of structured interviews with a member of the CAFCASS Board and senior managers at CAFCASS Central Office. Structured interviews were also conducted in Regions with service managers and CAFCASS practitioners.
- A service user survey was conducted. There was a limited response from 62 people (18%) of whom 21 (34%) were from men and 41 (66%) were from women. The main messages were:
 - most agreed that CAFCASS information explained the service it provides in domestic violence cases but about a third did not and the remainder had no view either way
 - nearly half considered that CAFCASS did not provide information about help from other agencies for survivors or perpetrators of domestic violence, and almost a half had no view either way. Slightly more were satisfied with the CAFCASS information; a few did not answer this question
 - whilst half of the respondents felt able to discuss their concerns about domestic violence with the CAFCASS practitioner, almost as many felt that they did not deal seriously with those concerns
 - about a third of the respondents agreed that the CAFCASS practitioner helped their children talk about their concerns about domestic violence. Whilst the same number disagreed, the majority expressed no view either way
 - over half of the respondents felt safe in the CAFCASS office and the Family Court, although one in six did not feel safe at CAFCASS and over a quarter did not feel safe at court.

- A practitioner survey was conducted. There were 55 replies (12% response rate).
- HMICA reports do not normally record the views of identifiable individuals within CAFCASS. Similarly, the views of other people interviewed during the inspection – such as service users, the judiciary, legal representatives and local authority staff – are not reproduced in Inspectorate reports in an identifiable form.
- CAFCASS has seen this report in draft form. This allowed HMICA to take into account comments, including those about factual accuracy.

HMICA's review criteria for assessing aspects of CAFCASS are set out below:

Defining elements	Indicators
<p>Service delivery</p> <p>Children and families using CAFCASS services are offered appropriate help and adequate levels of safety</p>	<ul style="list-style-type: none"> □ Risk assessments are undertaken systematically □ Safety planning is undertaken for practice in court, office and home visits □ Disclosure about domestic violence is enabled appropriately by CAFCASS □ There are effective mechanisms for listening to children and families who may wish to comment about services or use the complaints system □ CAFCASS users have access to appropriate and clear information about CAFCASS, court proceedings and domestic violence
<p>Strategy and performance management</p> <p>The establishment of a pertinent direction for CAFCASS, complemented by a staged plan of action and mechanisms for implementation and review, and systematic management of performance</p>	<ul style="list-style-type: none"> □ CAFCASS has effective plans to improve service delivery in domestic violence cases □ Key strategic issues about domestic violence issues are identified and effective plans are in operation □ There are effective arrangements for inter agency work regarding domestic violence □ There are effective management information systems to monitor domestic violence cases. Appropriate information about domestic violence is collected, collated, analysed and circulated □ CAFCASS actively seeks and makes use of the views of local and national community groups □ There are effective systems to ensure the accountability of all staff for service delivery
<p>People</p> <p>CAFCASS has sufficient trained staff who have appropriate awareness, skills and values to provide an effective service in domestic violence cases</p>	<ul style="list-style-type: none"> □ CAFCASS operational plans for domestic violence are linked to a training strategy □ Appropriate champions for domestic violence are deployed throughout CAFCASS □ Single and inter-agency training needs in relation to domestic violence, including diversity, are identified and met □ Staff have a clear understanding of, and comply with, agency and inter-agency processes as they relate to domestic violence cases

Methodology: inspection of the administration of HMCS

HMICA conducted this review through a series of visits over a two-week period in May 2005. These visits involved a total of five inspectors, one support team manager and one support team administrator. Visits were made to:

- The Combined Court, Middlesbrough
- Family Proceedings Court, Middlesbrough
- Family Proceedings Court, Hartlepool
- County Court, Hartlepool
- County Court, Wolverhampton
- Magistrates' Court, Wolverhampton
- County Court, Walsall
- Principal Registry, Family Division, London
- Family Proceedings Court, Wells Street, London.

HMCS in each area provided Inspectors with documentary evidence and carried out a self-assessment exercise. Inspectors viewed the premises and interviewed members of staff at all levels against the following framework.

HMCS has seen this report in draft form. This allowed HMICA to take into account comments, including those about factual accuracy.

Defining elements	Indicators
<p>The management of information Administrative policies, systems and protocols that:</p> <ul style="list-style-type: none"> □ allow information on cases where domestic violence is a factor to be identified, assessed and collated at the point of application □ address such diversity issues as are appropriate for the region □ use information effectively in the delivery of quality services to court users 	<ul style="list-style-type: none"> □ There is clear and visible strategic leadership linked to effective communications □ Administrative working arrangements ensure that the diverse needs of family court users are met as they relate to domestic violence □ There is a robust performance management system that is used to support a culture of improvement

Continued

Defining elements	Indicators
<p>Facilities</p> <p>The provision of facilities takes into account the needs of court users who are vulnerable or at risk, particularly in cases where domestic violence is a factor, and safeguard children and young people</p>	<ul style="list-style-type: none"> □ Buildings are accessible and offer adequate comfort and facilities, and appropriate privacy and safety to court users □ Administrative systems and practices exist to identify, meet and safeguard the needs of children, young people and vulnerable adults while they are on court premises, particularly where domestic violence may be a factor in their case □ Facilities exist to meet and safeguard the needs of children, young people and vulnerable adults who are involved in family court proceedings where domestic violence is a factor, while they are on court premises
<p>Partnership working</p> <p>Administrative arrangements ensure proactive co-operation with other agencies in the delivery of national and local inter-agency plans relating to domestic violence</p>	<ul style="list-style-type: none"> □ HMCS co-operates actively with other agencies, including CAFCASS, to provide high quality services to family court users in cases where domestic violence is a factor
<p>The experience of court users</p> <p>Administrative arrangements ensure that court users are treated with courtesy and respect, are made aware of the facilities available to them, and are offered the help necessary to enable them to understand and participate in court proceedings, particularly where domestic violence may be a factor in the case</p>	<ul style="list-style-type: none"> □ Court users are treated with courtesy and sensitivity, offered appropriate help and HMCS staff deal with enquiries promptly □ Administrative arrangements enable all family court users to understand and participate in court proceedings □ Domestic violence cases are given appropriate priority □ The standards of service family court users can expect are publicised, feedback encouraged and performance data published □ There is clear strategic leadership in respect of diversity issues and their importance is recognised throughout the Service

User views were sought by questionnaire through the courts. Other views were obtained through discussions with groups of survivors of domestic violence, facilitated by Women's Aid, for the CAFCASS Review.

Further evidence was gained from published research and work done with survivors of domestic violence.

Findings were shared with HMCS senior managers.

Bibliography

Advisory Board on Family Law: Children Act Sub-Committee (2000) *A report to the Lord Chancellor on the question of parental contact where there is domestic violence* London: Department for Constitutional Affairs

Brandon M & Lewis A (1996) 'Significant harm and children's experiences of domestic violence' 1 *Child & Family Social Work* 33-42

Buchanan A, Hunt J, Bretherton H & Bream V (2001) *Families in conflict: Perspectives of children and parents on the Family Court Welfare Service*. London: Policy Press/Nuffield Foundation

Calder M & Hackett S (Eds) (2003) *Assessment in Child Care: Using and developing frameworks for practice* (Dorset: Russell House) (including 'Domestic Violence and Children: Making a Difference in a meaningful way for women and children' (Rowell C (2003)

Department of Health General Practice Note on domestic violence (2001)
<http://generalpractice.co.uk/domvio01.htm>

Every Child Matters; Delivering Change for Children (2003) Government Green Paper Cm 5860 London: HMSO

Gorin S (2004) *Understanding what children say: Children's experiences of domestic violence, parental substance misuse and parental health problems* National Children's Bureau (for Joseph Rowntree Foundation)

Humphreys C, Hester M, Hague G, Mullender A, Abrahams H, Lowe P (2000) *From good intentions to good practice: Mapping services working with families where there is domestic violence* The Policy Press (for Joseph Rowntree Foundation) ISBN 1 86134 245 4

Paradine K & Wilkinson J National Centre for Policing Excellence, Centrex (February 2004). A Research and Literature Review. Protection and Accountability: The Reporting, Investigation and Prosecution of Domestic Violence Cases, commissioned by HMIC and HMCPSI to inform their Joint Thematic Inspection of Investigation and Prosecution of cases involving Domestic Violence

Office of the Deputy Prime Minister (2002) *Supporting People Summary No. 3: Handy Guide; Addressing Domestic Violence* www.housing.adpm.gov.uk

Parental Separation: Children's needs and parents' responsibilities (2004) Government Green Paper Cm 6273. London: HMSO

Prest C and Wildblood S, *Children Law – An Interdisciplinary Handbook* (2005) Family Law

Reducing Domestic Violence: An Inspection of National Probation Service work with Domestic Violence Perpetrators HM Inspectorate of Probation 2004

Seeking Agreement: A Thematic Review of CAFCASS schemes in private law proceedings
MCSI December 2003

Smart C, May V, Wade A & Furniss C with Sharma K & Strelitz J *Residence and Contact Disputes in Court* Volume 2 DCA Research Series 4/05 June 2005 page 28

Taylor-Browne, J. (Ed) (2001) *What works in Reducing Domestic Violence? A comprehensive Guide for Professionals*. Whiting Birch, London

Unless they're asked: routine screening for domestic violence in NSW Health. An evaluation report of the pilot project New South Wales Health Department (2001)

Violence at Home: A Joint Thematic Inspection of the Investigation and Prosecution of Cases Involving Domestic Violence HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary February 2004

Williams, L. (2003) 'Understanding child abuse and violence against women: A life course perspective' *Journal of Interpersonal Violence* 441-451

A summary version of this report in your language can be made available, on request, from the address below.

This report can also be made available, on request, in Braille or large type formats.

يمكن الحصول على ملخص لهذا التقرير باللغة العربية عند الطلب من العنوان أدناه.

Rezime izvještaja na bosanskom jeziku možete zatražiti na dolje upisanoj adresi.

如果您需要，我们可以提供中文版的这份报告的总结，请将您的要求寄到以下给出的地址。

Sažetak izvješća na hrvatskom jeziku možete, na zahtjev, dobiti na niže navedenoj adresi.

شرح خلاصه ای از این گزارش به زبان فارسی به هنگام درخواست شما از آدرس زیر در دسترس می باشد.

Une version abrégée de ce rapport peut vous être fournie en français si vous en faites la demande à l'adresse indiquée ci-dessous.

Auf Wunsch ist von nachstehender Adresse aus eine zusammengefasste Version dieses Berichts in deutscher Sprache verfügbar.

Μπορείτε να πάρετε μια σύντομη ελληνική έκδοση αυτής της έκθεσης, κατόπιν αίτησης, από την παρακάτω διεύθυνση.

इस रिपोर्ट का संक्षिप्त हिन्दी अनुवाद प्रार्थना करने पर नीचे दिए गए पता से उपलब्ध कराया जा सकता है।

Un sommario di questa relazione è disponibile, su richiesta, in lingua italiana all'indirizzo indicato di seguito.

本報告書の要約(日本語)をご希望の場合は下記住所までご請求下さい。

Pode obter, sob pedido e através da morada seguinte, uma versão resumida deste relatório em português.

ਇਸ ਰਿਪੋਰਟ ਦਾ ਸੰਖਿਪਤ ਪੰਜਾਬੀ ਅਨੁਵਾਦ ਹੇਠ ਲਿਖੇ ਪਤੇ ਤੋਂ ਨਿਵੇਦਨ ਕਰਨ ਤੇ ਮਿਲ ਸਕਦਾ ਹੈ।

Краткую версию данного доклада на русском языке можно получить по приведенному ниже адресу.

Qoraalkaan oo ah warbixin la soo koobay kuna qoran Afsoomaali waxaad ka heli kartaa haddii aad la xiriirto ciwaanka hoos ku qoran.

En sammanfattad version av denna rapport finns, på begäran på nedanstående adress, tillgänglig på svenska.

Muhutajari wa ripoti hii unapatikana katika lugha ya kiswalihi, tafadhali peleka maombi katika anuani iliyopo hapa chini.

บทสรุปเป็นภาษาไทยของรายงานฉบับนี้สามารถติดต่อขอได้จากที่อยู่ข้างใต้

Podemos proporcionarle un resumen de este informe en español si lo solicita a la dirección abajo reseñada.

Bu raporun Türkçe bir özetini aşağıdaki adresten isteyebilirsiniz.

درخواست کرنے پر اس رپورٹ کا خلاصہ درج ذیل ایڈریس سے اردو زبان میں دستیاب ہو سکتا ہے۔

Bài tóm tắt chữ Việt của bản báo cáo này đã sẵn có, nếu cần, xin theo địa chỉ dưới đây dò hỏi.

Alaye kukuru lori iwe yi ni ede Yoruba wa ti e ba fe, lati oju ile ati adugbo ti a ko si isale iwe yi.

如果您需要，我的可以提供中文版的這份報告的總結，請將您的要求寄到以下給出的地址。

Publications Section, HMICA, Block 2, Government Buildings, Burghill Road,
Westbury-on-Trym, Bristol BS10 6EZ.

Or via our website at <http://www.hmica.gov.uk>