

## Impact case study (REF3)

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| <b>Institution:</b> University of Leicester   |   |   |
| <b>Unit of Assessment:</b> 18   |   |   |
| <b>Title of case study:</b> Improving the Law's Response to Domestic Abuse  |   |   |
| <b>Period when the underpinning research was undertaken:</b> 2001–Present   |   |   |
| <b>Details of staff conducting the underpinning research from the submitting unit:</b>  |   |   |
| <b>Name(s):</b><br>Mandy Burton   | <b>Role(s) (e.g. job title):</b><br>Professor | <b>Period(s) employed by submitting HEI:</b><br>August 2001–Present |
| <b>Period when the claimed impact occurred:</b> 2014–Present  |   |   |
| <b>Is this case study continued from a case study submitted in 2014?</b> N  |   |   |
| <b>1. Summary of the impact</b>   |   |   |
| <p>Domestic abuse is a serious problem, for which existing legal remedies are often inadequate. Since 2000, Burton has undertaken in research and engagement with policy makers aimed at improving the law's response to domestic abuse. In the current REF period, her research has directly influenced policy in two ways. Firstly, her research and evidence to a Scottish parliamentary committee in 2017 contributed to the case for introducing emergency protection orders (EPOs) in Scotland, and these were included in a Scottish Government Bill in October 2020. Secondly, she was the co-author of an expert panel report for the Ministry of Justice in June 2020 which recommended fundamental changes to the process for child arrangement cases in England and Wales to reduce the risks of harm in cases where allegations of domestic abuse have been made. The Government accepted the report's recommendations and gave effect to several key points through amendments to the Domestic Abuse Bill 2020.</p>   |   |   |
| <b>2. Underpinning research</b>   |   |   |
| <p>A major strand of Burton's research has concerned emergency protection orders (EPOs), which were introduced in England and Wales in 2014. EPOs allow the police to exclude an alleged domestic abuser from a home shared with the victim, and to apply to a court for a civil order of the same effect but longer duration. Many European countries have similar orders and Burton researched the effectiveness of EPOs from a comparative perspective [R2]. Her research found that the effectiveness of EPOs depended on factors such as the training and resources given to the third-party applicants (typically the police), and additional specialist support available to victims. Burton's key recommendations on best practice for the implementation of EPOs to maximise the safety and autonomy of victims were that; (i) their consent should not always be required, (ii) the orders should be backed by criminal sanctions, (iii) that orders should be sufficiently long to be effective and (iv) to ensure that the third parties can comply with their requirements [R2, R3].</p> <p>Burton also has long-standing research expertise in relation to specialist domestic violence courts (SDVCs) and integrated domestic abuse courts (IDACs). In the early 2000s, she was part of an interdisciplinary team that empirically evaluated the first SDVCs operating in the criminal justice setting in England and Wales (Cook, Burton, Robinson, and Valley, <i>Evaluation of Specialist Domestic Violence Courts/Fast Track Systems</i>, Crown Prosecution Service/ Department for Constitutional Affairs, 2004). Separately, she engaged in comparative research concerning IDACs, which combine civil, family and criminal proceedings in domestic abuse cases, and which may adopt a 'problem solving' approach involving ongoing judicial monitoring of the perpetrator of abuse [R1]. This analysis led her to argue that there would be benefits to introducing IDACs in England and Wales, given that 'silo' working results in additional risk to</p> |   |   |

victims, for example through conflicting court orders [R1]. In 2017, she was a key speaker at an international symposium held in London on domestic abuse and child arrangement cases, where she again argued for court specialisation in the family courts. She followed that with a journal article in which she argued for specialist domestic violence courts, to facilitate both independent advocacy support for victims and the greater use of special measures such as screening witnesses, each of which would tend to lead to a safer process and to safer outcomes [R4].

Building on her research on court specialisation, from June 2019 to June 2020, Burton served as an academic member of an expert panel convened by the Ministry of Justice (MoJ) to examine the issues in child arrangement cases involving allegations of domestic abuse in greater depth. Burton contributed to a review of the law, the design of the call for evidence, the data collection and data analysis. The final report was co-authored by the three academic members of the panel [R5 – summary in Section 4 below].

Among the academic members of the panel, Burton took responsibility for drafting Chapter 5 of the report, entitled 'Raising and evidencing domestic abuse'. This chapter identified multiple barriers to raising domestic abuse, including limited understanding of coercive control among those involved, stereotypes among professionals concerning 'real' victims, mothers' fears of false counter-allegations, legal advice not being available, or poor advice being given not to raise domestic abuse. The chapter was the basis for the report's recommendations for better training for all professionals, for more resources and for a process that is more trauma and safety aware.

Burton also took responsibility for drafting Chapter 8 of the report, entitled 'Safety and experiences at court'. This chapter described how the court process is often re-traumatising, with special measures (such as screening, remote video link, separate entrances and waiting areas) not being used effectively, victims being subjected to abusive cross-examination with little or no judicial intervention, and the use of repeat applications for child arrangement orders as a means of continuing abuse. For this purpose, Burton took the lead in a review of the case law on section 91(14) of the Children Act 1989, which permits judges to prevent the making of repeat applications for child arrangement orders without the leave of a court. The review, published as an Annex to the report, showed that case law, by incorporating an 'exceptionality' requirement, has limited the effectiveness of this provision in protecting victims of domestic abuse [R5, pp. 206-211]. The material in Chapter 8 resulted in recommendations on special measure, cross examination and amendments to section 91(14) (discussed in Section 4).

### 3. References to the research

**R1.** Burton, Mandy (2008) Judicial Monitoring of Compliance: Introducing 'Problem Solving' Approaches to Domestic Violence Courts in England and Wales, *International Journal of Family Law and Policy*, 21(3) pp. 366-378.

**R2.** Burton, Mandy (2015) Emergency Barring Orders in domestic abuse cases: What can England and Wales learn from other European Countries, *Child and Family Law Quarterly*, 21(1) pp. 25-42.

**R3.** Burton, Mandy (2016) A Fresh Approach to Policing Domestic Violence, in Hilder and Bettinson (eds) *Domestic Violence: Interdisciplinary Perspectives on Protection, Prevention and Intervention*, pp. 37-57.

**R4.** Burton, Mandy (2018) Specialist domestic violence courts for child arrangement cases: safer courts, safer outcomes? *Journal of Social Welfare and Family Law*, 40(4) 533-547

**R5.** Hunter, Rosemary, Burton, Mandy and Trinder, Liz (2020) *Assessing the Risk of Harm to Children and Parents in Private Family Law Cases*, Ministry of Justice  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/895173/assessing-risk-harm-children-parents-pl-childrens-cases-report\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895173/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf)

#### 4. Details of the impact

Burton's research and expertise concerning the law's response to domestic violence had an impact upon policy outcomes in the current REF period in two distinct ways. Firstly, her research and evidence on EPOs assisted the Scottish Government and Parliament in developing legislation to provide emergency protection orders which may be applied for by third parties, to enable victims to access remedies without personal, financial or other barriers. Secondly, her co-authorship of a report on the law and process in child arrangement cases in England and Wales led to Government acceptance of the need for major changes in that area. Given the many thousands of child arrangement cases each year, and levels of harm encountered as a result of the process and outcomes where there are allegations of domestic abuse, this will significantly benefit many adult victims of domestic abuse and their children.

##### *Emergency protection orders (Scotland)*

Because of her expertise on EPOs in domestic abuse cases [R2, R3], in October 2017, Burton appeared as an expert witness before the Scottish Parliament's Justice Committee, as part of its inquiry on the effectiveness of such orders [E1]. Drawing on her research, Burton gave written and oral evidence on the scope and effectiveness of emergency protection orders in a range of European countries and supported their introduction in Scotland. That led the Scottish Government to a public consultation in December 2018 concerning protective orders to protect those at risk of domestic abuse, as part of which Burton's evidence was referenced [E2].

On 2 October 2020 the Scottish Government went on to propose the Domestic Abuse (Protection) (Scotland) Bill to provide for EPOs in Scottish law. Burton's evidence in 2017 was again referenced in the impact assessment relating to the Bill [E3]. On 22 December 2020, Burton then appeared for a second time as an expert witness before the Scottish Parliament Justice Committee, where she commented on the provisions for emergency protection orders in the Bill [E4]. This evidence addressed a range of matters, including the duration of the orders, whether the consent of the victim should be required, and their interaction with other orders.

##### *Redesigning child arrangement proceedings (England and Wales)*

Burton was centrally involved in the research and recommendations of the expert panel convened by the Ministry of Justice in 2019 to assess the risk of harm in child arrangement cases. It is estimated that between 49% and 62% of the 54,920 private law child arrangement cases in 2019 involved allegations of domestic abuse. The law and process on this subject have been a matter of public concern, including in child homicide cases where family courts had ordered contact (an issue highlighted by the *Nineteen Child Homicides* report published by Women's Aid England in 2016).

The expert panel report, published on 25 June 2020, recommended major changes to child arrangement proceedings [R5]. It found considerable failings with the existing adversarial system in child arrangement cases and argued that an inquisitorial ‘problem-solving’ and trauma-aware approach should be adopted. Its recommendations included more widespread use of special measures and restrictions on direct cross examination. It also recommended revisions to section 91(14) Children Act 1989, to reverse the judicially-developed ‘exceptionality’ requirement concerning orders preventing repeat applications without leave, to increase the safeguards against the use of repeat applications to continue domestic abuse.

The authors’ work on the report was warmly welcomed by the policymakers concerned. In the Introduction to the report, the Ministry of Justice’s joint Directors of Family and Criminal Justice Policy thanked the three authors for *“their dedicated and tireless work leading the drafting of the report, ensuring that the voices of all those on the panel and who submitted evidence were heard”* [R5, p 14]. The Lord Chancellor, Robert Buckland, MP wrote to the panel members thanking them for their important contribution and singled out the authors for their work. In his words: *“I am grateful to Professors Hunter, Trinder and Burton, for their tireless work in drafting the report. It was a herculean task to get the final report in a place ready to publish ahead of Report stage of the Domestic Abuse Bill, and I know the whole team appreciates how much time and effort they have each put into this”* [E5].

The June 2020 report received significant attention outside of Government and parliamentary circles. The publication of the report attracted media coverage, with broad consensus about the significance of its findings and recommendations [E6, E7]. The Government response (discussed below) was welcomed by the Victims’ Commissioner (Dame Vera Baird) and Domestic Abuse Commissioner (Nicole Jacobs), among others [E6].

More significantly, the report influenced policy developments concerning the legal framework relating to child arrangements cases. The Government published an implementation plan alongside the panel report on 25 June 2020 [E8]. The report was also the subject of a written House of Commons statement the same day by the Justice Minister, Alex Chalk MP. He described the report as *“lay[ing] bare many hard truths about long-standing failings in the family justice system”* and promised that it would be *“the springboard for the actions we will take to better protect and support children and domestic abuse victims”*[E9]. The statement went on to accept key general recommendations made in the report by promising to include an investigative approach as part of its pilot of an Integrated Domestic Abuse Court (IDAC) and to review the contact presumption in the Children Act 1989.

The ministerial statement of 25 June 2020 also accepted the Chapter 8 recommendations: (1) to extend automatic eligibility for special measures to victims of domestic abuse; (2) to ban cross-examination by perpetrators of domestic abuse; and (3) to make it easier for judges to use section 91(14) powers to prevent repeat applications by ex-partners [E9]. Legislative proposals on the first two points were then made through Government amendments to the Domestic Abuse Bill 2020, proposed in July 2020. On the third point, the Government continues to consider the best approach to revising section 91(14).

In a related development, in August 2020, Burton and Hunter were invited by the MoJ to be part of the Steering Group designing the new investigative system and piloting an Integrated Domestic Abuse Court (IDAC). Subsequently, in November 2020, Burton was assigned to the

'One Family, One Judge' working group set up by the MoJ to map the process and shape the design of the pilot IDAC.

#### 5. Sources to corroborate the impact

**E1.** Scottish Parliament Justice Committee, official record of meeting of 31 October 2017  
<https://www.parliament.scot/parliamentarybusiness/report.aspx?r=11165>

**E2.** *Scottish Government Consultation on Protective Orders for People at Risk of Domestic Abuse* (December 2018): [https://consult.gov.scot/justice/people-at-risk-of-domestic-abuse/user\\_uploads/290884\\_sct1218171740-001\\_protective\\_p3.pdf](https://consult.gov.scot/justice/people-at-risk-of-domestic-abuse/user_uploads/290884_sct1218171740-001_protective_p3.pdf)

**E3.** *Children's Rights and Wellbeing Impact Assessment: Domestic Abuse (Protection) (Scotland) Bill* (October 2020)  
<https://www.gov.scot/publications/domestic-abuse-protection-scotland-bill-crwia/>

**E4.** Scottish Parliament Justice Committee, official record of meeting of 22 December 2020  
<https://www.parliament.scot/parliamentarybusiness/report.aspx?r=13037>

**E5.** Letter to the panel members by Lord Chancellor, Robert Buckland MP, 25 June 2020 (on file).

**E6.** BBC News 25 June 2020, reporting on the release and reaction to the harm panel report:  
<https://www.bbc.co.uk/news/uk-53173266>

**E7.** 'Family court judges given power to intervene in domestic abuse cases', *Guardian*, 25 June 2020: <https://www.theguardian.com/society/2020/jun/25/family-court-judges-given-power-to-intervene-in-domestic-abuse-cases>

**E8.** Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan* (25 June 2020):  
<https://www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases>

**E9.** Alex Chalk MP, written statement, House of Commons, 25 June 2020 <https://questions-statements.parliament.uk/written-statements/detail/2020-06-25/HCWS313>