

Institution: University of Kent		
Unit of Assessment: 18: Law		
Title of case study: Bringing Vulnerable Parties from the Margins to the Centre in Private Family Law		
Period when the underpinning research was undertaken: September 2011-July 2014; June 2019-June 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s):	Period(s) employed by submitting HEI:
Rosemary Hunter	Professor of Law and Socio-Legal Studies	Sept 2006-August 2014; Oct 2018-present
Period when the claimed impact occurred: February 2014 – December 2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact		
<p>Family courts in England and Wales deal with over 90,000 private law children and financial applications each year. Victims of domestic abuse and litigants in person (LIPs) are appearing in increasing numbers in these cases. Hunter's research on the experience in the court process of these vulnerable and marginalised litigants has had a significant impact on senior judges, judicial educators, and UK Government Ministers, in informing and shaping:</p> <ol style="list-style-type: none"> (1) Procedural reform to better protect victims of domestic abuse and LIPs; (2) Changes to judicial education curricula to systematically include training on domestic abuse and judgecraft in relation to LIPs; (3) The UK Government's family justice reform agenda. <p>These initiatives have resulted in a judiciary better educated in the experience of marginalised litigants and aware of their responsibilities to identify and address vulnerability, and a Government commitment to improving protections for victims of domestic abuse and their children through the family courts.</p>		
2. Underpinning research		
<p>Hunter has a longstanding research focus and internationally recognised expertise on domestic abuse and access to justice in family court proceedings. During her time at Kent, she has undertaken four specific research projects within these areas of expertise which underpin this case study.</p>		
1. The Implementation of Practice Direction 12J		
<p>Allegations of domestic abuse are raised in 50-60% of family court cases concerning post-separation parenting arrangements. Practice Direction 12J (PD12J) of the Family Procedure Rules specifies the procedure to be adopted in response to such allegations. In 2011, Hunter and Dr Adrienne Barnett (Brunel) were funded by the Family Justice Council (FJC) to conduct survey research with family justice professionals on the implementation of PD12J. The survey received over 600 responses. Their analysis of the survey data was presented in a 90-page report to the FJC published in January 2013 [R1]. The report found that PD12J was not operating as intended. It identified limited understandings among judges and lawyers of domestic violence, including its impact on adult and child victims, and particular difficulties with the procedure where litigants appeared in person. The report made a series of recommendations, including expansion of the definition of domestic violence in the PD; clarification of when a fact-finding hearing to determine contested allegations of violence should occur; and reforms to judicial education.</p>		

2. Domestic Abuse in Financial Remedy Applications

Domestic abuse has traditionally been regarded as irrelevant in financial proceedings as financial remedies are determined without reference to the 'conduct' of the parties. In 2019, Hunter was invited by District Judge Judith Crisp to co-develop a Judicial College educational module on domestic abuse in financial proceedings. To complement the DJ's practice focus, Hunter undertook research on economic abuse and identified a number of ways in which domestic abuse may be relevant in financial proceedings other than as an issue of 'conduct'. This research resulted in an article co-authored with DJ Crisp [R2].

3. Litigants in Person in Private Family Law Proceedings

In 2012, Hunter was part of a research team led by Professor Liz Trinder (Exeter) who were commissioned by the Ministry of Justice to undertake research on LIPs in private family law proceedings, ahead of legal aid reforms that resulted in LIPs now appearing in over 80% of such cases. The research involved detailed analysis of a sample of cases heard in five courts in early 2013; a series of focus groups with local stakeholders; and secondary analysis of large national data sets from two concurrent studies on family dispute resolution. The report [R3] generated important findings regarding LIPs' experiences and needs both in and outside the courtroom. In particular, it highlighted the need for judges to take a more proactive approach than their traditional 'passive arbiter' role in order to facilitate access to justice for LIPs.

4. Assessing Risk of Harm to Children and Parents in Private Law Children Cases

In 2019, Hunter was appointed to a Ministry of Justice expert panel established to review how effectively family courts in England and Wales protect child and adult victims of domestic abuse in private law children cases. The panel received over 1200 individual and organisational submissions to its public call for evidence and conducted a series of focus groups with judges and professionals, alleged victims and perpetrators of abuse, and children who had been the subject of family court proceedings. Hunter 'undertook the preliminary analysis of the more than 1,000 submissions received, [...] identified the major themes in the evidence which underpin the [panel's] report, and led on the drafting and redrafting of the report' [a]. Consequently, she is listed as first author of the report, published in June 2020 [R4]. The report identifies four structural barriers which impede the courts' response to allegations of domestic abuse: resource limitations, the courts' pro-contact culture, the adversarial process, and silo working. Its extensive recommendations seek to address these barriers through root and branch reform of the family court process in child arrangement cases, placing domestic abuse and litigants in person at the centre rather than the margins of system design.

3. References to the research

[R1] R. Hunter and A. Barnett, *Fact-Finding Hearings and the Implementation of the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm – A Report to the Family Justice Council* (Family Justice Council, 2013). This report was reviewed by two academic referees and the FJC's Domestic Abuse and Executive Committees prior to publication. <https://kar.kent.ac.uk/35678/>

[R2] J. Crisp and R. Hunter, 'Domestic abuse in financial remedy applications' (2019) (December), *Family Law* 1440-46. This is the first UK article directly to address the relevance of domestic abuse in financial remedy proceedings. [Copy in supporting evidence folder.]

[R3] L. Trinder, R Hunter, et al., *Litigants in Person in Private Family Law Cases* (Ministry of Justice, 2014). Commissioned by the Ministry of Justice following a competitive tendering process. The 228-page report was reviewed by two independent academics and MoJ Analytical Services prior to publication.

<https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases>

[R4] R. Hunter, M. Burton, and L. Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report* (Ministry of Justice, 2020). This 214-page report analyses a substantial body of evidence, previous literature, and case law, highlighting the

structural factors underpinning the research findings. It was the product of a six-month drafting process, which included the input of 10 panel members and separate legal, policy, analyst, and practice-based reviews.

<https://www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases>

4. Details of the impact

Hunter's research arguing that judges must develop a stronger understanding of, and response to, the challenges faced by domestic abuse victims and LIPs has informed and shaped major changes in practice, procedure, and policy that address their vulnerability. Its reach is demonstrated by its direct impact on the entire family judiciary in England and Wales, as well as family law professionals (lawyers and social workers) and Government Ministers, and, as a result, its indirect impact on the tens of thousands of domestic abuse victims and LIPs who access the family courts each year. Its significance lies in substantial changes to the Family Procedure Rules, judicial education, and family justice policy to better protect and support domestic abuse victims, LIPs, and their children through private family law proceedings.

(1) Amendments to PD12J

PD12J specifies the procedure to be followed in the 50-60% of child arrangement cases in which allegations of domestic abuse are raised. In 2014, a Private Law Working Group was tasked with revising the Family Procedure Rules concerning child arrangement cases, including PD12J. The Working Group's Chair, Mr Justice Cobb, began his review of PD12J by turning for 'inspiration' [a] to Hunter and Barnett's 2013 Report [R1]. His initial re-draft incorporated some of the Report's recommendations, 'in particular the need to expand the definition of domestic violence to incorporate coercive and controlling behaviour, and more generally to strengthen the focus on the safety of both the child and the parent with whom the child lives' [a]. Cobb J then consulted directly with Hunter who suggested further amendments in line with the findings of both her PD12J [R1] and LIPs research [R3] [a, b]. The version ultimately adopted by the Family Procedure Rules Committee in 2014 implemented the recommendations of [R1] for the revision of PD12J to:

- Expand the definition of domestic violence to incorporate coercive and controlling behaviour;
- Strengthen the focus on the safety of both the child and the non-abusive parent;
- Clarify when and why fact-finding hearings should be held, and the need to take into account the capacities and vulnerabilities of LIPs and domestic abuse victims in deciding whether to hold them and how they should be conducted;
- Educate judges and lawyers about the impact of domestic violence on children and the nature and requirements of Domestic Violence Perpetrator Programmes;
- Provide for the establishment of links to local domestic violence services [b, c 3.2]

According to Cobb J: 'There is no question that [Hunter's] research made an important contribution substantially to improving PD12J' [a].

(2) Innovations in judicial education

The Judicial College is responsible for the induction and continuing education of all (full-time and part-time) judges and magistrates in England and Wales. Prior to 2017, its curricula for the family judiciary included only limited and occasional material on PD12J and LIPs, and none on domestic abuse in financial proceedings. Hunter's research on PD12J [R1, R4], domestic abuse in financial proceedings [R2], and LIPs [R3] has subsequently 'become an integral part of the Judicial College's private law training programmes for both established and newly-appointed judges' [d]. Since 2014, that research has variously reached all serving and new family judges, magistrates, and legal advisers. It has been systematically incorporated into and informed course content, and led to the establishment of new educational curricula.

Material based on [R1] is now a regular feature of family law induction courses [d, f], and was central to training for established judges following further revisions to PD12J in 2017 [d]. In

the most recent induction courses held in October and November 2020, a practical session on PD12J, delivered by an experienced Circuit judge, also discussed the implications of [R4] [f]. District Judge Lynda Ashworth, Private Family Law Course Director at the Judicial College, states that [R4] is already ‘an essential point of awareness and discussion for new family judges’ [e].

[R2] formed the basis for Hunter’s co-development of the Judicial College’s first-ever training on domestic abuse in financial proceedings [e, f]. This educational module, incorporating Hunter’s research on economic abuse, is now a regular feature of all ‘Family Money’ courses [e]. DJ Ashworth states that Hunter’s research ‘has provided a key input and been an integral part of that change’ [e].

Following the 2014 procedural revisions to child arrangement cases, a national training programme was run in April-June of that year to introduce all family judges to the reforms [f]. As described by Cobb J, ‘Given the greatly increased numbers of LIPs in the family courts it was essential that we included a session on dealing with LIPs in child arrangements cases, and we were fortunate to be able to draw on your and Professor Trinder’s MoJ research and forthcoming report [R3] in this regard. The research evidence provided judges with a broader and more robust understanding than could be gained from individual judicial experience’ [a]. Hunter and Trinder subsequently worked with the Judicial College, drawing on the findings of [R3], to develop a series of training videos for family judges and magistrates focused on judicial skills in dealing with LIPs, including those required for the more proactive approach to judging called for by the report. Several of the video scenarios focus on LIPs in cases involving domestic abuse allegations. Judicial College Family Law Course Director HHJ Christopher Simmonds states that the videos ‘are an excellent teaching tool’, and have also been ‘integral in expanding the coverage of domestic abuse to constitute half of the private law induction course – a significant increase from previous years’ [d]. According to him: ‘The judgecraft project has very productively combined our practice experience with the expertise, insights and energy derived from [Hunter’s] research to extend and enrich the education of family judges’ [d, f].

(3) Catalysing family justice reform

The *Assessing Risk of Harm* report [R4] has been widely acknowledged as a game-changer in the family justice system’s thinking about its response to domestic abuse. It was extensively reported in the national and international media, and welcomed by leading NGOs and charities, Police and Crime Commissioners, the Domestic Abuse Commissioner and the Victims’ Commissioner for England and Wales [g, h]. Nicki Norman, Acting CEO of Women’s Aid England, described it as ‘a major step forward in exposing what women and children experiencing domestic abuse have been telling us for decades’ [g]. Katie Russell, for Rape Crisis England and Wales, said: ‘The quality of this report speaks to the importance of having review panels such as these filled with and led by experts in the field. This should be recognised as best practice for all Government reviews’ [h].

The report resulted in a ‘step-change in thinking about the future direction of family justice reform’ [a]. In the Ministry of Justice’s Implementation Plan published alongside the report [i], the Government committed to implementing its recommendations. In his Written Ministerial Statement on the report on 25 June 2020, the Parliamentary Under-Secretary of State for Justice, Alex Chalk MP, said: ‘This report lays bare many hard truths about long-standing failings in the family justice system, especially in protecting the survivors of abuse and their children from harm.’ He continued: ‘I have carefully considered [the panel’s] conclusions and am determined to take action to improve the experience of survivors of domestic abuse in our family courts [...] The publication of this report provides a unique opportunity for the family justice system to reform how it manages cases involving children. The report is the springboard for the actions we will take to better protect and support children and domestic abuse victims throughout private family law proceedings’ [j].

Recommendations actioned by the Ministry of Justice to the end of 2020 include an amendment to the Domestic Abuse Bill 2019-21, in the House of Lords at the time of writing, to provide victims of domestic abuse with automatic access to special measures in family courts to protect their safety and wellbeing, and enable them to give their best evidence [R4 11.7, g]; establishment of a review of the presumption of parental involvement in s.1 of the Children Act 1989 [R4 11.4, g]; and the commencement of work to plan and pilot a new, investigative (rather than adversarial) procedure for child arrangement cases, which places children, LIPs, and families affected by domestic abuse at the centre of the design [R4 11.2, 11.3, 11.5, 11.6, 11.8, g].

5. Sources to corroborate the impact

[a] Testimonial from High Court Judge, Chair of the Private Law Working Group (2014), and member of the MoJ Expert Panel (2019-20). Describes the impact of Hunter's research in shaping reforms to PD12J, judicial education curricula, and family justice policy.

[b] Draft of PD12J with tracked changes showing Hunter's suggested amendments (pp. 1-10); and final version of PD12J 2014 (pp.11-20) highlighting wording based on Hunter's recommendations and specific suggestions.

[c] House of Commons Library, *Children: Child arrangements orders – safeguards when domestic abuse issues arise (England and Wales)* (Briefing Paper No. 8764, February 2020), section 3.2, noting the connection between [R1] and the 2014 revisions of PD12J.

[d] Testimonial from Circuit Judge and Judicial College Family Law Course Director. Describes the impact of Hunter's research in shaping new judicial educational curricula on PD12J and LIPs.

[e] Testimonial from District Judge and Judicial College Private Family Law Course Director. Describes the impact of Hunter's research on shaping new judicial educational curricula on domestic abuse in financial remedy proceedings, as well as the impact of [R4] in judicial education.

[f] Sample programmes for Judicial College training courses showing sessions on LIPs, PD12J and Domestic Abuse in Financial Proceedings, 2014-20.

[g] Ministry of Justice press release on [R4] (incorporating responses from Women's Aid England, Welsh Women's Aid, the Domestic Abuse Commissioner, and the Victims' Commissioner for England and Wales).

<https://www.gov.uk/government/news/major-overhaul-of-family-courts-to-protect-domestic-abuse-victims>

[h] Links to news items, compiled press releases, and compiled Twitter responses to show reach and significance of [R4], p. 5.

[i] Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan* (June 2020).

<https://www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases>

[j] Written Ministerial Statement on [R4] by Parliamentary Under-Secretary of State Alex Chalk MP.

<https://questions-statements.parliament.uk/written-statements/detail/2020-06-25/hcws313>