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Authors	McCaughren, Simone;Holt, Stephanie;Parkes, Aisling;Gregory, Soma
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University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Research report on guidance on contact time for infants and young children in separated families

Dr Simone McCaughren

Dr Stephanie Holt

Dr Aisling Parkes

Soma Gregory

December 2022

This research was commissioned by One Family – Ireland's national organisation for people parenting alone, sharing parenting and separating and funded through the RTE Toy Show Appeal Community Foundation Ireland.

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Preface

This study explored the perspectives of parents and professionals who manage contact arrangements in relation to a child/[ren] in common (aged 0-6 years) as well as the manner in which their children's views have been ascertained and represented as part of the process. Concern with the impact on children of discontinued parent-child relationships following parental separation or divorce has resulted in a depth of empirical knowledge in the maintenance of those relationships through the medium of 'contact'. While research consistently demonstrates that shared parenting arrangements (post-separation/divorce) work best when they are informally arranged between two parents who are committed to making those plans work in the interests of their children, the emotive nature of the separation/divorce experience for many families may demand formal and legal regulation (Holt S. , 2016a). This timely research was undertaken during a period when the Irish Family Law system is in the spotlight with a view to reform. This research attempted to gain a bird's eye view of how, and in what ways, contact arrangements are established for infants and young children in the 0-6 years age category. It set out to capture the lived experiences of those who share parenting as well as those who work with these families and young children. It therefore consisted of an in-depth literature review on the issue of contact concerning 0-6 year olds; the distribution of an online survey for parents who share the parenting of infants and young children; two focus groups with professionals working in the area of family law, one consisting of social professionals and one with legal professionals; and six interviews with members of the Irish judiciary working in the area of family law.

The Research Team wish to acknowledge the support received from One Family during each stage of the research project. The team were grateful for the collaborative way in which One Family openly engaged with us during the research process, providing us with additional information when requested, giving the team feedback at each stage of the research study. The Research Team would also like to acknowledge the work undertaken in the early stages of the study by Research Assistant David Connolly. His work in getting the survey up and running was invaluable as well as his contributions to supporting the team with the fieldwork. Our thanks also to the Research Advisory group who played a very significant role in the early stages of the research and who tried and tested the parents survey.

Finally, we would like to thank the parents who completed the online survey and shared their personal experiences with us, the social and professional members of the focus groups who gave us their time and valuable insights and to the Judges who supported the research study and carved out time in their busy schedules to meet the researchers.

Key Messages, Empirical Findings and Best Practice Recommendations

This section outlines some of the key messages emerging from the international literature. It also provides a snapshot of the current Irish system as experienced by parents, professionals and members of the Irish judiciary. Finally, it outlines some of the key best practice recommendations emerging from the report.

Key Messages from International Research

As a result of an extensive multidisciplinary literature review, a number of key messages grounded in children's rights and child developmental psychology have emerged. As a general principle, an individualised approach towards understanding and assessing children's circumstances and stage of development is essential in order to ensure that their individual best interests are considered. Such an individualised approach is also nonetheless a snapshot in time of the parent-child relationship, and, therefore, should not necessarily be relied upon for providing evidence for ongoing future cases.

Children's Rights

- All children, regardless of age, who are capable of forming views have a right to be heard in all matters affecting them including decisions about contact arrangements – whether formally or informally made. Due weight should be applied to such views in accordance with age and maturity of the child concerned.
- The best interests of the child should be the primary concern when making decisions about contact.
- Contact is a right of a child to have access to both parents and not the other way around.
- Research highlights that children and young people believe strongly in their right to be heard but do not want the power to decide post-separation/divorce arrangements, particularly when that involves making choices between their parents: the critical difference between having a voice and having a choice.

Child developmental psychology

- Children aged 0-6 years are undergoing a period of rapid developmental change.
- Attachment theory and research provide the most validated framework for conducting assessments on parent-child relationships for infants and children under the age of six years.

- Quality caregiving is the most important factor in attachment formation and children's well-being and not necessarily the frequency or type (overnight) of contact.
- Therapeutic and methodological expertise in ascertaining and representing the voice of infants and very young children is required to support a robust, safe and evidence informed process of assessment, decision-making and supportive infrastructure regarding contact time.

A Snapshot of the Irish Family Law System: The Empirical Evidence

As a result of the empirical research carried out with parents of children aged 0-6 years (when contact arrangements were being made) who have engaged with the Irish family law system, and professionals who currently work within the family law system, a number of key findings have emerged:

The younger child is silent in family contact decision-making in Ireland

- This research study identified a stark absence of the voice of infants and very young children in decision-making processes on contact time in the Irish context.
- Developmental changes for children aged 0-6 years are happening at a far greater pace than the current judicial system can respond to. In the Irish family law system, younger children are in danger of getting lost in what can be an adult-focused, conflict-fuelled, adversarial family law system. Delays accessing and progressing through the system are particularly problematic juxtaposed to the rapid developmental changes for these young children.
- Court reports appear to be the primary mechanism for introducing the views of younger children into court. However, the lack of robust regulation and oversight in respect of such reports has led to significant concerns about the quality and effectiveness of such a mechanism in practice in terms of introducing the views of children into court. For example, it was not clear how attachment theory and research inform the reports, if at all, on which the court relies for the voice of the child. Furthermore, access to these reports was found to be inequitable, inconsistent, and ad hoc. This research confirms concerns raised by the Childcare Law Reporting Project (2021) and the Children Living with Domestic and Sexual Violence Group (2021) previously in relation to court reports. Furthermore, in this respect, the courts are currently relying on individual private practitioners to undertake Section 32 (1)(a) court reports, when this is known to be a wholly unregulated profession.

Courts Infrastructure and Professional Training

- Concerns were expressed by all professionals and family members about the infrastructure of the courts and how, in the absence of a suitable system, the possibility of introducing authentic and genuine views of children is lost amidst the bigger shortfalls in the system.
- There is currently a severe lack of resources to support families navigating the family law system. The over-reliance on court reports for the purpose of introducing the voice of the child is problematic when the cost of such reports is so high and for some families, unattainable for this reason. There are also considerable time delays in returning completed reports to the court thus children and families having to incur further delays.
- The issue of continuing professional training for all those involved in the Irish family law system was raised across all the data sets. Participating parents asserted that Judges, barristers, and solicitors all require training specific to the critical decisions they make concerning contact.

Interventions and Supports

- The need for interventions and supports was highlighted by professionals and parents alike, including parenting programmes, shared parenting support groups, access to counselling for both parents and children, therapeutic interventions for children, and formal contact centre supports. The absence of a streamlined, accessible, and national contact centre facility was highlighted by the majority of participants as a significant gap in service provision and a significant problem for Judges.
- The absence of family contact services in Ireland is highlighted as particularly problematic for any child where parental conflict threatens the safety and well-being of that child. This is amplified significantly when we consider the cohort of infants and very young children who depend on the adults in their lives for their every need. Parents also called for a neutral, child-friendly, yet professional venue that could support safe contact time and support shared parenting.

Key Best Practice Recommendations

The following key messages emerged from the research. These represent a set of evidence - informed principles that should underpin all decision making on contact time for infants and very young children. These principles are grounded in a robust understanding of attachment theory. They are further embedded within a children's rights framework.

- All children capable of forming views have a right to have their views captured and included in all family law decision-making processes.
- An individualised approach towards understanding and assessing children's circumstances and stage of development is essential to ensure that their individual best interests are being considered. Such an individualised approach is also nonetheless a snapshot in time of the parent-child relationship, and, as such, should not necessarily be relied upon for providing evidence for ongoing future cases.
- The child's right to have contact with a parent is critical, and this needs to be reconceptualised as fundamentally a child's right and not exclusively an adult's one.
- The presumption that contact is always in the child's best interests needs to be challenged in cases involving domestic violence and abuse. This demands a paradigm shift in a culture that can prioritise adult wishes over children's'.
- Therapeutic and methodological expertise in ascertaining and representing the voice of infants and very young children is required to support a robust, safe and evidence informed process of assessment, decision-making and supportive infrastructure regarding contact time.
- Outcomes for children in shared-parenting families are better when positive supporting relationships are maintained with both parents, provided domestic violence or other abuse is not a factor.
- Quality caregiving is the most important factor in attachment formation and children's well-being and not necessarily the frequency or type (overnight) of contact.
- Overnight care is not essential to ensure that an infant or young child forms a healthy attachment to the other parent. In some cases, it may be more appropriate to focus on the importance of quality daytime contact time with children, building gradually to overnight visits as the parent-child relationship builds and the child develops. Including a checklist of factors to consider when deciding about contact for infants and very young children must include a consideration of the quality of child-parent relationship(s) up to that point. If more contact is being considered, then an incremental approach that will build-on and develop secure attachments with the second parent should be developed in a planned and structured manner with the child's developmental stage at the forefront.

- There is no solitary magic ingredient that makes contact time work or not work; rather a wide range of factors with operate interactively, interdependently, and dynamically, with the attitude, actions and interactions of the key family players shaping contact and determining its quality. For this reason, the courts and practitioners must be flexible to the unique circumstances of the individual family.
- Concerns about the views of young children being tampered with for the purposes of family court proceedings, has led to a general conversation concerning contact which is arguably shaped by parents, counsellors, and legal professionals. Adults perceived concerns about children's vulnerability to adult manipulation essentially further contributes to what is already an adult-dominated process by potentially jeopardising the best interests of the child, while also further silencing children in the process.
- Regular, accessible, structured, and ongoing training for Judges working in the area of Irish family law is critical. Such training would be of a multidisciplinary nature with child development forming a core part of it.
- The allocation of judicial supports and resources for the allocated Judge, including the availability of a therapeutic assistant for Judges and a move towards a team approach, with all professionals working together to achieve outcomes that are informed by best practice, with the child's rights and needs at the centre of all decisions. The system needs a service connected to the courts where the court can direct various forms of intervention not just for the child but also for the parents with the option of having a review in place.
- To that end, participating professionals also advocated for a specialised service that could be flexible with a tiered approach to support, reflecting that some families would need more and others less support and intervention. This specialised service would have the capacity to provide the court with a holistic view of the family whilst keeping the child at the heart of all decisions and assessments. Emerging from the analysis was a clear gap in services that provide a medium through which the child's views can be captured and represented. As such, the introduction of a Specialised Advocacy service for the child in the age range of 0-6 years was also a clear recommendation emerging from the analysis.
- Provision of a state-funded service for all family law cases sufficiently resourced and tasked with providing some quality assurance in the hiring and supervision of staff, including a panel of expert and regulated assessors for conducting court reports.
- While at the time of writing, the drafting of the Family Court Bill is still ongoing, this research emphasised the need for developing a more family-sensitive court system that is more focused

and responsive to the needs of families and less adversarial in nature. The findings also indicate the benefits for children and families in having single judge case management.

- The findings indicated that any reorganisation of the court infrastructure must be adequately resourced so that families can benefit from a properly resourced and more cohesive service.

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Section One: Introduction

1.1 Background

This timely research was undertaken during a period when the Irish Family Law system is in the spotlight with a view to reform. In this context, recommendations made by the Irish Human Rights and Equality Commission (July, 2021) included: to determine the best interests of a child in line with human rights standards; to ensure that the right of a child to be heard is adequately protected; to strengthen the protection for marginalised groups who are disproportionately represented within child and family law proceedings (PILA bulletin, 2021).

While Irish law, policy, and practice have undergone significant change over the past decade, in particular in the context of listening to children in matters affecting them, in the post-separation context at least, it is not always clear or obvious as to how, and in what ways, children are given the opportunity to contribute to the process in any meaningful way. There is a paucity of studies that have explored the perspectives of parents and professionals who manage contact arrangements in relation to a child/[ren] in common and the manner in which their children's views have been ascertained and represented. Responding to this gap in the knowledge base, the present research is concerned with establishing international best practice concerning contact time for infants and very young children in separated families. The research questions are as follows:

1. How can international research evidence and literature inform a model of best practice of contact for infants and young children in separated families along with parents who are sharing parenting who may or may not have previously been in a relationship together.
2. What is the lived experience of parents who share the parenting of infants and young children (aged 0-6 years) but are not in a relationship with one another?
3. What are the experiences of professionals working with children and parents (in a variety of roles and contexts) regarding contact arrangements for infants and young children (aged 0-6 years)?

The research design employed in order to answer the above questions involved the following three phases:

1. An extensive international literature review was conducted to establish best practice regarding contact time for very young children (0-6 years of age);
2. A survey was distributed amongst parents of very young children in Ireland (aged 0-6 years of age) who have had to negotiate contact/ access arrangements;

3. Two focus groups were undertaken: one with legal professionals comprising mediators, solicitors and barristers and another with social professionals comprising a domestic violence practitioner, a child's views expert (Section 32 reports), a project manager in a family support and targeted early intervention service, a practitioner in a city-based family service, and a play therapist.
4. Six interviews were undertaken with members of the Irish judiciary from the District and Circuit Courts.

As part of the introductory section to this report, the discussion will move on to set out the relevant legal context by briefly explaining the Irish Legal framework, including Article 42 A.4 of the Irish Constitution 1937, the legislative amendments introduced by the Children and Family Relationships Act 2015 (to the Guardianship of Infants Act 1964) to support the implementation of Article 42 A 4; section 47 of the Family Law Act 1995 and finally, part 2 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 which amends section 40 (Proceedings heard otherwise than in public) of the Civil Liability and Courts Act 2004.

1.2 The Irish Legal Framework

In the context of family law proceedings involving questions concerning guardianship, custody and access, the Thirty-First Amendment of the Constitution (Children) Act 2012, passed by referendum of the Irish people in November 2012, is particularly pertinent. Article 42 A became law on 28 April 2015 following a number of unsuccessful challenges before the Courts.

Article 42 A 4, which forms the constitutional basis of the current research, states that:

1° Provision shall be made by law that in the resolution of all proceedings—

i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or

ii concerning the adoption, **guardianship or custody of, or access to, any child,**

the best interests of the child shall be the paramount consideration.

2° **Provision shall be made by law** for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of **any child who is capable of forming his or her own views**, the **views of the child shall be ascertained** and given **due weight** having regard to the **age and maturity** of the child.

For the purposes of the current research, Article 42 A. 4 1 states that legislation will be enacted to ensure that where a child is the subject of guardianship, custody and access proceedings, the best interests of the child are the paramount consideration. Moreover, Article 42 A.4.2 states that in guardianship, custody and access proceedings, any child who is *capable* of *forming* his or her own views those views shall be ascertained and given due weight in accordance with the *age and maturity* of the child concerned. It is important to point out at this stage that the above wording of Article 42 A.4.1 takes account of the best interests principle as protected under Article 3 CRC, and in respect of the voice of the child, Article 42 A 4.2 almost mirrors 12(1) of the CRC which states:

> States Parties shall assure to the child who is *capable of forming his or her own views* the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with *the age and maturity* of the child.

The importance of the similarity in the wording lies in the fact that the UN Committee on the Rights of the Child (hereinafter referred to as the *UN Committee*), the international monitoring body responsible for overseeing the implementation of the Convention, has given strong authoritative guidance on how this wording should a) be interpreted legally and b) be implemented in practice.

1.2.1 Capable of forming his or her own views

The UN Committee has provided authoritative guidance on how to interpret Article 12 as it applies in the context of legal proceedings. It has made it clear that when interpreting the phrase 'any child who is capable of forming views', this should not be viewed as a limitation, but should be seen '…as an obligation to assess the capacity of the child to form an autonomous opinion to the greatest extent possible' (UN Committee on the Rights of the Child, 2009, para.20). The UN Committee has discouraged countries like Ireland from introducing age limits in law and in practice which may impact the implementation of this fundamental right (Parkes A. , 2015a, p. 32). This means that this provision applies to even very small babies and very young children who, while not capable of expressing views through the conventional form of speech, are nonetheless capable of forming views (Lansdown, 2011, p. 1). The Committee has also made clear that young children '…make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of written or spoken language' (2005, para.14). Whilst acknowledging that in practical terms very young children are not in a position to form and express views on 'complex, legally valid decisions', competence '…exists on a continuum from birth, while young children gradually acquire the language to analyse, reason and express complex experiences and (Alderson, 2010, p. 11). It is important to acknowledge the alternative forms of expression that are recognised under Article 13 of the UN Convention on the Rights of the Child 1989 since the right to express views should not be limited

to the expression of views in adult language where this is convenient for the decision-making process (Parkes A. , 2015a, p. 33). Article 13 refers to the freedom to receive or impart ideas, 'regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice'.

1.2.2 Dual Criteria of Age and Maturity

The reference to 'age and maturity' under Article 42 A of the Constitution (and under Article 12 CRC) makes it clear that these are dual criteria. In practical terms, this means that neither factor, in isolation from the other, should be determinative of a child's competence, and thus of the extent to which adults give due weight to the views of the child (Parkes A. , 2015a, p. 36). Thus, these dual criteria require a case-by-case individualised assessment of a child's circumstances where 'the physical, emotional, cognitive and social development of the child should be considered' (UN Committee on the Rights of the Child, 2013, para. 83.).

Akin to adults, children are not a homogenous group of people in society when it comes to assessments of competence. However, when it comes to legal decision-making processes, it is common practice to treat them as such, particularly when it comes to the issue of maturity. Article 12 of the UN Convention on the Rights of the Child 1989 acknowledges that children, similar to adults, have different levels of competence at various stages of their lives. The Committee has made clear that '[c]hildren's levels of understanding are not uniformly linked to their biological age' (UN Committee on the Rights of the Child, 2009, p. 29).

1.3 'Provision Shall be made by Law'

As outlined above, Article 42 A 4 of the Irish Constitution states that provision shall be made by law for ensuring that in all access/ contact cases, the best interests of the child shall be the paramount consideration and all children capable of forming views will have those views ascertained. To some extent, the Children and Family Relationships Act 2015, provides the legislative detail required for those principles to be effected in law. For example, section 45 of the 2015 Act (which amends section 3 of the Principal Act – the Guardianship of Infants Act 1964) gives further expression to the principle that in any access proceedings, the best interests of the child shall be 'the paramount consideration'. The newly inserted Part V of the Guardianship of Infants Act 1964 sets out a list of factors to which the court must have regard when determining in such cases what is in the best interests of the child, one of which is for the court to consider the views of the child. However, it is important to remember that despite the existence of such legal provisions, judicial discretion can sometimes result in a lack of legal clarity in family law cases:

> One of the legal hallmarks of Irish Family Law jurisprudence is that there is a great deal of judicial discretion in many of the Family Law statutes, which was the result of a deliberate policy decision by the legislators (Martin, 2005).

1.3.1 Section 32 Reports

Article 42A was introduced into the Irish Constitution in 2015 as a result of the *Thirty-First Amendment of The Constitution (Children) Act 2012.* Article 42 A.4.1 states that provision shall be made by law that in the resolution of guardianship, custody and access proceedings, the best interests of the child shall be the paramount consideration. Moreover, Article 42 A.4.2 states that provision shall also be made by law to secure in guardianship, custody and access proceedings, as far as practicable, '…in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child'.

The enactment of the Children and Family Relationships Act 2015 on 18 January 2016 resulted in a number of important changes to the Guardianship of Infants Act 1964 (hereinafter referred to as GOI Act 1964) under Part V. In particular, section 32 was introduced into the 1964 Act in an attempt to provide some of the legal detail required to satisfy the provisions of Article 42 A.4 in respect of listening to the views of children.

Section 31 of the GOI Act 1964, which sets out a checklist of factors which the courts *shall* make reference to when assessing the best interests of the child in guardianship, custody and access proceedings,[1] includes a reference to the views of the child that are ascertainable (whether in accordance with section 32 or otherwise). Furthermore, section 31(6) of the Guardianship of Infants Act 1964 asserts that in ascertaining the views of the child, '…the court shall facilitate the free expression by the child of those views and shall …ensure that any views so expressed by the child are not expressed as a result of undue influence'.

In this context, sections 32 (1) (a) and 32 (1)(b) refer to two different types of reports that may be ordered in court, each of which can serve as a means of introducing the views of children into guardianship, custody and access proceedings. However, it is currently not clear under what circumstances each report will be ordered.

[1] Section 63 of the Children and Family Relationships Act 2015 inserts section 31 into the Guardianship of Infants Act 1964.

Section 32 1 (a)

Section 32 (1)(a) of the 1964 Act[2] is broader in nature than section 32 (1)(b) and provides for the procurement of an expert report on any question affecting the welfare of a child. Significantly, while not expressly stated, the inclusion of section 32 (1)(a) in the new 2015 Act served to address the anomaly that a welfare report can only be ordered in accordance with section 47 of the Family Law Act 1995, the latter being only available in the Circuit Court and High Court. The District Court has never had the power to order such welfare reports in guardianship, custody and access cases.[3] An important difference between the section 47 report and the section 32 (1)(a) report, however, is that the latter report is specifically dedicated to any question affecting the welfare *of a child*. In contrast, the section 47 report refers to any question affecting the welfare *of a party to the proceedings or any person to whom they relate*.

Unlike in the case of section 32 (1)(b), those experts who are eligible to undertake the section 32 (1)(a) 'welfare report' for the court are currently not specified. There are several different areas assessed under this provision which are listed under section 31 (2) of the 1964 Act (as inserted by s 63 of the 2015 Act) (see Appendix 4 for the full list). Unlike the section 32 (1)(b) reports, there is no maximum fee structure set out in regulations or otherwise for these welfare reports. This lack of regulation regarding the fee structure has unsurprisingly led to practitioners setting their own fees for undertaking these reports. As a result, fees not only vary considerably from one practitioner to another, but also from one region to another. It is not immediately apparent how much the welfare report will cost and what the assessment entails with variation in approach and practice.

During this research, a number of practitioners across the country who undertake Section 32 1 (a) reports were contacted by the research team with a view to understanding the current cost of these reports. The research team confirmed that current fees vary significantly between practitioners, with the cost of reports ranging nationally from between €1,600 and €5,000. Some assessors' fees increase with the number of children per family, while others vary their rate depending on the level of court, with the fee increasing the higher the court. Assessors also tend to have an additional fee for giving evidence in court with regional variations in cost. For those entitled to legal aid, assessors receive a standard (lower fee) for undertaking these reports. For all intents and purposes, the Section 32 (1) (a)

[2] As inserted by section 63 of the CFRA 2015.

[3] This is despite the insertion of a new section 26 into the Guardianship of Infants Act 1964 (by section 11 of the Children Act 1997) which provided an express power for the District Court to order section 47 reports. The latter section was never commenced.

report is akin to the Section 47 report under the Family Law Act 1995, where it has been reported that fees for such reports can also vary significantly.[4]

Section 32 1 (b)

Section 32 (1)(b) of the GOI 1964 empowers the court to appoint a 'child's views expert' where it is deemed necessary or desirable to do so.[5] The purpose of this report is to determine and convey a child's view and it is commonly referred to as the 'voice of the child report'. Section 32 (3) sets out the factors to which the court must have regard when deciding whether it is necessary to appoint a child's views expert. These factors include:

(a) the age and maturity of the child;

(b) the nature of the issues in dispute in the proceedings;

(c) any previous report under subsection (1)(a) on a question affecting the welfare of the child;

(d) the best interests of the child;

(e) whether the making of the order will assist the expression by the child of his or her views in the proceedings;

(f) the views expressed by or on behalf of a party to the proceedings concerned or any other person to whom they relate.

Section 32 (4) states that a copy of the report shall be provided to the parties to the proceedings, and, where a child is not a party to the proceedings, they shall be given a copy subject to the following criteria set out under subsection 5:

(a) the age and maturity of the child and the capacity of the child to understand the report;

(b) the impact on the child of reading the report and the effect it may have on his or her relationship with his or her parents or guardians;

(c) the best interests of the child;

(d) whether the best interests of the child would be better served by the furnishing of the report to the parent, guardian, next friend of the child or an expert appointed under subsection (1)(b), rather than to the child himself or herself.

[4] For example, in Shannon's 2016 edition of the Children and Family Relationships Law in Ireland: Practice and Procedure, he asserted that the cost of the section 47 report varied between 2500 euro and 3000 euro. See Shannon G., *Children and Family Relationships Law in Ireland: Practice and Procedure* (Dublin: Clarus Press, 2016) p. 33.

[5] As inserted by section 63 of the Children and Family Relationships Act 2015.

The responsibilities of the 'child views expert' are set out under section 32(6) and further detail is provided in the Child's Views Expert Regulations.[6] This type of report is more regulated than Section 32 1 (a) with guidance on both the qualifications of experts who can be appointed by the court and the fee structures in place. Those eligible to undertake this work include: a) a psychiatrist who has practised child and adolescent psychiatry for a relevant period; b) a psychologist who has practised child and adolescent clinical psychology for a relevant period; c) a social care worker who has engaged in the practice of the profession of social care worker, as it relates to the provision of social care services to children, for a relevant period; d) a social worker who has engaged in the practice of the profession of social worker, as it relates to the provision of social work services to children, for a relevant period; e) a registered teacher who has taught children for a relevant period. The prescribed fee structure differs based on whether or not the expert is required to furnish a report on the views of the child (i.e., section 32(6)(c)). A fee of €240 is prescribed where such a report is not required. A higher fee of €325 applies where such a report is required. Where the expert is called as a witness, they are entitled to seek a maximum of €250 in expenses in respect of their appearance before the court. (https://gsba.ie/main/wp-content/uploads/2019/01/LAB-Voice-of-the-child.pdf).

In relation to both the welfare report under Section 32 (1)(a) and the child's views report under Section 32(1)(b), the court can order the report either of its own motion at any time during the proceedings having heard the parties, or on application to it by a party to the proceedings.

When reports are ordered by the court, the reports must be financed by the parties involved, and those entitled to legal aid receive some support with the associated costs (Houses of the Oireachtas Joint Committee on Justice and Equality Report on Reform of the Family Law System, October 2019, https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf)

<u>Court assessors</u>

Currently, there is no panel of qualified professionals available to undertake reports for the courts (Corbett & Coulter, 2021). Most are independent private practitioners, with some advertising their services on a website. Corbett & Coulter (2021) note that given 'assessors and experts are usually private individuals whose availability varies', this 'may lead to multiple adjournments while the court awaits a report' (p. 68). One such service advertises its services as including '*Family Law Assessments*' on its website (http://caidreamh.ie/family-law-assessments/). This is a service that is run by a clinical psychologist and one childcare worker (http://caidreamh.ie/the-team/). They undertake both Section

[6] S.I. No. 587/2018 - Guardianship of Infants Act 1964 (Child's Views Expert) Regulations 2018. See https://www.irishstatutebook.ie/eli/2018/si/587/made/en/print.

32 reports and Section 47 reports. According to their website, the '*report will simply provide the child's opinion and views to the court. It normally involves one or two meetings between the child and a member of the team at Caidreamh. This practitioner speaks with and listens to the child's wishes and then apply psychological theory to this to identify what is in their best interests'.* It also involves a meeting with both parents. The website does not provide any information on the cost of these services. Another service (Changes Counselling and Psychotherapy Limited) https://changes.ie/section-47-reports/ provides Section 32 reports by an expert in parental alienation while also providing a number of other therapeutic services. While it has a website, it does not provide any information on the Section 32 process or provide any information regarding fees.

Judges interviewed as part of the current research confirmed that they tend to appoint court assessors that are known to them within the geographical location where they hear cases. Furthermore, assessors also confirmed that solicitors tend to recommend the names of several court assessors to the parties of the proceedings.

The Children Living with Domestic and Sexual Violence Group's recent Submission to the Family Justice Oversight Group Consultation 2021 highlighted some concerns regarding court-appointed child welfare assessors. They drew attention to the fact that '*the quality and experience of the assessors providing the reports can vary.* They noted that '*In our experience many lack the necessary understanding of domestic and sexual violence, its impact on children and how the abuser can manipulate or intimidate children into expressing views and choices that are to the advantage of the abuser and not in the best interest of the child'* (Children Living with Domestic and Sexual Violence Group, 2021, p. 5). This group has recommended that *'the reform of the Family Court [should] review the efficacy of the system of use of S47 & S32 reports to meet the best interests of the child'* (2021, p. 5). Furthermore, Corbett and Coulter note that oftentimes delays are encountered, ranging from several months to one year, in getting reports completed and returned to court. They also note that 'sometimes the court must rely on the recommendations of lawyers for the parties, with the inevitable attendant danger of 'expert shopping' (2021, p. 68).

Release of reports

Section 32 provides that reports prepared under the relevant sections shall be provided to the parties. However, 'considerable controversy over that subsection' has been noted (Law Society, 2021). Section 32(4) provides: 'A copy of a report under section (1)(a) may be provided in evidence to the proceedings and *shall* [emphasis added] be given to (a) the parties to the proceedings concerned and (b) subject to subsection (5), if he or she is not a party to the proceedings, to the child concerned.'

The Law Society (2020) further notes that both sections appear to make it mandatory that a copy of the report shall be provided to the parties to the proceedings. It comments that the reality is quite different, and in practice, the courts do not directly provide a copy of reports to the parties. Instead, arrangements are made for the report's contents to be made known to the parties (McGowan, 2020) (https://www.lawsociety.ie/gazette/in-depth/voice-of-the-child). This supports many of the comments made by some of the court assessors that were approached during the current research study. They indicated that reports are lodged with the court and that parties' legal representation must apply for their release. As part of the current research, it was suggested that the practice of accessing Section 32 reports varies considerably, with some parents being afforded the opportunity to read them in a private office or in rooms within the courthouse. It was also noted that quite often, a blind eye is turned to parents photographing reports.

1.3.2 Section 47 Reports

Prior to 2016, when the Children and Family Relationships Act 2015 came into force, the only way in which an expert report could be ordered to present the child's views to the court was through a report ordered under section 47(1) of the Family law Act 1995, but this was and still is, only available in the Circuit and High Court. While section 26 of the Guardianship of Infants Act 1964 (as inserted by Section 11 of the Children Act 1997) extended section 47 to apply to District Court proceedings, this section lay dormant on the statute books and was never commenced. An expert can undertake a section 47 report to assess 'any question affecting the welfare of a party to the proceedings or any other person to whom they relate'.

It is important to point out that where an expert is appointed to facilitate the expression of the views of the child, the accompanying fees and expenses of the expert concerned must be borne by the parties to the proceedings. This is significant as section 47 reports cost over 2500€. While the cost for section 32 reports can be less, it can still pose a barrier to children being heard indirectly in this way to legal proceedings affecting them.

1.3.3 Section 20 Reports (under the Child Care Acts 1991 (as amended))

In some cases before the family law courts, Judges can request that a section 20 report be carried out by a social worker where there is a concern over the welfare of the child. Under section 20 of the Child Care Act 1991 (as amended)

> '…the court may, of its own motion or on the application of any person, adjourn the proceedings and direct the health board [HSE/Tusla] for the area in which the child resides or is for the time being to undertake an investigation of the child's circumstances'.

Any report provided by Tusla in this respect will consider whether or not a care order or a supervision order should be applied for in respect of the child; Tusla will provide any assistance deemed necessary and will take whatever other action concerning the child it considers appropriate. As part of the section 20 reporting process, the HSE should enquire into the views of the child concerned (HSE, Court: Best practice guidance, See: https://www.tusla.ie/uploads/content/Court_Report_guidancedoc.pdf, p.26, date last accessed: 08/08/22).

1.4 Protecting Privacy: *In camera* rule versus transparency

The *in camera* rule is an important feature of the Irish family law system. Its function is to shield the identity of the parties and any child to whom family law or child care proceedings relate. Part 2 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 which amends section 40 (Proceedings heard otherwise than in public) of the Civil Liability and Courts Act 2004 to allow bona fide representatives of the media to be present, researchers, and legal professionals to gain access to valuable information on the operation of family law.

Thus, in practical terms, the current legal framework as it applies to child contact cases in Ireland is piecemeal and complex and, in addition to the relevant constitutional framework, spans across a number of pieces of legislation. Despite the legal detail that exists, in practical terms, there still appears to be a lack of clarity and therefore transparency, concerning when and under what circumstances the views of very young children are considered in access or contact cases in Ireland.

The issue of transparency and accountability is commented on by Coulter (2022, p. 1) in her editorial to the Irish Journal of Family Law. Coulter (2022, p. 1) asserts that transparency and accountability are essential for public confidence in the family law system so that best practice can be scrutinised and upheld. Of relevance to this present research, Coulter specifically references how comprehensive and transparent data collection could illuminate the manner and extent to which the voice of the child is heard and how this evidence influences proceedings. In a similar vein, while acknowledging that Court

Rules apply to all 24 District Courts, Corbett (2022, p. 3) observes that practice in some districts has developed with a 'degree of specialism', concluding that this can result in inconsistent practice.

1.5 Mediation Act 2017

Where parents of young children (married/ unmarried/ same-sex couples and parents who have never lived together) find it challenging to agree on contact arrangements concerning the children, mediation services can support them in coming to an agreement that works for all concerned. The Mediation Act 2017 came into effect in October 2017 and aims to provide a comprehensive legal framework to promote the resolution of legal disputes through mediation as an alternative to court proceedings. One of the main objectives underpinning the Act is to encourage individuals to voluntarily seek mediation as an efficient and cost-effective alternative to court proceedings. At the end of a successful mediation process, parents should secure a parenting agreement which they both have negotiated and agreed upon. Various models of mediation exist for the purpose of making parenting agreements, including child-focused mediation and child-inclusive mediation. However, these models are not underpinned by Irish legislation and are not available nationally. Section two below discusses these models and other mediation aspects in more detail.

1.6 Conclusion

Section one has provided the national legal context to this report, highlighting select aspects of the Irish constitutional and legislative framework most relevant to contact proceedings involving infants and young children. The relevant aspects of Article 42 A of the Irish Constitution 1937 are outlined with a discussion of how the constitutional terminology has been interpreted at UN level by the UN Committee on the Rights of the Child. Moreover, the legislative basis for more frequently utilised methods of securing the 'ascertainable' views of the child in family law proceedings involving children is explored, including the Section 32 reports (Guardianship of Infants Act 1964); Section 47 reports (Family Law Act 1995) and Section 20 reports (Child Care Acts 1991). Finally, the legislation underpinning the use of mediation in this context is briefly outlined.

Section 2 of the report presents the international literature review, while section 3 presents the findings from the survey administered to parents. Section 4 discusses the key themes emerging from the qualitative individual and focus group interviews with relevant professionals, while the final section sets out the recommendations arising from this report.

Section Two: Methodology

2.1 Introduction

The focus of this section is to outline the methodology and rationale used for the research design. The section will commence by reiterating this study's research aims and objectives. It will then set out how the study was designed to address the three research questions. This section will explore the various research instruments which were created to facilitate data collection, the data collection processes, and the approach taken to data analyses will also be described. Limitations of these approaches will be acknowledged. Finally, the chapter will conclude by setting out the ethical considerations for this research.

2.2 Aims & objectives of research study

The overall aim of this research was to establish what are considered to be the most effective practices internationally in relation to contact for time for infants and young children where parents no longer or have never lived together.

The **research questions** were as follows:

1. How can international research evidence and literature inform a model of best practice of contact for infants and young children in separated families along with parents who are sharing-parenting who may or may not have previously been in a relationship together.

2. What is the lived experience of parents who share the parenting of infants and young children (aged 0-6 years) but are not in a relationship with one another?

3. What are the experiences of professionals working with children and parents (in a variety of roles and contexts) regarding contact arrangements for infants and young children (aged 0-6 years)?

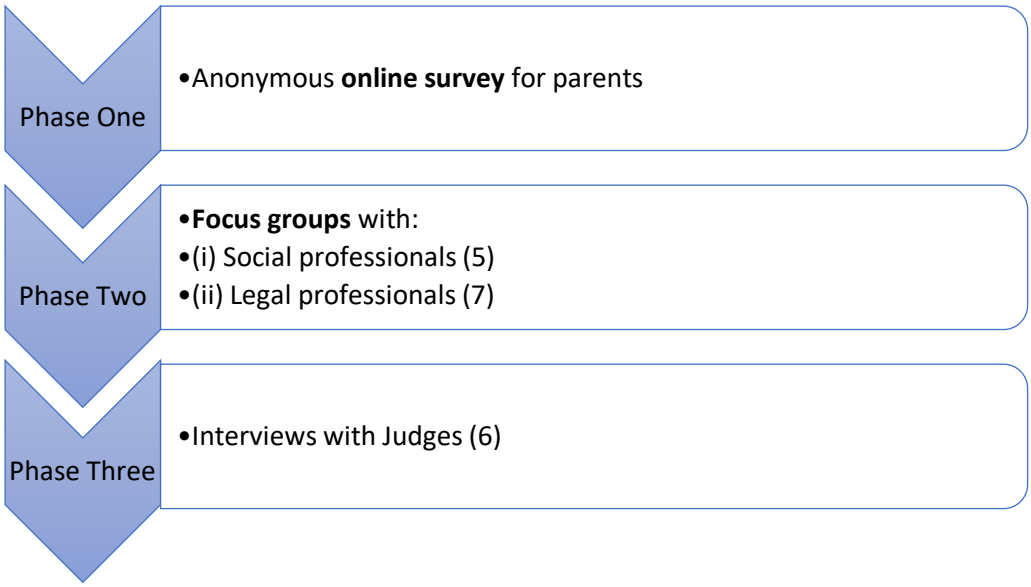
2.2.1 Conducting the Literature Review

The optimum approach to answer **Research Question 1** was to conduct a thorough review of international research evidence on contact for infants and young children in separated families. While the full methodology employed for undertaking the literature review is set out in detail in Section Two: Literature Review, a summary of same will be outlined here. At the outset, it was necessary to establish key definitions and terms that were central to this study. The research team devised a search strategy

that included: developing the search terms, identifying inclusion and exclusion criteria for literature, and identifying which academic databases were most appropriate to conduct the searches. The team undertook an in-depth analysis of all relevant international literature, and a comprehensive synthesis of all international peer-reviewed material was carried out.

2.3 Research design

To effectively address **Research Questions 2 and 3,** a phased process of data collection was planned to allow for an element of flexibility and allow for later stages of the research to be informed by the emerging data from earlier stages. There were three phases to this strand of the research: 1) An online survey for parents, 2) Focus groups with professionals (social and legal), and 3) Interviews with members of the Irish judiciary.



Phase One involved using an anonymous online survey using the Qualtrics platform. The survey comprised both closed and open questions and was distributed using Twitter to parents to capture the lived experience of parents who share the parenting of infants and young children (aged 0-6 years) but are not in a relationship with one another. The data collected through the online survey was instrumental in informing the parameters of the focus groups and interviews with key professionals since it highlighted what are considered important areas of focus.

An external advisory group was set up from the outset of the project. This was to ensure rigor, consistency, and ethical standards of the research project. The advisory group comprised of one representative from the commissioners of the research, a parent with experience of shared parenting,

and two academics with expertise in childhood, child protection and children's rights. The advisory group reviewed the survey content and piloted the survey to provide feedback before the distribution of the final version online.

2.3.1 Participants and access

In order to access the target population, convenience and snowball sampling were used (Bryman, 2016). One Family, the Commissioners of the Research, facilitated the initial distribution of the survey to their members and other organisations with whom they have links through convenience sampling. Permission was also granted to use social media to reach some of this population, and both the researchers and the commissioning body tweeted information about the survey on Twitter. This also generated some media interest, and various radio programmes across the country were given interviews to share information about the research and how to access the survey. The survey was launched in March 2022, and the survey link was live for a period of four weeks. One hundred and forty-one (141) participants took part in the online survey who had experienced arranged contact or shared parenting arrangements relating to their child(ren) under the age of 6 when these arrangements were put in place.

Phase Two involved holding two ***Focus Groups,*** which aimed to engage two key groups of professionals: 1) Social professionals and 2) Legal professionals. The participants who took part in the two groups were invited to take part due to their specialist expertise and knowledge relating to contact and access being negotiated for young children in the age range of 0-6 years. It was determined that focus groups were the best method of data collection to elicit the professional perspectives of these two groups of professionals concerning how the family law system operates. Focus groups are extremely useful for generating discussions which can reveal both shared understandings and contrasting views. Additionally, group discussions can also stimulate improved recollection, and people tend to say more when participating in focus groups, which can allow deeper understanding and fresh insights (Bryman, 2016; Flick, 2011).

Participants were selected from a list of contacts that One Family, in conjunction with the researchers created to select potential contacts. The selected participants were then furnished with a letter of invitation via email from the gatekeepers and funders of the research – One Family - to take part in the study detailing the nature and scope of the study and the manner they were being requested to take part. This included information concerning what participation would involve for the participants. The gatekeepers, irrespective of their previous contact with potential research participants, did not know the identity of those who agreed to participate in the final focus groups, as interested participants were directed to contact the Research Team directly through the Research Assistant. Informed consent (See

Appendix one) was obtained in advance by sending out Participant Information Sheets (See Appendix two) to the prospective participants and requesting that they email their consent form to the team's Research Assistant.

The Social professionals focus groups comprised five participants; a Domestic Violence Practitioner (SP1); a Child's Views Expert (SP2); a project manager from a Family Support and Targeted Early Intervention Service (SP3), a practitioner in a city-based Family Service (SP4) and a Play Therapist (SP5). Practitioners were from various geographical locations throughout the country.

In relation to accessing legal professionals for the focus group, initially, a similar strategy to the social professionals' focus group was employed; however, this was unsuccessful. On this basis, a different approach was devised by the team, which targeted legal professionals using social media platforms. A Twitter post was shared via the One Family social media network in July 2022. This tweet sought to engage with legal professionals working in the area of family law, asking them to contact the research team's Research Assistant to express their interest in taking part in a focus group on this subject matter. Also, specific emails were sent to family law practitioners informing them of the study and encouraging their participation.

The legal professionals focus group comprised seven participants: two mediators (LP5 & LP7), two barristers (LP2 &LP4), and three solicitors (LP1; LP3 & LP6), all of whom work or have worked in the area of private family law and have experience of working on cases where contact arrangements with children aged 0-6 years of age are at issue between parents. Participants were located in the East, South and Southeast of Ireland.

The focus groups used a semi-structured format and used an interview schedule (See Appendix three) developed using insights gained from the parents' online survey and the literature review.

Phase Three involved carrying out ***Interviews*** with six Judges who sit in the Family Law Courts at both District and Circuit Court levels. This was an additional phase of the research that was not part of the original research design. However, it was agreed, in collaboration with the commissioners of the research, that this was a necessary component of the research, given the originality of the study and the paucity of Irish research within this field of practice. It was also decided that if members of the judiciary were included in the research it would provide a more balanced representation of the issues concerning contact and access for young children.

Adopting a similar sampling strategy to that employed for the legal professionals (outlined above), members of the judiciary were initially selected from a list of contacts. Additionally, snowball sampling was used with this group as several Judges recommended a colleague who would be interested in taking part in the study. Informed consent from interested Judges was obtained in advance after sending a Participant Information Sheet and consent form detailing the nature and aims of the research, including what participation would involve. Interviews with the six Judges took place across a number of mediums; in person, online via MS teams and over the phone, depending on the preference of the Judge concerned. The interviews were semi-structured and used an interview schedule (See Appendix three) which was informed by the preceding stages of this strand of the research and the literature review. The length of time participating Judges have been adjudicating over family law cases ranged from between one year and 15 years.

2.4 Data analyses

Phase One - Anonymous Online Survey: In line with the exploratory nature of this study, the online survey engaged mixed methods, combining both open and closed questions. The open-ended questions aimed to collect data on parents' experiences and perceptions of contact and shared parenting for their infants and young children. It is important to highlight that not every participant in the survey provided narrative responses for each question. Some participants chose to answer some or none of the open questions in the survey. The qualitative data gathered by way of free-text boxes in the online survey were analysed thematically to highlight what were perceived by parents to be the main issues for them and their children. Braun and Clarke's (2006) six phases for conducting a thematic analysis were drawn upon for conducting this analysis. The research team each individually familiarised themselves with the data. Broad themes were subsequently identified, cross-referenced and agreed upon with the other team members. The process of generating codes, sorting, and reviewing them continued until overarching themes were identified that answered the research questions (Braun and Clarke, 2006). The closed questions aimed to gather basic quantitative data on a population that little is known about in the Irish context and provided essential descriptive statistics. This approach of collecting and analysing the data to support each other allowed the data to achieve complementarity and enhanced the overall findings (Teddlie & Tashakkori, 2009).

Phases Two and Three: Owing to the qualitative nature of phases two and three, Braun and Clarke's (2006) thematic analysis guidelines were once again drawn upon. The focus groups and interviews were anonymised, transcribed verbatim, and distributed amongst the research team. Following this familiarisation phase, the broad emergent themes were identified and agreed upon. Further, a

framework was developed using the primary themes that emerged from the study's data, which facilitated data analyses across the various interviews and focus groups.

2.5 Research Limitations

Post-data collection, the survey was acknowledged to have a number of limitations. Firstly, it was overly ambitious in its design. It was later deduced that this could have been a factor in the number of participants who did not fully complete the survey. It was also concluded that the inclusion of fewer narrative free-text response boxes might have resulted in a higher number of participants offering contributions to the open questions. Notwithstanding these issues, many participants responded to some of the open questions with narrative responses, and, as this is an understudied population whom until now little was known about, this survey has made a valuable contribution to the knowledge of the experiences and perceptions of this group.

A further limitation of the online survey was that it employed convenience and snowball sampling to access participants, therefore; sampling was not random. It is also acknowledged that in using social media, the online survey was mainly available to members of the population who have internet access and access to social media platforms. Therefore, it stands to reason that there may only have been a small percentage of the total population exposed to the survey, and as the overall number of people who have experienced shared parenting in the target population group is not available, we cannot know the response rate from the population. Furthermore, it is not known how representative of the population these respondents were (Bethlehem, 2010; De Vaus, 2014). However, as discussed earlier, this group is a hard-to-reach population. There is a paucity of knowledge about who they are, how many there are, and how to reach them. The aim of the research was to generate some knowledge on this subject, which has been achieved. The normal limitations associated with Interviews and Focus Groups - are neither generalisable nor representative of the general population. The semi-structured nature of the interviews/ focus groups also has limitations, - while on the one hand flexible, on the other can result in some topics not being covered as much as others.

2.6 Ethical considerations

Research ethics were embedded throughout the design and conduct of the research in accordance with Trinity College Dublin's Policy for Research Practice and University College Cork's Code of Research Ethics. Ethics approval was successfully applied for from both Institutional Research Ethic Committees prior to commencement in relation to each phase of the research study.

The nature and scope of this research were fully explained to all participants clearly by way of 'Participant Information Sheets' (See Appendix two). Informed consent was sought and received from

participants in the focus groups and interviews prior to the data collection. Informed consent was obtained via the online survey, which was prefaced by the information sheet. All data collected has been fully anonymised, and any identifying details have been removed. Formal procedures in relation to data handling, including data management and GDPR have been adhered to.

2.7 Conclusion

This section has set out the methods employed to realise the aims and objectives of the research as commissioned by One Family. The next section presents the international research evidence and literature to inform a model of best practice for contact time for infants and very young children where parents are no longer, or were never, in a relationship.

Section Three: Literature Review

3.1 Introduction

This introductory section sets out the parameters of the literature review, including a reflection on definitional and methodological issues and an outline of the process and outcome of the literature review conducted to inform and support this study. Starting with a focus on definitions, this section provides some context to the definitions used throughout this report and a rationale for the decisions taken. While many of the definitions are specific to different jurisdictions, definitions can also have different meanings and applications in law, policy and practice. Sound methodological approaches are key to informing any policy and practice arena, but arguably more so when it comes to decisions that are taken about very young children. To this end, we critique the existing knowledge base and apply some caveats to the research drawn on and the findings presented. We also provide an outline of the steps taken to engage with the literature review to ensure transparency and quality of the process.

3.2 Definitional and Methodological Considerations

According to the UK's Family Lives organisation, while there are numerous definitions such as 'Shared parenting', 'equal parenting', 'involved parenting', 'co-operative parenting', 'parallel parenting' and other terms…generally the term 'shared parenting' is preferred' (Family Lives, 2022[7]). The first part of this section will focus on the various terms used when parents are parenting apart before discussing the meaning of terms applied in domestic violence and interparental conflict.

3.2.1 Parenting Apart

While the term '*shared parenting'* will be used throughout this report, it is important to note that some of the international peer-reviewed literature referred to uses alternative terminology, which is outlined below**.** Moreover, in Irish law, shared parenting is not a term currently used to describe the relationships between parents and their children. The commissioners of this study, One Family, have developed a working definition of shared parenting based on their work with families as follows:

> 'Shared parenting is when both parents, who live separately, have an active parenting role in their child's life, irrespective of how much time they might actually spend with their child. One Family has a broad and inclusive approach to what sharing parenting might look like in each family' (2016, p. 2).

[7] https://www.familylives.org.uk/advice/divorce-and-separation/shared-parenting-and-contact/what-is-shared-parenting (Date last accessed: 08/08.22).

Within the international context, a *co-parenting* relationship exists when individuals have overlapping responsibilities for parenting children, and its quality can be characterised by the extent to which parents support (or fail to support) each other's parenting efforts (Feinberg, 2003, quoted in Kamp Dush et al., 2011). While Kamp Dush et al. (2011) acknowledge the challenges in this for parents after the dissolution of their relationship, they state that 'effective coparenting requires parents to set aside differences in their previous personal relationship, but often their relationship remains strained' (p. 2).

A second term - *Shared parental responsibility* – is used primarily in Australia under the Family Law Amendment Shared Parental Responsibility) Act 2006, where there is the presumption that both parents will have equal parental responsibility.

Finally, a third term - *Joint physical custody (JPC)* **-** is a term used in Sweden that refers to 'children living alternatively and about equally with both parents after a parental separation or divorce' (Fransson et al., 2018, p.349). They note that 'the proportion of Swedish children in JPC was about 1% of children with separated parents in the mid-1980s but is now between 35% and 40%' (ibid, p. 350). This form of parenting is uniquely popular in Sweden compared to other European countries and, according to Fransson et al. (2018), is due to the country's adaptation of a gender-neutral policy since the 1970s. This approach is also reflected in its wider policies on the dual-earner model, child-care policy frameworks and parental leave.

Of relevance to this present study, the terminology currently used to describe parent-child relationships in Ireland was inherited from the English Common law as it pre-dates the establishment of the Irish State. It is no surprise, then, that this terminology is archaic and not reflective of current thinking concerning the rights and responsibilities of children is concerned. Arguably, some of the language still used is reminiscent of a paternalistic culture which has predominated as far as children are concerned until recent times. Guardianship, Custody, and Access are the terms most frequently used in the social and legal context to describe parent-child relationships in Ireland today.

Under Irish law, *Guardianship* refers to the rights and responsibilities associated with raising a child and includes making important decisions about the child's upbringing, including education, religion, passports and where the child will live. Under the Guardianship of Infants Act 1964 (as amended), mothers are entitled to automatic guardianship rights, whether married or unmarried. Married fathers are also entitled to automatic guardianship rights, as are unmarried fathers who were living with the mother of the child for 12 consecutive months after 18 January 2016, including at least 3 months with the mother and child following the child's birth. Unmarried fathers who do not satisfy this requirement can apply to the District Court under section 6A of the Guardianship of Infants Act 1964 to become a guardian of the child, or they can become a guardian of the child with the consent of the mother with

the signing of a statutory declaration to that effect. There are also other circumstances where guardianship rights will be granted, particularly where it concerns grandparents or testamentary guardians. However, these will not be discussed here as this study focuses on parents. In its 2010 report, the Law Reform Commission recommended that the term guardianship be replaced with that of parental responsibility in line with the approaches adopted by other jurisdictions, including the UK. This recommendation was not implemented when this area of law was subject to reform in 2015.

Custody in Irish law refers to a parent's right to exercise care and control over the child on a day-to-day basis (R.C v I.S [2003] IEHC 86; [2003] 4 IR 431). There is currently no statutory definition of custody under Irish Law, and as pointed out by the Irish Law Reform Commission, this '…has led to confusion between the rights associated with guardianship and those associated with custody'(Law Reform Commission, *Legal Aspects of Family Relationships* (LRC 101 - 2010) December 2010 at para. 1.11). While *Joint custody* orders can be agreed between the parties or ordered by the court, in practice, it means 'that the child will generally have his or her primary residence with one party and spend time with the other' (Law Reform Commission, *Legal Aspects of Family Relationships* (LRC 101 - 2010) December 2010 at para. 1.11). The Law Reform Commission recommended in 2010 that the term custody be replaced with 'day-to-day care'. However, this recommendation was not implemented with the passing of the Children and Family Relationships Act 2015.

Access 'refers to the right of a child to maintain direct contact with the parent with whom the child does not reside' (courts.ie) although this has traditionally been referred to the rights of the non-custodial parent to access the child. The Law Reform Commission recommended in 2010 that this term be replaced with the term *contact* and that this also be clearly defined in legislation as including the right of the child to maintain personal relations and contact with the parent or other qualifying person on a regular basis, subject to the proviso that contact must be in the best interests of the child. This recommendation was also not implemented.

The international literature also uses the terms 'primary parent' or 'resident parent' regarding the parent who has primary responsibility for the child's care and who is the parent who primarily lives with the child; the term 'non-resident parent' to refer to the parent who does not live in the child's primary residence. These terms and those referred to above will be used interchangeably when citing the international literature and the local/national context within which it was conducted. As noted by Smyth (2017, p. 497), 'the diverse cultural, legislative, and policy contexts underpinning the studies and accompanying commentary', pointed to the fact that 'research must always be responsive to context.'

3.2.2 Domestic Violence and Interparental Conflict

The complex nature of domestically abusive relationships means that accurate and inclusive definitions are difficult to establish, and this is noted in research to date (Kearns et al., 2008; Trevillion et al., 2012). This report adopts and adapts the definition of the Report of the Task Force on Violence Against Women (1997), which defines domestic violence as: *'The use of physical or emotional force or threat of physical force, including sexual violence, in close adult relationships'* (RTFVAW, 1997:27). Understandings of domestic violence and how it manifests in relationships have substantially progressed in recent decades, and this definition is reflective of developments in empirical knowledge. Traditional definitions of domestic violence have been influenced by a criminal justice perspective where the focus is on discrete incidents of physical assault, with corresponding exclusive attention to victim safety. In acknowledging domestic violence as encompassing more than incidental physical violence, the term 'domestic violence and abuse' reflects a growing recognition in the literature of domestic violence as a process and a pattern of control and coercion that can include but is not confined to physical violence (RTFVAW, 1997; Kearns et al., 2008). Indeed, the concept of coercive control is gaining increasing traction and understanding (James-Hanman, 2018). Coercive control can be described as a pattern of domination that includes tactics to isolate, degrade, exploit, and control individuals (Stark, 2012). It is widely recognised as contributing greater insights into the nature of domestic violence and abuse and being more inclusive in its focus as it seeks to recognise all forms of abusive behaviour as acts of control (Stark, 2007).

Therefore, throughout this report, the term 'domestic violence and abuse' (DVA) is used interchangeably with 'coercive control', not only reflecting survivor's lived experiences but also challenging the idea that the two are distinct phenomena. We draw largely upon literature from English speaking countries whose Family Court systems are roughly in alignment. Moreover, we are addressing the most common type of case to be found in the Family Courts in these jurisdictions, namely heterosexual parents where the mother has been the primary caregiver and the victim of DVA and the parent seeking contact is the abusive father (Johnson, 2006). Other variants of this do appear within the Family Court system, but these are the exceptions to the norm.

There are many definitions and interpretations of interparental conflict. Smyth et al. (2019) write that the term 'high conflict' seems to be a prevalent term within family law, yet they argue that there is a difference between *circumstantial conflict* and *entrenched or enduring conflict.* They refer to the latter as 'situations in which the primary factor is not the content of the dispute itself but the dysfunctional interpersonal dynamics underpinning and/or triggered by that content' (p. 81). Smyth et al. (2019) warn of the long-term and far-reaching effects that ongoing unresolved parental conflict can have on parenting capacity. They caution that 'it can lead to problematic parenting processes including

inconsistent discipline, and poor role modelling' and that 'depressed, distracted, or traumatised parents are often unable to remain attuned to the emotional needs of the child. This in turn can adversely impact on parent–child relationships and lead to poorer adjustment outcomes for children'(p. 77). Similarly, Harold et al. (2017) theorise that 'the effects of conflict between parents occur indirectly through a 'spillover' of emotion from the couple relationship with the parent–child relationship; heightened levels of interparental conflict lead to more acrimonious parent–child relations, which in turn increase children's internalizing and externalizing problems' (p. 447). They reference the different ages and stages of development where children become more emotionally attuned to parental conflict. They suggest that very young children under two years old may not have developed the cognitive ability to appraise parental conflict that may be harmful -however, the evidence is mixed (Harold & Sellers, 2018; Graham, Fisher, & Pfeifer, 2013).

3.2.3 Methodological Considerations

Research on impact and outcomes for children experiencing a wide variety of parenting arrangements following separation and divorce or where their parents never lived together is beset with methodological issues that warrant some brief mention. Many studies do not differentiate between different types of pre-separation relationships or arrangements, including situations where the parents never lived together. This is problematic, particularly where assessments based on attachment theory are being drawn on to support conclusions on outcomes. Further sampling limitations include polarisations across what is already a limited literature base between white middle-class, educated samples (Fabricius & Suk, 2017; Pruett et al., 2004) and those focused on families considered to be 'at-risk' (Tornello et al., 2013) or poorer more marginalised communities. While a number of studies conducted in Sweden (Bergstrom and colleagues, 2019; 2021) conclusively find support for Joint Physical Custody, it should be noted that the policy context in this jurisdiction has had a strong gender-neutral and parental equality focus since the early 1970's. This goal for gender equality is reflected in robust policies, including parental leave, child-care infrastructures and dual-earner models – as such a very different context to Ireland and other countries regarding the frameworks and supports needed to underscore contact time for children (Fransson et al., 2018).

The empirical evidence base on children under six years of age is also quite limited, with just 13 papers found for this study. While that provides a clear rationale for the current study, it nonetheless provides a limited base to benchmark the evidence against, particularly given the methodological limitations outlined above. The available research on very young children's contact time with parents covers quite a time span from the 1980s to more recently, rendering comparability and generalisability difficult. While there is a larger bank of empirical evidence, which includes under 6's in samples of older children,

the findings on outcomes and impacts are rarely disaggregated between the age groups. Across the literature reviewed and as commented on in section one, there is criticism of the scales and measures used to reach conclusions on impact, outcomes, and best practice. This is particularly concerning given the vulnerability of this very young age group in the earliest stages of their development and with the most dependence of arguably all age groups on the adults in their lives for their care. With an over-reliance on studies based on psychological perspectives and a weak evidence base on the inclusion of the voice of very young children, the literature reviewed should act as a starting point and not an end point to inform best practice when supporting families where parents do not live together and decisions about contact time are being made. Finally, and as touched upon above, considered reflection on the literature needs to account for the cultural, social and legal differences that underpin the evidence base in the research evidence.

3.3 Overview of Methods for Conducting Literature Review

Taking the research aims and objectives as its starting point, a systematic approach to the literature review was adopted. Key search terms were determined following the inclusion and exclusion criteria for material as detailed in Table 1. A list of electronic sources was established, and these databases were searched using the identified search terms. All relevant studies published up until June 2022 were included. Grey material was also incorporated in the search to capture any available material not included in electronic databases. Results of electronic searches were then refined based on abstracts to determine their relevance to the research aims.

Table 1. Literature Search Strategy	
Search terms	Contact Time /Access /Custody Joint Physical Custody /Shared Parenting Domestic Violence /Domestic Abuse /Intimate Partner Violence
Inclusion criteria	Studies Infants /Toddlers /Preschoolers English Language
Exclusion criteria	Literature or primary research only involving children over 6 years of age
Databases searched	Academic Search Premier Cinahl JSTOR Psycharticles Psychoinfo PubMed Scopus ScienceOpen SpringerLink

3.3.1 Summary of Search Output

While there is a wealth of research commenting on the experiences of children in the 6–18-year age bracket of various types of parenting plans that were instigated following their parents' separation or divorce, the search described above found a dearth of literature, specifically empirical research, reporting on contact time for children under six years of age. Only 13 empirical papers were found that focused on the under-6 age cohort. This is reported on in the first section of the literature review. A broader reliance was therefore taken on related literature, both theoretical and empirical, as it concerned the topic of contact time for very young children.

The value afforded to the voice of very young children in the context of their parent's relationship and, indeed, in the context of the family law system has arguably influenced the nature, type and volume (or lack thereof) of research produced to date.

3.4 Conclusion and Literature Review Outline

This introductory section has presented some issues for reflection and consideration that occurred during the conduct of this literature review. From the data sourced and reviewed, the literature review is now divided into four independent yet inter-related areas, as follows:

1. The rationale for contact time for children.
2. Caveats and Concerns to inform decisions about contact time for children.
3. Ascertaining the voice of the child.
4. Supports and interventions.

3.5 Rationale for Contact Time for Children

3.5.1 Introduction

Whether focusing on children in out of home care or children in separated/divorcing families, a robust and empirical analysis exists highlighting the important of 'quality contact' in order to maintain and sustain the parent/s child relationship (Bullen et al, 2015; Holt S. , 2016a) Indeed, concern with the impact of discontinued parent-child relationships on children across both scenarios has resulted in a depth of empirical knowledge on the maintenance of those relationships through the medium of 'contact' or in the Irish context through 'access'. In the post-separation/divorce context, while research consistently demonstrates that parenting arrangements work best when they are informally arranged between two parents who are committed to making those plans work in the interests of their children, the emotive nature of the separation/divorce experience for many families may demand formal and legal regulation (Holt S. , 2016a). Similarly, for children in out of home care, there are many factors that can challenge the capacity for quality contact, including parental capacity and the availability of support

systems and structures (Taplin et al, 2021). Across both out of home care and parental separation/divorce situations, the evidence cautions against an uncritical assumption that contact is automatically in the child's best interests (Ruiz-Romero et al. 2022; Flood, 2010).

Focusing specifically on separation and divorce, a burgeoning body of empirical evidence nonetheless underscores the importance for children's development of good quality continuing bonds with both parents (Birnbaum & Saini, 2015; Lamb, 2012). It has also been well documented that nought to six years represents a sensitive period for the development of emotional competence (Housman et al, 2018) with Lamb (2018) asserting that the evidence consistently finds that outcomes for children are better when positive and supportive relationships are maintained with both of their parents.

Drawing on a considerable wealth of evidence, Steinbeck (2018) correlates separation and divorce with reduced well-being for children and parents, with children suffering from the loss of the relationships, and problematic attachment relationships, in addition to reduced emotional and financial support; and mothers with sole care of the child being overworked and stressed. As such, when parents separate and decide to no longer live together, this can result in the health and wellbeing of children being put at risk (Amato P., The consequences of divorce for adults and children, 2000). . Bowlby suggests that 'optimal outcomes for most children do not start with separated parents' (2011, p. 549). Rather, he asserts that children involved in family law proceedings are at risk of suboptimal attachment due to their family life experiences being compromised or indeed, due to negative experiences of divorce or separation. It has been suggested that the increased risk of emotional issues and social maladjustment for children with separated parents in particular, can be due to children's loss of social, economic and human capital after separation or divorce (Swedish Board of Health and Welfare, 2011). High incidences of parental conflict, in addition to dissatisfaction with parental relationships, may exacerbate lower well-being in children affected (ibid). However, the extent to which children cope with life after parental separation and divorce is to a large extent mediated by the ways in which they are supported in maintaining a relationship with both parents post separation (Bastaits & Mortelmans, 2016). When children spend quality time with both parents after a family separation, this results in children receiving more support from their fathers which has a positive impact on child well-being (Bastaits & Mortelmans, 2016).

Consequently, longstanding concern with the impact of discontinued parent-child relationships following parental separation or divorce on children's adjustment and general well-being has resulted in decades of empirical research on the maintenance of those relationships through a broad range of post separation parenting plans and arrangements for contact time (Lamb, 2018). Across the myriad of contact time arrangements, the most contentious debate seems primarily focused on the issue of Joint

Physical Custody (JPC) and specifically overnight arrangements for children with both parents, with a particular concern for attachment relationships. This section will therefore commence with a brief discussion on attachment before interrogating the empirical evidence from primary research on outcomes for children of shared parenting/JPC/overnight access.

3.5.2 Attachment Theory

Attachment theory originated in the 1950s when John Bowlby introduced the notion that very young children need stability and predictability in their core family relationships since their primary attachment relationships are still in development (Bowlby J., Attachment and loss. Vol. 1., Attachment, 1969). Mary Ainsworth and Mary Main then built upon this in the decades that followed. Essentially the attachment relationship centres on reciprocal parent-child engagement, which balances two key components - the child's developmental needs for a 'haven of safety' (safety and comfort) with the equally important needs of the child for a 'secure base' (allowing for exploration and the development of competence) (Ainsworth, Blehar, Waters, & Wall, 1978). The now well-established 'strange situation' procedure for determining variations in an infant's security of attachment to its mother was developed in the 1960s (Ainsworth, Blehar, Waters, & Wall, 1978). As identified by Main, Hesse and Hesse, there are four attachment patterns identified in the literature: secure, avoidant, ambivalent-resistant, and disorganised (Main, Hesse, & Hesse, Attachment Theory And Research: Overview With Suggested Applications To Child Custody, 2011).

The attachment-caregiving bond is a core foundation of the parent-child relationship (2011). Where this is structured and is functioning normally, there is a high degree of likelihood that the child concerned will use the security and stability of that relationship to develop and explore relationships with other people. If the bond is disrupted or interfered with in any way, this may result in the child experiencing significant pathology not only when they are young but also well into adulthood. As suggested by Lamb (2012), most children in two-parent families form attachments to both parents at the same stage in their development and maintaining relationships with both parents affects children's adjustment, irrespective of whether they live together.

Bergstrom et al. (2018) note that while there has been significant academic debate on the extent to which joint physical parenting is suitable for children of preschool age, there are a scarcity of studies which have examined this area. Much of the debate has focussed on the potential for risk to arise when a young child is separated from their mother, who, in many cases, will be regarded as the primary attachment figure (McIntosh, Smyth, & Kelaher, 2015; Nielson, 2014; Warshak, 2014). Challenging this debate, Lamb (2018: 18) asserts that claims that infant-mother attachments are harmed with regular

overnights away from their mother are based on a discredited concept of 'monotropy', which Bowlby (1969) initially favoured but subsequently rejected. Warshak (2014) has further cautioned against using the term 'primary parent'. He argues that child developmental research fails to support the rank ordering of parents as primary or secondary in their importance to children. Further, he states that due to children forming attachment relationships with both parents, if one such parent is designated as primary and, as a result, time is restricted with the other parent, this can disturb the other relationship. Significantly, research has also explored the role of gender in attachment formations. For example, neuroscience research has proven that the female brain is uniquely equipped to respond to the nonverbal nurturing aspects of attachment with very small infants (Schore & McIntosh, 2011). However, it is really important to remember that infants do not have a preference for either gender when it comes to attachment formation. What is critical is consistent and warm care from one parent that is predictable and responsive. Bergstrom et al. (2018) highlighted the limitations to some studies which include an overreliance on maternal reports on their children's health and wellbeing and the use of non-validated outcomes as indicators of stress in young children (such as wheezing).

3.5.3 Empirical Evidence on Children Under 6

From the outset, it is important to state that there is minimal empirical focus on outcomes for infants and children under 6 years of age, with mixed and contentious results rendering conclusions difficult. A rigorous search of the relevant databases and search engines on primary research on this issue and for this cohort of children resulted in 13 papers spanning over three decades (1987-2021) and three continents (America, Europe and Australia). Appendix four presents the aims, scope, methods, findings, and limitations of these 13 studies in a tabular extraction form. An additional two papers focused on under-6's but also included older children, as well as seven papers which provide a critical review of the 13 empirical papers on the under-six age cohort, are also included. A consistent thread throughout all 22 papers is a concern with attachment relationships and the maintenance of those relationships where parents do not live together. A select number of those studies are interrogated in this section to illuminate some concerns and considerations where evidence is being used to support decision-making on contact time for children with parents when they do not live together.

There are several studies which have been carried out in this area which have involved preschool children specifically. One of the earliest studies carried out in respect of overnight stays is that of Soloman and George (1999). This study investigated the organisation of attachment behaviour at two points - 12 months and 30 months - in 145 parent-child dyads. Infants of separated parents living in regular overnight arrangements (one night a week or more) were part of the sample, infants who had no overnights with the second parent, and infants in intact families. This study found that there was

more of a risk of anxious, unsettled behaviour when the child was reunited with the primary caregiver in the infant group who had regular overnight stays. These infants also demonstrated signs of disorganised and insecure attachment with the caregiver by 30 months. As one of the first studies to support concern for infants with overnightseparation from their mothers, Lamb (2018) asserts that interrogation of research design and methods is warranted. Significant limitations highlighted include the sample, which Lamb (2018) considered neither representative or comparable, as the intact families in the sample reflected a more educated cohort relative to the separated families; the separated sample was categorised by high levels of conflict included children whose fathers had never been involved in their care (Lamb M., 2012). This latter point is important as the majority of those infants had no relationship with their fathers before the overnighting began (Nielsen, 2014a). Nielsen (2014a) gives considered attention to these findings as this study is still consistently cited as evidence against overnight visits for infants, asserting that the findings are often misrepresented. Further to Nielsen's (2014a) concern that this study is grounded in the concept of monotropy that now has little academic or empirical support, Lamb (2018: 18) concludes that Solomon and Georges (1999) study provides *'no evidence that overnights with involved fathers affected the quality of infant–mother attachments. Rather, the study showed that the security of infant–mother attachment was at risk in high-risk family circumstances'.*

Studies which have used validated outcome measures are confined to children aged between two and six years. One such study conducted in the US by Pruett et al. (2004) involved 132 separating families, of whom only three had never lived together. Of the 132 children in the sample, 58 children stayed overnight with the other parent more than once a week, 41 stayed with the other parent overnight just once a week, and 33 had no overnightstays. Commenting positively on the sample, Nielsen (2014a) observes that this was a representative sample of the lower middle class, mostly white parents who had been married to each other when their child was born, with average conflict levels and no substance abuse history. Data was collected on the psychological problems of both parents of children in two age cohorts (2-to-3-year-olds and 4-to-6-year-olds) and measured using the Child Behaviour Checklist (Achenbach, 1991). While the study found no significant differences between the overnight and non-overnight children in the younger 2-to-3-year-old group on outcomes measure including depression, anxiety, social withdrawaletc., some difference was found for the older 4-to-6-year-old group. For this group, children who had overnight stays with the other parent had more positive outcomes and fewer psychological problems and aggression when compared to those with no overnight stays. Specifically, girls in this age group were less socially withdrawn and less socially anxious, leading Nielsen (2014a: 321) to conclude that a consistent schedule and positive relationship with both parents was a more important indicator of positive outcomes than overnight stays. Lamb (2018)

similarly concluded that the findings underscored the understanding, grounded in attachment theory, that post-divorce/separation, children benefit from ongoing supportive relationships with both parents.

A study conducted in Australia by McIntosh et al. (2010) drew on data from the National Longitudinal Study of Australian Children (LSAC) database (Australian Institute of Family Studies [AIFS], 2012), comparing three age groups: infants under 2, 2- to 3-year-olds, and 4- to 5-year-olds; across three family types (no overnights, occasional overnights: 1–3 nights monthly for infants and 1–9 nights for the 2–5-year-olds; and frequent overnights: 4–15 nights monthly for infants and 10–15 nights for the 2–5-year-olds). Amongst the many findings, and according to the 15-page summary of the larger 169-page report, the overall impact of overnighting for children aged 0 to 4 years was predominantly negative (McIntosh et al., 2010).

Nielsen (2014a), however, draws our attention to the fact that the agreed definition of shared parenting for infants (35% to 50% time) was not applied in this study, as is the case for all other studies. Rather, primarily due to the low number of (11) infants who were in the care of their fathers 35% to 50% of the time, the McIntosh et al. (2010) study applied a definition of shared care involving as little as four nights a month with the father. Lamb (2018) further draws our attention to the failure of the researchers to determine if the parents had ever lived together or whether the infants had had any opportunities to form an attachment to their fathers. Additionally, Lamb (2018) notes that the very young age of some infants might reasonably preclude attachments from forming at all. Similar to the Solomon and George (1999) study, Nielsen (2014a) cautions that this study, too, was grounded in the assumption that infants form primary attachments to one parent and that overnights away from that primary carer results in poorer attachment and increased emotional regulation problems. Both Lamb (2018) and Nielsen (2014a) recommend a thorough interrogation of this study as it is frequently misreported and offered as evidence against overnighting and shared parenting. Nielsen (2014b) outlines the significant limitations of the study, including the sample of parents, many of whom had never lived together, the small sample size of infants, and the lack of validity or reliability reported for four of the six measures of well-being.

McIntosh et al.'s slightly later (2013) study, which also used a nationally representative Australian sample, examined the associations between various ratios of shared overnight time and indications of emotionally regulated behaviours by infants with their primary caregiver. The study found that for infants and children 0-3 years, a number of negative correlations between higher overnights and emotional dysregulation were apparent. No significant associations were found for older children aged 4-5 years. Similar to their previous study, recognised limitations of this study included the fact that the sample size of infants and young children with high rates of overnight stays was small. Moreover, few

children remained in frequent overnight stays, so a longitudinal analysis could not be carried out. With similar limitations s and criticisms, this study confirms the findings of Soloman and George (1999)(cited above) and of Tornello et al (2013)(below). To reiterate, however, all three studies have been criticised regarding the limitations of the respective studies and with caution advised when considering their recommendations.

Similar to McIntosh et al.'s Australian study (2010), **Tornello et al.'s (2013)** US study drew on data from a national sample (Fragile Families Study) that was collected for other purposes. Unlike the Australian LSAC national study, the Fragile FamiliesStudy was not nationally representative as it focused on fragile or considered 'at risk' families. Lamb (2018) also highlights that the families in this study were predominantly not married or cohabiting, were living below the poverty line, with low educational attainment and had an over-representation of Black or Hispanic communities. Infant-mother assessment was based on an abbreviated list of items that had not been validated and was further based solely on mothers' reports. With varying interpretations of what frequent or regular contact involved, Nielsen (2014a: 327) concluded that *overnighting had one positive impact and no negative impact on any of the five measures of well-being for these children and was not clearly or consistently linked to insecure attachments.* Furthermore, using the Child Behaviour Checklist (Achenbach, 1991) , Tornello et al. (2013) found higher incidences of insecure attachment among infants who had overnight stays with a second parent; the study also confirmed that no psychological problems were presenting at three years of age related to custody arrangements in families with a challenging social and economic situation. Perhaps unsurprisingly, criticism has been levelled at the methods of assessment, the sampling and the interpretation afforded thestudy's findings.

More recently, a cross-sectional study conducted by **Bergstrom et al.** (2018) sought to compare the psychological issues among children aged 3-5 years of age as reported by parents and preschool teachers. Significantly, this study focussed on four patterns of living arrangements: intact families, joint parenting, living mostly with one parent and living exclusively with one parent. The sample in this study comprised 3656 children aged three to five years of age. Data was extracted from the Swedish population-based Children and Parents in Focus Study. This study revealed that children living in joint physical custody arrangements suffered from fewer psychological symptoms than those who lived with mostly one parent or only one parent, as measured by the Strengths and Difficulties Questionnaire. The results were similar to those of children living in intact families. Possible reasons for the latter outcomes, as suggested by the researchers, include that a child having access to two involved parents may be more important to the child from a well-being perspective than the problems associated with moving between homes. The researchers also acknowledge, however, that when parents can agree and manage joint physical custody and have less conflict, as a result, they are better positioned to be more

involved as parents and provide an appropriate environment for healthy mental health development. It should be noted that the study did not allow for possible pre-separation factors, which may have impacted psychological impact post-separation.

Completing this section, we return to reflect on Bowlby's view that 'what is sociologically popular and what is developmentally necessary are at loggerheads', an assertion which appears to hold true for the areas in which there was broad agreement (Bowlby & McIntosh, 2011, p. 553). Acknowledging that the 'primary' parent does not mean the 'better' parent, contact arrangements for very young children should support the growth and strength of the primary relationship and, at the same time, where possible, support the growing familiarity and attachment with the second parent (Main, Hesse, & Hesse, Attachment Theory And Research: Overview With Suggested Applications To Child Custody, 2011). In this regard, 'primary' simply refers to the primary responsibility for the fundamental aspects of the attachment relationship. From a neurological science perspective, attachment drives brain development, including the child's evolving capacity to know, express and self-regulate their emotions. Schore and McIntosh (2011) identify some important considerations from a scientific perspective regarding attachment. For example, the nature and scope of attachment in the first two years of life – a stage when the emotional right brain circuits are in a critical period of formation – differs to a large extent from attachment in the third and fourth years of life, which sees the maturation of the cognitive system. Any stressors on the attachment system in the first two years of life have a much more negative impact than exposing the child to a similar stressor in years 3 and 4. While Bowlby's early research suggested that attachment formation took place very early for a child, current research confirms that such an early window attachment formation is not exclusive. While the early attachment experiences of very young children are very important, attachment stressors and opportunities are still influential throughout childhood.

There does not appear to be any consensus around overnight care for infants and young children, mainly owing to a lack of empirical data in the area. Of those research studies that exist, these have limitations in terms of methodology and scope, as outlined above. For example, oft-cited literature in this area is that of Lamb and Kelly (Lamb & Kelly, 2001) (Kelly & Lamb, 2000), who place importance on the development of secure attachments with both parents, and a way of doing this is through the young child spending equal or frequent time with both parents. On the other hand, some researchers are of the opinion that repeated overnight stays away from the primary caregiver in the first and second years of a child's life are to be discouraged, as they can cause disruption to secure attachment formation with both parents (Main, Hesse, & Hesse, Attachment Theory And Research: Overview With Suggested Applications To Child Custody, 2011) (Sroufe & McIntosh, 2011). What does appear to be clear, however, is that overnight care is not essential to ensure that an infant or small child forms a healthy

attachment to the other parent. Quality caregiving is the most important factor in attachment formation and not necessarily the frequency of contact (Sroufe & McIntosh, 2011).

Furthermore, while research consistently demonstrates that post-separation/divorce parenting arrangements work best for children when they are informally arranged between two parents who are committed to making those plans work in the interests of their children, the emotive nature of the separation/divorce experience for many families may demand formal and legal regulation. The following section considers the inter-play of attachment in the decision-making process on contact time for children in formal family law proceedings.

3.5.4 Family law proceedings and attachment theory

Over the past few decades, there has been a proliferation of literature on young children's attachment and how it is considered in the context of family law disputes over contact. It is really important to remember that growing up as part of a separated family does not change the core mechanisms of attachment development. However, it is well accepted that the healthy development of children under the age of 5 years is at risk due to custody and access decisions (McIntosh, Smyth, Kelahar, Wells, & Long, 2010). In the context of family law proceedings, the concept of attachment is often introduced with a view to influencing the trajectory of decisions concerning contact and shared-parenting schedules. As McIntosh notes, in best case scenario, various understandings of attachment are used by Judges and professionals alike in an inconsistent manner to shape parenting plans or judgments. Alternatively, at its worst, attachment is moulded to support the subjective view of one party to the case or the argument of one parent over the other (2011). In this context, Main, Hesse and Hesse (2011) express strong opposition against the approach of some jurisdictions where each parent presents an expert witness to speak to the child and attachment. One of the main recommendations here is that any assessment procedure relating to children in custody and access cases should be assigned and directed exclusively by the court (Main, Hesse, & Hesse, Attachment Theory And Research: Overview With Suggested Applications To Child Custody, 2011).

Although the special issue of the international and inter-disciplinary journal *Family Court Review* (2011) entitled 'Attachment Theory, Separation and Divorce: Forging Coherent Understandings for Family Law' is now 11 years old, it was significant in that it sought to disentangle expert viewpoints on attachment with a view to generating some agreed understandings regarding attachment within the Bowlby/Ainsworth tradition at least, and their application to decisions made within the family law context. This issue of the journal sought to produce consistent meanings in areas of attachment theory and separation and divorce. Unfortunately, while the idea was welcome in theory, this edition of the Family Court Review has been subject to some criticism as not being a fair and balanced representation

of all of the key literature in the field of child attachment (Lamb M., 2012; Hynan, 2012) (Warshak, 2014) (Ludolph, 2012).

This special issue aside, the literature more broadly has failed to generate a one size fits all approach to fit in with the law's preference for consistency and certainty in family law decision-making. Yet, it is important to remember that from a practical point of view, infants and young children are not a homogenous group. Each child is unique in terms of personality, development and circumstances, and so, in keeping with a children's rights-based approach, an individualised approach based on the child's best interests and the voice of the child should be taken in such cases, once that child is capable of forming views and regardless of age. Furthermore, it is clear that shared or equal distribution of caregiving amongst parents is not the norm, even in families who are still together. Yet as Seligman points out, one of the main considerations for a judge in family law proceedings should be what arrangements would give the baby the most 'flexible, resilient, efficient perimeters' in relation to experiencing and learning how to co-regulate emotions, attention, the exchange of information, cooperation and the internalisation of a strong sense of security (Bretherton, Seligman, Solomon, Crowell, & McIntosh, 2011, p. 541). The answer lies in the science, which is that a young child needs predictability when accessing a caregiving relationship grounded in shared presence, shared recognition, and shared positive affect (Schore & McIntosh, 2011; Siegal & McIntosh, 2011). Waters and McIntosh (2011, p. 482) suggest that 'Focusing on time only, you could never guarantee the best attachment experience for the child'. Indeed, one thing agreed across the literature reviewed is that research with families involved in post-separation/divorce contact fails to identify a solitary magic ingredient that makes contact time work or not work; rather a wide range of factors operate interactively, interdependently, and dynamically, with the attitudes, actions and interactions of the key family players shaping contact and determining its quality (Holt S. , 2016a). In Irish Family Law proceedings, the focus tends to be on the adult parents, each having their own legal representatives and providing their own evidence to support their arguments. The danger here is that the child invariably gets lost in the arguments, and the focus on the child disappears. What is critical here is the child's right to have contact with a parent, and this needs to be reconceptualised as fundamentally a child's right and not exclusively an adult's one. If it is viewed in this way, then decision-makers such as Judges should seek evidence that has been objectively retrieved and included in the court's deliberation in addition to the evidence on the child's best interests. Where possible, the child should have some direct input into the process to ensure that their views are elicited and fed into the decision-making processes. Reflection on the process of eliciting children's views must also be given consideration. While it has been recognised that each child in each family is unique, as is their experience of parental

disruption, 'focusing on children's strengths rather than their deficits and capacities will allow all children greater participation' (Birnbaum & Saini, 2012, p. 279).

3.5.5 Conclusion

Attachment formation needs to be considered through the lens of a child and not a parent when thinking about contact arrangements. Indeed, a growing body of research from developmental psychology and neuroscience, in particular, has unequivocally demonstrated that attachment relationships are central to a child's development regardless of their family formation or cultural background. It is for the latter reason that the well-being of a child from an attachment theory and knowledge perspective should form an important part of the decision-making and planning process concerning contact. In fact, Lamb (2021: 483) has asserted that researchers and professionals should be aware of the challenges of talking about issues such as the effects of overnights on young children without first clarifying for whom, when, and after what earlier experiences, and in which family contexts. In other words, for children, an individualised approach towards their circumstances and stage of development is essential to ensure that their individual best interests are being considered. In the context of family law proceedings specifically, it is important for professionals and parents alike to remember that such an individualised approach to assessment is also nonetheless a snapshot in time of the parent-child relationship and, as such, should not necessarily be relied upon for providing evidence for ongoing future cases. That said, if a situation remains unchanged, then professionals may make predictions about the course of a parent-child relationship.

To that end, George et al. (2011) note that attachment theory and research provide the most validated theoretical and procedural framework for conducting assessments on parent-child relationships for infants and children under the age of six years. Main, Hesse and Hesse (2011), however, underline the importance of training in infant and child attachment theory research for family law professionals working with separating and divorcing parents. The reason for this is that enhancing the professional's understanding of the variety of factors which can affect a child's sense of safety, security, and comfort are critical to resolving custody disputes in a way that is in the best interests of the child. As mentioned at the outset of this report, children's rights would dictate that to determine the child's best interests, it is really important to try and understand the child's views on a particular matter. Bowlby (Bowlby & McIntosh, 2011) taps into a critical aspect of the discussion concerning how to determine what is best for the child. He notes that in the context of family separation or divorce in particular, 'unless the parents truly understand what it is that the child is going through, they are going to have inappropriate battles, reinforced in an adversarial way by some family law people, who will generate inappropriate solutions, and the child is going to be torn both ways' (2011, p. 553).

Finally, in situations where there is high conflict or violence, there is widespread agreement on the following: (a) the importance of limiting a child's exposure to interpersonal stress; (b) a child who has experienced domestic violence in their surrounding environment is often caught in a state of disorganised attachment – they can feel afraid of their parent as well as afraid for the parent (Lieberman, Zeanah, & McIntosh, 2011). In developmental psychology, it is well accepted that the trauma associated with domestic violence as well as being in high-conflict situations, causes harm to infants and children. In the latter cases, one solid attachment should be prioritised over two challenged attachments (Lieberman, Zeanah, & McIntosh, 2011). This is addressed in the next section.

3.6 Caveats and Cautions Associated with Contact Time for Children

3.6.1 Introduction

As outlined in earlier sections, considerable attention has been paid, over the past few decades, to the critical role fathers play in children's lives and to the consequent need to maximise fathers' involvement with children when parents do not live together (van der Gaag et al., 2019). This section, however, provides evidence that caution should be applied against any assumption that generic policies about non-domestic violence fathers can be assumed to apply to domestic violence fathers without consideration of the potential negative impact on children[8]. There is some limited literature on incarcerated fathers, and men considered anti-social, an extensive review of the literature in these areas is beyond the scope of this study.

3.6.2 Children who live with domestic violence and abuse (DVA)

This brief overview of the literature relevant to the focus of this report assumes as its starting point that 'children who experience domestic violence […] hear it, see it, and experience the aftermath' (p. 479). While it is acknowledged that children are relatively new subjects in the field of DVA research, there is, however, evidence of its co-occurrence with other forms of child abuse and neglect (Radford et al., 2013; Humphreys et al., 2019; Sijtsema, Stolz, & Bogaerts, 2020). Hamby, Finkelhor, Turner, & Ormrod (2010) concluded from their research that children living with DVA are almost four times more likely to experience other types of child maltreatment within the same year when compared to children not experiencing DVA, resulting in more negative outcomes (Jobe-Shields et al., 2015) as well as additional adverse childhood experiences (Spratt, McGibbon & Davidson, 2018; Coe et al., 2019). Although some studies claim that children can be unaffected by DVA (Chan & Yeung, 2009), others

[8] For a detailed literature review on inter-parental conflict, please see the 'Separating Well for Children' Project by CES.

stress that it is not a question of *if* they are affected but *how much* (Bunston, 2015; Callaghan et al., 2016).

The weight of that evidence on the impact of living with DVA is now recognised in policy and law in many jurisdictions as reaching the threshold of 'significant harm', with children's exposure included in definitions of abuse and neglect that require mandatory reporting (Morgan & Coombes, 2016). Also emerging is a recognition of coercive control as central to both the perpetration of DVA and how children experience it (Callaghan, Alexander, Sixsmith & Fellin, 2018). With the intention of 'controlling, intimidating, humiliating, degrading, exploiting and isolating an intimate partner' (Katz E. , 2019, p. 3), coercive control creates an atmosphere of fear, experienced by children as not only scary and confusing but also as a traumatic event that potentially influences their development in many ways (Holt, Buckley & Whelan, 2008; Stanley & Humphreys, 2015; Coe et al., 2019; Øverlien & Holt, 2019a). Multiple meta-analyses have concluded that children who live with DVA experience negative psychological, developmental, and health impacts (Kimball, 2016; Vu, Jouriles, McDonald & Rosenfield, 2016) with more internalising and externalising difficulties in addition to cognitive, relational, and physical health challenges than children who do not have these experiences.

Knowledge of the timing of the onset of DVA in intimate relationships also informs us that preschool children are at a high risk of experiencing domestic violence in their households. Indeed, research evidence suggests that when DVA occurs during pregnancy, it is likely to continue after birth (McMahon et al., 2011; Stewart, 1991). Infants and toddlers are considered a particularly vulnerable group as they are totally dependent upon others for care, and their lives are organised around the primary attachment relationship to a caregiver. The following section focuses on the needs and experiences of children under six years of age.

3.6.3 Children under 6 years of age

Focusing specifically on very young children, negative impacts can include interrupted language development, increased aggression, skewed attachment, and trouble sleeping (Howarth et al., 2016; Domoney et al., 2019; Lynch & Holt, 2019). One of the earliest studies of this age group was conducted by Zeanah et al. (1999) with 72 15-month-old children and their mothers. This study found 45 of the children to have insecure attachment, with 41 of these being characterised as *disorganised* (p. 81). In a study conducted with 274 preschool children (mean age = four years) in the U.S., Coe et al. (2019) concluded that DVA increased the risks of future mental health difficulties for young children and increased the likelihood of forming externalised behavioural problems. An earlier study by Radford et al. (2013) found that living with DVA can impact very young children's ability to reach each milestone in their rapid development. Similarly, Gilbert et al.'s (2013) observational study of the attainment of

developmental milestones for 88 children under six years of age whose parents reported incidents of DVA found a significant delay in linguistic, social and fine motor development.

Tallieu et al.'s more recent (2021) study draws on data collected by the Administrative databases housed at the Manitoba Centre for Health Policy in the Manitoba Population Research Repository (the 'Repository') on women giving birth in Manitoba between 2003-2006: 'Children of mothers screening positive for IPV [Intimate Partner Violence] around the time of delivery were also found to have more compromised health outcomes in the 5-years after delivery than children of mothers screening negative for IPV. Specifically, these children had higher odds of being diagnosed with attention deficit-hyperactivity disorder, lower respiratory tract infections, and to have an injury hospitalization than children of mothers screening negative for IPV (9)'.

McIntosh et al.'s (2021: 894) systematic literature review examines mothers' experience of DV in the ante- or perinatal periods and subsequent mother–offspring attachment security in early childhood (i.e., five years and under). Their review concluded that there was 'significant potential of IPV to impact the maternal state of mind, sufficient to disrupt the security of the infant–mother attachment relationship'. They further concluded that early identification and intervention to support the mother's parenting capacity could have child-safeguarding impacts.

Attachment has been written about extensively but is especially important to consider in relation to children who live with DVA and who often feel unsafe. While DVA can undermine a child's attachment and mental health throughout the life-course (Tiecher, 2002), many studies also comment on the harmful impact that DVA often has on parenting practices (Humphreys et al., 2006; Holt, 2016a; Stanley et al., 2012; Coe et al., 2019; Humphreys et al., 2019). The following section gives this issue more detailed consideration in light of the available literature.

3.6.4 Impact on Parenting

The empirical evidence identifies the significant role that positive mother-child relationships play in supporting children's recovery from living with DVA, and indeed, the role that responsive mothering plays in promoting children's resilience (Fong, Hawes, & Allen, 2017). Research also highlights how abusive men purposefully manipulate, undermine, and attack the relationship between the mother and child (Humphreys, Healey, Kirkwood, & Nicholson, 2018; Humphreys, Mullender, Thiara, & Skamballis, 2006; Thiara, 2010; Heward-Belle, 2017; Coe et al. 2019). Heward-Belle (2017: 375) suggests that this 'assault' on mothering involves many diverse tactics intended to control women's experience as mothers, from the point of pregnancy, during childbirth and afterwards. Tactics can also include using children as weapons, involving children in the abuse of their mothers, directly abusing children, disallowing mothers to comfort traumatised children, sowing seeds of division, constructing role

reversals by parentifying children, and infantilising mothers (Bancroft et al., 2012). Implicating or involving the child in the abuse of the mother can have a profound impact on a woman's feelings about her children and on the children's attitudes towards their mother, where they may lack respect for her as a competent parent (Katz, 2019).

Domestically abusive fathers are characterised as individuals with high levels of hostility and anger, low self-esteem and a poorly developed sense of identity that results in neediness, dependency, self-absorption, a lack of trust in others, and an inability to see the impact of their violence on their children (Bancroft & Silverman, 2002), or to see violence towards women as child abuse (Hearn, 1998). Broady et al. (2017: 335) concluded from their research with men attending a perpetrator programme that this indicated the men were either unable to understand the impact or unwilling to accept their compromised parenting capacity – both of which are problematic situations.

Presenting as less aware of and responsive to their children's needs, Labarre et al. (2016) highlighted problematic characteristics of abusive fathers to include demonstrating less emotional connection with their children, reflecting Holt's (2015) Irish research and Lamb's (2018) Australian research with children and young people. In these and other qualitative studies, children frequently describe their fathers as controlling and overreactive (Holt, 2015; Katz, 2016; Øverlien, 2014) and fathers themselves outline their own difficulties in controlling their anger, aggression, and violence towards their children (Strand, Jutengren, Kamal, & Tidefors, 2016). Struggling to respect their children's boundaries and holding more negative views of them (Stewart & Scott, 2014), abusive fathers have also been found to be more controlling and intimidating, using their children to control and abuse mothers (Harne, 2011; Heward Belle, 2017). Heward-Belle et al., (2019) also noted heightened rates of physical abuse of their children. Fathers' accounts of their violence range from using violence instrumentally to using violence uncontrollably, with equally destructive impacts on children (Heward-Belle, 2015). Khaleque's meta-analysis (2017), for example, correlates hostility in men's parenting with negative impacts on children's self-esteem and emotional regulation capacity.

3.6.5 Separation as a 'vaccine against domestic violence'?

Far from separation providing what Jaffe, Lemon and Poisson (2003, p. 29) termed a 'vaccine against domestic violence', Morrison (2015, p. 275) asserts that the risk of ongoing abuse of women and children continues post-separation. With children considered the 'tie that binds parents together long after they cease to be partners' (Elizabeth, 2017, p. 186), child contact arrangements can provide court authorised opportunities for abuse to continue (Khaw et al., 2018). Over two decades of research on child contact in the aftermath of DVA consistently identifies the handover of children as a time when women and children are at further risk of violence, threats, and harassment, leading many women to

seek to do this through third parties (Hester & Radford, 1996; Thiara, 2010). This research has also concluded that contact provides a route to continued manipulation of children (Holt, 2011; Thiara & Gill, 2012), with children who do not have contact with abusive fathers reporting feeling safer and more secure (Holt, 2018). Research further highlights the (at best) inadequate parenting skills of some domestic abuse perpetrators, with children's basic welfare and comfort needs neglected during contact visits (Harrison, 2008; Holt, 2011). As mentioned previously, few violent fathers are found to understand that their violence against mothers is emotionally abusive to their children, with Harne (2011) concluding from her research that perpetrator declarations of love for their children reflected a view of children as a form of 'property' existing for their benefit rather than expressions of a genuine commitment to the child's well-being.

As such, while the general research base regarding children of all ages provides evidence of the advantages of father-child contact for child outcomes post-separation (Adamsons, 2018; Lamb, 2012), the same correlation cannot be assumed where fathers are domestically abusive. Scott et al. (2018), for example, draw attention to poorer shared-parenting relationships, hostility, depression and substance abuse for domestically abusive fathers in addition to continuing abusive and controlling behaviours post-separation. Qualitative research with children on post-separation contact consistently cite examples of poor post-separation fathering to include arriving late or not at all for contact, not spending time with their children, and rigidity around arrangements that are unresponsive to children's changing needs (Holt, 2015; Humphreys et al., 2019; Morrison, 2015; Thiara & Humphreys, 2017). Children in Holt's (2018) Irish research expressed sadness when their father was abusive during contact, while conversely, the data also recorded children's upset and distress with contact they did not want, or wanted on their own terms, with bed-wetting and nightmares cited as common nocturnal manifestations of this emotional anguish. Similarly, when the children and young people in Lamb et al.'s (2018) Australian study were asked about their key messages for fathers who use violence, they described wanting their fathers to understand the significant impact of the violence on their lives. Lamb's (2018) participants described their fathers as controlling and overreactive, and fathers themselves describe difficulty controlling aggression and violence towards their children (Strand, Jutengren, Kamal, & Tidefors, 2016). DVA fathers' hostility and over-reactivity have, in turn, been shown to be among the most important predictors of negative social-emotional outcomes for children (Febres et al., 2014).

While separation can physically lead to the loss of a permanent father-figure in a child's life, the presence of domestic abuse often means that fathering is compromised, a deficit that separation alone cannot rectify. While many of the participating children and young people in research on post-

separation contact describe having 'father presence' in their lives (Holt, 2018; Lamb, 2018), their narratives were consistent with Pryor and Rodger's (2001) assertion that the mere presence of fathers is not enough. This binary concept of absent presence is also relevant for mothers' experience of post-separation contact (Holt, 2017). Post-separation abuse of the mother is documented to include verbal and psychological abuse, harassment, stalking, threats of violence (including death threats), physical and sexual assaults, and threats or attempts of suicide. This abuse can be witnessed by children, who also may be implicitly and explicitly involved in the abuse of their mother. The research evidence, therefore, highlights significant concerns about fathers' ongoing abusive relationship with children's mothers (Heward-Belle, 2017; Morrison, 2015).

3.6.6 Post-separation contact, DVA and child welfare

While the research provides clear evidence of the negative impact of living with DVA for children, findings on the impact on children of post-separation contact, specifically on the amount of contact, are more mixed. For example, Stover et al.'s US (2003) study with 50 preschool children's post-separation contact with DVA fathers found that the fathers' history of severe domestic violence perpetration predicted increasing externalising (but not internalising) difficulties for children. Similarly, Hunter and Graham-Bermann's (2013) US study with 219 6–12-year-old children who had lived with DVA over the previous year found that children showed more externalising difficulties when they had less contact with their fathers. While this might be a surprising finding, other studies have concluded that the presence of father-child aggression and not the amount of contact predicts conduct problems in children. Jouriles et al. (2018), for example, focused on children (aged 6 to 9 years old) with conduct disorders, concluding that children with above average contact with abusive fathers were more likely to experience above average father to child aggression and consequently greater child conduct problems. Georgsson et al. (2011) similarly concluded from their research with 41 children and adolescents (ages 7 to 19 years) that children exposed to DVA demonstrate higher rates of difficulties (both internalising and externalising) than children not exposed.

Acknowledging the relatively small and mixed literature on the impact for children of post-separation contact in the context of a prior history of domestic violence and abuse, it is important to consider some related research. One such epidemiological study is that conducted by Jaffee et al. in 2003, involving a longitudinal research design examining the impact of anti-social father involvement on a sample of 1116 5-year-old twin pairs. This study concluded that contact was only considered to be in the child's interests when fathers were not anti-social; with outcomes for children of highly anti-social fathers only improving when fathers were absent. A more recent study by Pires and Martins (2021) focused on the effects of authoritarian and permissive parenting styles and negative shared-parenting

for children under three years of age while physical custody proceedings were ongoing in court in Portugal. Drawing on data from a sample of 207 Portuguese newly separated/divorced parents, the study concluded that a combination of post-divorced or separation parenting and negative, destructive shared-parenting can predict negative outcomes for children in the 2-3-year-old group, indicating the risk of negative outcomes in early developmental stages.

3.6.7 Shared-parenting, domestically violent fathers and child outcomes

The empirical evidence presented above confirms that DVA fathers are more likely than their non-DVA counterparts to struggle with poor and compromised parenting capacity, with these deficits correlating to poorer overall outcomes for children (Scott, Thompson-Walsh & Nsiri, 2018). The available evidence also underscores the importance of shared-parenting and the correlation between shared-parenting and child internalising and externalising difficulties (Teubert & Pinquart, 2010). However, it is also clear that the shared-parenting relationships of DVA fathers more often continue to be highly conflictual, with contact time providing opportunities for the continued abuse of women and children (Hardesty et al., 2016; Holt, 2015; Thompson-Walsh et al., 2018).

Holt's (2016) 'Quality Contact' paper encourages us to consider the key ingredients or factors central to the successful occurrence of 'quality contact' for all separating families, specifically when contact time is being considered. Reiterating the assertion that there is no solitary magic ingredient that makes contact work or not work, several clear messages nonetheless emerged from the literature reviewed for the 'Quality Contact' paper. The first clear message emerging from this review is that contact frequency is less importance to children's well-being than contact activity. Rather, positive outcomes for children are directly related to the quality of their relationships with their parents, whether or not their parents cohabit. Directly related to this, post-separation contact arrangements should focus specifically on the development and maintenance of positive parenting involvement rather than simply on the structural arrangements regarding time and place. The second message concerns the centrality of the relationships between all those involved in the contact debate, which are considered critical in shaping contact and determining its quality. The relationship between the two parents is important, particularly their adherence to a child welfare discourse. However, the literature reviewed argued that the acceptance of resident and non-resident parenting status and the ability of both parents to relinquish their partnering relationship whilst maintaining their parenting roles are essential cogs in the wheel of contact, influencing its capacity to grind smoothly or to simply grind to a halt. The third and final message emerging from the literature reviewed cautions that those same features deemed critical for quality contact may be compromised where there has been a prior history of DVA, with this history identified as a potential contraindication to healthy and meaningful relationships. Concurring, Stark (2009: 289) concludes that there is no substantive evidence to conclude that children benefit from

contact with a violent parent and go as far as to say that 'devastating consequences frequently follow for women and children where genuine abuse is minimised or discounted'.

3.6.8 Conclusion

Taken together, the emerging themes in this section highlight the complexity of children's contact with DVA fathers, which raises obvious but difficult questions about both risks associated with such contact, the evidence base drawn on to inform those decisions and how quality contact can be achieved in the context of a prior history of DVA. The following section interrogates the literature on the decision-making processes on contact time for very young children.

3.7 Ascertaining the discernible wishes of the child in decision-making on 'contact time'

3.7.1 Introduction

Recent decades have witnessed a heightened awareness and increasing acceptance worldwide ,legally, culturally, and socially, of the need to include the perspectives of children in family law decision-making processes affecting them ((Parkes A. , 2015a), which has been copper-fastened through provisions of international law, in particular, article 12 of the UN Convention on the Rights of the Child and other applicable provisions. This section begins by outlining the rationale for ascertaining the voice of the child considering children's rights and best interests, before highlighting some problematic assumptions that can result in children's voices not being heard. The section concludes by discussing the myriad of ways in which children's views can be ascertained and represented in custody and access cases.

3.7.2 Rationale for ascertaining the voice of the child: considering children's rights

Unlike decision-making processes which affect adults, where it is the norm for such adults to be directly involved, involving children and, in particular, very young children, in decisions concerning parental contact time apparently needs justification merely due to these children being of a young age. This is even though such decision-making processes are for and about the lives of children now and into the future. That alone should be reason enough for involving children in these decisions in ways which are appropriate for them. Yet, as Lowe acknowledges, '… children's views have been decided upon the views of adults' in such cases (2001, p. 137).

Article 12 of the United Nations Convention on the Rights of the Child 1989, often referred to as the 'lynchpin' of the UNCRC, is a 'visionary provision' (Santos Pais, 2000, p.94) with a very practical meaning. Not only does Article 12 contain a fundamental substantive right of children to be provided with meaningful opportunities to be heard in all matters affecting them (Article 12 (1)), but it also underpins

the implementation of all other UNCRC rights. Article 12(2) more specifically recognises the rights of children to be heard directly or indirectly in all judicial (and administrative) proceedings, which also includes alternative dispute mechanisms such as mediation and arbitration (UN Committee on the Rights of the Child, 2009, p. 9). In the context of family law proceedings specifically, the Committee has made clear that

> …all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes. Some jurisdictions, either as a matter of policy or legislation, prefer to state an age at which the child is regarded as capable of expressing her or his own views. The Convention, however, anticipates that this matter be determined on a case-by-case basis, since it refers to age and maturity, and for this reason requires an individual assessment of the capacity of the child. (UN Committee on the Rights of the Child, General Comment No. 12 (2009) The right of the child to be heard, at para.52).

The UN Committee on the Rights of the Child (UN Committee) has interpreted Article 12 to require that children be appropriately informed about not only the circumstances surrounding the decision to be made but also their options concerning direct and indirect participation. This is so that they are well positioned to decide whether they want to contribute to the decision-making process in the first instance and, if so, in what way (UN Committee, 2009).

According to the General Comment on Article 12, as articulated by the UN Committee, this provision requires that all children capable of forming views be provided with a safe and child-friendly space for expressing their views in relation to matters affecting them in the first instance. The reference to 'capable of forming views' means that this provision applies to very young children, and indeed, the UN Committee, as far back as 2004, noted that:

> Contrary to popular belief, children could express their wishes and views from birth onwards through the progressively complex use of gestures and language. Investments were most cost-effective when children were young; thus, societies should strengthen their efforts to match investments to opportunities. UN Committee on the Rights of the Child. Day Of General Discussion (2004)- Implementing child rights in early childhood, UN. Doc CRC/C/SR.979).

In particular, the Committee has reaffirmed the applicability of Article 12 to younger children and, in this respect, pointed out to States that:

> Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in

> numerous ways, long before they are able to communicate through the conventions of spoken or written language. (UN Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood)

Acknowledging that all children are different, the weight attributed to such views should then be assessed on a case-by-case basis in accordance with the child's age and maturity. The Committee's guidance for States is based on understandings of child development which are undergoing rapid change in early childhood. Article 5 UNCRC supports this understanding as it refers to the evolving capacities of the child as an enabling principle. Indeed, the role of adults in supporting very young children is critical to a child due to '…rapid transformations in children's physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling' (UN Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, at para.17). Critically, the Committee makes clear that

> Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression and which have traditionally been justified by pointing to children's relative immaturity and their need for socialization (para.17).

Such authoritative Committee guidance has been provided to countries so that a consistent and meaningful approach could be taken towards incorporating the views of children in decision-making processes affecting them. Thus, Article 12 requires what is essentially an individualised approach towards children, whereby each child is considered according to their own unique set of circumstances ((Parkes A. , 2013). Unfortunately, in practical terms, in many jurisdictions, an approach has been taken towards children which is not individualised, and children have been conveniently treated as a homogenous group for the purposes of law and practice (Parkes A. , 2013). Arguably this is not only attributable to a pre-existing culture of paternalism towards children in addition to the literature which would group children's development according to ages and stages, but it has avoided the need to put in place resource-intensive processes which would be required to accommodate the needs of children in such cases. Indeed, as Buss acknowledges, 'The heavy focus in children's rights analysis on children's capacities reflects the influence of Piaget and his cognitive developmental followers, who have charted a relatively fixed pattern of development rooted in human biology' (Buss, 2009, p. 3). Yet, no less than adults, all children are different, with different life experiences and a unique trajectory of development which is in part shaped by the environment in which they grow. In accordance with Article 12, the child's views must be seriously considered, but they are not determinative or conclusive. Furthermore, Article 9(2) UNCRC provides that the child must be provided with the opportunity to contribute to any

proceedings that occur due to the child being separated from one or both parents, and any decisions made around this will affect the child in some way and are such that the child may make his or her views known. Thus, these provisions are of particular importance in the context of family law cases.

The UN Committee has clearly articulated five distinct steps which should be taken to ensure the meaningful participation of children in all decision-making processes affecting them: (1) the right to be kept informed at all stages of the process in a child-friendly manner; (2) the circumstances surrounding participation should be such that the child is facilitated and encouraged to express their views (contained within this is the need for the decision maker being adequately equipped to hear the views of the child) (Parkes A. , 2015a); (3) once a child is capable of forming views, they should be given the opportunity to express those views – determinations as to capacity require a case-by-case assessment; (4) the child should be informed after the decision-making process how their views were considered and to what extent; and finally (5) in the event that the child is denied the opportunity to express their views, there should be an accessible complaints mechanism made available to them for the purposes of seeking redress. In the context of political and legal reform, the Committee has advised that '[t] he child's right to be heard imposes the obligation on states parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress' (UN Committee, 2009, para. 48).

3.7.3 Rationale for ascertaining the voice of the child: considering 'best interests'

Apart from children having a right under international law to be heard in decision-making processes affecting them, it is also well accepted that there are distinct benefits to facilitating this both for the child concerned and decision-making processes in society more generally. The UN Committee on the Rights of the Child has acknowledged that '...decisions made about or on behalf of a child would be better informed and more likely to produce positive outcomes if the child him or herself' is involved in the process (UN Committee, 1997, para.334). Sutherland (2014) reinforces this view by suggesting that involving children in the decision-making process leads to better outcomes and supports abuse prevention. Van Bijleveld, Dedding, and Bunders-Aelen (2015) assert that this participation is associated with feelings of mastery and control. Many experts highlight the potentially enhanced vulnerability of children where distress and trauma of separation may render their parents unsure what to tell them, and children simultaneously avoiding any discussion for fear of causing further upset, and anxious to show loyalty to both parents (Hunter, 2007). Furthermore, research has found that when children's views are valued and their independence is maintained, their capacity to cope with adversity is enhanced (Bagshaw, 2007), and their self-esteem is bolstered (Van Bijleveld et al., 2015); leading to

better informed decisions that enhance children's protection and the quality of their lives (Stanley, 2006). McIntosh et al.'s (2010) Australian research found that significant and enduring reductions in the level of conflict were reported by parents and children directly correlating to the involvement of children in the decisions that were made about them. Excluding decisions such as those concerning contact on family breakdown, has resulted in children who are more likely '….to suffer from such symptoms such as anxiety, depression and conduct disorder, to exhibit stress and to blame themselves for their parents separation' (Taylor, 2006, p. 164).

3.7.4 Concerning Evidence and Problematic Assumptions

The process and outcome of that legal regulation through family law processes are of particular significance when we consider the empirical evidence which suggests that while domestic abuse is highly prevalent in the general population, it is even higher in families with children, and is disproportionately high in private law child proceedings in the Family Courts (Barnett 2020, p. 16). To that end, Hunter, Burton & Trinder (2020, p. 13) assert that in 2019, between 49-62% of UK family law cases reflect allegations or findings of domestic abuse. Despite this, the issue of domestic abuse is practically ignored in the Family Law courts of many jurisdictions, including Ireland, with extensive literature critiquing the processes and practices in the Family Courts regarding child contact cases and outcomes for women and children (see for example Hunter et al. 2018 who comment on practice in Australia, New Zealand, Sweden, Spain, the USA, Canada, England and Wales, Scotland, and Ireland). There is also further Irish and international research evidence of the continued abuse of women and children post-separation/divorce through the medium of contact (Barnett, 2020; Crosse & Millar, 2017; Holt S. , 2016b; Laing, 2017; Treloar, 2016).

Specifically, several assumptions about what is generally believed to be good or bad for children have emerged as influential in private family law proceedings. The first and the most influential of these assumptions underpins a potent pro-contact culture (Hunter, Burton & Trinder, 2020) which considers contact to be almost always in the child's best interest. Critiquing this pro-contact culture, Hunter and colleagues (2020) note that positive outcomes for children are, therefore, in part dependent on contact with their non-resident parent (usually the father); and with children needing two parents to co-operate with each other and maintain their parental relationships and responsibilities. Experts caution, however, that this assumption, if unquestioned, can result in contact decisions that may not adequately consider the risks posed in cases of domestic violence and abuse (DVA) (Morrison, 2015) (as outlined in the previous section), arguably prioritising fathers' rights over children's safety with potential long-term implications for children's safety and welfare. For example, Thompson-Walsh et al., (2021, p.2) conclude that the evidence on fathers' impact on children shows associations between hostility in

men's parenting and child maladjustment, including deficits in child self-esteem and emotion regulation (see meta-analysis by Khaleque, 2017).

Specifically focusing on DVA and notwithstanding the evidence presented in the previous section on caveats and concerns, the second assumption considers that the history of DVA is not relevant once the adults have separated. Indeed, an almost universal judicial focus on looking towards the future rather than the past renders prior histories irrelevant, even where those histories involved abuse, severing the relationship between DVA and its impact on children (Hester, 2011; Hunter & Barnett, 2013). Consequently, and as Hunter, Barnett and Trinder (2020) argue, domestic abuse may not be viewed as a potential child welfare issue and the parenting capacity of abusive men may be gauged without any consideration of their abusive behaviour. The 'disappearance' of the domestic violence history is but one half of a 'double disappearing act' that Radford and Hester (2015) suggest occurs when contact decisions are made. The second half of that disappearance act concerns the absence of children's voices or experiences in the decision-making process. This muffling (Kastendieck, 2021) or muting (Hunter, Burton & Trinder, 2020) of children's voices is grounded in the third powerful assumption: that involvement of children in the decision-making process or 'hearing their voice' in this context is not in their best interest. Claims of parental alienation also run the risk of silencing children voices with the process – the concern with parental alienation is discussed in a later section.

Although it is claimed that children and their needs are the central consideration in the child contact debate, how their individual needs and wishes are ascertained and represented in the decision-making processes is less clear. While this third assumption is grounded in an implicit belief that this involvement may further harm and distress those children, when children are given the opportunity to participate in meaningful and child-friendly ways, their competence to participate in the discussion about their experiences – their past and future – is evident (Callaghan et al., 2018; Holt, 2018). The research highlights that children and young people believe strongly in their right to be heard but do not want the power to decide post-separation/divorce arrangements, particularly when that involves making choices between their parents: the critical difference between having a voice and having a choice (Holt, 2018). Indeed, Križ and Skivenes (2017, p. 19) argue that efforts at participation that do not engage with children can be criticised as 'window dressing'.

Arguably, assumptions such as those outlined above can prove problematic as they limit the practice of deciding what is best for each individual child, taking into consideration their unique circumstances, by applying knowledge (albeit informed by research) about an abstract or universal child's needs and interests to each and every individual child, without attending to the needs and wishes of the individual child in question (Herring, 2014; Piper, 2000). Strict adherence to a general picture or 'single voice of

childhood' (Roche, 1999, p. 33) may prevent a child ever being heard, particularly if the child's views diverge from universally held assumptions. As already mentioned, the UN Committee on the Rights of the Child has made explicit that each child's capacity to form views should be assessed on a case-by-case basis and the need for an individualised approach to be taken in cases affecting them. Herring (2014, p. 20) argues that while it may be helpful to appreciate in general population terms what is in a child's best interest when considering a child picked 'at random' from the population, about whom we had no specific knowledge, the population of children who come before the court represent however a 'highly unusual' case. This, therefore, renders the knowledge we have about 'usual' children potentially of little significance and possibly of some risk. Kastendieck (2021) further underscores the importance of listening to children individually so that their diverse and variable levels of maturity and capacity and their unique needs can be met.

Indeed, while Article 12 requires that where the decision being made will impact the life of the child concerned, that the child should be able to express their views, it is only after the child has expressed their views that their age and maturity are relevant. Judicial decisions that are made before the child has been given an opportunity to speak negate that opportunity and that right. Furthermore, the need to consider the dual criteria of age and maturity are reflective of the reality that children are not a homogenous group. Indeed, Article 12 does not specify an age at which children are deemed capable of forming views on a matter; nor has this provision been interpreted as setting an age limit. Yet, legal systems worldwide have traditionally set age limits beyond which children are deemed more capable of having an input into family law proceedings (Parkes, 2013a). The latter has, in effect, resulted in serving as a common barrier to younger children, in particular having input into such cases with children under the suggested age limit, being denied any opportunity to participate in such cases. Each child needs to be considered on a case-by-case basis, an approach which has been advocated by the UN Committee. As acknowledged by the UN Committee on the Rights of the Child:

> Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child's
>
> capacities to form a view. For this reason, the views of the child have to be assessed on a case-by-case examination[9].

However, in the context of decision-making in the Family Law Courts regarding contact James et al. (2004) suggest that the presumption that contact is in the child's best interests and the construction of

[9] UN Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, UN Doc. CRC/C/GC/12 at para.29, see https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en (date last accessed 17/02/2022).

the legal concept of the child's right to contact, negates their equivalent right not to have contact. A holistic interpretation of the UNCRC requires that children are facilitated in having meaningful input into decisions concerning them, including in family law cases. Such an approach helps to uncover those cases where contact may not be in their best interests. Where an approach contrary to Article 12 is adopted, and a child's competence is prematurely assessed at the outset, a child's competence may be judged on the views they express. Thus, if their views concur with the dominant assumptions about best interests, they are deemed competent, and if they do not, they are deemed immature, incompetent or unnecessarily influenced by the resident parent (usually the mother) (Cossar et al., 2014). Based on their findings from recent empirical research with legal professionals, combined with an analysis of reported case law and relevant literature, Tisdall et al. (2021, p. 17) caution against the construct of the 'influenced child' who is vulnerable to both adult pressure and adult manipulation which they assert ultimately undermines their participation and compromises their rights. The issue of Parental Alienation warrants a brief discussion here.

3.7.5 Defining the indefinable – 'Parental Alienation'

In any discussion on child contact and access, the concept of parental alienation (PA) – its use and misuse must be considered. Parental Alienation, as a concept, was first recognised by Wallerstein and Kelly in 1976. However, the term parental alienation syndrome was coined by Dr Richard Gardner, describing it as 'a disturbance in which children are not merely systematically and consciously 'brainwashed' but are also subconsciously and unconsciously 'programmed' by one parent against the other'[10]. Gardner, referred to parental alienation as a disorder occurring in child custody cases and almost exclusively in which one parent (usually the mother) programmes the child to turn against the other parent (usually the father) (Woods, 1994). The term parental alienation syndrome was therefore used to describe the brainwashing of children against their fathers, where their mothers were also described in varying degrees as 'fanatic' (Gardner, 1991).

In more recent times, parental alienation has been used to describe situations whereby a parent is rejected by a child 'without legitimate justification' (Bernet et al., 2020, p. 1225). While Doughty et al. (2018) state that 'there is no decisive definition of parental alienation within the research literature', others refer to it as a 'go-to litigation tactic' used by domestic abusers (Proudman, 2021). It has also been noted that parental alienation is a concept that is increasingly cited in the Irish Family Law courts

[10] http://www.fact.on.ca/Info/pas/gardnr01.htm

(Coleman, 2022), and caution should be exercised around what has become a 'loaded term' (Doughty et al., 2018).

Concerns have been expressed regarding the danger of this term being sometimes used erroneously and indiscriminately without any foundation and merely as a legal strategy. The increasingly common use of this term in court proceedings have led some to question the scientific basis for the use of the term. For example, Johnston et al. (2020, p.270) draw attention to the 'controversy about its scientific integrity and its use as a legal strategy in response to an increasing range of issues in family court'. Indeed, the scientific basis for using this term has been left open to question due to the fact that to date, the concept parental alienation has not yet been officially included in the Diagnostic and Statistical Manual of Mental Health Disorders-Fifth Edition (DSM-V). The latter is the standard classification of mental disorders used by mental health professionals worldwide. Interestingly, the term was removed from International Classification of Diseases (ICD- 11) of the World Health Organisation in September 2020 '…because it is not a health care term. The term is rather used in legal contexts, generally in the context of custody disputes in divorce or other partnership dissolution' (https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation), which again has led critics to question its scientific validity. That said, some have argued that the despite the lack of an explicit reference to this term in DSM – V, for example, existing terms used within it cover what amounts in effect to parental alienation. For example, the latest version of the DSM -V recognises a 'parent-child relational problem' which refers to unwarranted feelings of estrangement or negative attributions of the other's intentions.

The danger with a broad, all-encompassing use of the parental alienation concept is that it can overly-problematise some of the short-term difficulties that children can experience in adjusting to family changes. Moreover, it overlooks some of the more sinister and more nuanced complexities that can exist within separated families. Johnston & Sullivan (2020) refer to several socio-cultural shifts that have contributed to an increased focus on parental alienation. For example, the introduction of a 'no fault' system of divorce, where the grounds for divorce are not-fault based. This introduced non-adversarial dispute resolution processes on the premise that gender equity would be promoted. It was hoped that separating parents would be better able to settle their own affairs without having to engage in judicial processes. However, Johnston & Sullivan (2020) note that this assertion was challenged by advocacy movements supporting victims of domestic violence. They argued that women and children sometimes fared worse from these alternative dispute resolution processes. It is also as a result of a greater focus on children's rights to enjoy a relationship with both parents as well as an increase in advocacy and joint physical custody rights for fathers. However, Sheehy & Boyd (2020) warn that 'the movement

toward formal equality/ gender neutrality has obscured underlying gender-based power relations, including Intimate Partner Violence (IPV)' (p. 88). The debate here questions whether Judges are more likely to focus on alienating behaviours than IPV when determining custody and access (ibid). They argue that there is considerable pressure placed on mothers to demonstrate that they can work with fathers even if the presence of IPV exists.

Arguably, in the context of family breakdown, the focus on the adults concerned can render the child voiceless in a debate which is, after all, about them. Indeed Barnett (2020) notes that one of the most concerning aspects of parental alienation is 'its refusal to accept children's views as their own' (p. 27) and that it can play a role in silencing the voices of vulnerable women and children. This concern seems to be a valid one in the wider debate on children's participation rights. Tisdall et al. (2021, p.16), in a study that explored barriers to child participation rights, noted that 'resident parents were most frequently cast as the influencing parents and non-resident parents as those who made allegations of parental influence or manipulation'. Concern too has been raised in relation to the attention that the judiciary gives to parental alienation over Intimate Partner Violence (IPV). For example, a Canadian study undertaken by Sheehy & Boyd (2020), noted that 'considerable onus is placed on mothers to show they can cooperate with fathers even if intimate partner violence has been established: mothers are called alienators if they do not coach their children to view their fathers in a positive light, or force contact' (p.88). Neilson's study (2018) explored how the concept of parental alienation is applied by Canadian courts. She concludes that 'reliance on single controversial theories [such as that of parental alienation] can be replaced by detailed scrutiny of child best interest factors and by reliance on scientific child-development principles that have broad professional and academic acceptance' (p. 47). Specifically, within the context of England and Wales, concerns have been raised about the use of court-appointed experts to attest to the existence or otherwise of parental alienation, many of whom are unregulated (Summers & Campbell, 2022). Concern too has also been raised about the potential financial gain for experts in making parental alienation diagnoses and in recommending further therapy. In any case, it is questionable the extent to which a formal diagnosis of parental alienation can be made when it is not yet formally recognised within DSM-V or ICD-11 as outlined above.

Of interest, Doughty et al. (2018) undertook a review of research and case law on parental alienation in the UK. They concluded that while there was a diverse range of literature on the subject area, there was a paucity of robust empirical studies. Indeed, their review also commented that the literature on parental alienation generally focuses on definitions and debates about the existence of the concept and less so on about 'how the concept is understood, assessed, and worked with from a practice perspective' (2018, p. 16). There may be myriad reasons why a child chooses not to have contact with

their non-resident parent. Indeed, the possibility of a child losing contact with a parent remains one that troubles practitioners of both the short-term and long-term consequences this might have (Doughty et al., 2018). However, there may be layers of complexity in trying to understand the short-term difficulties experienced by a child in adapting to family change and their estrangement from a parent. According to de la Cruz et al. (2022, p. 27), children can display 'justified feelings of distancing'. However, Doughty et al. (2018, p.41) note that 'manipulation of a child's views, appears to require considerable time and expertise that may not be readily available'. Arguably, the adoption of an individualised approach towards children in family law decision-making processes, formal and informal, will support a more child-centred process as opposed to one driven by the feelings and perspectives of the adults involved. Parental alienation comes down to an assessment or determination made by an adult concerning a child's feelings and behaviour toward another parent. Yet, the reasons for a child behaving in, or feeling, a particular way post separation/ divorce toward the non-resident parent can be varied and may have nothing to do with the parent with whom they are living. Attributing this situation to a concept that lacks empirical evidence and independent evaluation or indeed, a scientific basis is problematic and not necessarily an approach that is in the child's best interest. An alternative and more appropriate way of addressing this issue is through an independent and professional consideration of the child's perspectives through a means appropriate for the child concerned.

In Ireland and of relevance to this report, parental alienation has also gained some traction within the legal field and in contested cases of parental separation and divorce. The Department of Justice is currently awaiting the report of a commissioned study, 'Approaches to the Concept of Parental Alienation in Other Jurisdictions', to assess the framing – legislative and otherwise - of the concept of parental alienation internationally and the various approaches being taken to deal with this issue in other jurisdictions[11].

3.7.6 Considering Welfare and Rights

The academic writing and thinking on children's rights in the context of separation/divorce, custody, and access fall on either side of a dichotomous debate concerning welfare and rights. The lack of decision-making or participatory rights afforded to children is justified on competency and welfare grounds, underpinned by an adherence to children's right to remain as children, protected from involvement in adult affairs, with such involvement making 'unreasonable demands on their maturity' (Pryor & Rodgers, 2001, p. 112). At the other end of the continuum is the children's rights or liberalist position which, maintains that affording children rights also affords them protection. Specifically,

[11] https://www.justice.ie/en/JELR/RFT-Approaches-to-the-concept-of-parental-alienation-in-other-jurisdictions.pdf/Files/RFT-Approaches-to-the-concept-of-parental-alienation-in-other-jurisdictions.pdf

Birnbaum et al. (2011, p. 415) argue that to 'build an ethic for children's participation', adults need to 'listen respectfully and engage in a dialogue' with children that respects their capacity rather than their perceived limitations. They argue instead for a re-balancing of this debate, a balance that Alderson and Morrow posit is needed in order to: 'enable children to be heard without exploiting them, protect children without silencing and excluding them and pursue rigorous inquiry without distressing them' (2004, p. 12). While beliefs about children's competency seem slow to shift, those who do make meaningful efforts to talk to children discover the levels of maturity and insight their views reflect (Overlien & Holt, 2021). Far from compromising children's welfare, participation with the support and guidance of trusted adults challenges and progressively enhances their skills base and competence, resulting in what Fitzgerald, Graham, Smith, & Taylor, (2010, p. 294) consider to be 'important and far-reaching benefits for children'. Furthermore, involving children in decisions that affect them results in a more informed decision-making process and contributes to a more democratic society in general (Parkes, 2015a).

Running alongside the age/competency and welfare rights debates is a profound ambiguity and concern that participation potentially confers rights on children that challenge firmly established familial power balances or imbalances and traditional beliefs about children and childhood. However, diverging from this moral panic and apprehension, the research evidence suggests that including children in decision-making fora that affect them is about respecting children and not handing over control, or as Sutherland (2014): 160) suggests, the difference between 'having a say' and children 'having their way'. These findings echo those of other similar studies where children want to have a 'voice but not necessarily a choice' (Ewing et al., 2015, p. 47; Holt, 2018). Building on these findings, the following section provides a clear rationale for children's inclusion in family law matters affecting them and some of the methods that can usefully be employed to secure that involvement.

3.7.7 Methods for ascertaining and representing the voice of the child

Divorce and separation proceedings were designed by adults for adults. Thus unsurprisingly, the prospect of involving children's voices did not originally feature in the design of the Irish courtroom nor the conduct of the proceedings. Over time, this has resulted in what is effectively the shoehorning of children's views into what is essentially an adversarial and adult-dominated process. Birnbaum and Saini's (2012a, p. 261) review of qualitative studies concluded that the gatekeeping roles performed by adults and professionals involved in the decision-making process post-separation effectively render children silent.

There are a variety of ways in which children's views can be ascertained and represented in custody and access cases, including being party to the proceedings; being separately represented; participating via a court-ordered 'welfare' report; where they are interviewed by the judge or submit a letter to the judge for consideration (Parkes A. , 2013, pp. 89-121); where children give direct evidence in court of via video link (Birnbaum, 2017; Hunter, 2007) or via Voice of the Child Reports (Hayes & Birnbaum, 2020). While the judge can see the child in his or her rooms in private, it is not something that occurs with any degree of regularity, nor is it encouraged. Indeed, while Hunter (2007) asserted that in the absence of very good reasons, a judge should not refuse a child's expressed wish to speak with him/her, Tisdall et al.'s (2004) earlier UK research found only 17% of judges they interviewed were open to speaking directly with a child, should the child request this. Aside from the usual welfare concerns regarding the placing of undue burden on the child to choose between their parents, judges participating in Hunter's (2007) UK research expressed concern that they were not adequately skilled to speak directly to children and, as such, lacked the confidence to do so.

However, incorporating the views of very young children requires very specific expertise which takes account of the child's developmental age and stage as well as the child's evolving capacities. As highlighted above, simply because a very young child is cannot to contribute through the conventional medium of speech does not justify their potential input being dismissed or ignored because it is not possible/ too difficult to involve them in the process. Yet as Cashmore and Parkinson (2009) point out in the context of family law proceedings specifically, children were traditionally excluded from such proceedings for their own protection or their perceived limited capacity to make any meaningful contribution to such proceedings (Cashmore & Parkinson, 2009). Although a child may be unable to contribute to the process in a manner that is convenient, this does not absolve states parties of their responsibilities to facilitate children's involvement in the decision-making process. The UN Convention on the Rights of the Child is a holistic document containing several provisions of critical importance here. In the context of listening to children, Article 13, which provides for freedom of expression, sets out a non-exhaustive list of the alternative means of expression which are of critical importance for very young children or children with disabilities:

> …this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, *in writing or in print, in the form of art, or through any other media of the child's choice*. [own emphasis added]

3.7.8 The role of third-party professionals

Where efforts have been made to include the views of very young children, unsurprisingly, there has been a tendency to rely heavily on the input and expertise of third-party professionals to elicit these views and present them for consideration in the family law decision-making process. Concerns about children being vulnerable to adult manipulation or their views being tampered with for the purposes of court proceedings have led to a general conversation concerning contact, which is arguably shaped by parents, counsellors and legal professionals (Fitzgerald, 2002, p. 188). For example, drawing on the wider international research, the indirect method of including the child's views in welfare reports has been cited. The latter reports can be written by either qualified professionals (usually psychologists or social workers) from external agencies, independent assessors, or court-based officers, involving a number of interviews with the children and their parents (usually separately and together) in order to determine a recommendation for the court as to what is perceived to be in the child's best interests (Birnbaum & Saini, 2015). However, the professional completing this assessment is not charged with ascertaining and representing the views of the child; instead, as Van Bijleveld et al. (2015) concluded, investigating and reporting on the views of the child for the purpose of assessment. Indeed, Mantle et al. (2007) question how much the final welfare report accurately reflects the child's actual wishes and feelings; or the welfare officer's interpretation of those wishes and feelings. Birnbaum et al. (2011) highlighted the challenges children experienced through a lack of preparation for the process, minimal feedback and a lack of consultation on significant issues such as where they would go to school.

In this context, Van Bijleveld et al. (2015) comment that while it is clear that any child's views should be ascertained in line with age and maturity, it is considerably less clear who should assess the maturity of the child and, indeed, what criteria should be employed for that assessment. A further important finding, however, is that it is the manner in which children are engaged with and the clarity of that engagement that matters, not who engages with them (Judge, Welfare Officer, Solicitor etc.). One hundred and three young adults (aged 18-25 years) who participated in Fortin, Ritchie, and Buchanan's (2006) research reported on the ways their parents organised contact following separation and divorce. Of interest to the current literature review is that the participating young adults stressed their need for privacy and the importance of the setting to facilitate this process, with many feeling intimidated by the formal court setting. Careful attention needs to be given to the manner in which children are engaged, with some children preferring to communicate via the written word or through art or play. O'Reilly and Dolan (2015) highlighted the value of using play skills as it provides a better insight into the child's world and a better representation of the child's voice in any assessment process. Indeed, the latter is in accordance with the suggestion from the UN Committee outlined above that in order for all children to be able to express themselves, other forms of expression beyond the conventional form of

speech should be used to facilitate this in line with Article 13 UNCRC (UN Committee, 2009). Related to this is the need for highly skilled assessors and communicators, with Schofield (1998) arguing that engaging with children is not just a simple matter of obtaining their views; it is nevertheless imperative for the child to feel that they have been listened to. In agreement, Tisdall et al. (2021, p. 18) report that children repeatedly talk about the 'Super Listener' as someone who has the skills to engage a diverse range of children, build trust and provide information in a way that children can understand it. Bagshaw (2007, p. 454) differentiates between child-focused interventions, which 'follow processes and reach conclusions that are in each child's interests', and child-inclusive practice, that finds 'the child's voice in the presence of the child', as opposed to in its absence. The role of the child consultant in this process will be discussed in the final section on 'Interventions and Supports'.

3.7.9 Conclusion

When children are asked in an appropriate and child-centred manner what they want or what helps them process and understand what is going on, it is not surprising to find that they are lucid in their responses (Holt, 2018). Indeed, from a very young age, children are capable of understanding and participating, with being listened to one of their primary needs (Bosisio, 2012). In general, for children of all ages, being listened to involves responding to their need for information and consultation; their desire to know what is happening and why through open and honest communication (Trinder et al., 2002). Research with children as young as five years of age also highlights that children and young people believe strongly in their right to be heard but do not want the power to decide post-separation/divorce arrangements (Bosisio, 2012; Holt, 2018), particularly when that involves making choices between their parents. When asked, children as young as five years of age also indicate great diversity regarding their wish to participate in family matters, demonstrating their capacity to hold views and articulately express them, but also a wish not to participate and preferring no responsibility for decision-making (Holt, 2018). Kastendieck (2021, pp. 398-399) concluded that 'the dance between children's need to be genuinely involved without being torn apart by their parents is a delicate one'. The UN Committee on the Rights of the Child has stated that the wording 'capable of forming views' should not be used as a limitation; rather, it should be seen as 'an obligation to assess the capacity of the child to form an autonomous opinion to the greatest extent possible' (UN Committee on the Rights of the Child, UN Doc. CRC/GC.12/2009, para.21). Tisdall et al. (2021) assert that the child should be assumed to have the capacity to hold a view rather than having to prove their capacity to do so (UN Committee, 2009 at paras.51-52). Similarly, Holt (2018) earlier argued that it should not be a case of proving the child's ability to participate but rather placing responsibility on adults to be competent enough to elicit those views in the context of a trusting relationship with the child. In agreement, Overlien and Holt (2018) posit that when children are judged incompetent to participate, we should,

perhaps, firstly question whether the methods used to elicit their views were appropriate and, secondly, whether those methods were 'competently' administered.

3.8 Supports and Interventions: Best Practice

3.8.1 Introduction

There are several supports and interventions that could be adopted in the Irish context to support the shared-parenting of very young children. The section below outlines a selection of these, many of which are well-established internationally and some of which could be introduced in the short to medium term. In the short to medium term, contact centres, which were previously successfully piloted in Ireland (Murphy & Holt, 2013) but discontinued due to funding issues, should be reintroduced. In the long term, a new role of a specialist child consultant is recommended to introduce the views of the child into informal parenting discussions, more formal mediation processes as well as family law proceedings. Furthermore, given that mediation is a well utilised option in the context of family separation and divorce, rather than having the current model (entitled *separating parents*), which seeks to focus the minds of parents on their young children's needs post-separation, consideration be given to the establishment of an authentic child-inclusive model which, through incorporating the views of the child (as obtained by a fully trained professional), is more children's rights compliant than the current framework under the Mediation Act 2017 allows. Each of these supports will be outlined below.

3.8.2 Child Contact Centres: Contact with conflict

In terms of providing a contextual background for any discussion on the merits or otherwise of child contact centres, it is important to consider the complexities that exist for families when it comes to contact. For many families, those in post-separation/divorce situations or for those families not living under the one roof, agreeing on the frequency and parameters of contact for their child and their non-resident parent is one that requires 'parental capacity for empathy, insight and compromise' (Holt, 2016a, p. 98). For others, their acrimony is so deeply embedded that they cannot reach a contact agreement, and in these situations, contact is often imposed by the courts in the form of a court order. This means that the times, locations, and frequency of contact become part of a legally binding agreement. What cannot, of course, be legislated for is the quality of that contact (Holt, 2016a) for the child. In cases where a court is asked to determine contact arrangements, current Irish law concerning guardianship, custody and access facilitates the imposition of compulsory arrangements for contact for very young children without their direct input (outside of a court report) and without any systematic review process determining how the process is working in practice for the child. While, on the one hand, such court orders for contact create enforceable rights for parents, they can sometimes operate

in a manner that violates a child's rights and is not in the child's best interests. Does the question then arise regarding whose interests these contact arrangements serve? The parents or the Childs? Article 42 A clearly states that all guardianship, custody and access decisions should be made based on a child's best interests.

3.8.3 Contact with flexibility and listening to children

The starting point in this discussion is that the right to contact is a right of a child - not a parent (as acknowledged under the Irish Law Reform Commission report but it is also clearly stated under Art 9 CRC) and furthermore that it is the right of a child to have input into these decisions about contact time (as set out under Article 42 A, and Articles 9 and 12 of the CRC). Application of the principle that contact is in the best interest of a child and is a 'right' of both parents can be problematic, as it undermines the reality that contact needs to be unique to each family (Holt, 2016a). It also runs the risk of prioritising one right (to contact) over another right (best interests).

The literature also underscores this position arguing that children should have direct input into those decisions and that it is not good enough to merely represent their views through an adult (in most cases, a parent) (Caffrey, 2013). Indeed, it has been argued that 'there is particular impetus to hear the 'voice of the child' [regarding child contact] since a child refusing to meet a parent may be distressed by contact and total ongoing disregard for his/her distress may be damaging to the child' (ibid, p. 2).

There is also debate within the literature about how and in what ways children's voices should be heard. Caffrey's (2013) study also found that those professionals who made referrals to the contact centres (Judges, social workers, and solicitors) all tended to have different perspectives on the ways in which children could express their views differently and noted the 'contrasting discourses concerning children's capacity' (p. 24). Interestingly, she identified the social work profession as having 'a liberal 'social actor' discourse of children's capacity', where, regardless of age, children (and babies) were seen to have the capacity to have their wishes and feelings about contact taken into consideration. Caffrey (2013) further observed instead, 'the child's age or development was positioned as a factor which may determine the *way* in which the child would communicate' (ibid). Indeed, this study indicated a clear divergence of views regarding the role that contact centres play, with some legal professionals believing that the centres had a role in persuading children to comply with mandated contact (ibid).

When children and their parents are faced with uncertainty, change and unreliability, there is a need for contact to be planned, structured and well-organised, especially from the outset. When contact arrangements become unpredictable and parents 'move the goalposts', this can be experienced as disruptive and very unsettling for the children involved. While contact agreements or plans (informally or formally established) are essential for initiating contact after separation/divorce in establishing

boundaries and navigating unchartered waters, they should not be regarded as finite. This is particularly important for very young children who are undergoing rapid developmental change. Written agreements are merely guidelines for activating and establishing contact from the outset. A degree of flexibility acknowledges that the contact may change over time in accordance with the changing needs of those involved. Contact for children is not a static and unchanging event in their lives; far from it being flawless, it has challenges that must be met at certain junctures in their lives. There must be creative, supportive, cost-effective, and efficient State services in place to review contact time for the child and that address the changing needs of families in a timely and non-adversarial manner. One way of allowing children's voices to be heard and to have their wishes made more visible is through the establishment of contact centres.

3.8.4 Contact centres – why?

Contact centres have been described as 'child centred environments that offer safe, friendly, and neutral places where separated families can see their children so that relationships can be (re)started and for any contact to be safe and in the child's best interest' (Cafcass, 2022). The definition of contact centres in the Irish context has been similarly described as 'a safe, friendly and neutral place where children can spend time with the parent/s they do not live with. It is a child centred environment which allows the child to form or develop a relationship with the parent at their own pace and in their own way, usually through play and child centred activities' (https://onefamily.ie/how-we-support-families/child-contact-centres/). Historically, child contact centres were established to provide safe spaces for child-to-parent contact in cases of child protection (Dunn et al., 2004; Murphy & Holt, 2013).

Murphy and Holt (2013) notes the absence of services available to the Irish courts to support contact between parents and children, particularly where there is a history of domestic violence and where contact needs to be supervised. Similarly, Caffrey (2013) argues that contact centres have a very important role to play within the family justice system to ensure that the 'voice of the child' is heard. Referring to the UK context, Caffrey (2013) points out that the establishment of child contact centres emerged as a response to an identified need, particularly in private law cases, for safe and financially viable places for contact.

In Ireland, while there are a limited number of locations used for this purpose, there is a notable lack of such facilities. However, a pilot Child Contact Centre service was established in two locations in Dublin in 2010 by Barnardos and One Family. This emerged from research undertaken by One Family where an identified need for Child Contact Centres to support children in care and separating families was recognised. It began operating in 2011, and among its key objectives was to provide a safe place for children to have contact with significant family members in their lives (Murphy & Holt, 2013). The centre provided different levels of support for families, including *supervised contact,* where it was

deemed that there is a potential risk to the child and so this contact is supervised and closely observed; *supported contact,* where parents and children can meet in a space without being closely monitored; and *handovers* where the centre acts as a safe place to drop and collect children but where parents don't have to meet one another (ibid). The centre also provided a variety of specialist family support services, including counselling and play and art therapy. Unfortunately, this child contact centre is no longer running and ceased operating in 2013. A comprehensive evaluation of the service by Murphy and Holt (2013) concluded with several important recommendations for Government were made including the following (ibid, p. 84-85):

1. An information, advice and referral service regarding children and parenting issues should be attached to the Family Law Courts.
2. An assessment service for families whose cases come before the Family Law Courts should be made available.
3. A service is required which supports children in articulating their wishes and which ensures that their voices and best interests are central to all contact decisions.
4. Relevant contact services offering supervised, supported and handover contact should be made available.
5. A range of family supports should be accessible to parents not living together and their children including counselling, parent mentoring and child therapy.
6. An agreed policy is required concerning how best to address issues in relation to child contact in situations of domestic violence.

In 2017, Kiely et al. (2019) undertook research exploring a child-contact centre in the south of Ireland (Bessborough Centre) that operates as a supervised child contact centre and is mainly used by Child Protection Services. The Bessborough Centre is a not-for-profit organisation (a registered charity) that provides child and family services aimed at supporting and promoting positive childhood outcomes, developing and understanding parenting capacity, building overall family resilience, and contributing to healthier and more sustainable communities (https://www.bessborough.ie/about-us/.) However, it appears to be the case that the current service primarily receives referrals from social workers in child protection with currently no facility to cater for private family contact. Kiely et al. (2019) highlighted a number of issues in relation to supervised child contact with fathers. Some of the professionals interviewed highlighted concerns regarding the lack of structured services to support the input of fathers in the lives of their children (Kiely et al., 2019). Although this study predominately sought the views of fathers and professionals in the context of supervised child contact, it sheds light on the importance of specialist knowledge and skills that are important for those working in child contact

centres. Some of the specialised skills include 'specialised knowledge of child development, skills pertaining to risk assessment and detection of parental manipulation or subtle perpetration of abuse' as well as knowing when to intervene (ibid). The importance of highly skilled and experienced professionals with the ability to work with high conflict was also highlighted in Murphy and Holt's (2013) study. They indicated that professionals need a diverse skill set in areas such as 'key working, child and family risk assessment, counselling, parent mentoring' (p. 83). Kiely et al. (2019) noted that the purpose of child-contact centres was, in the main, to facilitate and support families in the short term. However, they did note that those attending in a private capacity (as opposed to those attending as a result of child-care proceedings) tended to use the services for a briefer period of time.

3.8.5 Support for families -the way forward

It may be important for professionals who work with working with families, including play therapists, psychologists, and family support workers, to be available to parents to support and equip them with the ability to communicate what contact means to them at different stages in their lives and to negotiate changes that may arise. Human relationships are. Complex by their very nature, they can change and develop over time and should be nurtured. There is an important and crucial role that practitioners in contact centres can play in co-ordinating, mediating and maintaining positive contact arrangements between parents and children. Literature has suggested that those tasked with the role of supervising and or facilitating child contact need to have the requisite skills and training. What's also important to consider is that the role of contact centres in the lives of families must also be carefully monitored and regularly reviewed. While there can never be a 'one-size fits all' approach to child contact, child contact centres might well be part of a solution towards meeting the needs of families and children. The Irish Judicial system may also benefit from considering the role that contact centres could play in the wider family law system. It has been noted previously that changes to the landscape of family law cannot happen in a vacuum and that services such as child contact centres in Ireland should ideally be developed alongside other proposed infrastructural changes to the Family Law Courts (Murphy & Holt, 2013). Another model of intervention that is also worth exploring is the Child Consultant model.

3.8.6 Specialist Child Consultants

The role of child consultant is currently one which is used in Alberta, Canada, as a type of family-focussed intervention role which can support families in making decisions post separation and divorce or indeed in situations where the parents have never been married but would like to work out parenting arrangements for when they are not living together (See https://www.lorriyasenik.com/specialist/ for an example). As described by Yasenik et al.

> The Child Consultant is a short-term, non-clinical, nonevaluative role, widely used in Australia in family mediation and in Canada for mediation and parenting coordination. The Consultant does not take on a therapist or a child advocate or guardian ad litem role; rather, this person is specifically trained to meet with children of separation and divorce in order to gather and bring their thoughts and concerns back to the coparents' (Yasenik, Graham, & Fieldstone, 2020, p. 765)

The Child Consultant ensures that the children's input is obtained in a manner that is safe and developmentally appropriate. As far as training is concerned, the Child Consultant is usually trained in a variety of specialist approaches for working with children of all ages and stages developmentally. As recognised by Yasenik et al. (2020), obtaining the voice of the child is the most reliable and effective way of bringing the child's needs and preferences to a decision-making process concerning parenting arrangements post-separation. In the absence of this, co-parents are mainly reliable for providing input concerning their child, which can result in the child's views being accepted, dismissed or distorted. An effective way of ensuring the child's voice is effectively transmitted is through the use of a child consultant, as '[t]he use of a non-directive meeting process which is child-centered [and] creates maximum space for the child to share matters that are of importance to them'. (Yasenik, Graham, & Fieldstone, 2020, p. 765).

In Alberta, CA, the support of a Child Consultant is generally sought out by parents, legal professionals, mediators, and Judges. The main purposes for which a Child Consultant will meet with a child include:

1. Explore with the child, through various means, the child's views of his/her family and their relationships with important family members.
2. Inform the child in a child-friendly and child-appropriate manner about the separation/divorce process and who is involved.
3. Explore the child's perspectives and experiences more generally.
4. Identify what may or may not be going on for the child, including any needs they may have.
5. Provide the child with a safe space to express feelings/ thoughts they may have they feel that they cannot express due to concern for a parent's feelings.
6. Explore and identify the child's coping skills, if any.

In terms of process, both parents are asked to engage with the Child Consultant intervention process. Initially, the Child Consultant will meet with each parent individually to learn about the child. Each parent will be asked to bring their child to the Consultant at least once, and each session with the child is about 45-50 minutes. In some cases, the Child Consultant will meet with the child concerned more

than twice. The Child Consultant will then request to provide feedback to the parents, meeting them individually or together; alternatively this can be done in a mediation session or in a meeting with lawyers in attendance. In some cases, where a Judge calls for the report, the parents will receive the contents of the report verbally, but the written report will be provided to the court.

Personal communication with the Child Consultant experts in Alberta, CA, has provided this study with the following information specific to the purpose of this study:

1. The child-focused activities described above are most appropriate for children aged 4-5 years and older. Babies and infants 0-4 years would fit into an observation process with some standard checkpoints and ways to record the information. Normally Children's contact service practitioners are not considered 'Child Consultants' and are on-record service supervisors of visits.
2. While in some jurisdictions (Australia, for example), visitation programs are government funded, others (for example, the Alberta CA visitation programme), it is parents who pay for the service.
3. Regarding the qualifications and regulations of child consultant professionals, they are either private practitioners hired by the hour or hired by an organisation. The Child Consultant role is just emerging in Canada, is older in Australia, and it is a non-regulated role. Those providing a service might belong to a regulatory body such as Social Work, Psychology or Family Law.

Based on the foregoing and specific to the Irish context, an ideal model of a child consultant would embody a highly trained and qualified professional (with qualifications in child psychology, play or art therapy or similar) who would only work with children from all age groups utilising methods for ascertaining the views of children that are developmentally appropriate. It would be a state-funded profession and regulated by a body such as CORU. Depending on where the contact arrangements are being determined (in court/mediation), the Child Consultant would report accordingly to the relevant process in an objective manner and would not be at the behest of either parent.

3.8.7 Child-Inclusive versus Child-focused Mediation

While it is always preferable to resolve family law disputes informally, sometimes, this is simply not possible. However, that does not necessarily mean that in all such cases, parents will need to resort to family law proceedings in order to have a custody and access decision made that works for everyone. Indeed, mediation is a process that is available and actively encouraged in such cases. Formal mediation has a long history dating back to the 19th and 20th centuries (Parkinson, 2020). Yet, the involvement of children in mediation processes is less well established. That said, some jurisdictions have developed

processes which are of a child-inclusive nature. In contrast, others, which claim to be focussed on the interests of children, are still very much adult-orientated processes.

Moloney and McIntosh (2004) have helpfully explored the differences between these two models of mediation. *Child-focussed* mediation, which would be by far the more common model utilised worldwide to date, aims to support parents in focussing on the needs of their children. In particular, this model '…facilitates a parenting agreement that preserves significant relationships and supports children's psychological adjustment to the separation, including recovery from parental acrimony and protection from further conflict' (Moloney & McIntosh, 2004, p. 72). On the other hand, the *child-inclusive* model of mediation, which was initially introduced in Australia in the late 1990s, actively involves children in the mediation process, an approach which is arguably more in line with the children's rights approach to family law proceedings mandated by Article 12 of the UN Convention on the Rights of the Child 1989. Taking into consideration the child's stage of development, children are involved in the process and are consulted about their unique and individual experiences of the family separation/ dispute. As part of the process, children are provided with very basic information about the process that aims to support their present and future coping. The child's experiences are then fed back to the parents in a skilled, sensitive, and respectful way that allows them to leave the mediation process on stronger ground with respect to their post-separation parenting (Moloney & McIntosh, 2004). In addition to being well embedded in Australia, Muto acknowledges that the child-inclusive mediation model is now utilised in New Zealand and Canada. However, the US has been slow to adopt this model in practice (Muto, 2016).

The operation of both models in practical terms has been examined in the literature. For example, a study by McIntosh et al. (2007) compared the outcomes over 12 months for two groups of separated parents. One group attended child-focussed mediation where the child was not directly involved. The other group participated in child-inclusive mediation sessions where the child's experiences and needs were included in the process as facilitated by a child specialist. Each intervention sought to target not only the psychological resolution of parental conflict but also aimed to improve the ability of parents to reflect on the experiences of their children post-separation and the associated reduction of distress to the children. Repeated measures at baseline, three months, and 12 months post intervention were taken, with attention paid to subjective distress and relationship quality for all family members. While both treatment groups benefited in terms of reduced levels of conflict and improved dispute management, it was clear that the child-inclusive intervention had a variety of additional impacts that were not evident in the other group, with particular emphasis on relationship improvements and psychological well-being. Significantly, these benefits were strongest for fathers and their children. Moreover, any parenting arrangements that were made were more durable for the child-inclusive

mediation group, and the parents in this group were half as likely to initiate further litigation over parenting agreements. In those jurisdictions where child-inclusive mediation is well embedded, there is a recognition that children from violent families can also achieve positive and timely outcomes if a flexible model of child inclusive mediation were to exist. Hart suggests that

> [t]he process of researching, developing, and gaining acceptance of such a resource-intensive model of child-inclusive practice requires recognition by professional mediators, and society in general, that these children's need are different from those of children from separated families who have not been exposed to domestic violence (2009, p. 21).

As far as very young children are concerned, a cluster randomised pilot study of a mediation-based intervention for separated parents of children under the age of five years (called Young Children in Divorce and Separation (YCIDS)) revealed that an education intervention designed for parents concerning infant neurological and social-emotional development and implications for post separation shared-parenting was useful and could potentially result in cost savings for the courts (McIntosh & Tan, 2017).

Based on the foregoing analysis, it is proposed that for all children, including very young children, and in cases where mediation is a viable option, a national child-inclusive mediation model should be explored as an option for establishing shared-parenting arrangements in the long term. This model would ideally operate in tandem with the services of a child consultant for children, be accessible nationwide, and state-funded.

3.8.8 Conclusion

Each of the supports and interventions outlined above have been trialled and tested in other jurisdictions. The have been proven to support the well-being and development of very young children in what is, without doubt, a unique and complex family contact process post-separation. A feature common to all three recommendations is that they are non-adversarial and therapeutic in nature, characteristics that would better serve the needs of very young children in child contact arrangements. At present, in contested adversarial cases, access orders can only be changed by re-entering cases into court and, for young children in the 0-6 years group (the focus of this study), their developmental changes are happening rapidly and at a far greater pace than the judicial system can respond to. For these reasons, the non-adversarial nature of these recommendations is particularly attractive when we consider that the literature has also highlighted the abusive potential of the adversarial model where applications to amend access orders are made to merely lodge 'complaints' about the other parent's behaviour, which ultimately takes the focus away from the child. For some families, contact necessitates a neutral safe meeting space, and the literature has indicated a clear absence of facilities

in Ireland that provide such support. The establishment of contact centres with trained staff that provide safe, neutral spaces for families and are free of charge would support the contact needs of families.

While mediation exists in Ireland as a support to parents negotiating a separation or contact arrangements, it is a less well-known intervention and even less well understood amongst separated co-parents. In most cases, the current model that operates is one where arrangements are ironed out between the parents with due regard for the needs of the child but without the direct input of young children. While a form of child-inclusive mediation exists on the island, it is not nationally available, nor does it have the professional input of a child consultant/ specialist. Given the process of family court reform that is underway, it is critical that the new infrastructure be adequately resourced with therapeutic services for children and families. These services would support a process of ongoing contact that not only operates in the best interests of the child but it would be flexible and efficient in its response to the developmental needs of children that are likely to change over time.

3.9 Summary of Literature Reviewed

The evidence presented in this literature review reflects a longstanding concern with the impact of discontinued parent-child relationships following parental separation or divorce on children's adjustment and general well-being. A subsequent emphasis on the importance of contact time has resulted in a myriad of contact time arrangements. The most contentious debate seems primarily focused on the issue of Joint Physical Custody (JPC) and specifically overnight arrangements for children with both parents, with a particular concern for attachment relationships.

Much of this debate has focussed on the potential for risk to arise when a young child is separated from their mother, who, in many cases, will be regarded as the primary attachment figure. Indeed the evidence challenges claims that infant-mother attachments are harmed with regular overnights away from their mother, with further caution exercised against the use of the term 'primary parent'. Significantly, research has also explored the role of gender in attachment formation, with the literature review concluding that infants do not have a preference for either gender when it comes to attachment formation. What is critical is consistent and warm care from one parent that is predictable and responsive, with quality caregiving considered a more important factor in attachment formation than the frequency of contact. A consistent theme across the literature reviewed is that research with families involved in post-separation/divorce contact fails to identify a solitary magic ingredient that makes contact time work or not work; rather, a wide range of factors which operate interactively, interdependently and dynamically, with the attitudes, actions, and interactions of the key family players shaping contact and determining its quality (Holt, 2016a). Emerging from the literature reviewed is the

absence of substantive evidence to conclude that children benefit from any contact with a violent or abusive parent.

Attachment theory and research emerge from the literature as providing the most validated theoretical and procedural framework for conducting assessments on parent-child relationships for infants and children under the age of six years. This, therefore, underlines the importance of training in infant and child attachment theory research for family law professionals involved in decisions about contact time. Furthermore, the literature underscores that attachment formation needs to be considered through the lens of a child and not a parent when thinking about arrangements for contact time. Indeed, the evidence asserts that attachment relationships are central to a child's development regardless of their family formation or cultural background. Therefore, for those charged with making decisions about contact time for very young children, an individualised approach towards their circumstances and stage of development is essential to ensure that their individual best interests are being considered. In the context of family law proceedings specifically, it is important for professionals and parents alike to remember that such an individualised approach to assessment is also nonetheless a snapshot in time of the parent-child relationship and, as such, should not necessarily be relied upon for providing evidence for ongoing future cases. This individualised approach needs to be based on the child's best interests, and the child's voice should be taken in such cases on an ongoing basis once that child is capable of forming views, regardless of age.

While there is a wealth of research commenting on the experiences of children in the 6–18-year age bracket of various types of parenting plans that were instigated following their parents' separation or divorce, this literature review identified a dearth of literature, specifically empirical research, reporting on contact time for children under six years of age. A rigorous search of the relevant databases and search engines on primary research on this issue and for this cohort of children resulted in 13 papers spanning over three decades (1987-2021) and three continents (America, Europe, and Australia). With this very limited empirical focus on outcomes for infants and children under 6 years of age, also emerged mixed and contentious results, rendering conclusions difficult.

Regardless of age and where possible, the child should have some direct input into the process to ensure that their views are elicited and feed into the decision-making processes. Apart from children having a right under international law to be heard in decision-making processes affecting them, it is also well accepted that there are distinct benefits to facilitating this both for the child concerned and decision-making processes in society more generally. However, unlike decision-making processes that affect adults, where it is the norm for such adults to be directly involved, involving children and, in particular, very young children, in decisions concerning parental contact time apparently need

justification merely due to these children being of a young age. Parental representation of the views of children is not considered sufficient to comply with the legal requirement to ascertain the views of children in all matters affecting them. Moreover, where a contact decision has been agreed upon which affects a child, it is not appropriate to disregard the child's views where the issue is uncontested.

The literature reviewed also cautions that, in the context of decision-making in the Family Law Courts regarding contact, the presumption that contact is in the child's best interests and the construction of the legal concept of the child's right to contact can negate their equivalent right not to have contact. Similarly, if the child's views concur with the dominant assumptions about best interests, they are deemed competent to participate, and if they do not, they are deemed immature, incompetent or unnecessarily influenced by the resident parent (usually the mother). Indeed, the literature also cautions against the construct of the 'influenced child' who is vulnerable to both adult pressure and adult manipulation, which they assert ultimately undermines their participation and compromises their rights. Concerns about adult manipulation can result in an accusation of 'Parental Alienation', a concept which has gained considerable traction in Ireland and internationally; yet lacks empirical evidence, independent evaluation or indeed a scientific basis, and as such is problematic and not necessarily an approach which is in accordance with children's rights and a child's best interests.

Concerns about children being vulnerable to adult manipulation or their views being tampered with for the purposes of court proceedings have led to a general conversation concerning contact, which is arguably shaped by parents, counsellors and legal professionals (Fitzgerald, How Children are Heard in Family Law Proceedings in Australia, 2002, p. 188). When it comes to contact time for children, it has been argued that children should have direct input into those decisions and that it is not good enough to merely represent their views through an adult, including a parent. To that end, while there are a variety of ways in which children's views can be ascertained and represented in custody and access cases, incorporating the views of very young children requires very specific expertise which takes account of the child's developmental age and stage as well as the evolving capacities of the child. Although a child may be unable to contribute to the process in a convenient manner, this does not absolve state parties of their responsibilities to facilitate children's involvement in the decision-making process.

Reports can be written by either qualified professionals (usually psychologists or social workers) from external agencies, independent assessors, or court-based officers, involving a number of interviews with the children and their parents (usually separately and together) in order to determine what is perceived to be in the child's best interests (Birnbaum & Saini, 2015). However, the professional

completing this assessment is not charged with ascertaining and representing the views of the child but rather with investigating and reporting on the views of the child for the purpose of assessment. This review questions, therefore, how much the final report accurately reflects the child's actual wishes and feelings; or the professional's interpretation of those wishes and feelings.

Careful attention needs to be given to the way children are engaged, with some children preferring to communicate via the written word or through art or play, demanding highly skilled assessors and communicators. To this end, the UN Committee on the Rights of the Child has stated that the wording 'capable of forming views' should not be used as a limitation, rather it should be seen as 'an obligation to assess the capacity of the child to form an autonomous opinion to the greatest extent possible' (UN Committee on the Rights of the Child, UN Doc. CRC/GC.12/2009, para.21).

For some families, their acrimony is so deeply embedded that they cannot reach a contract agreement, and in these situations, contact is often imposed by the courts in the form of a court order. This means that the times, location, and frequency of contact become part of a legally binding agreement, which may need to be supervised and supported to ensure the safety and welfare of the child and/or the primary parent. One vehicle for supporting such contact is through using contact centres, which are described as safe, friendly, and neutral places where separated families can see their children.

The role of child consultant is currently one which is used in several jurisdictions as a type of family-focussed intervention role which can support families in making decisions post separation and divorce or indeed in situations where the parents have never been married but would like to work out parenting arrangements. The Child Consultant ensures that the children's input is obtained in a safe and developmentally appropriate manner.

Mediation is a process that is not only available but is actively encouraged in cases where an agreement on custody and access cannot be reached. While formal mediation as a process has a long history, the involvement of children in mediation processes is less well established. Child-inclusive mediation is an emerging international model with a clear potential model for establishing shared-parenting arrangements in the long term.

Section Four: Phase One Survey Data Findings

4.1 Introduction

The following section provides an overview of the online survey data findings. This first phase sought to gather the views of 141 participant parents, all of whom had an experience of arranged contact or parenting agreements relating to their child(ren) who were in the 0-6 years age group when these arrangements were established. The survey used a mixed methods approach; therefore, the findings are represented both quantitatively and qualitatively. Some of the themes explored in the following sections include parental perspectives on the views and voice of the child, domestic abuse, parental alienation, parents' perception of their children's experience of access, parents' perception of concern about children while on access, and parents' reflections on contact and their need for support.

4.2 Survey Sample

The 141 participants who took part in the online survey had experienced arranged contact or parenting agreements relating to their child(ren) under the age of 6 years when these arrangements were put in place. 119 participants provided details about their gender and current age; however, 22 participants chose not to answer this question. Of those who provided these details, 79.8% (n=95) were female, and the remaining 20.2% (n=24) were male. The largest proportion of participants were in the 35-44 years age group (58.0%, n=69), followed by those in the 45–54-year age group (23.5%, n=28). For most participants in this study, the other parent involved did not live far away. Nearly a third stated that the other parent lived in the same community or town (31.9%, n=45), while 35.5% indicated that they lived within the same county (n=50).

4.3 Set-up of contact and types of contact in place

Figure 1 below shows the various ways contact arrangements were set up for parents participating in the online survey. This question allowed participants to select multiple items in recognition of the fact that contact arrangements were fluid and that parents may have used more than one approach during this time. 61.2% (n=85) of respondents reported that contact had been 'self-arranged' between them and the child(ren)'s other parent, while a further 30.2% (n=42) indicated that contact had been court-ordered.

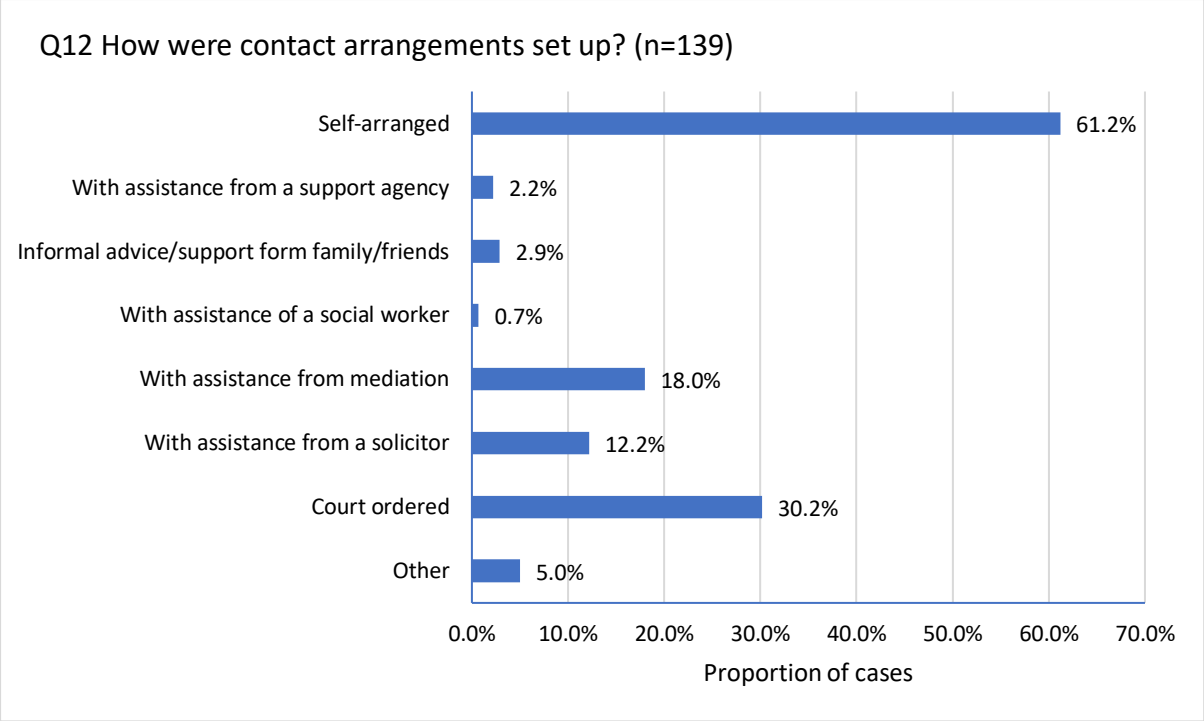


Figure 1: Set-up of contact arrangements (multiple response item) (n=139)

Table 1 below explores the various types of contact children of participants have / had with their other parent. 'Overnight stays' were reported by 68.9% (n=93) of participants, which is the most frequent method of contact. Again, this was a multiple-response item to reflect the various types of contact which may have been utilised by these participants in relation to the children's contact arrangements.

Table 1: What type of contact does your child / children have with the other parent? (Q20) (Multiple response item, n=135)

	N	%
Overnight stays	93	68.9
Telephone	66	48.9
Texting	34	25.2
Letters / cards	12	8.9
Photos	19	14.1
Emails	5	3.7
Video calls	43	31.9

Supervised contact	8	5.9
Day time contact only (no overnights)	13	9.6
Other (please explain)	28	20.7
Total respondents	135	

4.4 Views and Voice of the Child

Participants in the survey were asked for their perspectives on the extent to which the views of their children were reflected in decisions made about contact. As illustrated in Figure 2 below, just under one-third of participants surveyed (32.1%, n=36) believed that decisions made about shared contact reflected their child(ren)'s views. The qualitative aspects of the online survey aimed to explore how and where the voice of the child was present in participants' experiences of shared parenting and access. Participants were asked how, if at all, their child(ren) engaged in voicing their opinions about contact arrangements with their other parent. The data conveyed a full spectrum of experiences relating to how the voice of the child was, or was not, considered when arranging or facilitating access. These narratives illustrated varied approaches to shared parenting as well as differing parent-child relationships.

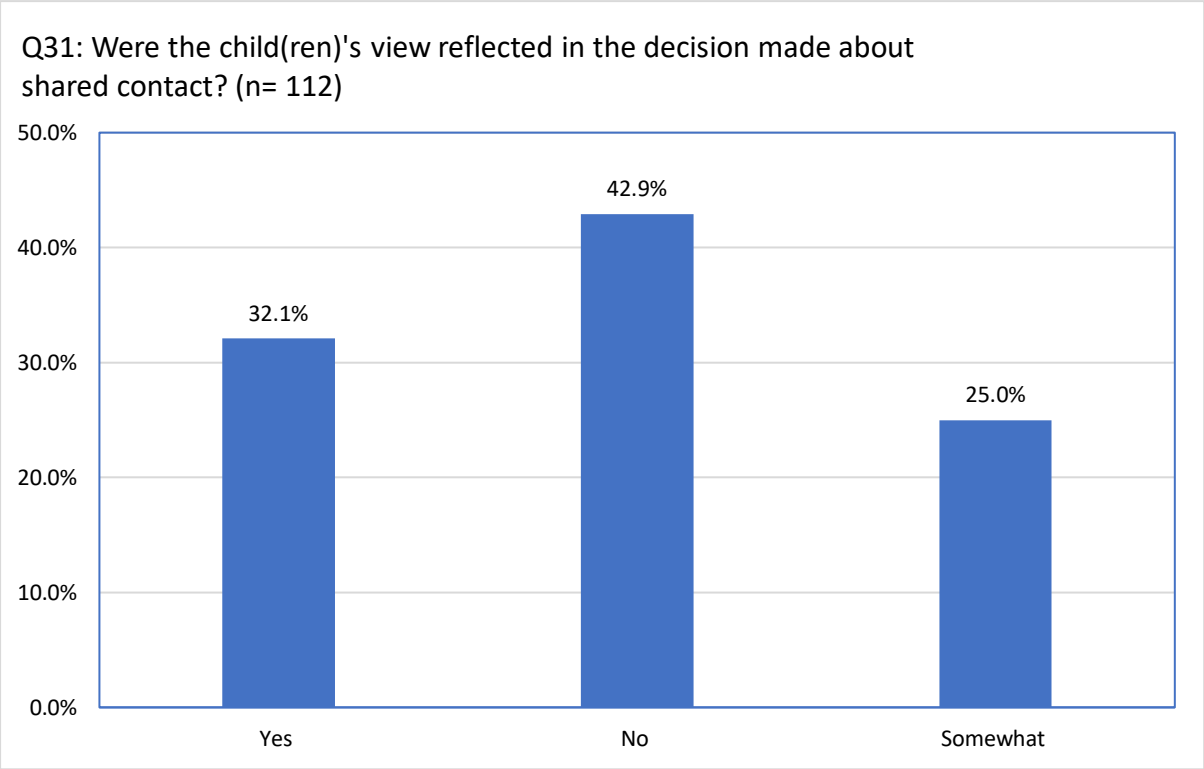


Figure 2: Column chart of whether children's views were reflected in the decision about shared contact (n=112)

Many participants felt their children had not been involved in sharing their opinion about contact arrangements as they had been considered *'too young' to* do so. Several parents noted that as their children advanced in age, they eventually reached a point where they were in a position to provide input on contact arrangements to their parents, mediators or the courts, if involved. However, several other participants revealed that even in cases where their children were asked, their views were not necessarily taken into account. These participants conveyed their perception that decisions were often made by adults on behalf of children. The following participants' quotes illustrate this:

> *'They were asked for their opinion but overall the decisions were made by the adults' (*P23, female)

> *'Decisions were led by parents, but I have always checked in with children to ensure they're happy'* (P28, female)

> *'If child wasn't happy I would consider this but in reality a young child does what they are told and have limited autonomy'* (P26, female)

> *'On the odd occasion where she really feels strongly about not going to her dads then I keep her home, but it's in her best interests to spend time with her dad'* (P7, female)

Several participants described how their child(ren)'s wishes were allowed for concerning access. In these situations, children's opinions and preferences were acknowledged and respected:

> '*He went through a phase where he didn't want to sleep over. This was respected and my son's father and I communicated and found the problem which was then resolved. My son's opinion does matter, if he ever said he didn't want to go then I wouldn't force him but it's important to have contact with his dad so hopefully if that did happen we could find out why'* (P54, female)

> *'I check in with my child regularly on this and always take his views into account'* (P77, female)

> *'They were never forced to go even though this was my biggest fear in the beginning stages. It was their decision'* (P60, female)

Another quote describes one parent's experience of attempting to make minor adjustments to access arrangements based on their view that their child was not responding well to access with their other parent. Yet this parent also perceived that there was a limited amount that could be done within the context of the agreed arrangements:

> *'…. based on his negative reaction to spending time with his daddy I tried to make small changes to frequency & length of visit. I didn't feel like I was allowed to change much'* (P67, female)

However, several parents revealed that their child(ren) had communicated that they did not want to go on access with their other parent but that the visits were upheld regardless:

> *'Child says no repeatedly when they don't want to go for visits, but co-parent said they have to get used to it'* (P91, female)

Another participant's narrative describes a situation where she believed her child was emotionally penalised by her father for expressing that she did not want to go on overnight access visits:

> *'She told her dad she does not want sleepovers and he didn't take her. But he argued and then has since been ignoring her'* (P68, female)

Conversely, several participants described a situation where their child(ren) had communicated that they would like to spend more time with their other parent, but it was claimed that their other parent was not responsive to these requests.

> *'They will always want more time with him which he is not willing to do'* (P93, female)

> *'They want to see their dad more, but he won't or can't'* (P15, female)

'Their father will not agree to take them for a second longer than he has to' (P44, female)

A number of parents described how their or their former partner's work commitments or living arrangements shaped how and when access took place rather than the child(ren)'s preference. Nearly half of the participants (46.9, n=53) surveyed indicated that work schedules and the other parent's availability were a factor for contact arrangements (Figure 3):

'The contact was mostly worked around work schedules' (P45, female)

'Child was too young to communicate, mainly based on availability of other parent and living arrangements.' (P43, female)

'Our daughter would like to spend more time with the other parent during the week, that's not really possible because of distance, school routine and travel costs' (P81, not specified)

'The arrangement is based mostly on work schedules, but she does also ask if she can visit her Dad if he is off work and we do sometimes' (P61, female)

As illustrated in the above quote by participant P61, which relates to work schedules, several participants' responses recognised the requirement for a degree of flexibility and responsiveness to the fluid needs of children as they communicated them. A further example is presented below:

'They weren't asked at the time but have settled into routine. [Children's] Requests for extra time are accommodated' (P58, female)

Meanwhile, several participating fathers conveyed their belief that their child's views about access visits were not their own. For these participants, there was a strong sense that their children had been manipulated or coached, by their other parent:

'My daughter spoke but they weren't her view or words' (P53, male)

15.2% (n=17) of those who responded to Q30 believed their child(ren)'s voice was communicated via a court assessor's court report (Figure 4). One father claimed that it was because of the court report that his experience of parental alienation was revealed, as illustrated below:

> *'Section 32 made it very obvious that more time was needed with dad and parental alienation was evident'* (P50, male)

Another parent wrote that they did not feel that the contents of the reports were taken onboard by the court, as illustrated:

> *'There have been a section 32 and section 47 report compiled. One of the kids was interviewed for the section 47 report. Both reports were more or less ignored by the court'* (P52, male)

While another parent believed that the reports had made her child(ren)'s voice heard:

> *'They were too young to attend court but did have their voice heard through a psychologist in the form of a section 47 and via social workers'* (P94, female)

However, several of the participants who had the experience of court-ordered access and who provided their opinions were critical of the process and did not feel their child(ren)'s views were either sought or represented:

> *'They had no say. Access was court directed'* (P69, female)

> *'Child's views not even considered or asked by mediator /judge'* (P24, female)

> *'The children were not consulted by court'* (P100, female)

The participants' narratives presented in this section on the 'voice of the child' illustrate the context in which these young child(ren)'s access visits took place. These descriptions illustrate the varying degrees to which their voices were heard and/or considered, within the context of complex adult relationships and the complicated constructs in which they operate, such as work commitments, new living arrangements or legal processes.

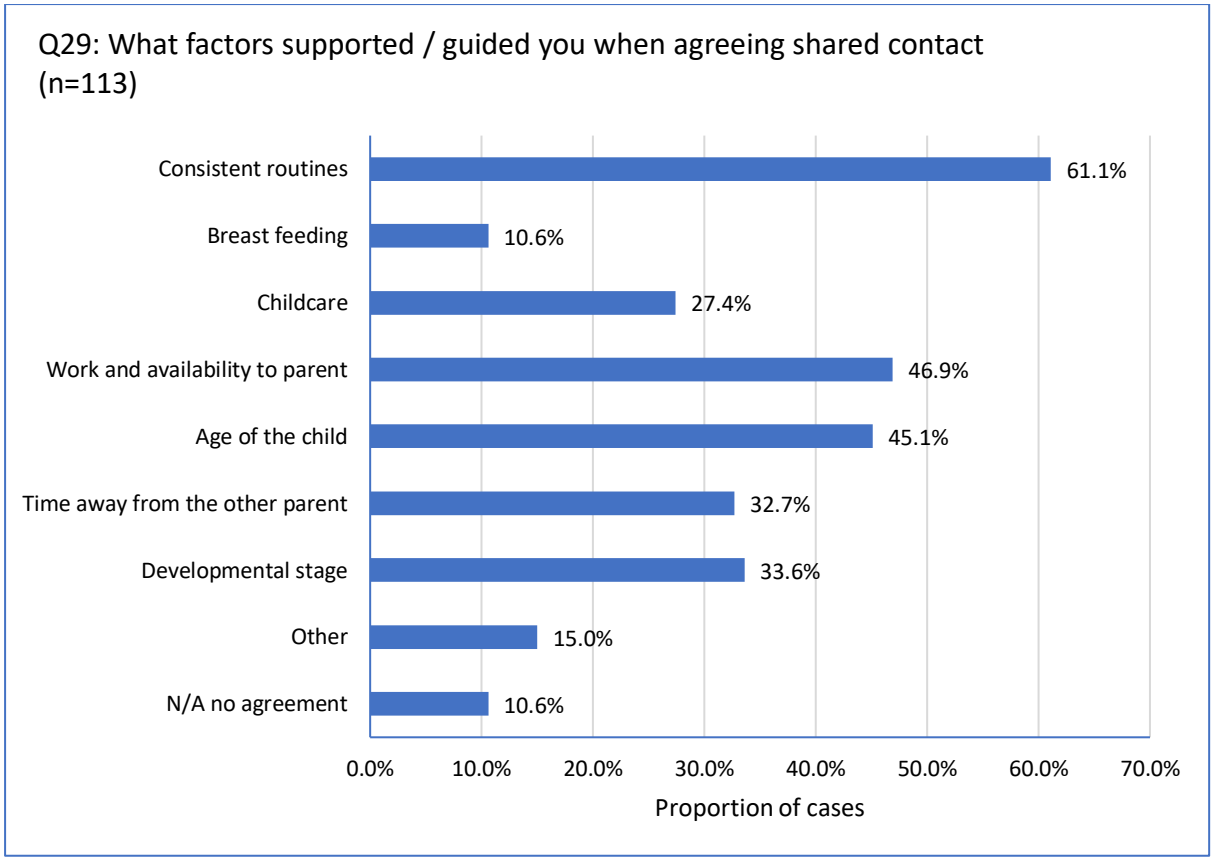


Figure 3: Factors that support / guided agreeing to shared contact (Multiple response item, n=113)

Figure 3 above presents other various factors that participating parents believed influenced or guided their shared parenting and contact arrangements. 'Consistent routines' were indicated as an important factor that guided contact arrangements by nearly two-thirds of participants (61.1%, n=69). Meanwhile Figure 4 presents the various ways in which participating parents understood their children's voices and views were communicated. More than half of parents surveyed felt that their child 'voiced' their views directly about shared contact (51.8%, n=58), while 39.3% (n=44) believed that it was them as a parent or parents, who were responsible for conveying their child(ren)'s views on their behalf.

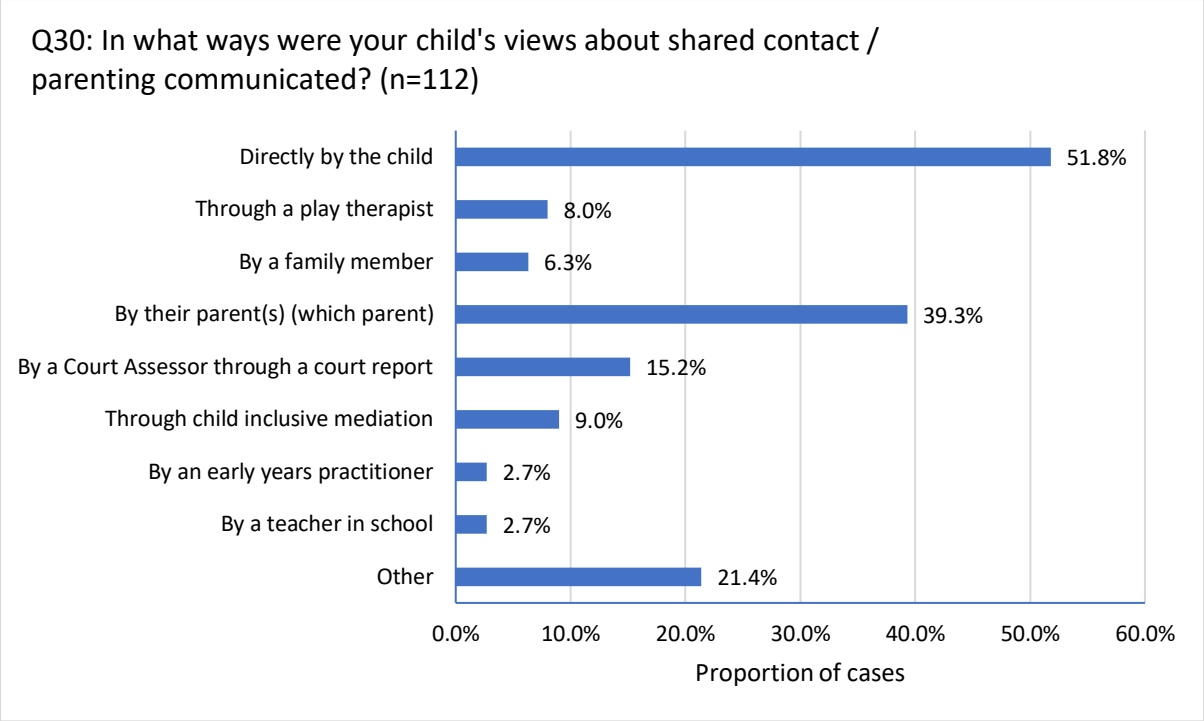


Figure 4: **Communication of child(ren)'s views about shared contact / parenting (Multiple response item, n=112)**

4.5 Domestic Abuse

Domestic abuse was indicated as being a factor in relationship breakdown by nearly half of the respondents in this study (47.1%, n=65). The gender breakdown for these participants was 86.5% female (n=45) and 13.5% male (n=7). Meanwhile, a further 13 participants chose not to disclose their gender. Where it was indicated by participants that domestic abuse had been present, frequently it was suggested in the qualitative responses that the abuse did not end with the ending of relationship. There were several claims that alleged abusers were still engaging in abusive behaviour post-separation, or using access or the child(ren) as a mechanism for abuse, as illustrated by the following participants' quotes:

> *'At times, more so in the past, father has used child / access to continue abusing me. This was emotionally abusive to our child.'* (P119, female)

> *'In cases of domestic abuse, the other parent can use the children as another way to get at you, even when he's no longer in the home.'* (P109, female)

> *'Control, anger, abuse, losing control in one way and the need to punish, poor communication, ability to delay or abuse court process, ignoring court orders, inflexibility one week no issue the next and so on'* (P72, male)

Furthermore, many respondents reported being verbally abused when handing children over to their former partner for access. In some cases, just being in the presence of their former partner was difficult for some, with one mother saying that she finds it: *'Very difficult to face [my] abuser at handover time'* (P139, female). The data suggests that in some instances, the presence of the children did not deter former partners from engaging in abusive behaviour during the handover for access as can be seen from this participant's quote:

> *'My marriage was very controlled by my ex-husband and he still tries to gain control through the children. He continues to be abusive, aggressive and manipulative to me in front of the kids. He has also assaulted me in front of the kids at access handover'* (P69, female)

Some of the primary carers who had left an abusive relationship felt fear when their child was on access with the other parent. These participants expressed concerns that their former partner was being abusive to their child(ren) during access. The qualitative narratives from these participants portray allegedly abusive behaviours on these visits, with descriptions of verbal and emotional abuse or coercively controlling behaviours towards the children.

> *'He has not changed and he is a bully and an emotionally abusive person, to the children as well. He is not accepting of who they are and very critical of me.'* (P17, female)

> *'He assaulted me in their presence. He constantly shouted at them. I do not know what else he did.'* (P100, female)

Several parents expressed the belief that the other parent's 'interest' in access was disingenuous and was merely another way of getting at them, rather than any genuine interest in spending time with their children, as illustrated by this participant's response:

> *'He [other parent] was never truly interested in spending time with our daughter, he was just obsessed with having her as much as I did and trying to use her to hurt me.'* (P76, female).

For those who indicated that domestic abuse was a factor and where there was also a court order in place, it was conveyed that these participants often felt frustrated by court decisions. In particular,

some participants' perception was that the family courts did not adequately understand the dynamics of domestic abuse or the complexities of facilitating access with an abusive former partner.

> *'The false idea that a child should always maintain a relationship with their birth parents is extremely harmful. It's false and it does not benefit any child to maintain contact with a perpetrator of abuse. Furthermore, the effect the abuse and contact has on the primary custodian is extremely detrimental to that parent as well as the child. All agencies such as Tusla and our family law system support the idea of maintaining contact between children and abusive parents which is outrageous and cruel.'* (P18, female)

Additionally, several parents expressed frustration that supervised access was not mandated. For others where it was mandated, it was not enforced.

> *'Court system does not understand victims of domestic abuse and enabled further abuse in not taking it seriously enough.'* (P94, female)

> *'The family courts enable and facilitate coercive control and post separation abuse. Long periods of no contact as the abusive parent stops and starts access whenever it suits/doesn't suit them. All the while they push me further and further into debt on legal costs.'* (P18, female)

> *'Children of domestic abuse scenarios should not be allowed unsupervised access to their children. The default should be no access until they can prove they are engaged in rehabilitation'* (P74, female)

4.6 Parental Alienation

While just seven parents who completed the online survey used the term 'parental alienation', there were many other narratives that described behaviours that could fit the term's definition. . Of those who used the term 'parental alienation', one was female, and six were male. While some claims of parental alienation took more extreme forms, the more typical depiction was presented as one parent portraying the other parent in a less favourable light to the children they shared. More extreme cases of alleged parental alienation may see parents try to stop the child from seeing their other parent. For example, one father noted that:

> *'My ex-wife used parental alienation as a form of abuse against me which resulted in my child and myself bonding much later'* (P73, male).

It was alleged by some parents who felt alienated that false accusations were used in court proceedings to have an outcome favourable to one parent over the other. Several of these respondents spoke of a need for greater education for Judges regarding parental alienation. One

respondent claimed that after the Section 32 report was conducted and presented to the court, it became evident that parental alienation was a factor.

4.7 Parents' understanding and perception of their children's experience of contact and access

Parents were asked if they were satisfied with their child(ren)'s contact with their other parent. Just over one-third indicated that they were satisfied with this contact (37.1%, n=52), as shown in Figure 5 below.

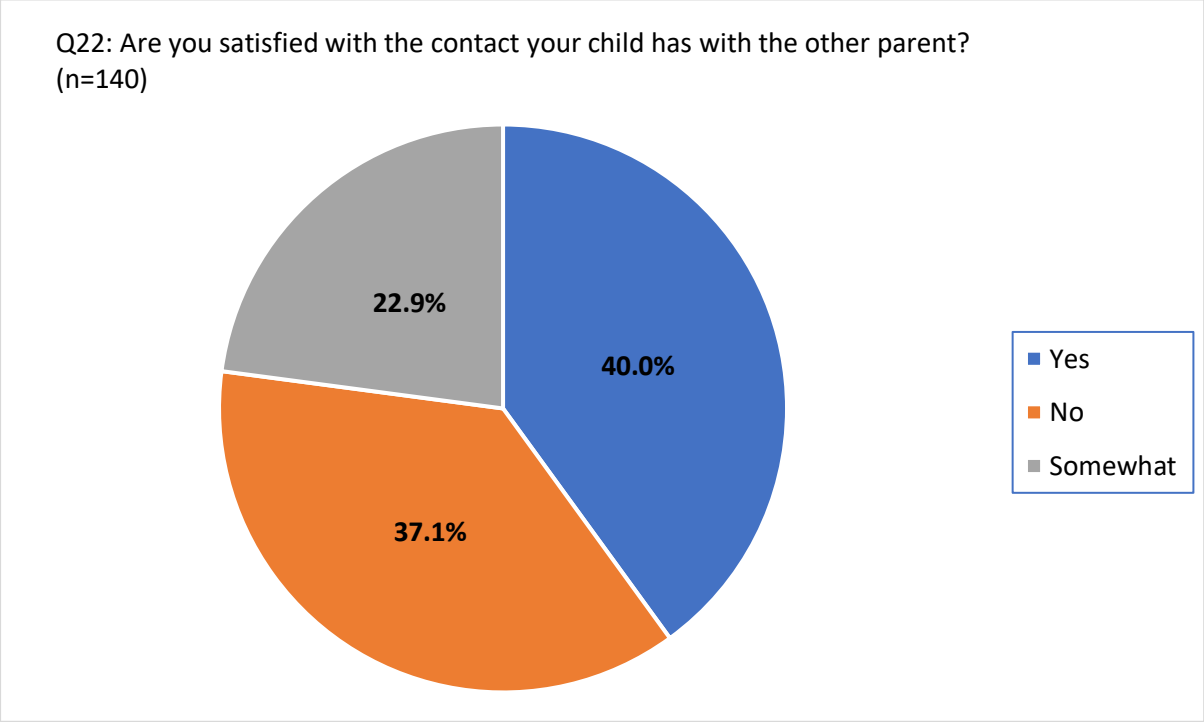


Figure 5: Pie-chart of Parents' satisfaction with contact with the other parent.

Furthermore, respondents were asked for their insights into how they perceive their children's experience of contact and access. In this regard, parents were asked how they know when their child(ren) are responding well to time with their other parent. Many parents reported that they knew when things were going well for their child(ren) simply by the fact that they were *'happy'*. Similarly, several others spoke about their children being *'happy and chatty'* or *'content and happy'*. There were frequent references to markers such as sleep, diet, mood, and behaviour that indicated their children were comfortable with the contact they had with the other parent. Many parents referred to having an

open line of communication with their children and that their child would tell them, or they would talk about visits together afterwards.

Similarly, when asked, participating parents explained that they believed they could also tell when child(ren) were not experiencing access or contact positively. For several parents, it was the contact time change-over that was described as being unsettling or difficult for some child(ren). One mother explained that while her son enjoys spending time with his dad, that:

> '*Change has always effected [him]. He comes home hyper and out of sorts every time even though he loves his time with his dad'* (P54, female)

Many parents indicated that their child(ren) communicated their discontent with access and contact by expressing that they did not want to go or by refusing to go. Children's moods and behaviours were also claimed to reveal if they were distressed by contact. Parents described observing changes in their children's behaviour, such as '*general upset and distress'* (P42, female) *,* children being '*very unsettled and cranky'* (P17, female) on return from access and similar responses indicating that children were *'withdrawn and anxious'* (P23, female)*, 'clingy and act[ing] out'* (P35, female) and *'He takes days to readjust, he's angry, frustrated, doesn't want to take his calls, hides his toys (dolls, pink toys etc) from dad on calls. Doesn't talk about time with dad.'* (P24, female). One parent noted her child *'comes back loud and obnoxious' (P46,* female). This situation is further illustrated in this participant's quote:

> *'They are completely dysregulated, crying tearful, emotional, angry, a varying display of challenging behaviours'* (P93, female)

Another parent of a 4-year-old girl, where domestic abuse was indicated to be a factor in the breakdown of the relationship, describes how her daughter displayed that she was not responding well to access with her father following their visits:

> *'Usually by the mood swings, separation anxiety, restless nights, sleep and toileting regression. Sometimes there are outbursts of violent rage.'* (P18, female)

As per Table 1 above, 8 participants (5.9%) who revealed that their child(ren) experienced supervised access. For several of these participants, there was a perception that the supervised access was not

properly enforced or that it was supervised by the other parent's mother and father, as illustrated below:

> *'He [the children's father] had access 'supervised' by his parents. They never supervised.'* (P100, female)

Indeed, for two participants, they [the mothers themselves] supervised access with their children's fathers.

> *'I have no welfare concerns as I supervise the contact and the other parent does not take the child out of my home.'* (P9, female)

A couple of parents disclosed their belief that supervised access did not continue for a long enough period before unsupervised overnight access was granted:

> *'He [the father] then was granted 30 minutes supervised access to our 3rd child when the baby was 18 months. After 7 x half hour [30min] supervised access sessions he was granted overnight access the same as the other children. I was very, very disappointed at this order as I felt I was handing over my son to a stranger. Three and a half hours access wasn't enough of a bonding period in my views.'* (P69, female)

Conversely, one parent described their perception that contact increases were guided by the child's reaction to the contact and then steadily increased:

> *'Led by children's reactions to interactions e.g. initially contact was supervised, then short periods and built to longer of unsupervised.'* (P35, female)

However, a prevailing sentiment which emerged from the narratives shared were complex and often fraught situations for the primary caregivers. As articulated by the following participant's quote:

> *'His anger issues. Finances and his addictions. Trying to arrange supervised access should have been easy. It was far from easy.'* (P8, female)

4.8 Parents' Perception Of Concern About Children While On Access

Participants were asked: '*Have you any concerns for your child(ren)'s welfare or protection before, during or after their contact?*' More than half of respondents to this question indicated '*yes*' they experienced concerns (54.5%, n=73). Additionally, when asked, 84.5% (n=60) of respondents indicated that they had raised these concerns with someone. However, only 20.0% (n=15) believed these concerns had been addressed, with a further 22.7% (n=17) indicating concerns had been 'somewhat' addressed. These questions revealed that 57.3% (n=43) of participating parents who had raised concerns about their child(ren)'s welfare or protection did not believe their concerns had been addressed. The qualitative components to these questions elicited insights into these parents' experiences.

Several parents expressed '*mild*' concerns about their child(ren) while they were with their other parent, which generally related to different standards of parenting or different routines to their own. These included poor hygiene practices or inadequate nutrition, a perceived lack of routine or regulation, for example, for bedtimes or screen-time. Indeed, all of these issues are present in the following participant's quote:

> *'I just feel like there is no care when he's there. His clothes aren't changed (even though I send a suitcase with clean clothes with him), teeth not brushed, he doesn't always have proper meals (eg forgetting to factor lunch time into the day, snacks all day rather than meals), his eyes are always bloodshot when he comes home from too much screens & no enforced bedtimes.'* (P67, female)

Several parents expressed concerns over supervision or worries about the other parent leaving children on their own when they would not have done so, for example, when running errands, as illustrated below:

> *'I did have [concerns], I don't feel my ex is as responsible as I hoped, he left the kids alone to go to the shop when very young.'* (P47, female)

> *'My partner and I had wildly differing views on parenting and what was ok in regard to what was appropriate in leaving them alone while running errands.'* (P22, female)

Several other parents claimed more serious situations had occurred while their child(ren) had contact with their other parent.

'Father was unreliable and untrustworthy. Would put them in dangerous situations (take them camping, get drunk and allow them to go to the communal showers alone (when they were 2 & 4).' (P113, female)

'Coparent has described leaving toddler unsupervised in paddling pool & doesn't follow doctors advise Re reflux & colic issues.' (P91, female)

While a number of other parents wrote about their anxieties over children being exposed to or involved in, overly adult interactions while with their other parent:

'Concerns re exposure to arguing and chaotic nature of his romantic relationships.' (P26, female)

'Her mother can be quite manipulative and burdens my daughter with her own worries. She also speaks badly of me to her which troubles my daughter. And tells all sorts of rather nasty lies about me. Such as telling my daughter that I treat her different to my other children.' (P101, male)

Meanwhile, several parents wrote about their concerns over child protection issues such as child safety or their child(ren) witnessing or experiencing abuse while on access visits with their other parent; the following participants' quotes reflect this situation:

'I know she is experiencing emotional abuse from things she has told me he has said to her. I have also witnessed this.' (P68, female)

'Alcohol abuse, was terrified letting dad have the youngest child, he does not drink now.' (P60, female)

'She describes witnessing her daddy pushing and shoving his fiancée, she has described being verbally abused by his fiancée and has been involved in their arguments, says she is afraid of her daddy.' (P76, female)

Several parents described seeking help with their concerns. A number of these parents mentioned having had a discussion with the other parent directly, which on some occasions, resolved the issue. Several other participants described the involvement of professionals such as social workers or support workers. While several others mentioned approaching the court to raise their concerns. As highlighted above, a number of these parents claim that little was done to address their concerns, as illustrated by the following quotes.

> *'He ignores my solicitor letters and Tusla said we didn't meet the threshold for an inspection.'* (P69, female)

> *'TUSLA discussed the concerns with the child's father however the case was closed after the conversation.'* (P57, female)

> *'There was awareness and indeed acknowledgment of the abuse in verbal discussions with assessors. In their report it is not very clear although the recommendations surrounding access are somewhat reflective of the abuse and concerns. Judge never recognised or even acknowledged the abuse that was occurring right under the nose of family court. Sadly, there were little or no consequences for my ex-partner of the abuse our child and I have suffered to date.'* (p119, female)

4.9 Parents' reflections on contact and the need for support: 'The challenges never go away. Parenting is not static and separated parenting isn't either'

When asked about the challenges of shared parenting, participating parents' narratives revealed a number of areas. Many parents referred to a lack of or poor communication with the other parent as problematic to their shared parenting arrangements. Additionally, inconsistency or changing arrangements without much notice were also described as challenging for both respondents and their children. Similarly, a lack of flexibility was noted by many parents as a further obstacle to shared-parenting.

> '*Although I know when he is supposed to take her, he often cancels or is late'* (P6, female)

> *'Dad is unreliable and I always end up picking up the pieces. Would be easier to do this exclusively by myself but I believe it is important for my child to have contact.'* (P77 female)

Many parents talked about the practical challenges of shared parenting, summarised by one parent as *'negotiating schedules, different parenting approaches, different rules.'* (P31, female). Different parenting styles, as discussed above, or one parent's established routines not being followed while on access, were also described by some as challenging for shared-parenting.

> *'…. he is not as bothered about her personal hygiene and bedtime routines as I am but I have had to accept that he parents differently to me.'* (P7, female)

> *'He will not co-parent and can't keep up to a proper routine and parenting plan etc.'* (P5, female)

Three participants used the term '*counter-parenting'* to describe a more extreme situation where the other parent was actively opposing their parenting. Other participants described being undermined or experiencing hostility or aggression towards them from their child(ren)'s other parent. Several respondents disclosed that they did not perceive their arrangements to be 'shared' parenting; they understood it to be merely facilitating basic contact between their children and their other parent. The following quotes describe several participants' experiences of these particular challenges.

> *'It is not shared parenting; it is counter parenting.'* (P46, female)

> *'Having someone who undermines all your hard work and doesn't recognise that they have an extended family with me, I am not just a place that the kids go for overnights…it isn't a house, it's a home'* (P1, male)

> *'The parenting is not really shared - I would describe it as access.'* (P28, female)

However, one father presented a different point of view; he perceived that the time constraints of access visits with his children did not allow for 'real' parenting. Reflecting on his circumstances, he wrote:

> *'I'm very glad I get to see my kids two days and two nights every week. I love them but this is 'access time' and not enough time to be a real parent, helping with homework, school runs and making sandwiches. That is what I became a father to do'* (P73, male)

The data also revealed that many participating parents felt unsupported in their parenting arrangements, regardless of whether they viewed their circumstances as shared-parenting or single-parenting. Reflecting on her situation, one participant disclosed:

> *'Sometimes being a co-parent feels like I'm swimming against a current. When on my own I feel that I'm always on the backfoot with regards to supports, finances and time. The structure of Irish society was not created to support single parents or people coparenting, we need to look at how we provide supports to women and men in this situation and remove the inherent barriers to financial security, provision of adequate housing, etc.'* (P61, female)

Another parent reflected on her experience of loneliness:

> *'Access with other parent does not equal shared parenting. Shared parenting does not represent what is happening for many people. I parent alone and my daughter goes to visit her dad, there is a big difference between the two. I try to include him re medical, school etc but he does not engage and leaves all that to me. It is very lonely even when you are in new relationship because you are the only person that truly cares and loves your child.'* (P26, female)

While another mother revealed that she experienced feelings of isolation during that time:

> *'I found it very isolating being a single parent, support around that would have been helpful in her younger years' (P118, female*).

4.10 Challenges: Experiences of the Irish family law system

Some parents expressed the view that the legal system was not the appropriate place to iron out access arrangements. There was support communicated by a number of participants for the implementation of a different mechanism, or organisation, to facilitate arranging access which did not involve the courts:

'Access to some sort of middle ground between self-organised & court ordered access. I would have valued a service that would work with us to decide what was fair that was allowed to stay semi flexible.' (P67, female)

'*Third party organisation that could help with access arrangements.'* (P92, female)

Many respondents who had experience with the courts were critical of the legal system believing their children were not protected in the process. These participants' perceptions of the family law system in Ireland were often expressed using words such as '*brutal' (P27, female) and 'toxic' (P94, female).* This is further illustrated by the following quotes from two mothers with experience of the family courts:

'I don't think the court process protects the children. It lines the pockets of the barristers and you're just another case.' (P14, female)

'Family court ordered partially supervised minimal physical access while the abusive parent was to undergo thorough anger management but he refused to comply and another judge dismissed the access or instruction in place to allow the abusive parent whatever access he requested, all without this judge ever hearing evidence from either party. The family courts enable and facilitate coercive control and post separation abuse' (P18, female)

Several participants with experience of the legal system expressed their view that court-ordered access was often initiated without much consideration of the effect on their child(ren). There were examples given where children were distressed by having to attend such access and, as a result, be separated from the parent with whom they reside and who provides the vast majority of their care. Additionally, several participants expressed the view that the courts need more training around the needs of children, families and, in particular, around the complexities of abusive relationships.

'A fixed family law system and fully trained and informed staff and judges with adequate resources for parenting following an abusive relationship and resources to prevent post separation abuse' (P18, female)

'Family Law needs specifically trained judges, barristers and solicitors who are able to give each case the time it deserves, as too many problems are being brushed under the carpet due to [time restrictions] and huge waiting lists' (P76, female)

4.11 Increased access to supports

Participants were asked what supports might help parents to navigate access and shared parenting arrangements. A number of participants expressed the view that supports outside of the legal system were lacking in Ireland, as illustrated by the following quote:

> *'I feel like there is no support for parents in this area outside of legal routes'* (P6, female)

It was suggested by a number of parents that there was a need for more opportunities to avail of free mediation services. In addition, several parents identified the need for increased access to free legal support for family law cases, and faster access to the court and swifter decision-making within the legal system. A number of parents highlighted that greater monitoring or enforcement of court orders would be beneficial, and additionally, the need for courts to interrupt orders, if required, was mentioned by another participant.

> *'I think a free mediation service for all separating parents (or those not in a relationship) would help to protect children in the long run and to avoid any false accusations of forced or coerced arrangements when children are older' (*P43, female)

Additional potentially beneficial supports were identified by many participants and included; specific shared-parenting groups or shared-parenting support groups, shared parenting courses, and improved access to counselling services for both parents and children:

> *'Dad's groups that are set up to help other dads to offer solutions to being single parents and how to continue a relationship with their child/ children. Any education via the internet / dad's groups to help navigate these times for the benefit of the children' (P127, male)*

> *'[I] would love a support group of women who understand the really unique challenges. Therapy has been hugely beneficial for our relationship, so free therapy for co-parents would be amazing. Mindfulness/yoga courses for single parents. Empathy training!' (P104, female)*

Access to play therapy for young children was suggested on several occasions also. Furthermore, one parent identified the need for a safe and neutral space in which to facilitate access with the other parent, as this mother's quote illustrates:

> *'A neutral child friendly venue where we can all go together. Not the middle of a city and then you've no idea where your baby is, who they're with, are they warm, fed, given something to drink. A place where the parent who's not around all that time can learn from the primary carer about the child, show how to change nappies, and mainly so the baby/ child is safe, happy, feels secure and isn't having a trauma response to basically being kidnapped by a virtual stranger every week.'* (P27, female)

Several parents highlighted that the services provided by One Family were crucial in their experience of navigating shared parenting and access for their young children.

4.12 Conclusion

The above section presented the findings from Phase one of the research study, an online survey which captured the lived experience of parents who share the parenting of infants and young children (aged 0-6 years) but are not in a relationship with one another. A more in-depth understanding of these parents' experiences and perceptions was achieved through the collection of both quantitative and qualitative data, thus providing fresh insights into a previously understudied group in the Irish context. The next section presents the findings from the qualitative focus group and individual interviews with professionals who engage with families negotiating contact time for infants and very young children.

Section Five: Phases Two and Three – Findings from the Focus Groups and Individual Interviews

5.1 Introduction

This section explores the qualitative data collected from phases two and three of the fieldwork. Phase two involved garnering the perspectives of two specific groups of professionals who work with children and families involved in making contact arrangements. One focus group explored the unique and specialist perspectives of a mix of social professionals. The second focus group tapped into the professional knowledge and specialist expertise of legal professionals, including mediators, solicitors and barristers. The findings of phase three of the research reflect the expert and distinct perspectives of the key decision-makers in family law proceedings – that of the Judges of the District and Circuit Courts.

5.2 Issues arising for children and families in contact and access

The social and legal professionals, and members of the judiciary who were interviewed, acknowledged that there were several issues arising for children and families in access/ contact cases which made navigating the system particularly problematic. These ranged in nature from the strongly embedded adversarial nature of family law proceedings to the unique and evolving needs of very young children.

5.2.1 Adversarial nature of family law

Three of the Judges interviewed raised the adversarial nature of the family law system as an issue for families. These three Judges held the view that existing difficulties could be exacerbated by the adversarial process. J3 was of the opinion that the court process could aggravate the situation for the more intractable cases, further noting that the current system does not actually serve to reduce conflict. Meanwhile, J1 described how the confrontation between the parties, and between their lawyers, was '*not appropriate'* and '*out of control'.* J1 further stated that Judges have a responsibility to '*stamp out'* adversarial behaviour in their court rooms. J6 described the application of the adversarial system in family law as *'a shocking model'*; further elaborating their opinion that *'it's dreadful, it's dreadful for us as a judiciary, it's dreadful for the parties and the solicitors'.* The drawbacks to the adversarial system in family law cases were also acknowledged within the social professionals' focus group whereby it was pointed out that '…t*he adversarial kind of like nature of …of court is just do you know that's a real that's like difficulty from the start'* (SP1, Project Manager, Family Support and Targeted Early Intervention Service).

5.2.2 Inadequate infrastructure

The infrastructure of the family courts was highlighted as problematic for those using the system. For example, participants in the legal professionals' focus group highlighted that the current infrastructure poses several serious challenges for families who are accessing the court for contact proceedings. LP2, a barrister, elaborated on this claiming; *'…it is that the court infrastructure and by that, I mean everything from the buildings to the support service to the Judges, to the registrars to the safe, secure areas et cetera, is not being provided by the state that to my mind is the biggest obstacle at the moment to dealing properly with access issues for children of any age and certainly for young children'* (LP2, Barrister). J6 was also of the view that infrastructure was not suited to facilitate family law; for example '*outdated courthouses, in some cases couples under severe stress are standing around in hallways, there aren't enough consultation rooms, etc, it's very inappropriate'*. Similarly, J1 reflected on these issues and revealed that pre-COVID, '*Phoenix house was a nightmare; it was a health and safety issue because all of the cases were called on at 10:30 or 10 o'clock, three courts with, say 20 cases in each-that's 60 parties multiplied by lawyers and everyone and people with domestic violence all in the same space and everything'.* The public health concerns that came with COVID resulted in time slots being given to people to avoid the issue of everyone turning up at the same time and being there all day. The daily changing schedule resulted in the backlogs being cleared and the building being a '*more humane place'*.

5.2.3 Long waits and lengthy processes

A strong theme to emerge was the length of time it can take for cases to come before the court. In essence, this issue was put down to the sheer volume of cases that come before the courts in each sitting, and the time it takes to address each individual case adequately. By way of illustration, J2 described the problems with family law in the district court as being due to the fact that it is '*hopelessly overcrowded*' in terms of the lists that Judges must hear and where, in some county districts, the court might only sit twice a month. J2 was of the view that this leads to '*sticky plaster solutions put on each month to try to move it onto the next month…and to get a full contested hearing which might take a couple of hours'.* J2 further qualified that in some parts of the country, there might be 80-100 cases before the court on any given day and even just to progress those, '*you give them each a couple of minutes'.* J4 identified the issue a lack of Judges to deal with hearings resulting in an unnecessary backlog. They were of the view that *'people should be able to come back into court once a month, once every two months to move things along'.*

The issue of delays in reaching a Judge was echoed by participants in the legal professionals' focus group, who noted that in one part of the country, *'it can take anywhere up to two months to get before*

a Judge, and that's if it's not adjourned' (LP3, Solicitor). Similarly, LP1 pointed out that *'…most of the Judges are dealing with a mix of private law, Tusla, criminal all in the one day, and the volume of cases is absolutely huge even in comparison to two or three years ago. And so, I think the impact of COVID is really significant because cases have not got to hearing'* (LP1, Solicitor). However, with a contrasting opinion, another participant in this group claimed that the existing system delays were more so due to *'… people not having their work done, and that applies to everyone from lawyers, counsel and solicitors to mediators to assessors'* (LP2, Barrister). J4 was of the view that delays in the court system could be due to a number of reasons including *'if the parties aren't ready to go or there isn't a Judge on the day you know can get put back again and if a section 32 report has been ordered then the report is out of date by the time it comes to court, and you have to get an updated report'.* Furthermore, waiting on times in courts on the day of a hearing were highlighted as problematic; *'…sometimes people agree to access arrangements that they're not really, totally happy with just because they're worn down by the day of just waiting, waiting, waiting'* (LP4, Barrister). Indeed, it was claimed that these situations had been further compounded by the Covid-19 pandemic, which has resulted in waiting times being extended significantly in some cases.

In the legal professionals' focus group, it was suggested that once parties managed to get it into the system, things progressed a lot quicker:

> *'I suppose it's like the analogy with the hospital system where people say the public system is great once you get into it. But it's the once you get into it. And I think the same is true. While there are exceptions in all professional cohorts including Judges, most Judges, most courts are good.' (LP2, Barrister).*

Similarly, P3, solicitor, acknowledged *'So, it, it can be very, it can be a very fraught situation, but then once, once you get over the first, you know the waiting period, then once we get into court or into court proceedings, then things tend to take a very familiar pattern'*. However, in recognition of the delays in getting before a Judge, it was claimed that; *'we try and make every effort to initiate agreed access arrangements at a very early stage'* (LP3, Solicitor).

5.2.4 Time-sensitive nature of family law for under 6s

The delays relating to family law take particular significance, considering that all Judges interviewed stressed how time-sensitive family law cases are concerning very young children. For example, J1 acknowledged the need to address cases swiftly as; *'six months in the life of a 4-year-old is a very long space of time'.* Similarly, J4 echoed this saying, *'six months in a child's life is a long-time and... if that extends to two or three years, you know, it's a different child….'* J2, reflecting on the complexities of

contact arrangements for the under sixes, noted that; *'Because you're dealing with such a young cohort of children whose needs and abilities change so dramatically in the first six years of their life, it's almost inevitable that finally resolving access is going to take a lot of time'.* Similarly, J3 emphasised how children in this group are growing rapidly, though constantly evolving developmental stages, with changing needs:

> *'…children who are only children for very short periods of time and the child who's maybe 12 months old when the proceedings start, it's very different to the child of two years when the case comes on for hearing and what has happened to the child in those, in that intervening 12 months can be quite significant, you know, particularly if there's no contact with one parent and you know, so that's, I suppose that the system perhaps that we have or that that's how the court system works at the moment.'*

All the Judges expressed an awareness that this group will require constant changes to their access arrangements to best suit their needs at that time. J2 disclosed that *'particularly for family law involving very small children, is almost unending because…with very small children…how you would make an access order in relation to a 6-month-old might be very different in how you make an access order for a 2-year-old'.* Issues with delays in the court were raised again by J1, who highlighted an inequality between courts inside and outside of Dublin, where cases outside of the capital city can be heard months apart, resulting in situations where '*I've often found really difficult and tragic situations down the country because there's not enough time and space and not enough Judges and not enough hearings' (J1).* J4, contrary to some of the views expressed here, believed that '*some Judges have a view that...final orders [regarding access] should be made as soon as possible and try and close the file on things'.* However, it was the view of J4 that in *'family law it's very rare that there's going to be final orders that are never going to be changed '*and said that '*a step access approach works better and allows the parties to get their head around things in incremental steps to build it up*'. One way of achieving this was by implementing interim orders and then bringing parties back to review it. J4 continued by saying, *'even if, you know, even if a child is young and there are concerns, ideally there'd be face-to-face supervised access that could take place from a young age to try and build that up and give the parties a chance to work out whatever issues are there'.* However, despite the difficulties surrounding final judicial orders, J6 highlighted the belief that it may also be unsustainable to have decisions and cases monitored over time by the court as *'it's court of law, and not a child care setting'*.

5.2.5 Children's needs in relation to access

A strong theme which emerged from the data was the extent to which children's needs and rights were considered in relation to contact arranged through the legal route. Participants in the social

practitioners focus group were of the view that court rarely works well for children. For example, SP1 (Domestic Violence practitioner) expressed the view that children can get lost in the court system and, importantly, what is happening in other areas of a child's life may not necessarily be considered when court decisions are ordered. According to one participant in the social professionals' focus group, what happens in some instances is that within the current system, it almost becomes the child's responsibility to go on access and '*appease the court'* (SP2).

However, in the legal professionals' focus group, one participant spoke very favourably about some Judges working in the district court on child contact cases, noting that they take a child-friendly approach in such cases with access being treated as a right of the child (LP4, Barrister). Moreover, LP4 noted that '*they're not swayed by maybe a mother saying well I should have access as the child is under 6 and the Judges are inclined to give it to both, you know, between the mother and the father because the voice of the child is so difficult for under 6'*. However, yet again the caseload that some Judges carry outside of Dublin was highlighted as problematic in terms of the overall quality of decision-making. As one Solicitor recalled:

> *'I was involved in a case where a Judge dealt with 108 cases that day in the District Court and then made a decision at 6:30 in the evening on … [a case involving a child]. Wouldn't hear from the section 32 reporter because it was 6:30pm and made the order and like it was just an appalling environment, an appalling judicial environment for a Judge to be expected to make a decision in. But also, he was ratty and unreasonable at that area of the day and made …obviously, I think a terrible decision''* (P6, Solicitor).

It was alleged by one participant that the '*pro-contact position throughout the Irish Family law System'* (LP6, Solicitor) was problematic:

> '*But like nobody …like there is not a moment where someone says hold on a second. We've a very young child caught in the middle of this, it never ever happens, and this is serious level of kind of lip service to absolutely, you know, a child first policy, like it's absolute bunkum and it's primarily more about the preservation of a really poor system you know like*… '(LP6, Solicitor).

Meanwhile, J1 raised the issue of cases where the mother is resisting overnight access because of the child's age. While J1 understood this resistance as the mother being '*protective*' and that 'it's difficult for the mothers they have to let go and they find that difficult', the reality J1 asserted is that '*if you let it go too long it'll never happen so if not now, when?*' Stating that the prior relationship between the

child and their father was absolutely critical, J1 said overnight access would not be given immediately if the child had never seen their father, suggesting instead that '*you're going to build it up gradually you know -you're going to take the child's circumstances into account and the relationship between the parties*'. Reflecting on similar situations J6 disclosed that:

> *'I take into account does the person seeking access, how well do they know the child? If it's a very young child, let's say under a year, I wouldn't think overnight access is appropriate at all, then there is a question of whether or not initially the access should be supervised if the child doesn't know the father then I would think that very important, then who supervises, mother might want be the most appropriate person, it might be, I try and see if there's a third party that's acceptable to both of them, that could supervise and that's the way I would try and, I would adjourn then and try and build it up that way'* (J6)

Regarding gradually building up the contact time J1 also described a process where the case would be brought back before the court, perhaps in 3-6 months, for review. This was also frequently something the s32/47 assessor might also recommend. This participant also asserted that this review process was something that parents were generally in favour of, stating that '*unless they're really bad people they want their children and they want the best for their children… but there are some pretty vicious mothers out there too.'*

On this topic also, J3 suggested that for very young children, normal developmental milestones could become mistaken for a child becoming uncomfortable with contact with their non-custodial parent; e.g. making strange, tantrums or outbursts, and these may be used as a reason for the child not wanting to go. Reflecting on what was important when deciding on issues of access J3 noted:

> *'…the main considerations then are the child and the child's needs, recognising that the child is best served, the best interests of the child are served by having a meaningful relationship with both parents and then trying to assess and where the non-custodial's capacity is at and also looking at the custodial parent and how easy it is going to be or how challenging it's going to be for them to be able to separate from their child'*

J1 also talked about cases where either parent seemed to have little insight into their children's needs, where they seemed emotionally disconnected, or where parents were making allegations and counter-allegations against each other. J1 stated that these latter cases *'really worried me'.* When asked if contact was ever denied, J1 stated, '*not too often because you're* conscious of people's right to have a relationship'.

5.2.6 Safety / Contact Centres

Participants in the social practitioners' focus group identified that a primary concern they shared was children's safety while on access, especially if there were any additional concerns, such as the previous history of domestic abuse. The lack of safe spaces for access to occur was highlighted by SP2 (Child's Views Expert), who noted that in Ireland, there is '*nowhere where access can happen safely'.* Meanwhile, SP1 (DV Practitioner) expressed the view that in these instances, the '*rights of parents are superseding the rights of children regarding access'.* SP3 (Project Manager, Family support and targeted early intervention service) emphasised *'the importance for children [to] have a safe space to go where staff have the qualifications and where they have the insight into not just what's been said or what's not being said',* further drawing attention to the need for safe, sanctioned access and contact spaces when children's safety is a concern. SP group participants spoke about the important role contact centres played for children in contact and access. SP 1(DV practitioner) reflected on the loss of contact centres and had the following to say: *'The feedback (relating to contact centres) was overwhelming… it was just to know that that child can go somewhere and if it's not safe for the child, for the access to continue, then somebody else was making that decision. A professional was making that decision. So, it was actually listening to what the child wanted, you know? But they were the biggest loss, definitely'.*

One of the issues J1 raised was the lack of support for parents in the form of contact centres. This was a missing support for both families and for the Judges when they considered that this support was needed, whether from a child safety or child welfare perspective or where parenting needed parenting support. Without accessible and affordable contact centres, J1 stated that the only option for families was a service called CORE, a professional organisation that families had to pay to access.

Similarly, J4 identified the lack of supervised access facilities as a '*big issue*' in family law. The cost associated with supervised access was raised by J4, who said: ***'It's about 100 euro an hour for supervised access. So that is a huge amount out of their weekly income if that has to happen. And it's not something that can happen for a couple of hours at that price.'*** Similarly, J2 explained that they have come across many cases where some form of secure access, either supervised or supported access, was necessary and yet '*it is almost impossible to get it'.* J2 said that the lack of available safe, secure access facilities has led to decisions being made where an access order requires access to take place in a play centre simply because there is an element of security of it being in a setting where there are people around where there might be CCTV cameras just to reassure a parent and that it is far from ideal.

Correspondingly, J6 concurred with J1, J2 and J4 on the issues that lack of supervised access facilities can create for families who may require this type of service:

> *'… there is again, shortage of supervisors, some of them don't work at weekends which is extraordinary, I mean access is a very often a Saturday-Sunday. It's a nightmare. It often stops access progressing because we can't get someone to supervise, and the other aspect of it is it's very expensive, I mean there should be centres that are sponsored by the state. Whereby if I direct supervised access, I can say go to that centre now direct, they will supervise it and it should be a 24/7, they're not there.'* (J6)

5.2.7 Domestic abuse / Coercive control / Child as a weapon

Access and contact where there were a history of domestic abuse was raised by participants in the social practitioners' focus group. SP2 (Child's Views Expert) discussed how access, and maintenance, can be used to *'continue the abuse.* Additionally, issues of coercive control were raised by the social practitioners as being an issue for some of the families they engage with. For example, SP4 (Practitioner, City-based family service) said, *'a lot of that [coercive control] comes out in access visits where children are weaponised or used as tools'.* Reflecting on the issue of domestic violence in family law cases, J1 posed the question, **'***what is domestic violence? It's a very difficult thing to really assess it, I struggled a bit with all of that'*.

SP4 (Practitioner, City-based family service) shared the view that court orders leave too much room for interpretation; stating that they are '*not clear…there is not enough detail'* and that '*one person interpreting it this way and the other person is interpreting that way…and…someone who is controlling and abusive is going to interpret it in a dysfunctional way'. However, J3* highlighted their aim to *'craft orders to allow for further access to be agreed through the parties'* in recognition of the fluidity required for these types of arrangements. Underscoring what may work in some situation can have very different implications if domestic abuse has been present.

5.2.8 Different parenting styles

Additionally, J3 commented on challenges which can arise from different styles of parenting between parties. In these situations, J3 emphasised the need to encourage communication between the parties about the type of care parents felt their child might need and to resolve issues amongst themselves.

5.2.9 Difficulty with accessing mediation

Describing mediation as '*amazing really'*, J1 stated that it was always immediately evident when couples had engaged in mediation because '*they sit beside each other have everything sorted out, talk*

to each other' and that the end result is that '*the children are the people who benefit from all of that'.* J6 also felt strongly that mediation had much to offer as an alternative to the court process and disclosed trying to 'steer' people towards mediation where possible. J6 further explicated that *'in mediation they [the parties] have the power which is taken away from them in the judicial platform'.* However, on speaking about the idea of compulsory mediation*,* J6 stressed that '*you can't order someone to mediate*'. J6 further explained it is essential that parties engage in mediation *'voluntarily'*. Furthermore, J6 described instances where judicial colleagues had ordered mediation as a '*recipe for disaster'.* However, J6 stated that long waiting times or delays could mean that the window for parties engage in mediation can be lost.

5.3 'The Voice of the Child? 'The child has no voice''

As reflected in the above quote, a dominant theme emerging from the analysis of both focus group and individual interviews with a broad range of social and legal professionals was the stark absence of the voice of infants and very young children in the Irish family law arena, specifically when decisions about contact time are being made. This includes the period since Article 42 A was inserted into the 1937 Constitution and the Children and Family Relationships Act 2015 came into force in January 2016. While one participant, Judge (J2), stated that the amendment to the Irish Constitution and the resulting incorporation of Section 32 into the 1964 Act by the 2015 Act has 'institutionalised or solidified the importance of seeing the views of the child, so it is mandatory in every case that the child can express their views, you just have to do it', another participating member of the judiciary confirmed that the 'nought to sixes don't get heard.. you won't see them -the only people that see them are assessors for you. I don't know any Judge who'd hear a child that young' (J1). Similarly, J6 revealed an uneasiness in engaging with this younger cohort of children; *'… I don't know I would go below 8, I wouldn't be comfortable I don't think'*. Indeed, one member of the judiciary (J4) was of the view that '*the one to six cohort is the most difficult because you don't have their voice properly'* but later added that '*if the children are a bit older, then we do have to take their voice into consideration and then the reporter is ordered…'*

While it is important that particular consideration be given to the views of very young children, not least because it is their right but also because they are (or should be) the central focus of the decision-making process, it would seem that these children have limited or no opportunities to have their perspectives considered, and, as a result, minimal impact or influence on that process or the outcome. Furthermore, under Article 42 A 4.1 of the Constitution and section 3 of the Guardianship of Infants Act 1964, in access/ contact cases, the best interests of the child are the paramount consideration. In

making this determination, the courts are directed to consider a list of factors set out under Part V of the 1964 Act (as inserted by section 63 of the Children and Family Relationships Act 2015), including the ascertainable views of the child concerned. The analysis suggests that the absence of young children's voices in this context occurs for a number of reasons, including judicial skill, resources available to support the process, perceptions of the capacity of the child and the dominant voice and influence of the parents in the process.

5.3.1 Adults first, then children? '…this is the pervading culture'

The presumption that children's needs or best interests are best served by having a relationship with both parents was described by one participant as '*a pervading kind of culture' (SP1).* Despite Ireland being party to the UN Convention on the Rights of the Child 1989 (since 1992) and relatively recent legal reform in this area, including the Children's Rights Referendum in 2012, many participant views concurred with SP1, who asserted that *'for a long time, children have been an appendage to their parents in the societal structure'.*

For example, J3 noted that they would expect the parents to present the views of their child(ren), explaining: *'the views of the children would be brought directly or indirectly before the court through the parents, you know, particularly if they're very young'.* J3 further qualified that if parents have reached a resolution, that they would be satisfied this resolution was attained through knowledge that the parents possess about their child's needs and best interests and that the presumption was that it is the custodial parent who would be most attuned to their child's needs. Echoing this position, a participating barrister also asserted that in contact cases, the voices of children are not regarded as necessary:

> …in my experience, a large volume of cases involving children are dealt with quite adequately by the parents even before they've gone to solicitors, or if they've gone to solicitors in conjunction with their solicitors or Counsel, or in many cases, a case goes to settlement, or indeed full hearing without the need for any outside intervention because it is not a dysfunctional situation, nor is it a situation that they are at such loggerheads that they can't deal with most of the child-related issues. (LP2, Barrister).

However, participants spoke about the ways in which the child can get lost during acrimonious parental separation and where parents can become blinded to the needs of their child. In terms of representing the needs and wishes of young children, SP5 was of the view that there is *'an unwillingness or inability to see where the child is coming from'.* SP5 also related this to parental readiness and said that many parents are not ready to listen to or take on the needs of their very young children while going through

a parental separation. Similarly, SP5, a play therapist, went as far as to say that children can be used as a mere 'tool' within the process. In relating her experience working with very young children, she spoke about what she witnessed as '*an inability to really understand…this child…their age, their needs…even their physical, their practical, needs like clothes, little teddy bears going from house to house. What that might be like for them because…one parent is so caught in the rage against the other'.* Parental readiness was also cited as critical for play therapy to be effective, as both parents need to come on board and be willing to reflect on what is going on for their child.

Finally, some participating professionals highlighted situations where young children's views were clearly out of step with the decision that was ultimately made by the Judge. Indeed, rather than the court system being used to determine what is in the best interests of the child, SP4 referred to the court system being used by parents as a '*system to control*' that is sometimes used *'to punish and control the victim and the children'.* Highlighting that while there had been significant improvements in general in understanding the impact of trauma and adverse childhood experiences for children from pregnancy onwards, this understanding was not taken into account in custody and access cases and that young children's experiences of access are very often underestimated. Across all interviews, a further question was raised about the child's capacity to engage in the decision-making process and the appropriateness of that involvement.

5.3.2 Children's capacity

In assessing the capacity or appropriateness of children's involvement in the decision-making process, age appeared to be a common threshold above or below which voices were heard – or not. Some participants argued that '*we can ascertain for children from a very young age'* (SP1, DV practitioner) but went on to confirm that they nonetheless remain largely invisible and that there is a real need for their rights to be promoted. She emphasised that there is a '*continual need for the child to be at the centre of any arrangements [made on their behalf]'.*

Regarding the children who do get to speak with a Judge, J1 was one of a number of participants who affirmed that the child's age would be a considerable factor influencing whether they get heard or not, with 8 years of age probably the youngest age they would talk to them. J1 also commented that because someone else must be in the room and that the conversation must be recorded, the result is that the whole process is not very *'child friendly'.* J2 similarly questioned the purpose of engaging very young children, particularly those in the 0–3-year-old age group, explaining: *'I suspect that up to 3, they're not capable of expressing or formulating a view in a way that is of any huge value'* and that '*the differences between a 3-year-old and a 6-year-old being [able to] articulate their view…is huge'.* While

J2 reflected that as children get closer to age of 6 years, Judges would be more concerned to enquire into the children's views. J2 cautioned, however, that you'd be '*wary about placing huge reliance on their views because you'd be wondering how that view has been articulated, how it has been communicated, how it has been reported…'* J2. Notwithstanding the different rates at which children mature, J2 aligned closely with the views of J1 that children from 7 years up are at an age where more meaningful engagement can take place. J4, also discussed the age at which they believe children can have a more meaningful voice in relation to decisions regarding access but was of the firm view that this would take place via a third party. They said: *'I think I take the view that around 5 but depending on the child. So, from 5 up that the assessor can get some indication of what their wishes are, and you know, maybe a four-year-old, depending on the four-year-old. But I think up to that it's very hard to get their voice, and certainly, I wouldn't be bringing them into the courtroom'. J4* was of the belief that some members of the judiciary would even think that five is too young. However, J4 believed '*an assessor would have [the] tools to get the voice of the child from about five depending on the child'. T*hey also said that they would consider listening to the voice of an older child in court but was of the belief that it is a difficult process for the child and sometimes '*harder than anticipated*' for the child to come into such a formal setting.

J5 was the only Judge interviewed that spoke about the importance of observable behaviours in young children. They recognised that while very young children cannot speak, they can communicate. J5 spoke about pre-verbal children and said that *'But if you think you see a child who can't verbalise , they will verbalise in different ways. And it's a matter of being able to interpret that. Now, I think that's beyond the realm of the Judge. I can't do that because I have no training in that'.* This Judge said that if a baby clings to its mother and cannot separate from its mother and is sending signals about its place of safety then '*that's the voice of the child'.* J5 was of the view that *'the under sixers the guidance can be got from the professionals doing sections 32 reports as to how the babies react to these are trained psychologists and psychiatrists during this, and it does help.'*

As already discussed above, the UN Committee on the Rights of the Child have cautioned against the use of age as a barometer of maturity as it serves as a barrier for children being heard. That's why there are dual criteria - age and maturity - and an individualised approach advocated for children on a case-by-case basis. As human beings, children are all different and mature at different rates - a one size fits all approach is not appropriate or children's rights compliant. Finally, J1 cautioned that *'if you're going to tell all children that they've a right to be heard, do you have the facilities for that, do you have the time for it, -and look we don't have any of that so you're kind of doing it on the hoof and then you get, I*

mean, you get seriously compromised children'. This cautionary note also concerned the issue of judicial skill and the available resources to support their decision-making, which is addressed next.

5.4 Skills and Resources

> *'[I] used to be terrified talking to them because [I] didn't know what to be saying to them'. (*J2)

Reflective of J2's quote above, all participating Judges commented on their perceived lack of skill and confidence in engaging with children in ensuring that their voice was being heard. For example, J3 described the process of engaging with very young children as *'extremely challenging [preferring instead] to rely on the indirect reporting of matters through a section 32 report to the court.'* Describing the children in high conflict cases as '*compromised*', J1 stated that Judges would see children if they have to – '*if you're being asked to - if you're being pushed to',* but that some Judges are *'dead set against it - then there are others who simply will do it - it's very diverse'.* J1 further asserted that the legislation for hearing the voice of the child was brought in without any resourcing of the implications of that legislation, concluding: *It was a lovely idea to bring in the voice of the child, but it wasn't thought about, it hasn't been resourced, who's going to decide which child is heard, who's going to hear them?* J1

Similar concerns were also expressed by other legal professionals regarding the State's failure to put in place the necessary infrastructure, including adequate resourcing for the implementation of the constitutional requirement to ascertain the views of children in guardianship, custody and access cases concerning them, resulting in what one participant described as '*a real pressure point in the system*' (LP2, Barrister).

There further appeared to be a consensus amongst most legal professionals that since the Constitutional framework now recognises that the child has a right to have an input into contact decision-making processes, the way this takes place should not be down to cost. Indeed, one practitioner claimed 'It's unconstitutional, I think, to even look for a payment' (LP4, Barrister). In this context, LP4 further elaborated:

> *I have never come across a case where a Judge has brought in a child under 6 to speak to them…. But for children 6 and younger, it's always been section 32's in my experience, and these if it's being done privately, the section 32 assessor demands the money up front before he or she even does the assessment. It just puts people; it puts people off having to pay upfront or maybe one party will pay and the father won't pay his 50% or the mother won't pay hers. So, she'll say I can't afford because I'm not being paid maintenance and it just delays the whole thing. It antagonises everything*. (LP4, Barrister).

Returning to the issue of constitutional change referred to earlier, J2 asserted that this has not necessarily changed the way Judges make decisions and that they make them now '*with the benefit of those reports, which is a big improvement'*. J1 asserted that in the absence of a court report, '*you're only doing guesswork really, I never see a child that age'*. The next section addresses the findings on court reports.

5.5 Court reports as a way of bringing the voice of the child into the court

The Judges that were interviewed spoke positively about the introduction of Section 32 reports, with J3 referring to them as a '*game changer*' for the District Court. J2 remarked on the benefits that can be gained in commissioning a Section 32 and said 'it *helps take some of the pressure off, it may suggest a solution to a very difficult problem, it may suggest a way forward in a case where the parents can't agree…'* J1 also spoke positively about the use of court reports and asserted that *'it's almost a great relief as a Judge when you have a report -you can tweak it, you might say 'well not so much access' or 'a little more or not two weeks holidays let's reduce to one for the time being' or you know, so it's a great bonus to have a report'*. Similarly, J3 stated that '*being able to get [a] somebody who has a suitable qualification, to be able to meet with both the parents, to be able to meet with the child and then be able to and give us an assessment and make recommendations to the courts, is extremely helpful*.' J4 also acknowledged the benefits to be gained from Section 32 reports, especially where the assessor meets the child and the parents '*in situ'* in their own environment. Further noting how the objective nature of such reports can be beneficial in intractable differences, J3 indicated that they viewed court reports as the preferred method of bringing the child's voice into the court for contested cases:

> *'…if there's more contested dispute perhaps, then I'm satisfied, I would generally look for a report that would bring the child's views in directly to the courts, that would be a Section 32 report and then in some very contested cases, one might meet with children, but I would be very reluctant to meet with such young children, I must admit.'* (J3)

J2 said that the judiciary are obliged to have regard to the wishes of the child if they are capable of being expressed. J2 further commented that Judges rely on experts to give Section 32 and Section 20 reports and are generally careful to do it in as many cases as possible as Judges are very alive to the amendment. However, this was not a sentiment that was shared by some of the social professionals. SP1 (DV Practitioner) was of the view that Section 32 reports are the exception rather than the rule, and in their practice experience, '*the Judge doesn't order a Section 32 lightly'*. SP2 (Child's Views Expert) spoke about the way in which various reports can be used in court and oftentimes disregarded by Judges. They said that what happens in practice is that '*they'll (Judges) either order a Section 20, which is useless, or they'll order a Section 32 and then you'll get a Judge who doesn't agree with what the*

psychologist has written, and he'll order a new one... and then it's such a long process. The judicial system is endless'. Likewise, some of the legal professionals also had concerns about the way in which court reports are used. LP2, a barrister, noted that while in some cases, lawyers may undermine the credibility of the court report for the Judge or, indeed, the Judge may decide not to afford much weight to it:

> *…once you get the assessor, and if the assessor is a good assessor, you tend to get resolution at that point in time I find not in every case, but in the large bulk of them, because most practicing lawyers know that Judges, while not bound to listen to the voice of the assessor as an expert witness will almost certainly do so, unless there's compelling reason not to listen to the assessor* (LP2, Barrister).

5.5.1 Issues with court reports

However, while the Judges were very positive about the use of Section 32 reports, the social and legal professionals and some Judges, also highlighted several issues and concerns they had in relation to the court reports. These ranged from the quality of court reports being produced, the qualifications and efficiency of court assessors, the availability of court assessors, the high costs involved and the extent to which reports are valued by Judges.

Indeed, the Judges spoke about the importance of knowing what assessors are available to them and their quality of work. This, according to the Judges varies quite considerably. J1 explained that there are regulations as to who is qualified to conduct a Section 32 report but that there are no regulations specifying who can do a Section 47 report, resulting in the need to know *'who's good out there and knowing who's not good - that can be an issue too'*. J1 expanded on this, stating that confidence in the report produced was largely dependent on the level of trust or confidence the Judge had in the assessor. J3 was of the view that matching the person to the assessor can be useful, if it is possible. However, it is not always possible due to hearings taking place in different geographical areas, and therefore Judges may not know the local assessors. J3 noted that they can, and sometimes do, take advice from lawyers in these instances. J1 also spoke about the importance of knowing the assessor and cautioned that without knowing who is undertaking the court report that as a Judge '*you've just to hack on with it, basically you don't know if you're making wise decisions, you've to just cross your fingers and hope you are'.* J4 said that reports can vary considerably, with some being too long and structurally problematic, with others do not provide any objective opinion.

J2 noted considerable difficulties in different parts of the country in getting suitably qualified people to undertake reports. J2 expressed concern about this and said: '*there isn't sort of [a] standard, the criteria set down by the Act are terribly broad'* and said that they would be *'questioning the expertise of some of the categories of people named in the Act as being able to do them.'* One barrister from the legal professionals' focus group similarly noted that '*…getting a suitable assessor to carry out a report,*

whether it's the section 47 report under the Family Law Act 1995, or whether it's the section 32 reports [from the CFRA 2015) whether voice of the child or otherwise' (LP2, Barrister) can be challenging. SP3 (Project Manager, Family Support & Targeted Early Intervention Service) also raised the issue of quality assurance. They said that while some of the professionals tasked with carrying out the reports might be very skilled in working with a certain age group, they questioned whether consideration is really given so that the skill set of the professional matches the age and profile of the child. They also said they see the same names being used in courts and questioned if there was limited personnel available to undertake them. Similar concerns were expressed by one solicitor about the quality of the court reporters, with one LP6 claiming:

> *'I think there are very few actually good reporters out there. I think there's a predominance of bluffers who make up stuff and it's rarely evidence-based and ….my experience, and it is only my experience, is in 99.9% of cases, beleaguered Judges follow whatever the recommendations are without any critical assessment of what those recommendations are. If there are factual errors that are pointed out within reports, and those factual errors can be gross, you know, and I mean that in the truest sense of the word, they're rarely corrected.'* (LP6, Solicitor).

Some of the participants in the social professionals' focus group expressed concerns regarding the value of court reports and queried if there should be other methods of incorporating the voice of the child into court proceedings. SP1 (DV practitioner) was of the view that court reports do not always capture what is going on for the child, and in her experience, that while a Section 32 report can be very effective in having someone who understands the age and developmental stage of the child, oftentimes children remain '*peripheral*' in relation to the preparation of the report. In fact, one practitioner in the social professionals' group talked about using the same generic report for completing section 32s. They said the following: '*…when I'm talking about access in the courts, I am...my, my recommendations are four pages long. They're all generic, but they're tailored to suit that individual family'*. The play therapist in the focus group (SP5) was of the belief that while Section 32 reports are valid, they believe it would be important for more professionals to actually go into the child's natural environment to observe their attachment style in making decisions regarding contact and access: '*To go in and see them in their schools, who look at their behaviour, look at the very basics of training and observational skills. So just observing families, observing children with their parents. Can they put their arms around them? Can they sit on their lap? Are they looking at them? Can they hold eye contact? The very basics.'*

SP3 (Project Manager, Family Support & Targeted Early Intervention Service) warned that Section 32 reports should not be seen as a panacea and has seen some very upset children following the recommendations of a Section 32 report while also raising the issue of quality assurance. They also said that quite often, there is a lot of information that would be available on a child through their school, GP, PHN or other services they are attending but that this existing information is '*rarely harnessed*' for

private family law proceedings. They were also cautious about services ordered through the court to make decisions *'in a very limited…time period sometimes for very limited amount of time that the child gets to…meet that professional'.* They feared that there was not enough time to build a level of trust with the child, something which is crucial to the process.

Others emphasised the high costs associated with such reports. J4 believed ideally, reports should be free for everyone or, at the very least, *'they'd be at a set fee because the fee is very high'.* Similarly, J3 noted that in some instances, the financial costs associated might be prohibitive for some families. Moreover, LP4, a barrister, commented that ': *'the voice of the child reports at very significant cost, which is outside the scope of a lot of people, and that does cause difficulties even if there is legal aid board involvement'* (LP2, Barrister). Another barrister commented that '*Section 32 reports are often used, and they are quite difficult because they're 50/50 payments and they're up to 1500/1600 euro per parent, and legally it only covers a small amount of that*.' (LP4, Barrister).

Aside from the costs associated with court reports, many participants talked about the turnaround of reports being too slow, given how time-sensitive family law matters tend to be. J2 highlighted the significant delays in getting Section 32 reports from the time an order has been made and said that while it is the court's decision to allocate an assessor, it is a very subjective thing and that *'it mostly turns on who is available to do it and who is available to do it in a timely way'.* J4 similarly brought up the issue associated with backlogs and assessors being overwhelmed by the demand to such an extent that *'they're [assessors] are not taking legal aid reports anymore'.* Finally, an additional concern highlighted by LP6, Solicitor, was

> *'[t]he lack of regulation concerning section 47 and section 32 reports was also highlighted as a critical issue by a number of participants in the legal focus group: 'there isn't a central database of section 47 and 32 reports where someone is looking at them going. What are the trends? What's happening? What are people saying?' (LP6, Solicitor).*

5.6 Parental Alienation

Parental alienation emerged as a theme as it was a live issue for a number of participants in the context of contact/ access proceedings. Perspectives varied amongst Judges and legal professionals on the existence and validity of this concept. For many, parental alienation was understood to be an ambiguous concept. For example, LP6 (Solicitor) revealed that *'I don't think it's something that's universally accepted, and so I'd be loath to kind of say that it's a definitive thing, I think there's probably a difference between alienating behaviour or conduct and parental alienation'*. This sentiment was echoed by LP5 (mediator), who shared their opinion that parental alienation was *'…a behaviour with an effect rather than a syndrome*'. Several participants in the legal focus group questioned whether

acrimony stemming from the relationship breakdown was provoking behaviours or conduct that were being exemplified as parental alienation.

Similarly, J1, J3 and J4 were of the opinion that while claims of parental alienation were raised in child contact cases, there were actually very few genuine instances of parental alienation when the evidence was examined. J4, a Judge sitting in the District Court, was of the view that parental alienation *'is not in as many cases as it's brought up in'* but *'would be alleged a lot'*. J1 disclosed the opinion that it was '*a very handy excuse -and it's trotted out quite a bit now there's very few genuine cases of it'.* J6 revealed that in spite of colleagues discussing their experiences of parental alienation, they had never presided over a case of *'intentional parental alienation'* . Further expressing the view that these kinds of difficulties can arise when the parties become *'entrenched in their own views'*. Conversely, J2 suggested that while parental alienation was a '*controversial term*' they were '*absolutely convinced that it or something akin to it exists*'. Similarly, LP7, a mediator, shared the view that '*it [parental alienation] is happening. It's been evidenced in other countries as well… It certainly has presented in mediation, and it is probably the most difficult thing to deal with in mediation'* (LP7, Mediator). However, offering a divergent perspective, J1 cautioned that the lack of any scientific basis for PA was *'worrying, disruptive and very time-consuming in legal terms - but it's not as common as I think it's portrayed to be*'. Meanwhile, J3 described their experience of parental alienation being used in very specific circumstances as a response to allegations of domestic abuse:

> '*…there may also be a cohort of cases where one party, usually the mother of the children, will raise issues of domestic violence and then it almost seems it's in response to that that, the allegation of parental alienation is made on the other side and you know, it may be that don't want to use too emotive language myself here, but it may be that these are, you know, kind of, terms that might be used, not always correctly, but as ways of advancing positions.'* (J3)

Views on parental alienation ranged from it being a current concept to one that had become less fashionable over time. For example, J3 described it as *'a hot-button topic at the moment'.* While another legal professional perceived that its popularity was waning; *'seems to be less fashionable if I can use that phrase loosely now, but I don't pretend to be an authority on the psychology of it…there seems to be a move away from it, but not quite saying it doesn't exist'* (LP2, Barrister).

The value of Section 32 reports was also brought up in this context, with J4 saying that assessors can be *'very good at getting into that (parental alienation) and sometimes they will quote directly from what a child has said, which would give an indication of parental alienation'.* Similarly, J5 said that they defer to the skills of the psychologists who undertake Section 32s saying that they quickly get to the bottom of it and *'have…a fair idea as to who is telling the truth'.* Furthermore, several participants pointed out

that some assessors were more inclined to name it in reports than others. This was highlighted as an issue because of the ambiguity surrounding the term, further noting that the inclusion of parental alienation in these reports can lead to its inclusion as a legal finding, as illustrated by LP6 *'…. if those certain assessors that are, you know, particularly focused on parental alienation identify it, but then subsequently a Judge identifies, and then it becomes a legal finding' (LP6, Solicitor).* However, it was also acknowledged by LP4 that there are some *'Judges in the District Court just seem to be very awake to the possibility of maybe parental alienation is probably a very big term for something that's probably more happening more naturally from on a day-to-day basis'* (LP4, Barrister).

5.7 *In camera* rule

The issue of transparency in family law cases was an issue for some participants. Some legal professionals and Judges were of the opinion that the *in camera* rule served its purpose well, and one Judge went so far as to say that '*the system would collapse'* without it (J4). In particular, J4 was of the belief that in family law cases that also involve domestic violence, *'it would put so many people off… people don't want their dirty laundry, for want of a better word, aired in public, and they won't tolerate that'.* Similarly, J6 expressed the opinion that, especially in small communities, the *in camera* rule is *'absolutely essential because of the nature of the reports'*. Others were a little more concerned that it was serving as a barrier to learning what was happening in family law cases involving access - particularly in the District Court, where these cases are not reported. J2 was of the view that the *in camera* rule was crucial for protecting the anonymity of children and their families and did not feel that the rule impeded transparency. Furthermore, J2 was of the opinion that '*it is open to the press to report family law cases as long as they do so anonymously*' and that if people want to find out what is going on in family law that it is possible to find out, however, LP6, a participant in the legal professionals' focus group, shared the view that greater transparency was a need in family law cases, particularly in relation to decisions and judgements.

> *'We don't get to see the decision-making, there is no peer review of the court reporters. There's no central register on the court reporters; no one knows what the reporters are doing in a general sense. And no one can statistically tell us. And you know there is nothing wrong with transparency. You know, there are children at the centre of this. We should know what's happening there and we don't really know what's happening'* (LP6, Solicitor)

Both LP6 (solicitor) and J3 emphasised the importance of court reporting, with J3 indicating that a more academic approach to reporting, along the lines of the Child Law reporting project on public child care proceedings, may hold the most value:

'… certainly, Carol Coulter's project on reporting from the family law courts was extremely important. I think it's extremely important that we continue to have some official reporting in that way, you know that's not journalistic reporting, that's much more academic style reporting because that helps me see what my colleagues are doing and it helps me to measure myself or to reflect on my practice, as opposed to what I'm reading about theirs and I think that's really, really, really important' (J3)

J3 was also of the opinion that there could be merit in questioning the relevance of the *in camera* rule, especially as modern life and social media have impacted on privacy as it was once understood: '*I just think that there is a question about, you know the whole in camera rule and privacy and what was meant to achieve and that's another very big question'* (J3). Meanwhile, a participant in the social professional's focus group shared their view on the *in camera* rule by stating that under the current system, there is '*no privacy and there is too much privacy' (*SP3, Project manager, Family support and targeted early intervention service).

5.8 Training

Education and training for Judges was a common theme identified across all groups of participants, including parents, the social and legal professionals focus groups, and amongst the Judges themselves. Recommendations for training ranged from awareness-raising concerning the supports available for parents and children regarding contact to developing a stronger capacity to engage with children directly. Participants from the social professionals' focus group were of the view that Judges do not have the knowledge of the full range of services that could be made available to support children and families regarding contact and access. In their experience, it is usually the solicitors that will bring forward names to the Judge.

It was also recommended that the Family Law Bill [on specialist family courts] needs to be progressed at a faster pace in order '…to have a dedicated separate family law court system, albeit within the overall umbrella of the court system, *with dedicated and trained Judges and appropriate support staff and support services*, whether they be psychologists, mediators' [own emphasis added] (P2, Barrister). . Comparably, J6 also stressed the importance of '*specialised*' or *'dedicated'* Judges who would deal exclusively with family law. J1 referred to areas of skill development and training that were lacking for the judiciary, including developing the capacity to engage with children.

Highlighted by J1 and J2 as hugely positive was the recent appointment of Justice Mary Rose Geraghty with responsibility for training all Judges, from those newly appointed to the more experienced Judges. Judge Geraghty's role involves dedicating 50% of her time to being the Director of Judicial Studies. The training that is made available as described by J1 as responsive to judicial need in that Justice Geraghty would do '*any course that anyone wants; somebody expresses a need for training in a particular area,*

she'll do it, that's great'. J1 stated that this was a big improvement on what was initially available to Judges entering the profession, where essentially you were '*trained by making mistakes'.*

There was also recognition given to the fact that training is not mandated and that not all Judges attend training. J2 commented *'if you're among the cohorts of district Judges, you might be tempted to say that some of the people who need that training the most are the very ones who won't attend it'.* The difficulty associated with training, according to J2, is that there is a general shortage of Judges, so it is very difficult to release Judges from court to attend training. J2 said, '*if the choice in sending Judge X to a training course or sitting in a court that would otherwise have to be cancelled, he or she has to go to the court'.* This same issue was identified by J4, who expressed frustration at not always being able to get away from court duties to attend training. J4 suggested that if the training was recorded, it could be availed of in one's own time; this would make training more accessible to members of the judiciary who would otherwise be unable to access it. Indeed, J6 divulged using personal leave to attend training as '*that was the only way I was going to do it'*.

J3 expressed enthusiasm about the advent of the Judicial Council and the possibility of induction programmes and training opportunities. J3 further noted, '*I would certainly hope that at some stage in the relatively near future that there will be specific training for Judges who are dealing with family law.'* J3 highlighted the desire for convergence on legal procedures and standards with other issues such as child development, conflict resolution and skills for interviewing children, for example. However, J3 also expressed concerns over finding time for training, as Judges are already under great pressure in light of overburdened courts and a backlog of cases.

5.9 Conclusion

This section identified several themes that emerged across all the professional participant groups. These ranged from common issues arising for children and families who must engage with the family law system to arrange contact time to more mainstream concerns about the manner in which the voices of very young children form part of the decision-making process to determine what is in the best interests of the child. The professional perspectives, to a large extent, overlap with many suggestions made by the Judges and parents and together, these inform the recommendations which are discussed in section six below.

Section Six: Discussion and Recommendations

6.1 Introduction

This research project has responded to a clear gap in the empirical knowledge base on the perspectives of parents and professionals who manage contact arrangements concerning a child/[ren] in common and the manner in which their children's views have been ascertained and represented. To that end, this project has conducted an extensive international literature review with a view to establishing international best practice in relation to contact time for infants and very young children where parents no longer or never lived together. This literature review was supplemented with mixed methods primary research with parents and a range of professionals in Ireland.

Returning briefly to the introductory section of this report, we reiterate that this research is grounded firmly in the constitutional requirement under Article 42 A. 4 1 which states that legislation will be enacted to ensure that where a child is the subject of guardianship, custody and access proceedings, the best interests of the child are the paramount consideration. Furthermore, Article 42 A.4.2 states that in guardianship, custody and access proceedings, the provision shall be made by law to ensure that any child who is *capable* of *forming* his or her own views, those views shall be ascertained and given due weight in accordance with the *age and maturity* of the child concerned. Importantly, the wording of Article 42 A.4.1 takes account of the best interests principle as protected under Article 3 CRC and also that of Article 12 CRC, the latter of which has been unequivocally interpreted by the UN Committee as meaning that the phrase 'any child who is capable of forming views', should not be viewed as a limitation, but rather as an obligation. This provision, therefore, applies to even very small babies and very young children who, while not capable of expressing views through the conventional form of speech, are nonetheless capable of forming views (Lansdown, 2011, p. 1).

Drawing this report to a conclusion, three key findings have emerged from the research conducted. These are as follows:

1. The absence of the voice of infants and very young children (aged 0-6 years) in the decision-making process on contact time was highlighted across all three phases of the research.
2. The culture, practice and operation of the current Irish family law system falls short of Ireland's international legal obligations under Articles 3 and 12 of the CRC.
3. Resources and interventions are needed to scaffold the assessment, decision-making and contact support systems required to ensure quality, safe and meaningful contact time for infants and very young children.

These findings will be discussed briefly before this section concludes the report with some targeted recommendations.

6.2 Discussion of Findings

6.2.1 The voices of infants and very young children in the decision-making process on conduct time: most notable by their absence.

Many important messages emerged from the literature review, as summarised earlier in section three. Chief amongst these is that regardless of age and where possible, the child should have some direct input into the decision-making process to ensure that their views are elicited and fed into that critical process. Apart from it being their right under international law, as stated above, it is also well accepted that there are distinct benefits to facilitating this both for the child concerned and the decision-making processes more generally. Of importance, such an approach helps to highlight those cases where contact may not be in the best interests of the child. However, unlike decision-making processes that affect adults, where it is the norm for such adults to be directly involved, the literature highlights the opposite practice for children, involving children and, in particular, very young children, in decisions concerning parental contact time apparently needs justification. This theme in the literature was mirrored in the empirical findings as laid out in sections four and five of this report. The stark absence of the voice of infants and very young children in the decision-making process was highlighted across all phases of the research design. The muffling or muting of children's voices, as referred to in the literature (Kastendieck, 2021; Hunter, Burton & Trinder, 2020) also emerged with clarity in this report. The lack of empirical evidence focused on contact time for children under 6 years of age, with only 13 international papers identified, set the scene for this study, with considerably more contention than consensus arising from this research. This finding was also echoed across the mixed methods data collection phases of this research. While participating parents considered that their child's view was included in the decisions being made, they simultaneously acknowledged that those decisions were led by parents and made by adults. This was echoed across the participating professionals, with a Judge asserting that the '*nought to sixes don't get heard'* and, similarly, other professionals confirming that the views of children in this age cohort are presented to the court through their parents. However, parental representation of the views of children is not sufficient to comply with the legal requirement to ascertain the views of children in all matters affecting them. It is also not sufficient to identify quickly and with absolute clarity those cases where contact time is not in the child's best interests.

The literature reviewed cautioned against the construct of the 'influenced child' who is vulnerable to both adult pressure and adult manipulation which they assert ultimately undermines their participation and compromises their rights. Concerns about adult manipulation, which can result in an accusation of 'Parental Alienation', also emerged across all data sets analysed. Acknowledging that parental

alienation is a concept lacking empirical evidence, independent evaluation or indeed a scientific basis, it nonetheless was described by participants in this research as gaining traction in the Irish family court system. Concerns about children being vulnerable to adult manipulation, or their views being tampered with for the purposes of family court proceedings, have led to a general conversation concerning contact, which is arguably shaped by parents, counsellors and legal professionals (Fitzgerald, 2002, p. 188). This finding is not only concerning but is also problematic and is not an approach which is in accordance with children's rights and a child's best interests focus. This research has also highlighted that concern with children's vulnerability to adult manipulation has compounded an adult-dominated and adult-centric debate on an issue that paradoxically should be entirely focused on children. The culture, practice and operation of the current family law system were also highlighted as contributing to the silencing of children in the debate concerning contact time.

Key Points:

- This report identified a stark absence of the voice of infants and very young children in the decision-making process on contact time.
- Adults perceived concerns about children's vulnerability to adult manipulation essentially further contributes to what is already an adult-dominated process by potentially jeopardising the best interests of the child, while also further silencing children in the process.

6.2.2 The culture, practice and operation of the family law system

As set out in section one of this report, the focus in Irish Family Law proceedings (as with other adversarial systems) tends to be on the adult parents, each having their own legal representatives and providing their own evidence to support their arguments. The challenges inherent in an adversarial legal system were highlighted by many participants, with several Judges commenting that the current system does not serve to reduce conflict. While one participant noted that confrontation between parents and their representatives is '*out of control*', another described the adversarial nature of the system as '*like a cattle market…the abusers are just beside each other'.* In a system described by parents as '*toxic*', the danger is that the child invariably gets lost in the arguments, and the focus on the child disappears. In this context, the literature reviewed established strong opposition to the approach of some jurisdictions where each parent presents an expert witness to speak to the child and attachment. For all the reasons cited above, one of the main recommendations is that any assessment procedure relating to children in custody and access cases should be assigned and directed exclusively by the court (Main, Hesse, & Hesse, 2011).

The length of time it takes to access and proceed through the family law system in Ireland was also highlighted as problematic across the data sets, with one parent observing: *'Family Law needs specifically trained Judges, barristers and solicitors who are able to give each case the time it deserves, as too many problems are being brushed under the carpet due to [time restrictions] and huge waiting lists'* (P76, female).

Delays entering the system, long waiting times on the day of the hearing, and delays resolving cases were all cited as exacerbating an already fraught and complex situation. Long waiting times to access court processes were identified as both unaccommodating, unresponsive and inappropriate for addressing access issues. As one participant put it, '*the systems grind very slowly*'. Where at present, in contested adversarial cases, access orders can only be changed by re-entering cases into court, the implications for very young children take on particular significance where developmental changes are happening rapidly and at a far greater pace than the judicial system can respond to. It is important to note that all professionals participating in this present research were acutely aware of the impact and implications of delays; with one professional's assertion reflecting the views of other participants, '*we try and make every effort to initiate agreed access arrangements at a very early stage'.* From an infrastructural perspective, many participants raised the issue of the lack of privacy and respect shown to clients, with cases discussed in open corridors and free legal aid clients only having the opportunity to meet and discuss their case with their solicitor five minutes before they go in front of a Judge. With the literature underscoring longstanding concerns about the impact of discontinued parent-child relationships following parental separation or divorce on children's adjustment and general well-being (Lamb, 2018), and contact with a parent accepted as a child's fundamental right, it seems reasonable that the decisions made should be evidence-informed, objectively retrieved, and carefully deliberated. The nature of the adversarial system, process delays and the court infrastructure described above would not appear to support that outcome.

The literature reviewed in section three has highlighted the proliferation of evidence in the field of young children's attachment and how it is considered in the context of family law disputes over contact specifically. Of significance is the finding that while growing up as part of a separated family does not change the core mechanisms of attachment development, the healthy development of very young children is at risk due to custody and access decisions (McIntosh, Smyth, Kelahar, Wells, & Long, 2010). In the context of family law proceedings, the concept of attachment is often introduced with a view to influencing decisions concerning contact time with various understandings of attachment employed by Judges and professionals alike in an inconsistent manner to shape parenting plans or judgments.

Nonetheless, attachment theory and research emerge from the literature as providing the most validated theoretical and procedural framework for conducting assessments on parent-child relationships for infants and children under the age of six years. Some participants highlighted inconsistencies in how Judges engage with the court report system – with some Judges asking for them and others not; some Judges taking them into account in their decisions and others dismissing them. The participating Judges highly valued court reports and the support they felt that the reports provided them with in their decision-making. Interestingly, variation in the quality of these reports was also highlighted by the participating Judges, as was the inequity in the current system where parents who can afford it or have legal aid are able to have reports completed and those who fall between those two stools having no report available to them. In cases such as the latter, not only is this service inaccessible for these parents but more importantly, the only opportunity for very young children to have their voices considered in such decision-making processes is lost as a result. Variation in the quality of these reports was also highlighted by other participating professionals and by the parents completing the survey. Concerns raised included the qualifications of the report writer, the individualistic and tailored nature of the reports written for each child in each family, and importantly, how the child's views and wishes were ascertained and represented. While Irish law, policy and practice have undergone significant change over the past decade, in particular in the context of listening to children in matters affecting them, it was not always clear from the analysis that where assessments were undertaken, an individualised approach grounded in the child's best interests and reflecting the voice of each individual child was taken. It was not always clear or obvious either as to how and in what ways children are given the opportunity to contribute to the process in any meaningful way. While the recent appointment of Justice Mary Rose Geraghty with responsibility for judicial training was enthusiastically welcomed by all Judges , the time allowed for training in busy judicial schedules was highlighted as problematic. Particular areas identified for judicial training included knowledge of child development, conflict resolution, and skills for interviewing and engaging children.

While there is little consensus in the existing literature on how, when and how often children should have contact time with parents, what does appear to be clear, however, is that overnight care is not essential to ensure that an infant or small child forms a healthy attachment to the other parent. Quality caregiving is the most important factor in attachment formation and not necessarily the frequency of contact (Sroufe & McIntosh, 2011). To this end, the literature more broadly has failed to generate a one size fits all approach to fit in with the law's preference for consistency and certainty in family law decision-making. Indeed, while the law can adjudicate on the logistics of time and place where contact time is being decided, it has limited influence over the nature, and importantly, the quality of that contact time. While the participating families in this present research were wholly committed to their

child experiencing meaningful, safe, and quality contact time, the extent to which that could be achieved was influenced by the supports and resources available to them.

Key Points:

- Developmental changes for children aged 0-6 years are happening at a far greater pace than the current judicial system can respond to. In the Irish family law system, younger children are in danger of getting lost in can be an adult-focused, conflict-fuelled, adversarial family law system. Delays accessing and progressing through the system are particularly problematic when juxtaposed against rapid developmental change for these young children.
- Court reports appear to be the primary mechanism for introducing the views of younger children into court. However, the lack of robust regulation and oversight in respect of such reports has led to significant concerns about the quality and effectiveness of such a mechanism in practice in terms of introducing the views of children into court. For example, it was not clear how attachment theory and research inform the reports, if at all, on which the court relies for the voice of the child. Furthermore, access to these reports was found to be inequitable, inconsistent, and ad hoc. This research confirms concerns raised by the Childcare Law Reporting Project (2021) and the Children Living with Domestic and Sexual Violence Group (2021) previously in relation to court reports. Furthermore, in this respect, the courts are currently relying on individual private practitioners to undertake s32 (1)(a) court reports, when this is known to be a wholly unregulated profession.
- Quality caregiving is the most important factor in attachment formation and children's well-being and not necessarily the frequency or type (overnight) of contact.

6.2.3 Resources and interventions needed to scaffold the assessment, decision-making and contact support systems needed to ensure quality, safe and meaningful contact time for infants and very young children.

The literature review clearly argues that children should have direct input into contact time decisions, and a variety of ways to ascertain and represent those views, including the views of very young children, were discussed. Underpinning these methods requires very specific expertise which takes account of the child's developmental age and stage as well as the child's evolving capacities. Each of the supports and interventions outlined in the literature has been trialled and tested in other jurisdictions and has been proven to support the well-being and development of very young children in this complex family contact process. A feature common to all three recommendations is that they are non-adversarial and therapeutic in nature, characteristics that would better serve the needs of very young children in child contact arrangements. At present, in contested adversarial cases, access orders can only be changed by re-entering cases into court and for young children in the 0-6 years group (the focus of this study), developmental changes are happening rapidly and at a far greater pace than the judicial system can respond to. For these reasons, the non-adversarial nature of these recommendations is particularly attractive when we consider that the literature has also highlighted the abusive potential of the adversarial model where applications to amend access orders are made to merely lodge 'complaints' about the other parent's behaviour, which ultimately takes the focus away from the child. For some families, including families participating in this study, contact necessitates a neutral safe meeting space. However, the findings of this study have illuminated the absence of adequate infrastructure of contact services in Ireland that provide such support.

With attachment theory providing the most validated theoretical and procedural framework for conducting assessments on parent-child relationships for infants and very young children, the importance of training in infant and child attachment theory research for family law professionals and other professionals involved in decisions about contact time is emphasised.

Key Points:

- Therapeutic and methodological expertise in ascertaining and representing the voice of infants and very young children is required to support a robust, safe and evidence informed process of assessment, decision-making and supportive infrastructure regarding contact time.
- An individualised approach towards understanding and assessing children's circumstances and stage of development is essential in order to ensure that their individual best interests are being considered. Such an individualised approach is also nonetheless a snapshot in time of the parent-child relationship, and, as such, should not necessarily be relied upon for providing evidence for ongoing future cases.

- The absence of an infrastructure of contact services in Ireland is highlighted as particularly problematic for any child where parental conflict threatens the safety and well-being of that child. This is amplified considerably when we consider the cohort of infants and very young children who depend on the adults in their lives for their every need.

6.3 Recommendations

6.3.1 Court Infrastructure

A common set of recommendations encouraged by blue skies visionary thinking emerged from the analysis of the empirical findings related broadly to the infrastructure of the court system. For some participants, a fast-tracking of the Family Law Bill to provide for a dedicated separate family law court system, with dedicated and trained Judges and appropriate support staff and support services, was recommended. For one participant, this new system would take as its starting point a children's play area with all other services, including the courtroom, building around this central feature. Critical to this reformed system was the need for the same Judge to be allocated to the family for their journey through the family law system.

As part of this wrap-around system, a further recommendation concerned judicial supports and resources for the allocated Judge, including the availability of a therapeutic assistant for Judges and a move towards a team approach, with all professionals working together to achieve outcomes that are informed by best practice, with the child's rights and needs at the centre of all decisions. The system needs a service connected to the courts where the court can direct various forms of intervention not just for the child but also for the parents with the option of having a review in place. This service would have many different services within one organisation. Both the UK CAFCASS system and the reintroduction of the former involvement of the Probation Service in providing court reports were suggested as improvements.

Finally, the need for greater transparency in the decision-making process on custody, guardianship and contact cases was highlighted as an area needing attention with further reviews of the *in camera* rule called for. Problems cited by participants with the *in camera* rule were noted to include the lack of a peer-review process and accountability in the decisions being made. Of note, one participating Judge referenced the subjective nature of decisions that are made in court, stating, '*At the end of the day, a lot of it will depend on the person sitting behind the bench; some people are better at it, some people are more suited to it, some people are more sympathetic, some people are terrified of it and that influences how they make their decision'.*

6.3.2 Court Reports

The need for a **state-funded service for private family law cases** was highlighted as fundamental to the functioning of a more efficient, effective and equitable system. This service would involve a move away from private practitioner involvement and move towards a system where an organisation akin to Tusla could be sufficiently resourced and tasked with providing some quality assurance in the hiring and supervision of staff. As part of this, state funding **of a panel of expert assessors for conducting court reports** was identified as important for ascertaining the views of children in contact cases. Many professional participants were also of the view that **this service should be regulated**, with objective criteria by which their qualifications, ability and experience could be judged. Participants expressed criticism concerning the accessibility of court assessors and the turnaround time of reports, at times leading to further delays in the judicial process. Indeed, access to reports in a more timely fashion was highlighted by participant Judges.

6.3.3 Mediation

Several recommendations were made concerning the role of mediation in child contact cases. For example, it was suggested that better use could be made of **section 16 of the Mediation Act 2017**. Section 16 of the Act facilitates a process whereby the parties to the case or the court of its own motion decides to invite the parties to consider mediation as an option in attempting to resolve the dispute and can provide information on the benefits of mediation. In addition, where parties agree to try mediation, the court has the power to adjourn the proceedings and/ or make an order extending the time one of the parties must comply with the rules of court or any court order issued as a result of the proceedings. Taking the parents out of the courtroom to reach an agreement, but with the capacity to return to the courtroom to get the agreement ruled on, was described by one participating professional as 'the wonderful intersection of the Mediation Act and the court system. And we need to use that more'. Another participant advocated for a different approach somewhere between mediation and court; *'a quasi-decision-maker'* or a space where decisions could be enacted faster to help families move more swiftly through contentious issues. Concerns raised about the mandatory use of mediation included cases where there was domestic violence, and further concerns were expressed about possible delays to what is already a lengthy process, particularly the time sensitivity needed for cases involving very young children.

6.3.4 Training

The issue of training for all those involved in the job of family law was raised across all the data sets. Participating parents asserted that Judges, barristers, and solicitors all require training specific to the critical decisions they are involved in helping resolve about children's lives. For some participating professionals, this training was highlighted as needing to include '*the very basics of attachment'.* Related to this, many parents expressed the view that access was often court-ordered without adequate consideration of the child's needs or the potential impact on the child. All of the participating Judges concurred with the critical importance of training but were also keen to highlight the pressures of their roles, the shortage of Judges, and the lack of time available to attend training. A clear recommendation in this regard concerns the need for **regular, structured, and ongoing training for Judges**.

With the literature underscoring that attachment formation needs to be considered through the lens of a child and not a parent when thinking about arrangements for contact time, for those charged with making decisions about contact time for very young children, an individualised approach towards their circumstances and stage of development is essential in order to ensure that their individual best interests are being considered. In the context of family law proceedings specifically, it is important for professionals and parents alike to remember that such an individualised approach to assessment is also nonetheless a snapshot in time of the parent-child relationship and, as such, should not necessarily be relied upon for providing evidence for ongoing future cases.

6.3.5 Supports and Resources

A number of supports and resources emerged from the data analysis as urgently required to support families with contact time with their children. Across all participants, the need for **interventions and supports** was highlighted, including parenting programmes, shared parenting support groups, access to counselling for both parents and children, therapeutic interventions for children, and formal contact centre supports. The absence of a streamlined, accessible, and national **contact centre facility** was highlighted by the majority of participants as a significant gap in service provision and a significant problem for Judges who were *'tearing their hair out because there is nobody to supervise the access or places to go'.* Parents also called for a neutral, child-friendly, yet professional venue that could support safe contact time and support shared parenting. To that end, participating professionals advocated for a **specialised service that could be flexible with a tiered approach to support**, reflecting that some families would need more and others less support and intervention. This specialised service would have the capacity to provide the court with a holistic view of the family whilst keeping the child at the very centre of all decisions and assessments. It would also facilitate a process where every child and every family could be treated and responded to uniquely.

Emerging from the analysis was a clear gap in services that provide a medium through which the child's views can be captured and represented. As such, the introduction of a Specialised Advocacy service for the child in the age range of 0-6 years was also a clear recommendation emerging from the analysis.

Key Summary Recommendations:

- The provision of a dedicated separate family law court system, with dedicated and trained judges and appropriate support staff and support services.
- The provision of judicial supports and resources including a therapeutic assistant to support judicial decision-making.
- Provision of a state-funded service for all family law cases sufficiently resourced and tasked with providing some quality assurance in the hiring and supervision of staff, including a panel of expert and regulated assessors for conducting court reports.
- Notwithstanding concerns about the mandatory use of mediation in domestic violence cases, mediation was cited as one mechanism that is perhaps under used in providing a forum for dispute resolution.
- Regular, structured, and ongoing training for judges is critical to ensuring decisions are informed by current research evidence on child development, children's needs and well-being in the context of parent-child relationships and quality contact.
- A system of supports and resources grounded in a firm and theoretical foundation of attachment theory is required to respond flexibly and differentially to the continuum of needs presenting when contact time for infants and very young children requires formal assessment and intervention.

6.4 Conclusion

We conclude this report by highlighting the critical point that all those involved in family law need to remain cognisant that infants and young children are not a homogenous group. Each child is unique in terms of personality, development, and circumstances, and so, in keeping with a children's rights-based approach, an individualised approach based on the child's best interests and the voice of the child should be taken in such cases, once that child is capable of forming views and regardless of age. Furthermore, it is also clear that shared or equal distribution of caregiving amongst parents is not the norm, even in families who are still together.

Section 7: Key principles to inform decision-making on contact time for 0-6 year olds.

General principle

1. There is no 'one-size-fits-all' approach when it comes to 0-6 year old infants and children. Each child grows and matures at their own rate.

Best Interests of the child of paramount importance in contact cases

2. It is essential that the child's best interests lie at the heart of family law cases. Despite the fact that children are not party to the proceedings, any decisions made regarding children must be based on their best interests and not on parents' perceived interests.
3. In determining a child's best interests in contact cases, it is essential that the age and stage of development at the time of decision-making is considered. Moreover, the views of the child must be considered once a child is capable of forming views as part of the determination of best interests. It must be remembered that an individualised approach to assessment is only a snapshot in time of the parent-child relationship, and, as such, should not necessarily be relied upon for providing evidence for ongoing future cases.
4. It must be understood that contact is a right of the child and unless it is not in their best interests, contact with both parents should be promoted and maintained. However, application of the principle that contact with both parents is always in the best interests of a child and is a 'right' of both parents' risks undermining what is truly in the best interests of the child in some cases.
5. There is no substantive evidence to conclude that children benefit from contact with a violent and abusive parent, with the evidence highlighting devastating consequences for women and children where genuine abuse is minimised or ignored.

Children aged 0-6 years in a regular state of change developmentally

6. Children aged 0-6 years are in a critical period of growth and development and attachment formation is a key aspect of this. Thus, attachment formation must always be considered through the lens of a child and not a parent when determining contact arrangements. Indeed, attachment relationships are central to a child's development regardless of their family formation or cultural background.
7. Attachment theory and knowledge should underpin any decision-making and planning processes concerning contact in order to ensure that the child's best interests are protected.
8. Quality caregiving is the most important factor in attachment formation and not necessarily the frequency of contact. While there is little consensus on how, when and how often children should have contact time with parents, what does appear to be clear however, is that overnight care is not essential to ensure that an infant or small child forms a healthy attachment to the other parent.

Importance of listening to children, regardless of means of communication

9. Regardless of age and where possible, the child should have some direct input into the decision-making process in order to ensure that their views are elicited and fed into the decision-making processes.

10. To that end, while there are a variety of ways in which children's views can be ascertained and represented in contact cases, incorporating the views of very young children requires very specific expertise which takes account of the child's developmental age and stage as well as the evolving capacities of the child.

Professional training, continuing professional development and non-adversarial mechanisms

11. The evidence underscores the importance of training in infant and child attachment theory research for family law professionals working with separating and divorcing parents.
12. When understanding the important relationships in a child's life, it is important that a holistic approach to the child's world is understood by court assessors or practitioners who are asked to represent the views of the child – this requires time and getting to know the wider systems with whom the child and their family have contact and who might usefully inform the decision-making process.

    What is required in making decisions regarding contact time for infants and young children is consideration of appropriate methods of intervention by which these determinations are made. Those tasked with the responsibility of reporting the needs and best interests of children to the court must be competent to work with this particular age cohort and possess the skills, training, knowledge and have familiarity with a wide range of areas including child development, child interviewing, domestic violence and child abuse.
13. Appropriate non-adversarial mechanisms must be established and promoted to acknowledge and respond to the reality of family life. These mechanisms must recognise and be responsive to the fact that children grow older, and situations and circumstances change over time. Contact arrangements should not be viewed as static and unchanging.

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Appendices

Appendix One – Informed Consent Form



Trinity College Dublin
Coláiste na Tríonóide, Baile Átha Cliath
The University of Dublin



UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Consent Sheet

I……agree to participate in a focus group for the purpose of research to develop and disseminate guidance on contact time for infants and young children in separated families.

The purpose and nature of the study has been explained to me in writing.

I am participating voluntarily.

I give permission for my focus group to be audio-recorded.

I understand that I can withdraw from the focus group, without repercussions at any time, whether before it starts or while I am participating.

I understand that I can withdraw permission to use my data from the focus group within two weeks of the focus group, in which case the material will be removed.

I understand that my anonymity will be ensured in the write-up of this piece of research by disguising my identity.

I understand that disguised extracts from my focus group responses may be quoted in future research publications and other academic work, and I give permission for this.

Signed: …… Date: ……

PRINT NAME:…….



Trinity College Dublin
Coláiste na Tríonóide, Baile Átha Cliath
The University of Dublin



UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Participant Information Sheet

Please take the time to carefully read through the following information.

Thank you for considering participating in this project. The purpose of this document is to explain to you what the research is about and what your participation would involve, to enable you to make an informed choice about your participation. If you have any questions, please contact the researchers of this study [contact information given at the bottom].

What is this study about?

This study seeks to capture the perspectives of professionals who have experience working with and supporting children and/or parents, who are sharing parenting of young children through separation (this also includes parents who were never in a relationship but have a child in common). The focus group aims to learn about your experience working with separated parents and/or children.

Who is conducting the study?

This study is a collaboration between researchers from the School of Social Work and Social Policy, Trinity College Dublin and the School of Law, University College Cork. The commissioners of the research are One Family, Ireland's national organisation for one-parent families. The study is kindly funded by the RTE Toy Show: Improving Well-being Strand.

What participation involves

Taking part in this research will involve being part of a focus group of between 5 – 8 participants. The focus group will last approximately 1 to 2 hours in duration. The focus group members will be asked questions broadly related to the following areas:

1) The challenges for parents and children who are the focus of this study

2) What parents find positive and/or challenging in the shared-parenting experience and the extent to which they are supported

3) The extent to which the views of young children (0-6 years) are considered in contact arrangements/agreements

4) The nature and scope of cooperation between legal and social professionals involved with those parents and children.

Are there any risks involved in taking part in the study?

We do not anticipate any negative outcomes from participating in this study. Some questions and topics may be sensitive in nature, and you can choose to not answer these. The research team will endeavour to avoid any potential conflicts of interest with focus group members.

Is participation in the study voluntary?

Participation in this study is completely voluntary. There is no obligation to participate.

Will my information remain confidential?

Your identity will be kept confidential in any analysis, publication and presentation of any data and findings. Your personal information in the case of your signed consent form will be stored securely in a locked cabinet that only the Principal Investigator, Dr Simone McCaughren, will have access to, for up to five years.

Should your focus group take place online, the recording will be stored in Microsoft Stream which is private, and password protected. This will be deleted after 3 days.

Should your focus group take place in-person, the recording of the focus group will be used to transcribe your interview and your identity will be hidden on the transcripts. The recording will then be deleted not more than 3 days after it is taken. While your profession (for example, social worker, legal practitioner etc.) may be mentioned, your name and/or organisation will not be identified.

What will happen with the results of the study?

The information from this study data will form part of the report for the commissioners of the research (One Family). The results of the study may also be published in scientific papers and books and may be presented at conferences and conference proceedings. If this is the case, your identity will remain confidential, and no one will know that you took part in the study.

Criteria for participating in the study:

You must be at least 18 years old. You must have at least 3 years' professional experience of working with either parents and/or children who are in a situation of parental separation, or divorce, or shared-parenting.

Privacy and Data Storage:

The data will be stored completely anonymously. No personal information that can identify you, including the specifics of where you work or specific cases you were involved in will be shared in the reporting of the research. The data will be stored on Trinity College Dublin's computers, which are part of a secure institutional server.

GDPR:

Under GDPR you have the following rights.

- right of access;
- right to rectification;
- right to erasure;
- right to object to processing based on legitimate or public interest;
- right to data portability;
- right to object to profiling or making decisions about individuals by automated means?

You can contact the following for any and all GDPR concerns:

Email: dataprotection@tcd.ie

If I decide to take part in the study…

If you are interested in taking part in the study, you will be asked to sign a consent form (see attached). You will need to return it to this email address: connold8@tcd.ie. Should you be selected for the study, you will then be contacted by a member of the research team who will confirm date/time, and medium through which the focus group will take place. The focus groups will be recorded and transcribed verbatim removing any identifying material.

If you have any questions about this study…

Please contact:

Dr Simone McCaughren: smccaugh@tcd.ie

Dr Stephanie Holt: sholt@tcd.ie

Dr Aisling Parkes: a.parkes@ucc.ie

Appendix Three – Sample Interview Schedule

Focus Group – Legal Professionals and Mediators

Panel of interviewers: Dr Simone McCaughren (PI) (TCD), Aisling Parkes (UCC)

Structure of Interview

Part A: Setup

Part B: Welcome & voluntary informed consent

Part C: Data collection

Part D: Ending

Part E: Administration

Part A: Setup

Turn on transcription on MS teams after confirming all ok to be recorded.

Part B: Welcome and Voluntary Informed Consent

(i) Introduction

Simone and AP: introduce themselves and thank people for coming.

Simone - Check that all participants have given their consent. Inform participants that the session will be recorded (via MS Teams) and that the transcription will be anonymous but that their profession (example play therapist) will be mentioned in the reporting of the study. Inform participants that the session will not run later than 2.30pm. In terms of ground rules, ask participants to use the hand function where appropriate and to not interrupt others when speaking.

AP: Give participants some background to the research study (See below).

Background to the research study

Commissioned piece of research by One Family

Inter-university (UCC & TCD) and inter-disciplinary (social work & law)

The overall aim of this research is to establish what are considered the most effective practices internationally in relation to contact for infants and young children in separated families.

The target population is, therefore, very broad and includes a broad range of families and circumstances including those who lived together, never lived together, were in a relationship/never in a relationship/in a brief relationship, those that were married but are separated/divorced. Sample includes situations where the separation was amicable and some where it was highly contested/continues to be contested and where there was/continues to be a level of domestic violence or abuse

Research Objectives and Interview Focus

For the purposes of today's FG, our focus will be on guardianship, custody and access cases/ decisions which are made in cases of separated families in the courtroom and in mediation sessions. The overall aim is to build a picture of the experiences and impressions with respect to how well the system works for children aged between 0-6 years where parents do not live together or where parents no longer live together.

Ethical approval has been granted for the current study by TCD and UCC research ethics committees.

Format of research – This is stage 3 of the qualitative aspect to the study: focus groups (sw, sol's, barristers GAL's) and interviews (judges only).

Timing for today's session. 1.5 hours in total

Simone: Invite participants to introduce themselves and ask them to say a little bit about the relevance of their experience for this project in terms of what they do.

Introductory Information

How long have you each been working on cases concerning guardianship, custody and access?

Can you take us through a typical guardianship, custody and access case concerning very young children – what does that look like in your work context?

What are the top three issues, in your experience, which arise for children under 6 years and families when considering contact and access?

In your experience, how and in what ways, if at all, are the views of children aged 0-6 years considered in decisions that are made regarding contact and access?

Do you think the adversarial model of decision-making concerning guardianship, custody, and access leads to good decisions for children aged between 0- 6 years? Why/ Why not?

Guardianship, Custody and Access Decisions and child participation

In your opinion, to what extent are young children informed about what is happening in G, C and A cases in your opinion?

What are your views on very young children (0-6 years) participating in guardianship, custody and access decisions?

In accordance with international law, Article 12 CRC states that ALL children capable of forming views, should have the opportunity to be heard directly and or indirectly in all matters affecting them, including decisions made on family separation. To what extent does this happen as far as 0–6-year-olds are concerned and do children have a choice as to how they participate?

Are very young children able to freely participate in access cases concerning them or are there barriers to their participation in your opinion?

When decisions are made for young children in GCA, in your view, are there opportunities to review these decisions in time?

In your experience, to what extent are the views of very young children (0-6 years) considered as part of the decision-making process concerning G,C and A?

What professionals do you rely on or regard as helpful when it comes to representing the VOC?

In your opinion, is there anything that could be done to make your decision-making role concerning G, C and A regarding very young children easier?

In your experience, is there any difference between the handling of cases involving married parents/ cohabiting parents as compared with parents who were never in a relationship? (If so, why, and what are those differences?)

Legal and Constitutional Framework

What are your opinions on the Constitutional framework that govern G, C& A cases?

Is the Constitutional framework appropriate? (If not, what are its shortcomings?)

How much focus or emphasis is explicitly placed on the relevant constitutional and statutory provisions during proceedings?

In your view, what changes could be made at a practice/policy/legal level?

Since Art 42A was inserted into our Constitution, has the manner in which you consider decisions concerning children aged between 0-6 years changed in practice? If so, in what ways?

Conclusion

Is there anything that I haven't asked that you would like to add?

Please note that further questions may be asked by the moderators if points are unexplored or if a participant raises a pertinent issue that relates to the research question.

Appendix Four – 32(1a) Sections

Sections A - K

(a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;

(b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);

(c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;

(d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;

(e) the child's religious, spiritual, cultural and linguistic upbringing and needs;

(f) the child's social, intellectual and educational upbringing and needs;

(g) the child's age and any special characteristics;

(h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;

(i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;

(j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;

(k) the capacity of each person in respect of whom an application is made under this Act—

(i) to care for and meet the needs of the child,

(ii) to communicate and co-operate on issues relating to the child, and

(iii) to exercise the relevant powers, responsibilities and entitlements to which the application relates.

Appendix Five - Extraction Table of Papers Isolated for Literature Review on Contact Time for Children Under 6 years of age

Author, Year & Country	***Article Aim***	***Methodology***	***Impact/ Outcomes***	***Mediators[12] re Contact***	***Study Limitations***
Altenhofen, et al. (2010) USA	Study explored child & family qualities that contribute to post divorce child attachment within shared parenting time arrangements.	Sample of 24 mainly white divorcing mothers and 24 children aged between 12-73 months, children overnighting an average of eight times a month. Mother & child engaged in free-play while mother completed questionnaires re conflict and communication; qual interviews with mother; Attachment measured via AQS.	Contrary to their prediction, insecure attachments were not related to how long the child had been overnighting or how much time the child spent away from its mother in day care.	In fact, insecure attachments were only related to one factor: the mother's emotionally unavailability or insensitivity toward her child.	Sample – predominantly white, families early in divorce process, sample of mothers is educated. Study based on older concept of attachment theory known as monotropy. Mothers rather than trained observers did the test ratings. Because these children were not compared to any other group, we cannot know whether overnighting contributed to more insecure attachments.

[12] DV/Conflict/parental capacity/interparental relationships; high conflict, parental conflict, parental alienation (charge levelled at mothers for resisting contact), key mediates how the father facilitates fathers contact

Bergstrom et al 2021 Sweden	To investigate the association of living arrangements and coparenting quality with mental health in preschool children after parental separation.	Cross-sectional pop-based study - 12845 3-year-olds in Sweden. Mental health measured by parental reports using Strength and Difficulties Questionnaire; coparenting quality with a 4-item scale. Living arrangements of 642 children in non-intact families categorised into JPC, living mostly with one parent and living only with one parent.	Very similar MH outcomes in JPC children compared with those in Intact families – those in one-parent families had more MH problems. Addition of coparenting quality measurement in analysis altered overall picture. Children in intact families had more mental health problems compared with JPC	Coparenting quality is a key determinant of mental health in preschool children and thus should be targeted in preventive interventions.	Based on parental reports of SDQ. Coparenting assessment tool was a modified tool of 4-items – most families score high perhaps related to self-serving bias.
Bergstrom et al. (2017). Sweden		Cross-sectional study used data on 3656 Swedish children 3-5 years of age living in intact families, JPC, mostly with one parent or single care. Linear	Children in JPC showed less psychological problems than those living mostly or only with one parent. In parental reports, children in JPC and those in intact families had similar outcomes, while teachers reported lower unadjusted	Joint physical custody arrangements were not associated with more psychological symptoms in children aged 3–5 years, but longitudinal studies are needed to account for potential pre-separation differences.	Cross-sectional design. Also likely that there was a positive selection of parents into the JPC category, with regard to communication between the separated parents,

		regression analyses were conducted with the SDQ, completed by parents and preschool teachers, as the outcome measure.	symptom scores for children in intact families.		and a negative selection into the living mostly or only with one parent, with regard to parents who had a range of social problems. Another limitation was the possible selection bias of fathers who chose to complete the outcome measure in the current study.
Fabricius, W. V., & Suh, G. W. (2017) USA	To assess the quality of long-term relationships with both mothers and fathers of college students whose parents separated before they were 3 years old – o/nights and daytime access.	230 University students (19 years mean age) completed survey in addition to at least one of their parents.	More overnight time with fathers when children were toddlers and infants was associated with more secure relationships with both parents in emerging adults.	Positive effects on the quality of father–young person relationships were evident even when the parents reported that there had been considerable conflict.	28% mothers & 32 % fathers had UG degree; 21% of both had Masters or higher. Generalisation of these findings to the universe of separating families is limited by the selective sampling of high functioning young adults from relatively affluent family backgrounds.
Kim et al, 2021 USA	To examine the associations among parental perceptions of coparenting quality, quality of	Data from Project Study of Infants' Emergent Sleep Trajectories (SIESTA;	Results indicated that there was an indirect, but not direct, association between mother-reported coparenting quality across the first year of life and	Findings highlight the importance of coparenting quality, especially in the early postpartum period, in	Sample primarily rural, white, lower-to-middle class families, limits generalizability. Sample limited to

	mothering (as indexed by maternal emotional availability), and infant–mother attachment.	R01HD052809), a study funded by the National Institute of Child Health and Human Development (NICHD) looking at infant sleep, development and parenting across the first 2 years of life. 167 families were recruited (152 in final sample). Parental reports of positive & negative coparenting quality, maternal emotional availability, and infant–mother attachment were assessed in 152 infants and their parents at 1, 3, 6, 9, and 12 months postpartum. Home Visits, questionnaires (mothers); videos of infants sleeping &	infant–mother attachment at 1 year through maternal emotional availability across the first year. Father-reported coparenting across infants' first year was not associated with infant–mother attachment at 1 year. Mothers' perceptions of coparenting at 1 month were indirectly linked to attachment at 1 year through maternal emotional availability across the first year.	organizing quality of parenting and infant attachment.	coparenting between two, different-sex birth parents. Grandparent involvement not accounted for. No data on infant–father attachment. Limited data on fathers'. EA Study relied on parents' self-reports of their coparenting quality.

		bedtime parenting; measurements of co-parenting relationships scale and maternal EA & Infant Attachment Security.			
Kline-Pruett et al. (2004). USA	Explored connections between occurrence of overnights, schedule consistency, number of caregivers, and young children's adjustment to parental separation and divorce.	One of three studies with validated outcome measures. 132 children aged two to six years, measured with the Child Behaviour Checklist. Study comprised 58 children with overnights with one parent more than once a week, 41 children with just one overnight stay per week, and 33 children with no overnight stays.	Overnight stays by girls were associated with advantages in social functioning and less psychological problems in terms of internalising problems and aggression when compared to girls with no overnight stays.	According to reports by both parents, children had fewer behaviour problems at the time of follow-up when they had good relationships with both parents. Having a regular schedule and having overnights with fathers were both associated with having fewer behaviour problems. Inter-parent conflict was more problematic than the number of overnights.	Sample of lower middle-class parents with average levels of conflict and no history of substance abuse or physical abuse. Most were white (86%) and had been married to one another (75%) when their children were born.

McIntosh, et al. (2010) Australia	One of three studies with validated outcome measures for children who were three to five years of age.	Sample drawn from Longitudinal Study of Australian Children (LSAC). Study looked at 1215 children aged 4-5 years old in different contact arrangements. Two studies -one of high conflict parents in community-based mediation - included data collected over time from both parents and their children (n=131 families). Second study used data from national random samples of parents of 5,000 young infants and parents of 5,000 children aged 4–5 years.	found lower persistence among the two- to three-year-olds who spent 35% or more time with their second parent, mostly the father they found no differences in psychological problems according to the Strengths and Difficulties Questionnaire and after controlling for socioeconomic family factors	Results show evidence of increased insecurity among very young children who have frequent overnights, perhaps particularly in the face of parental conflict	Most kids in sample lived exclusively with mother, 21 mostly but stayed overnight with dad less than once a month; 63 once a week. It was not determined if parents ever lived together or if infant had developed attachment to Dad. Infants assessed very young. No established or validated measures of infant adjustment or infant-parent attachment used, other than rating by researchers. Maternal and teacher ratings used to reach conclusions.
McIntosh, et al. (2021)	To explore mothers' Experience of	Study surveyed all empirical work	Confirms inverse link between mother's experience of intimate	Moderated by sample type – clinical versus community, and	Limitations within current

Australia	Intimate Partner Violence and Subsequent Offspring Attachment Security Ages 1–5 Years	(n=802) including unpublished literature to examine meta-analytic associations between maternal experiences of IPV and offspring attachment security (ages 1–5 years) measured at least 6 months post-IPV exposure. N=6 studies included for meta-analysis.	partner violence in the perinatal window and subsequent attachment security in children aged 1–5 years (r ¼ .23).	the child's age at the time of the attachment assessment. Findings consistent with prior findings of a strong relationship between maternal caregiving behaviour and offspring attachment (George & Solomon, 2008) and that caregiving is, itself, directly affected by assault on a mother (Levendosky et al., 2012). The relationship between IPV and insecure attachment is attenuated over the course of early development.	methodologies include the understudied nature of father–child attachment in the context of IPV. While it remains easier for social scientists to recruit mothers for these forms of research, doing so increases the risk that we will focus on mothers' parenting as the problem and the solution, ignoring the role of fathers in both risk and protective offsets for children's outcomes.
McIntosh, et al. (2013) Australia	Are there associations between quantum of overnight stays away from a primary resident parent and the infant's settledness, or emotion regulation with that parent?	Nationally representative parent report data from the Longitudinal Study of Australian Children (LSAC) were used. Three age bands were studied, and three levels of	When parenting style, parental conflict and socio-economic factors were controlled for, a greater number of shared overnight stays for the 0–1 year old and the 2–3 year old groups predicted some less settled and poorly regulated behaviours, but none for the 4–5 year old group.	The findings do not however describe characteristics of infants who adjust well to higher overnight ratios.	Small samples of infants and young children with high rates of overnight stays resulting in variable statistical power. Overall, parents reporting substantial overnight arrangements also

		overnight care contrasted. Two indices of psychosomatic health were selected; global health status, and illness with wheezing. Data sources include face-to-face interviews with Parent 1, and self-completed questionnaires. Data from the Parent-Living-Elsewhere (PLE) and from independent sources (such as childcare workers), particularly for the two youngest groups, were sparse, prohibiting the inclusion of other sources of data, and			reported higher personal incomes, greater history of having once lived together, and less conflicted current co-parenting than did separated parents in the 'daytime only' category. In all age groups, boys were more likely than girls to have 'substantial overnights' arrangements. LSAC data from non-resident parents were too sparse to include in the present study.

		negating the possibility of meaningful contrast of these perspectives with that of Parent 1.			
McKinnon & Wallerstein (1987) USA	Longitudinal study exploring parental motivations for JPC and child outcomes.	Between 1981-1985 25 families applied to Centre for Families in Transition with questions about joint custody. Involved 26 white middle class children, seven 1-3 year olds, 19 x 3-5 year olds Assessment (parent, teacher reports, clinician assessment including developmental stage and happy and well adjusted)	1 year later found 3 of the 7 children under the age of 3 years and 13 of the 19 3 to 5-year-olds were doing well Children faring less well than they had a year earlier. Interestingly, the youngest children handled transitions between their two homes better than the 3- to 5-year-olds.	**Child doesn't do better when:** Researchers attributed these children's problems not to shared parenting, but to parents' dysfunctions: alcoholism, violence, psychological problems, or negligent parenting. Researchers speculated that the older children were more stressed because they were having to adjust to nursery school and were more aware of changes occurring in their families, such as their parent's remarrying or having another baby.	
Pires & Martins (2021) Portugal	This study intended to contribute to the research on the impact of coparenting after separation or divorce on child	Sample of 93 parents with 2-3 year olds drawn from a larger cohort of 207 Portuguese newly	Post-divorce or separation parenting combined with negative, destructive coparenting can predict negative outcomes for children. This relation was found for the two-	The theoretical moderation path model fit both sample groups, showing the negative predictive effect of parents' authoritarian, permissive, triangulation, and conflict on	The cross-sectional nature of the study precludes the generalization of the findings. Additionally, the sample size was

	adjustment in a sample of newly separated or divorced Portuguese parents.	separated/divorced parents with sole or joint custody processes ongoing in court.	or three-year-old group, indicating the risk of negative outcomes in early developmental stages.	child adjustment for both younger and older children, only with little differences between them.	not sufficient to test the path moderation model across different segmented age groups.
Solomon & George (1999) USA	This study represents the first systematic investigation of the effects on infant attachment to mother and to father of the increasingly common practice of overnight visitation (time-sharing) with the father in separated and divorced families.	145 infant – mother dyads recruited through newspaper advertisements and referrals from lawyers, mental health professionals, and day care centres. Assessment: Technique for assessing attachment, the strange situation (e.g., Ainsworth, Blehar, Waters, & Wall, 1978)	More disorganized/unclassifiable infant – mother attachments among 44 babies who spent regular overnights (at least one per month) with their father in comparison to 52 infants from married families. Attachment security did not differ between the regular overnight group (composed of about 20% of couples who had no stable relationship at conception) and 49 infants from separated/divorced families who had only day contact with their fathers.	Mothers in the overnight group whose infants exhibited disorganized attachment reported more conflict, poorer communication, and less maternal protection compared to mothers in this group whose infants were securely attached. Argue that infants especially, but also toddlers, should spend limited time away from their primary attachment figure. Argue that very young children should have few overnights away from the primary attachment figure until they are 3 or perhaps 4 years of age. Results show evidence of increased insecurity among very young children who have frequent overnights, perhaps particularly in the face of parental conflict.	Solomon (2013) acknowledged that interpretations and conclusions not warranted. Samples not representative – intact families better educated and affluent than separated ones; latter characterised by high conflict levels. No evidence that overnights affected quality of infant-mother attachment (Lamb). Based on concept of monotropy – no longer supported.
Tornello et al. (2013)*USA	Two primary aims:	Analysed data from the Fragile	Attachment & Security	At age 1 or age 3, fathers who saw children more frequently	Limited research base. Not nationally

	(a) To provide descriptive evidence on the physical custody arrangements for very young children and (b) To test the hypothesis that very young children who had frequent overnights with their fathers would have more insecure attachments with their mothers Also explored relationships among frequent overnights, attachment insecurity, and children's psychological well-being. One of three studies with validated outcome measures for children who were 3 to 5 years of age, (conducted in the US and Australia).	Families and Child Well-being Study. A large, diverse sample of very young children representative of the population of 20 U.S. cities with populations greater than 200,000 (n=4,898 families). Sample was first collected between 1998 and 2000 from 20 major U.S. cities. Direct assessments of children included a Q-sort measure of attachment completed at age 3 as well as parents' reports of child's well-being. Nonmarital births (and therefore predominately low-income and	Divided groups into 'day contact only', rare overnights, and frequent overnights. Weighted 1 years sample: The frequency of attachment insecurity (43%) was notably higher in the frequent-overnight group. Weighted 3 years sample: found a significant difference in attachment frequent-overnight group again showed the highest level of insecure attachment (37%). Children with frequent overnights at age 3 displayed more positive behaviour at age 5 than their peers in both the day-contact-only and rare-overnights group but were no different than children in the some-overnights group. Argues that frequent overnights away from the primary attachment figure are associated with greater attachment insecurity among infants. 43% of infants were insecurely attached to their mothers when they spent at least one night a	were rated by mothers as being better fathers and as having a better relationship with the mother. Maternal depression (assessed at age 1) was significantly correlated with a number of measures of child adjustment at age 3 years. For example, maternal depression was significantly correlated with externalizing behaviours at age 3 and age 5. Results show evidence of increased insecurity among very young children who have frequent overnights, perhaps particularly in the face of parental conflict.	representative – focus on fragile or high-risk families; 60% below poverty line. Fathers' interviews were incomplete – couldn't compare data with mothers' interviews – over relied on mothers' interviews. Assessment tool an abbreviated one – so not validated.

		racial/ethnic minority families) were oversampled by a factor of three. Mothers and fathers were interviewed separately shortly after the child's birth and again when the child was 1, 3, and 5 years old.	week with their non-resident father. This contrasts with 25% of infants who had only day contact with their fathers, and 16% of infants who had at least one overnight in the last year but less than one per week. Found higher proportions of insecure attachment among infants with overnight stays but no relation between psychological problems at the age of three years and custody arrangements in families with a strained social and economic situation, using the Child Behaviour Checklist. However, less problems were reported among five-year-old children who had JPC arrangements at the age of 3 years compared to those who only lived with one parent at 3 years of age.		
Studies including 0-6 with older age groups					
Bergstrom et al 2019. Sweden	Aims to study psychological problems in 2- to 9-year-old Nordic	Total symptom score according to the Strengths and Difficulties	Children in single care had more psychological symptoms than those in joint physical custody and those in nuclear families	Longitudinal studies with information on family factors before the separation are needed to inform policy of	The external loss of the survey was high and may be biased by a selective attrition of

	children in different family forms. The Nordic Study of Children's Health and Well-being (NordChild) is a cross-sectional survey which was conducted in Sweden, Denmark, Finland, Iceland and Norway in 1984, 1996 and 2011. Stratified sampling based on age and gender was made from the total population of children. A postal questionnaire including information about the study was sent to the child's registered home address. The questionnaire was directed at the parents, but if they found it appropriate, they could fill it in together with the child.	Questionnaire as well as scores showing externalizing problems were compared among 152 children in joint physical custody, 303 in single care and 3207 in nuclear families through multiple linear regression analyses.	had the least reported symptoms. Externalizing problems were also lower in nuclear families compared with joint physical custody after adjusting for covariates. Young children with non-cohabiting parents suffered from more psychological problems than those in intact families. Children in joint physical custody had a lower total problem score than those in single care after adjusting for covariates.	young children's post-separation living arrangements.	families with low socioeconomic resources and migrant background. Accordingly, results should not automatically be generalized to these disadvantaged families. It is possible that children who suffer from psychological problems, even this young, are at greater risk of experiencing a parental divorce and end up living with only one of their parents. Future studies should preferably include longitudinal data with more detailed information on custody and living arrangement histories.

Steinbach & Augustijn (2022) https://doi.org/10.1037/fam0000875	Investigated the association between physical custody arrangements after separation or divorce and four dimensions of children's well-being: psychological, physical, social, and cognitive/ educational.	Using data from Family Models in Germany (FAMOD), a survey of postseparation families conducted in 2019, four linear regression models were estimated for children aged 2–14 in SPC and JPC families, with analytic samples of up to 1,161 cases	The bivariate results provided support for the hypothesis that children living in JPC families fare significantly better than children living in SPC families on all four dimensions of well-being.	However, after controlling for a set of child, parent, and separation characteristics, as well as for the quality of family relationships, the differences between children from SPC and JPC families disappeared. Additional analyses revealed that the parent–child relationships fully mediated this association. In sum, the quality of family relationships accounted for the positive association between JPC and children's well-being in this study.	Results should not automatically be generalized to lower socioeconomic and migrant families. The inclusion of children from 2 to 9 years of age is a considerable strength of this study.
COMMENTARY/ CRITIQUE					
Fransson et al (2018) Sweden **https://doi.org/10.1080/10502556.2018.1454198**	Reports On A Series Of Studies Known As The Elvis Project investigating JPC families	Three epidemiological studies on mental health in children in the youngest age groups have been conducted in the Elvis Project. The SDQ was used to measure the well-being of children in intact, JPC, and SPC families.	1st project: According to the parents' reports, there were no significant differences between children in intact families and JPC children. The preschool teachers, however, reported fewer problems for children in intact than in JPC families. 2nd study: As with the first study, the children in SPC had more psychological and behavioural problems than those in JPC and those in intact families had the fewest problems.	Poor health or stress in both the custodial and noncustodial parent in SPC families might also contribute negatively to the well-being of the child. Factors that benefit or hinder children from thriving in JPC, such as being caught in the middle of high ongoing conflict, family violence, and families with child and parental psychiatric morbidity, have not been sufficiently studied.	The Swedish studies all had a cross-sectional design, meaning child health or well-being is measured at one point in time. Design doesn't allow conclusions to be drawn about whether JPC is the 'cause' of the children's better outcomes. It is possible that factors existing before the

			3rd study gathered data on 3000 3-year-olds.		parents' separation can directly influence the choice of living arrangements, thus causing important selection bias.
Ginger et al, 2004 file:///C:/Users/sholt/Documents/Documents/Family%20Law/Literature/Contact%20Time/UNDER%206%20PAPERS/Ginger%20&%20Lee%202017.pdf	VOC - overview of developmental research that experts and attorneys should be familiar with. Reviews how developmental considerations arise and are considered differentially dependent on the specific court venues, differing levels of proof or weight given to evidence. This article is less of a 'how to' manual and more of a GPS for manoeuvring through occasionally murky, frequently complex, waters.	Review/Discussion	Children should have a voice and should be allowed to participate in legal actions that influence their own lives. A body of research on types of questions and children's productivity under different conditions of questioning has produced significant and consequential findings that inform forensic interviewers. Evaluating children in the legal system requires a nuanced understanding of children's uniqueness, an appreciation for, and knowledge about, systemic and family dynamics, and a commitment to mastering the body of research and scientific knowledge that exists in developmental psychology.	The loyalty conflicts children experience, their natural reticence to share intimate details of their thinking and feelings with strangers, their lack of mastery of many cognitive tasks of reasoning, planning, foresight, and judgment, their undeveloped appreciation for, and knowledge of, their emotions, and their undeveloped perceptiveness and insight due to the function of egocentricity make for puzzles and questions not encountered in evaluating a solitary adult or an older adolescent.	
Lamb 2018 https://doi.org/10.1080/15379418.2018.1425105	Good critique of five papers studies most frequently referenced in the context of infant attachment when parents	Review of five key studies on separation, attachment relationships and infants.	Discredits the concept of 'monotropy' grounded in belief that infants initially only formed attachment to their mothers; that these relationships remained primary and would be	Consistent with attachment theory, the evidence suggests that children benefit when parenting plans allow them to maintain meaningful and	This review of all empirical studies focused on the effects of regular overnights with fathers on the

	separate, showing what they do and do not tell us about the ways in which children's adjustment can be promoted when their parents separate.	Fabricius & Suh, 2017; McIntosh, Smyth, & Keleher, 2010; Pruett, Ebling, & Insabella, 2004; Solomon & George, 1999; Tornello et al., 2013)	challenged by extended separations. Critical of samples (**Solomon & George:** unrepresentative); lack of attention to benefits of overnight with fathers; **McIntosh et al:** sample lived exclusively with mothers; not determined if parents ever lived together; no validated measures of infant adjustment or infant-parent attachment; **Tornello et al:** sample was high risk – not nationally representative; assessment tool not assessed and not administered by trained observers; **Fabricius and Suh:** sample of high functioning students at 3rd level from affluent families).	positive relationships with both of their parents. None of the studies assessed the child–mother relationships or the youngsters' behaviour pre-separation. None included any assessments of the child–father relationships. Findings were based on maternal reports. Pruett et al. (2004) reported that inter-parent conflict was more problematic than the number of overnights; Fabricius and Suh (2017) reported that overnights in early childhood had a beneficial effect on father–child relationships even when there was inter-parental conflict.	children's attachments to their primary-caretaking mothers and on the children's psychological adjustment reveals a small corpus of relevant studies characterized by many misinterpretations and methodological problems.
Nielsen 2014A https://doi.org/10.1080/10502556.2014.901857	Similar to Lamb 2018, article summarizes and critiques 11 empirical studies that have addressed question of parenting plans for infants and toddlers.	Critical Review	Identified problematic groups of studies: 1. Shared Parenting without comparison groups – three studies (McKinion & Wallerstein 1987; Brotsky et al 1991; Altenhofen et al, 2010); 2. Children of all ages – four studies (Kline et al 1989; Maccoby & Mnookin, 1992;	**As per other studies re conflict.**	1. Three papers referred to - cannot tell us whether shared parenting is any better or worse than primary care parenting plans, but they do tell us that most of these infants and toddlers fared

			Melli & Brown, 2008; Kaspiew et al, 2009); 3. All children under 6 years – four studies (Pruett et al 2005; Solomon & George 1999; McIntosh et al, 2010; Tornello et al, 2013)		well in their shared parenting families. 2.Across the four studies, where nearly half the children were under 5 years, shared parenting linked to better outcomes. 3. All four studies reached similar conclusions.
Nielsen 2014B https://doi.org/10.1080/10502556.2014.965578	What type of parenting plan is most beneficial for the children after their parents separate? More specifically, are the outcomes any better or worse for children who live with each parent at least 35% of the time compared to children who live primarily with their mother and spend less than 35% of the time living with their father?	Summary of 40 studies.	40 studies reached similar conclusions. First, shared parenting was linked to better outcomes for children of all ages across a wide range of emotional, behavioural, and physical health measures. Second, there was not any convincing evidence that overnighting or shared parenting was linked to negative outcomes for infants or toddlers. Third, the outcomes are not positive when there is a history of violence or when the children do not like or get along with their father. Fourth, even though shared parenting couples tend to have somewhat higher incomes and somewhat less verbal conflict than other parents, these two factors alone do not explain the better outcomes for the children.	Overall, the children in shared parenting families had better outcomes on measures of emotional, behavioural, and psychological well-being, as well as better physical health and better relationships with their fathers and their mothers, benefits that remained even when there were high levels of conflict between their parents.	Determining what impact shared parenting has on children has been difficult for at least two reasons. 1. Children whose parents have higher incomes or least conflict might have better outcomes post- separation, regardless of the parenting plan. If study doesn't control for income and conflict, possibility that it was not shared parenting per se that made the difference. 2. Parents' characteristics and marital status are not the same in all the

					studies-those differences can affect outcomes for children independent of the parenting plan. 3. Although most researchers used standardized instruments and valid procedures, others used measures that had no established validity or reliability. Sample sizes also varied greatly.
Sroufe & McIntosh (2011). USA file:///C:/Users/sholt/Downloads/Family%20Court%20Review%20-%202011%20-%20Sroufe%20-%20DIVORCE%20AND%20ATTACHMENT%20RELATIONSHIPS%20%20THE%20LONGITUDINAL%20JOURNEY.pdf	Exploring children's development in high conflict climates, and place of attachment pathways through divorce. Interview with author re their survey of family law field about child development during divorce. What are the longitudinal consequences of disrupted attachment relationships, and what bearing might that have on our	Interview with the authors Sroufe is a lead researcher on the Minnesota Longitudinal Study of Childhood, now a 30-year research program that sets out to explore the development of children growing up in climates of chronic socioeconomic risk.	'The relationship with any parent is as much as they make of it'p.464 Attachment status is changeable 'early attachment is not destiny' p.465 - if social and family support increases between 18 months and five years old, those children who were insecure at 12 or 18 months, are not so likely to have behaviour problems at 5 years. Building healthy relationships in the first 3 years – the child has better opportunity to cope with stressors.	**Child does better when:** Infants and toddlers spend limited time away from their primary attachment figure until they are 3 or perhaps 4 years of age. Secondary attachment can be developed and maintained through brief, frequent daytime visits, perhaps two per week. Think from the infant's perspective: regularity, predictability, and responsive work best for infants. Secure attachment means the child takes forward an abiding belief that things are ok and will	Based on interview between McIntosh and Sroufe - Sroufe offers candid views from his longitudinal research, emphasizing the influence of attachment security in the progression of relationship competence across the life span, and considers implications for complex custody matters. Only one perspective however.

	thinking about divorce custody matters?		Not about amount of time fathers spend, it's about quality of emotional response e.g., 3 days mam, 3 days Dad, it can work but would increase the job of the child because they've to construct two of these organisations of dyadic emotion regulation behaviour instead of one. Effects on the child after separation from mother are there afterdays, and overtime, and require a process of recovery.	be ok. So, once they have that in the bank, which they can usually get in the first 2 or 3 years, then it is not the same type of a problem to start going back and forth **Child doesn't do well when:** Not ideal to have overnight with pre-language children – best if the child has a primary figure. There is doubt, uncertainty and ambiguity around secure attachment. Decreased social support, increased stress, and increased anxiety and/or depression for the parent all interfere with developing a secure attachment. And that is apart from the direct consequence of stress and unpredictability on the child itself. Regular contact – ongoing relationship: Two short visits during the week, one day during weekend to develop attachment. Infant is better off having one base until that is completely consolidated, organized, in the bank, and they know it. Attachment is not about a fixed quantity of time.	

				As maternal depression went up, child behaviour problems went up. As it went down, child behaviour problems came down. Child abuse and interparental violence, contributed to behaviour problems for the boys in our study.	
Steinbeck 2018 https://onlinelibrary-wiley-com.elib.tcd.ie/doi/epdf/10.1111/famp.12372	This review focuses on the effects of JPC on children's and parents' well-being.	Literature Review based on 40 studies from North America, Australia, and Europe published between 2007 and 2018.	Children are not generally harmed by JPC. JPC arrangements have certain benefits for parents, including better health, greater freedom and a more equitable share of the burdens of childcare.	There are several relational and structural conditions which appear conducive to beneficial joint physical custody arrangements (Gilmore, 2006, p. 26): (1) geographical proximity, (2) the ability of parents to cooperate without (high) conflict, and at a mini-mum, to maintain a business-like relationship, (3) a certain degree of paternal competence,, (4) family-friendly working hours, (5) a certain degree of financial independence, (6) flexibility, and (7) a high degree of responsiveness to the needs of the children, including willingness to alter the arrangements to meet the	First, parents who practice joint physical custody differ in several significant ways from the majority of separated or divorced parents whose children live almost exclusively with their mothers. They are, for example, better educated, have a higher income, and quite low conflict levels.

				children's changing needs when they get older. How joint custody will affect children and parents when the arrangement is not voluntarily practiced by privileged parents. There is some evidence that the degree of conflict between the parents is a significant factor that negatively influences the child's and the mother's adjustment in a joint physical custody arrangement (e.g., Cashmore et al., 2010; Vanassche et al., 2013). More research is urgently needed. The next step must be to conduct more and better studies to examine the impact of conflicts and care cycles as well as the effects of joint physical custody for children under the age of four years, not only from a sociological or legal perspective, but also a psychological angle.	

***Fully reviewed paper**