

CAFADA

Children and Families Affected by Domestic Abuse

Court Advocacy

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About CAFADA

CAFADA (Developing the Evidence Base for Innovation in Social Care for Children and Families Impacted by Domestic Abuse) is a research project funded by the Economic and Social Research Council. CAFADA examines social care responses to families affected by domestic abuse in Scotland and England. This briefing paper explores the role of court advocacy in supporting victims-survivors of domestic abuse, focusing on the challenges posed by the justice system.

About Court Advocacy

There are different models of court advocacy. However, in the domestic abuse context, it is generally designed to help victim-survivors navigate complex criminal legal systems and processes. It aims to shield them from the adversarial aspects of the justice system. Court advocates provide the court with information about the risks posed to victims-survivors by the perpetrator of domestic abuse and ensure that victim-survivors' views and interests are effectively represented in legal proceedings. Court advocacy services also support children and families by explaining the court process and helping them understand the potential outcomes. Additionally, they conduct risk assessments, recommend protective orders (e.g., Non-Harassment Orders), develop safety plans, and connect families with practical and emotional support throughout the legal process.

This briefing draws on research carried out with Edinburgh Domestic Abuse Court Support Service (EDDACS), located in Edinburgh Women's Aid.

Key messages

- The criminal legal system struggles to meet the different expectations placed on it – the punishment and rehabilitation of perpetrators, and the protection and recovery of victims-survivors.
- There have been ongoing attempts to improve responses to children and families experiencing domestic abuse across the criminal legal system, with varying degrees of success. Learning from the work of groups like Women's Aid has however, helped introduce innovative practices into the court setting.
- Fragmentation across legal system responses to domestic abuse – criminal, civil and child protection - is reported to be confusing with negative consequences for victims-survivors engagement in the legal system more broadly.
- Covid-19 had a significant impact on the court process, with cases taking longer to complete – however, it was inefficient and insensitive to victim-survivors prior to the pandemic.

- Families continue to experience problems in their encounters with the criminal legal system. There is a perception that the ongoing harms and risks associated with domestic abuse are not understood or prioritised. This results in poor experiences for victims, potentially deterring them from seeking help or cooperating with justice system more broadly in the future. The consequences of these negative experiences are profound, as they can erode the trust and willingness of victims to engage with legal processes that are supposed to protect them.
- Children risk being invisible in the criminal justice system's responses to domestic abuse. Legal reforms have not sufficiently addressed their needs, leaving a significant gap in support and protection for this vulnerable group.
- Court advocacy services provide important information and support for children and families as they attempt to navigate the legal process and court system.
- Innovation and expansion of court advocacy is affected by limited resources and the rigid legal system that families encounter – this serves to prevent opportunities to meaningfully address the harms of domestic abuse and indeed, harms that are exacerbated by the legal system.
- While innovations such as court advocacy may be hampered by wider structural and organizational issues, they highlight the importance of wider societal responses to addressing domestic abuse, challenging the basis of men's violence against women and children in the home and the need for community led safety for women and children

About Edinburgh Domestic Abuse Court Support Service (EDDACS)

Victim-survivors of domestic abuse face challenges at each stage of the criminal justice process. This can include the difficulties of reporting to police, giving evidence in court, inadequate communication from court officials, the lengthy duration of the process, the court environment, and ongoing concerns about personal safety. The adversarial process and emphasis on prosecution and punishment often fails to adequately represent the interests of adult and child victims of domestic abuse.

Court advocacy services for victim-survivors of domestic abuse offer support, where the service is available, to victim-survivors who engage with the court and justice system. This innovation provides victim-survivors with information, support and assistance as they go through the legal system.

The work of a court advocacy service situated in Edinburgh, a large Scottish city, provided the focus for this study. We did not conduct an evaluation of the service, rather we considered the challenges and benefits of this service in providing support to children and families when court proceedings were underway. The study considered how court advocacy can influence and support the court experience for children and families and explored what was innovative about this intervention and the potential for its wider development.

How did we research court advocacy

We initially conducted a literature review of court advocacy services, exploring the body of literature that both reports on and frames court advocacy policy and practice. We also interviewed practitioners who provide advocacy for women and child victims and witnesses of domestic abuse. Anonymised service data provided by EDDACS, was analysed to compare pre- and post-COVID timepoints. The data focused on key variables such as case length, involvement of children, age of women, presence of Non-Harassment Orders (NHOs), and court outcomes. (176 cases pre-covid, 139 post-covid). Qualitative interviews were carried out with practitioners (n=9) during the pandemic in 2021, and a focus group with practitioners took place in 2024 to sense check our overall findings.

What did we find?

Victim Focussed Justice

Participants reported a gap between policy aspirations of a 'victim focussed' justice system and the everyday interactions experienced by women and children affected by domestic abuse in their encounters with the courts. The experiences of families raised questions about the extent to which the criminal legal system was able to prioritise the rights of women and child victims of domestic abuse.

Service data highlighted that domestic abuse cases were often lengthy, involving multiple hearings, frequent postponements, and late guilty pleas. The time taken to resolve these cases has not yet returned to pre-pandemic levels, contributing to prolonged stress and uncertainty for victims-survivors. These delays hinder recovery and undermine their trust in the justice system.

There is a gap between how the justice system operates—focused primarily on the sufficiency of evidence to prosecute—and the experiences of harm and risk that victims-survivors face. This often fails to fully address the ongoing harm and danger posed by domestic abuse with the potential of leaving victims unsupported and unsafe.

Victims Needs and Rights

Overall, participants questioned the extent to which victims' needs and rights were understood at various points in the court process. Participants expressed concern about the extent to which criminal legal processes were based on an accurate understanding of domestic abuse, whether the ongoing and repeated harms of domestic abuse were understood by professionals working within the system. While there were examples of good practice in encounters with professionals this was inconsistent.

Children are largely missing from service data, reflecting the adult-focused nature of current laws, systems, and responses to domestic abuse. This absence underscores a critical gap in the justice system's ability to recognise and address the unique rights, needs and vulnerabilities of children affected by domestic abuse.

Application of Protective Orders and Court Outcomes

Participants indicated that victim-survivors did not always understand why particular decisions had been made during the court process - for example the application (or non-application) of a Non-Harassment Order. This related to victim-survivors' lack of confidence that their concerns had been heard or the full implications of harm experienced had been acknowledged in the legal process. Service data also highlighted that that court outcomes did not always align with the charges initially brought forward, nor did they always seem aimed at preventing future abuse or protecting victim-survivors. These inconsistencies can lead to a sense of injustice and fear among victims-survivors, as the legal disposals may not reflect the severity of the abuse they have endured.

Justice System Generated Risks

Participants identified the criminal justice system as at times generating risks for adult and child victims of domestic abuse. Risk was not always fully understood or assessed, meaning that information sharing (for example) did not always prioritise safety. There was serious concern that a lack of response from the justice system to repeated breaches of bail conditions left victim-survivors at risk and diminished their trust in the justice system to offer protection.

The Treatment of Domestic Abuse Across Legal Systems

There was a view from professionals in our study that domestic abuse is treated differently across civil, criminal and child protection systems. While treated as a crime in the criminal justice system, participants reported that in civil court proceedings domestic abuse and risks associated with child contact were often marginalised or did not fully engage with the risks posed by domestic. This inconsistent approach to domestic abuse was difficult for victims with experience of different legal systems to reconcile and acted to undermine their confidence across legal systems that are intended to offer protection.

Resourcing of Court Advocacy

Court advocacy is intended to mitigate the harms of the criminal legal process, as they are experienced by children and families. However, the service is not universally available and is dependent on resourcing and investment. Court advocacy services were recognised as a crucial

support for children and families but not available across all of Scotland. Thus, court advocacy as an intervention is not guaranteed or necessarily universal in its application.

Recommendations

Upholding the Rights of Victims'-Survivors

Domestic abuse disproportionately affects women and children, yet their rights are not always adequately upheld within the criminal, civil, and child protection legal systems. Ensuring these rights is essential for improving victims' experiences with the broader justice system and restoring their confidence in it. This also raises broader questions about what the concept of "justice" means for victims-survivors of domestic abuse and the extent to which this can be met by current legal systems.

Children's Invisibility in the Justice System

Children remain largely invisible in the criminal legal response to domestic abuse, which fails to address their rights, needs and safety concerns. Greater attention must be paid to children, ensuring that their needs and rights are protected throughout the legal process. Without a dedicated focus on children, the justice system risks perpetuating harms towards children.

Impact of Justice System Inaction

The seeming inaction of justice systems, whether through delays in case disposals or failures to respond to breaches of bail conditions, significantly undermines the safety and recovery of victims-survivors. It hinders victim-survivors access to justice and erodes trust in the systems, leaving victims at greater risk. Addressing these issues requires a more robust and timely response from justice systems to uphold the rights and safety of victims-survivors.

Addressing Harms Beyond the Legal System

The safety and recovery of women and children requires a comprehensive range of supports that go beyond the criminal legal system. This includes mental health services, housing, and community-based programmes that address the broader harms of domestic abuse. A multi-faceted approach, integrating both legal and non-legal supports, is essential for effectively addressing the long-term impacts of domestic abuse on victims-survivors.

Consistent Understanding of Domestic Abuse across Legal Systems

There is a need for a consistent and improved understanding of domestic abuse, especially regarding the risks it poses to women and children. This understanding must be integrated across criminal, civil, and child protection systems to ensure a cohesive and effective response. The

fragmented approach currently seen in these systems often leads to gaps in protection and support for victims-survivors, further undermining their safety and recovery.

Resourcing of court advocacy

The challenges faced by court advocacy services, coupled with the complexity and delays of domestic abuse cases owing to the pandemic, underscore the need for increased resourcing. These services are under acute pressure due to the high volume and complexity of cases, many of which remain unresolved for extended periods. Enhanced resourcing for advocacy services is crucial to ensure that victims-survivors, receive the support they need throughout the legal process.

How can you find out more?

CAFADA has produced several briefings, as well as published research. These can be found here: <https://cafada.stir.ac.uk>

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