

# Appendix 8

## Domestic violence

Excerpt from the Report to the Lord Chancellor on the Question of Parental Contact in Cases where there is Domestic Violence by the Children Act Sub-Committee of the Advisory Board on Family Law, dated May 2000.

### SECTION 4: SUMMARY OF OUR MAIN CONCLUSIONS AND RECOMMENDATIONS

- 4.1 The issue of domestic violence in the context of contact applications is seen throughout the Family Justice System as one of considerable importance.
- 4.2 There is both a powerful public perception and an acceptance by a significant number of professional organisations that the issue is not being fully addressed by the courts.
- 4.3 We are not, at this stage, persuaded that there is a need to amend the Children Act to address the issue, or for the introduction of a legislative code to provide a presumption against contact where domestic violence is established, such as exists in New Zealand.
- 4.4 However, we are strongly of the view that, as soon as possible, there should be Good Practice Guidelines, preferably introduced by way of Practice Direction from the Lord Chancellor and the President of the Family Division along the lines set out in section 5 of the report. Those Guidelines should apply at every level of court.
- 4.5 We are further of the view that the operation of the Guidelines should be carefully monitored over a defined period by the Lord Chancellor's Department and the Court Service, and that the question of legislation should be reconsidered at the end of that period in the light of the impact made by the Guidelines.
- 4.6 The monitoring referred to in paragraph 4.5 should be part of a systematic gathering and analysis of information relating to applications made to the court for contact in which domestic violence is an issue. Furthermore, there should be longitudinal research funded by the Department aimed at informing all the professionals working within the Family Justice System about the effects of domestic violence on children and residential parents, and the impact of different contact orders on children and their parents.
- 4.7 We also recommend that there should be continuous training for the Court Welfare Service and in due course joint training for the officers of CAF/CASS designed to ensure that they are fully alert to the effects of domestic violence on children and the risks to children in having contact with violent parents. There is also a need for training for the judiciary in understanding the effect of domestic violence on children and parents.

## SECTION 5: OUR PROPOSED GUIDELINES FOR GOOD PRACTICE

Court to give early consideration to allegations of domestic violence.

- 5.1 In every case in which domestic violence is put forward as a reason for refusing or limiting contact the court should at the earliest opportunity consider the allegations made (and any answer to them) and decide whether the nature and effect of the violence alleged by the complainant (or admitted by the respondent) is such as to make it likely that the order of the court for contact will be affected if the allegations are proved.

Steps to be taken where the court forms the view that its order is likely to be affected if allegations of domestic violence are proved.

- 5.2 Where the allegations are disputed and the court forms the view that the nature and effect of the violence alleged is such as to make it likely that the order of the court will be affected if the allegations are proved the court should:
- a) consider what evidence will be required to enable the court to make findings of fact in relation to the allegations;
  - b) ensure that appropriate directions under section 11(1) of the Children Act 1989 are given at an early stage in the application to enable the matters in issue to be heard as speedily as possible, including consideration of whether or not it would be appropriate for there to be an initial hearing for the purpose of enabling findings of fact to be made;
  - c) consider whether an order for interim contact pending the final hearing is in the interests of the child; and in particular that the safety of the child and the residential parent can be secured before during and after any such contact;
  - d) direct a report from a court welfare officer on the question of contact unless satisfied that it is not necessary to do so in order to safeguard the child's interests;
  - e) subject to the seriousness of the allegations made and the difficulty of the case consider whether or not the children in question need to be separately represented in the proceedings; and, if the case is proceeding in the Family Proceedings Court whether or not it should be transferred to the county court; if in the county court whether or not it should be transferred to the High Court for hearing.

### Directions to the Court Welfare Officer in cases involving domestic violence

- 5.3 a) Where the court orders a welfare officer's report under section 7 of the Children Act 1989 in a disputed application for contact in which it considers domestic violence to be a relevant issue, the order of the court should contain specific directions to the court welfare officer to address the issue of domestic violence; to make an assessment of the harm which the children have suffered or which they are at risk

of suffering if contact is ordered; to assess whether the safety of the child and the residential parent can be secured before, during and after contact; and to make particular efforts to ascertain the wishes and feelings of the children concerned in the light of the allegations of violence made.

- b) Where the court has made findings of fact prior to the court welfare officer conducting his or her investigation, the court should ensure that either a note of the court's judgment or of the findings of fact made by the court is made available to the court welfare officer as soon after the findings have been made as is practicable.
- c) Where in a case involving allegations of domestic violence the whereabouts of the child and the residential parent are known to the court but not known to the parent seeking contact; and where the court takes the view that it is in the best interests of the child or children concerned for that position to be maintained for the time being, the court should give directions designed to ensure that any court welfare officer's report on the circumstances of the residential parent and the child does not reveal their whereabouts, whether directly or indirectly.

### **Interim contact pending a full hearing**

5.4 In deciding any question of interim contact pending a full hearing the court should:

- a) specifically take into account the matters set out in section 1(3) of the Children Act 1989 ('the welfare check-list');
- b) given particular consideration to the likely risk of harm to the child, whether physical and/or emotional, if contact is either granted or refused;
- c) consider, if it decides such contact is in the interests of the child, what directions are required about how it is to be carried into effect; and, in particular, whether it should be supervised, and if so, by whom; and generally, in so far as it can, ensure that any risk of harm to the child is minimised and the safety of the child and residential parent before during and after any such contact is secured;
- d) consider whether the parent seeking contact should seek advice and/or treatment as a precondition to contact being ordered or as a means of assisting the court in ascertaining the likely risk of harm to the child from that person at the final hearing.

### **Matters to be considered at the final hearing**

5.5 At the final hearing of a contact application in which there are disputed allegations of domestic violence:

- a) the court should, wherever practicable, make findings of fact as to the nature and degree of the violence which is established on the balance of probabilities and its effect on the child and the parent with whom the child is living;

- b) in deciding the issue of contact the court should, in the light of the findings of fact which it has made, apply the individual items in the welfare checklist with reference to those findings; in particular, where relevant findings of domestic violence have been made, the court should in every case consider the harm which the child has suffered as a consequence of that violence and the harm which the child is at risk of suffering if an order for contact is made and only make an order for contact if it can be satisfied that the safety of the residential parent and the child can be secured before, during and after contact.

### **Matters to be considered where findings of domestic violence are made**

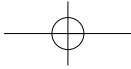
5.6 In each case where a finding of domestic violence is made, the court should consider the conduct of both parents towards each other and towards the children; in particular, the court should consider:

- a) the effect of the domestic violence which has been established on the child and on the parent with whom the child is living;
- b) whether or not the motivation of the parent seeking contact is a desire to promote the best interests of the child or as a means of continuing a process of violence against or intimidation or harassment of the other parent;
- c) the likely behaviour of the parent seeking contact during contact and its effect on the child or children concerned;
- d) the capacity of the parent seeking contact to appreciate the effect of past and future violence on the other parent and the children concerned;
- e) the attitude of the parent seeking contact to past violent conduct by that parent; and in particular whether that parent has the capacity to change and/or to behave appropriately.

### **Matters to be considered where contact is ordered in a case where findings of domestic violence have been made**

5.7 Where the court has made findings of domestic violence but, having applied the welfare checklist, nonetheless considers that direct contact is in the best interests of the child or children concerned, the court should consider (in addition to the matters set out in paragraphs 5 and 6 above) what directions are required to enable the order to be carried into effect under section 11(7) of the Children Act 1989 and in particular should consider:

- a) whether or not contact should be supervised, and if so, by whom;
- b) what conditions (for example by way of seeking advice or treatment) should be complied with by the party in whose favour the order for contact has been made;



- c) whether the court should exercise its powers under section 42(2)(B) of the Family Law Act 1996 to make a non-molestation order;
- d) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period;
- e) setting a date for the order to be reviewed and giving directions to ensure that the court at the review has full information about the operation of the order.

### Information about local facilities

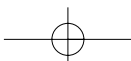
- 5.8 The court should also take steps to inform itself (alternatively direct the court welfare officer or the parties to inform it) of the facilities available locally to the court to assist parents who have been violent to their partners and/or their children, and, where appropriate, should impose as a condition of future contact that violent parents avail themselves of those facilities.

### Reasons

- 5.9 In its judgment or reasons the court should always explain how its findings on the issue of domestic violence have influenced its decision on the issue of contact; and in particular where the court has found domestic violence proved but nonetheless makes an order for contact, the court should always explain, whether by way of reference to the welfare check-list or otherwise why it takes the view that contact is in the best interests of the child.

### Note

- 5.10 Although not part of our formal guidelines, we think that all courts hearing applications where domestic violence is alleged should review their facilities at court and should do their best to ensure that there are separate waiting areas for the parties in such cases and that information about the services of Victim Support and other supporting agencies is readily available.



## Psychiatric report prepared by Dr J.C. Sturge giving a child and adolescent opinion with regard to:

### Appeal cases *Re L, Re V, Re M, and Re H* (2000)

(Dr Sturge consulted with Dr D. Glaser in preparing this report)

For the cases *re L* (*Contact: Domestic Violence*), *re V* (*Contact: Domestic Violence*), *re M* (*Contact: Domestic Violence*) (2002) 2 FLR 334 (and see p603 (above)), the Official Solicitor asked for a report giving a child and adolescent psychiatric opinion on, among other matters, the implications of domestic violence for contact. The task was approached with humility as much of what is said is self-evident, is clearly already part of the judiciary's thinking as is illustrated in so many judgments, and as the literature cited is well known to many in the legal profession involved with child care.

The consultation paper from Mr Justice Wall, Children Act Sub-Committee of the Advisory Board on Family Law *Contact between Children and violent Parents: The question of Parental Contact in cases where there is Domestic Violence* (Lord Chancellor's Department, 1999) was widely welcomed and endorsed by the child psychologists and psychiatrists who commented and we view it very positively.

We received a bundle of papers the index to which is attached.

The series of questions posed by the Official Solicitor are taken in order, as headings.

#### **1. What are the psychiatric principles of contact between the child and the non-residential parent?**

The principles that guide the advice of child psychiatrists and psychologists are drawn from developmental and psychological knowledge, theory and research.

##### **Knowledge base**

These draw particularly on the following:

##### **i. Development: Knowledge of children's cognitive, social and emotional development**

The following are of particular relevance to issues of contact:

- There are particular needs at particular times with critical times for forming basic relationships.
- There is the need for warmth and approval and the development of positive self-esteem.
- There is the need to increasingly explore and develop independence from a secure base.
- There is the need for a sense of security, stability, continuity and “belongingness”.
- Cognitive development affects children’s ability to remember and to hold people in their minds; it affects their ability to understand situations.

**ii. Interactional issues: Knowledge, theory and research on such aspects as:**

- Attachment
- Relationships and interactions with carers, parents, siblings and the extended family;
- Effects of loss when families are disrupted;
- Effects of adverse care;
- The child’s interaction with the environment;
- Question of resilience and vulnerability;
- Significance of cultural factors.

All of the above hold different relevance for different children at different ages. A young child experiencing loss through separation or trauma through exposure to violence will express his or her feelings through behaviour such as agitation, sleep disturbance and “naughtiness” rather than any coherent account of what he or she is feeling and why.

Older children and adolescents may also act out their distress and confusion through their behaviour rather than expressing this directly. The more emotionally mature and well adjusted the girl or boy is, the more able (but not necessarily willing) he or she will be to put their feelings and wishes into words.

### iii. Innate factors

These are the factors brought into the situation by virtue of the child's own unique make-up-genetic and temperamental factors including the sex of the child.

Please see the attached reference list for relevant references of which we have tried to present just a minimum number – either germinal or of particular relevance.

#### **Principles drawn from this knowledge base relating to contact:**

These are seen as core principles that should guide decisions whatever the nature of the case.

- i. We see the centrality of the child as all-important. There will be tensions around the child because, in disputed cases, the parents will hold differing positions. The needs of the adult positions obscure and overwhelm the needs of the child but promoting the child's mental health remains the central issue.

Decisions about contact must be child-centred and relate to the specific child in his or her specific situation, now. Every child has different needs and these also alter with the different needs at different stages of development. The eventual plan for the child must be the one that best approximates to these needs.

- ii. To consider contact questions the purpose of any proposed contact must be overt and abundantly clear.

Contact can only be an issue where it has the potential for benefiting the child in some way. Defining in what way this might be will help guide decisions about whether there should be contact and also its nature, duration and frequency.

The different purposes of contact include:

- the sharing of information and knowledge; curiosity is healthy; sense of origin and roots contribute to the sense of identity which is also important as a part of self-esteem;
- maintaining meaningful and beneficial relationships (or forming and building up relationships which have the potential for benefiting the child; this may be particularly relevant to infants);
- experiences that can be the foundations for healthy emotional growth and development; children benefit from being the special focus of love, attention and concern and of loving and being concerned;
- reparation of broken or problematic relationships;

- opportunities for reality testing for the child; children need to balance reality versus fantasy and idealisation versus denigration;
  - facilitating the assessment of the quality of the relationship or contact – most relevant where a return to a particular parent is being considered;
  - severing relationships, e.g. Goodbye meetings.
- iii. Decisions must involve a process of balancing different factors and the advantages and disadvantages of each. This includes contact versus no contact and whether to accept or go against the wishes of a child.

### **Fathers:**

Contact with fathers, as opposed to other family members or people with whom the child has a significant relationship, brings the following, in particular, to bear although the general principles remain the same:

- the father's unique role in the creation of the child;
- the sharing of 50% of their genetic material;
- the history of his or her conception and the parental relationship;
- the consequent importance of the father in the child's sense of identity and value;
- the role modeling a father can provide of the father's and male contribution to parenting and the rearing of children which will have relevance to the child's concepts of parental role models and his or her own choices about choosing partners and the sort of family life he or she aims to create.

### **2(i). What are the benefits of (a) direct and (b) indirect contact with the non-residential parent?**

#### **Benefits of contact**

Potentially, these are all the benefits referred to above and depend on the age and development of the child, the individual characteristics of the child and his or her situation which is the present situation but includes the impact on that situation of past experiences and events. Central to potential benefits is also the capacity of the parent concerned to understand and respond appropriately to his or her child's needs.

In summary, the benefits include the meeting of his or her needs for:

- warmth, approval, feeling unique and special to a parent;
- her or his need for extending experiences and developing ( or maintaining) meaningful relationships;
- information and knowledge;
- reparation of distorted relationships or perceptions.

(By way of summary a dimensional diagram is attached).

**Direct** contact can meet one or more or all of these needs. The sort of direct contact separated parents are able to agree and organise between themselves in negotiations as responsible parents with their child's best interests at heart is the type of arrangement that is likely to take place in a positive and supportive way and is the most likely to most benefit the child.

**Indirect** contact can only meet a much more limited number of needs, amongst these in particular, are:

- i. Experience of the continued interest of the absent parent which, in a very partial way, will meet the need to feel valued and wanted i.e. not rejected, by that parent.
- ii. Knowledge and information about the absent parent.
- iii. The keeping open of the possibility of the development of the relationship, e.g. when the child is older or has some specific need of that parent.
- iv. There may be some opportunity, through letters or phone calls, for reparation.

Much depends, particularly with small children, on the manner in which the indirect contact is managed by the resident parent.

There is a lack of resources (and creative and flexible thinking) in how to allow children to gain from their indirect contact where the resident parent's hostility distorts the manner in which the child interprets the indirect contact, for example, proxy contact arrangements.

## **2(ii). What are the risks of (a) direct and (b) indirect contact with the non-residential parent?**

### **The risks of direct contact are:**

The overall risk is that of failing to meet and actually undermining the child's developmental needs or even causing emotional abuse and damage – directly through the contact or as a consequence of the contact.

Specifically, this includes:

- i. Escalating the climate of conflict around the child which will:
  - a. undermine her or his general stability and sense of emotional well-being;
  - b. inevitably result in tugs of loyalty and a sense of responsibility for the conflict (except in the smallest of babies);
  - c. affect relationships between the child and both the resident and the non-resident parent. It may, for example, result in extreme polarisation with enmeshment with the resident parent and rejection of the non-resident parent as a result of the child's efforts to reduce the conflictual situation.
- ii. Direct experiences within the contact:
  - a. abuse: physical or sexual, or emotional, see below; neglect. Dangerous situations include those in which the parent has delusional beliefs at the time of contact i.e. is acutely mentally ill or is under the influence of alcohol or drugs.
  - b. emotional abuse through the denigration of the child directly or the child's resident carer, through using the contact as a means of continuing or escalating the "war" with the resident parent e.g. seeking derogatory information, engendering secrets, making derogatory remarks in an attempt to undermine the resident parent.

This can also be seen as increasing distortions in the child's perceptions and understanding of reality.

This includes situations where the motivation for contact is to satisfy the need of the contact parent e.g. to get at the other parent or maintain a link with him or her, and is not motivated by positive feelings for the child and a genuine wish for a healthy relationship with that child.

- c. continuation of unhealthy relationships e.g. inappropriately dominant or bullying relationships, controlling relationships through subtly or blatantly maintaining (or initiating) fear or through other means (e.g. bribes, emotional blackmail).

This includes situations where the child is aware of the continuing fear about the contact parent on the part of the custodial parent.

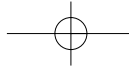
- d. undermining the child's sense of stability and continuity by deliberately or inadvertently setting different moral standards or standards of behaviour. Rules for the child may be very different with the contact parent and the child may be allowed to do quite different things which are normally forbidden. This can affect his or her understanding of right and wrong and/or give him or her the means to then challenge or defy the resident parent.

This is particularly likely to occur where the parents are unable to responsibly discuss their child rearing practices and related issues with one another.

- e. experiences lacking in endorsement of the child as a valued and individual person e.g. where little or no interest is shown in the child himself or herself. Contact where the contact parent is unable to consistently sustain the prioritisation of the child's needs.
- f. unstimulating experiences which are lacking in interest, fun or in extending the child and his or her experiences.

iii. Other

- a. Continuation of unresolved situations e.g. where the child has a memory or belief about a negative aspect of the contact parent e.g. abuse, and where this is just left as if unimportant. Actual denial of abuse where this has been established or the child continues to make statements about it and/or refusal to look at apologising and other means of helping the child deal with the situation can be particularly destructive to the child both in terms of failing to validate their experience and failing to validate the child as a valid individual as a consequence and in terms of failing to recognise and help the child in his or her need to come to terms with what has happened.
- b. Unreliable contact in which the child is frequently let down or feels rejected, unwanted and of little importance to the failing parent. This also undermines a child's need for predictability and stability. We believe the legal processes tend to under-estimate the impact on the child and the child's situation of a parent who does not arrive on time or at all, who cancels at the last minute or makes a great fuss over a child's request to miss a contact in order to do something important to the child, a parent who breaks promises – promises to come for treats, for



holidays, for not behaving in a particular way (such as criticising the child or the custodial parent) or who is unreliable at contact – for example, only attentive by fits and starts. The child is likely to feel let down, disappointed, angry and unvalued or rejected; the resident parent is likely to have to deal with the aftermath of such events and feelings and there may be an undermining of the child's whole situation.

The child may in part recognise the overall effects the unreliability is having and the distress caused to his or her carer. Children who do not want contact for these reasons must be heard and, almost invariably, their wish for no contact granted.

- c. The child is continuing to attend contact against his or her ongoing wishes such that the child feels undermined as someone in his or her own right whose feelings are considered and heeded.
- d. All significantly difficult contact situations for the child where there is little potential and prospect for change e.g. wholly implacable situations, contact which is failing to prioritise the child's needs.
- e. The stress on the child, on his or her resident carer and on the situation as a whole of ongoing proceedings or frequently re-initiated proceedings, of periods of contact and then no contact on and off also need taking into account. Proceedings often mean a standstill in the child's overall life and development while his or her carer's emotional energies are taken up with the case and the child only too aware that he or she is at the centre of some dispute and somehow responsible for this and the resulting distress. We know of no research that has systematically looked at the impact on children or drawn out proceedings but our experience is that the children are adversely affected.

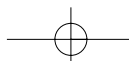
### Indirect contact

The above apply only inasmuch as the non-resident parent is able to convey undermining and distorting messages through whatever indirect contact medium is agreed. Obviously, there is greatest scope for harm in telephone contact and least in vetted contact such as letters.

Other risks are that of the non-resident parent, in abduction risk situations, using the child's communications to establish details about the child that could lead to identifying the child's home address, school or routines, or as ammunition in legal proceedings, or simply in undermining the resident parent.

In summary:

In contested contact cases it is unlikely that the best contact situation for the child can be established – one which both parents support and in which the child's needs are consistently met.



Hence the balancing act referred to in point iii. Of how the knowledge base can be applied to decisions about contact, above.

### **3. What weight is to be placed upon the following factors in children contact cases?**

#### **(i). Where there is a history of significant intra-familial violence and the child has had a negative experience of the non-residential parent e.g. witnessing an incident of intra-familial violence or threats to the mother;**

We take the term intra-familial violence to refer to inter-partner violence and not to other forms of domestic violence such as direct child abuse per se. The child may, of course, be abused in inter-partner violence – directly and physically or emotionally. Research indicates that children are affected as much by exposure to violence as to being involved in it. The ongoing fear and dread of it recurring is also emotionally very damaging (see papers by McClosky et al and Jaffe et al).

Secondly, we take the position that all children are affected by significant and repeated inter-partner violence even if this is only indirect i.e. the child is not directly involved. Awareness is all but inevitable and even without this there will be the aftermath of the violence and the distorted inter-partner relationships, communication and behaviours. The research is entirely consistent in showing deleterious effects of exposure to domestic violence on children.

It needs to be noted that research in this area is all in relation to the effects on children of domestic violence and not to either the changing circumstances of that violence e.g. if the violent partner leaves the relationship and other factors in such situations (contribution of mother's behaviour to the violence, the further relationships she makes and her overall competence as a parent) nor to the question of how previously exposed children fare according to whether or not contact continues.

Thus views in this area are based on the generality of the research on the ill-effects of such exposure and experience and using this in a common sense way to inform opinion. However, findings in relation to children's fear and dread (McClosky) and the experience of those treating children psychotherapeutically after exposure to domestic violence that the persecutory fears are deep-seated and persistent indicate that even when children do not continue in that violent situation, emotional trauma continues to be experienced; the memories of the violence continue as persecutory images.

The context of the overall situation is highly relevant to decision-making. The contribution of psychiatric disorders to situations of domestic violence and emotional abuse must be considered. Such disorders will have put enormous pressures not only on the child, but on the

other parent. Depression and delusional disorders are obvious examples but personality disorders may be most relevant in this context. Where such a personality disorder, for example a borderline personality disorder, affects interpersonal relationships, both the relationship with the partner and with the child are likely to have been marked by unstable and intense relating on an inter-personal level, with extremes of feelings, anger problems and other behavioural problems – for example, jealousy and irrational ideas, threats or acts of self-harm and marked impulsivity. This will have added to the emotional abuse of the child and is likely to continue. The reinforcing effects on some such people of continuing the interpersonal battles will complicate and prolong legal proceedings and may lead to frequent re-applications. The continuing complex and intense on/off relationships so often seen in domestic violence may further undermine arrangements.

The child needs protecting from all this.

It needs to be remembered that the most extreme form of domestic violence is murder where one partner (usually the man) kills the other. The fear that one of their parents might be killed during the violence is often a significant part of the trauma to the child.

Domestic violence is relevant in the following ways with regard to contact (and all relate to the general principles already set out):

- a. There may be a continuing sense of fear of the violent parent by the child;
- b. The child may have post-traumatic anxieties or symptoms which the proximity of the non-resident violent parent may re-arouse or perpetuate;
- c. There may be a continuing awareness of the fear the violent parent arouses in the child's main carer;
- d. There are likely to be all or many of the issues referred to under "risks of direct contact", some of which may not be directly the responsibility of the violent parent e.g. the mother's or resident parent's reaction and post-traumatic symptoms in relation to the past violence.
- e. There is the important, but largely neglected area, of the effects of such situations on children's own attitudes to violence, to forming "parenting" relationships and to the role of fathers in such relationships and in caring for and protecting their children. Research indicates, that particularly in boys, attitudes are affected. One study (Moffitt and Caspi) showed a close relationship between childhood antisocial behaviour and partner violence (and early childbearing) while others show clear associations between domestic violence and behaviour problems (in girls and boys but it is the boys that show more antisocial problems). This same review (Grych and Fincham) also produced evidence of associations between the frequency and intensity of the violence with the severity of the child sequelae but no specific gender or age association beyond that referred to above.

The process by which the ill effects are mediated are not known but there are various hypotheses including ones which see the inter-partner violence as disrupting the quality of parenting generally as well as theories of child stress and child imitation. Genetics may also play a role i.e. the violent and dysfunctional traits are inherited. Contact decisions, if this were a pure effect, would then have little bearing on outcome. An interaction between genes and environment is seen as the most likely explanation.

Put in moral terms what is the view about encouraging children to have relationships with fathers who have behaved criminally and in a way that specifically denigrates the mother and specifically undermines and distorts the caring and protective roles of parents. Domestic violence is usually an assault on the child's main carer. Leonore Terr's work indicates that threats to the carer on whom a child is dependent have more serious consequences in young children than attacks on themselves.

- f. Direct physical abuse: parents who are violent to each other are more likely to be violent to their children. The same review mentioned above, taking the research together, puts the risks as between 3 and 9 times greater than in non-violent families.

We are not in these questions asked to address the issue of the mother's part in any domestic violence which complicates the picture but less so if the decision that she is to be the main carer is already taken and she has successfully extricated herself from that and other violent relationships.

**(ii). Where the child is adamant that he/she does not wish to see the parent or contemplate contact**

Ekeelar has produced a helpful approach to assessing how to weight children's wishes (attached).

The following need to be accepted:

- i. The child must be listened to and taken seriously;
- ii. The age and understanding of the child are highly relevant;
- iii. The child, and the younger and the more dependent, either for developmental or emotional reasons, if in a positive relationship with the resident parent will inevitably be influenced by:
  - that parent's views;
  - their wish to maintain her or his sense of security and stability within that household.

- iv. Going against the child's wishes must involve the following:
- Indications that there are prospects of the child changing his or her view as a result of preparation work or the contact itself e.g. there is a history of meaningful attachment and a good relationship; the non-resident parent has child-centred plans as to how to help the child overcome his or her resistance; there are some indications of ambivalence such as an adamant statement of not wanting to see that parent accompanied by lots of positive memories and affect when talking of that parent.
  - Consideration of the effects on the child of making a decision that appears to disregard their feelings/wishes. It is damaging to a child to feel he or she is forced to do something against their will and against his or her judgment if the child cannot see the sense of it.
- v. Unreliable contact: see 2.iii.b. above.

**(iii). Where there is an absence of a bond between the child and the parent with whom he or she does not live**

The following need to be taken into account:

- i. The age and developmental level of the child: infants invoke and promote parenting behaviour towards them by their own behaviour and interactions. The interactions and experience of the carer of the infant and the infant of the carer are necessary to the formation of attachment and bonds (positive and significant relationships in either direction) between them. The lack of attachment or bonds in a small baby should not therefore in itself be seen as a reason for not promoting contact.

Toddlers and older children remain capable of forming bonds and attachments although these will be of different quality and type according to the situation. A strong bond for years with a single carer is likely to result both in a greater resource for forming future strong bonds and relationships.

However, if they remain with the long-standing "attachment" parent new bonds are unlikely to become as strong or meaningful as the basic one.

In adolescence, other significant developmental issues come into the situation. In relation to an absent bond with the non-residential parent, the seeking of a clear and separate identity may lead to greater interest in a little known biological parent. The introduction of contact may at the same time because of the adolescent's seeking of independence, add complications which undermine the "main" placement (eg expressing a wish or leaving to live with the non-resident parent as an act of defiance towards the resident parent and his or her controls).

- ii. The question, perhaps, needs to be looked the other way around. If there is a strong relationship, bond or attachment that is a good reason to continue and promote contact as failure to do so will be an emotional loss for the child and much more likely to be experienced as an abandonment or rejection.

Lack of such a bond means there is not that argument for furthering contact but it is not, in itself, a reason not to try to build a new relationship.

In this last situation, other considerations may come into play, such as other emotional investments of the child e.g. in a step parent and what specifically the new relationship might add to the child's life and well being.

In the event that there is no meaningful relationship between the child and non-residential parent and an established history of domestic violence with or without opposition to contact by the resident parent, there would need to be very good reason to embark on a plan of introducing direct contact and building up a relationship when the main evidence is of that non-residential's capacity for violence within relationships.

#### **(iv). Where there is a case of Parental Alienation Syndrome:**

Parental Alienation Syndrome does not exist in the sense that it is:

- not recognised in either the American classification of mental disorders (D.S.M.IV) or the international classification of disorders (I.C.D.10);
- not generally recognised in our or allied child mental health specialities.

We do not consider it to be a helpful concept and consider that the sort of problems that the title of this disorder is trying to address is better thought of as implacable hostility. The essential and important difference is that the Parental Alienation Syndrome assumes a cause (seen as misguided or malign on the part of the resident parent) which leads to a prescribed intervention whereas the concept (which no-one claims to be a "syndrome") is simply a statement aimed at the understanding of particular situations but for which a range of explanations is possible and for which there is no single and prescribed solution this depending on the nature and individuality of each case.

The basic concept in the Parental Alienation Syndrome is a uni-directional one as if such situations are a linear process when they are, in fact, dynamic and interactional with aspects of each parent's relationship to the other interacting to produce the difficult and stuck situation.

There is an elegant rebuttal of such a syndrome by the highly reputable Kathleen Faller and we fully agree with the thrust of her arguments (paper attached).

The possible reasons for a resident parent taking a position of implacable hostility (by implication to the ex-partner as much as to contact) are:

## Appendix 8

## Family Bench Book

- a. A fully justified fear of harm or abduction resulting from any direct contact with the non-resident parent;
- b. A fear of violence or other threat and menace to herself if the non-resident parent has indirect contact to her through the child i.e. it could lead to direct contact.
- c. Post-traumatic symptoms in the custodial parent which are acutely exacerbated by the prospect or the fact of contact;
- d. The aftermath of a relationship in which there was a marked imbalance in the power exercised by the two parents and where the mother fears she will be wholly undermined and become helpless and totally inadequate again if there is any channel of contact between herself and the ex-partner, even when that only involves the child. The child can be used as a weapon in such a bid to continue to hold power over the mother. As in a) b) and c) above, this can be a sequelae of domestic violence.
- e. Wholly biased hostility which is not based on real events or experience. This may be conscious and malign or perceived to be true. The latter encompass the full continuum from misperceptions and misunderstandings through overvalued ideas to delusional states. The former may result from a simple wish to wipe the slate clean and start again and can be seen after relationships that were initially highly romantic or idealised and for the breakdown of which the woman can only account for by vilifying the partner in order to avoid facing the possibility that the breakdown in the relationship was her failure and amounts to rejection.

It is both these situations, in which there are often sexual abuse allegations emanating mainly from the resident carer, which particularly exercise experts and the Courts as the fathers may be well functioning, well meaning and represent a real potential for a good relationship with the child.

The term “implacable” is used here to describe the intensity and unchanging nature of the hostility and the fact that any amount of mediation is unlikely to result in an alteration in the hostility felt by the parent. It is important to note it is often two-way i.e. the non-resident parent is as implacably hostile to the resident parent as the other way around. It is more often not directly expressed or camouflaged as the non-resident parent has “more to lose” by its being obviously stated.

Implacability makes no difference to the general principles outlined in this document although it increases the complexity and difficulties and the prospects of solution-finding.

#### **4. In what circumstances should the Court give consideration to a child having no direct contact with the non-residential parent?**

The core question.

In our experience the Judiciary takes careful account of all the relevant factors and comes to decisions based on the individual needs of the child in question.

From all that is written above, it will be clear that we consider that there should be no automatic assumption that contact to a previously or currently violent parent is in the child's interests; if anything the assumption should be in the opposite direction and the case of the non-residential parent one of proving why he can offer something of such benefit not only to the child but to the child's situation (i.e. act in a way that it is supportive to the child's situation with his or her resident parent, and able to be sensitive to and respond appropriately to the child's needs) that contact should be considered. We would go as far as to suggest, acknowledging our limited knowledge of the law, a position in which a father (or mother in certain circumstances) who has been found to have been domestically violent to the child's carer should need to show positive grounds as to why, despite this, contact is in the child's interest in order for an application to be even considered. There could be a requirement that that parent sets out how he proposes to help the child heal and recover from the damage done.

In these situations, it is unlikely that the conditions outlined in 2.i. above will be met and that contact will be in the child's interests. Domestic violence involves a very serious and significant failure in parenting – failure to protect the child's carer and failure to protect the child emotionally (and in some cases physically – which meets any definition of child abuse).

Without the following we would see the balance of advantage and disadvantage as tipping against contact:

- a. some (preferably full) acknowledgment of the violence;
- b. some acceptance (preferably full if appropriate i.e. the sole instigator of violence) of responsibility for that violence;
- c. full acceptance of the inappropriateness of the violence particularly in respect of the domestic and parenting context and of the likely ill effects on the child;
- d. a genuine interest in the child's welfare and full commitment to the child i.e. a wish for contact in which he is not making the conditions;
- e. a wish to make reparation to the child and work towards the child recognising the inappropriateness of the violence and the attitude to and treatment of the mother and helping the child to develop appropriate values and attitudes;

- f. an expression of regret and the showing of some understanding of the impact of their behaviour on their ex-partner in the past and currently.
- g. indications that the parent seeking contact can reliably sustain contact in all senses.

Without the above we cannot see how the non-resident parent can fully support the child, play a part in undoing some of the harm caused to the child and his or her whole situation, help the child understand the reality of past events and experiences and fully support the child's current situation and need to move on and develop healthily.

With a-f above, we see there as being a significant risk to the child's general well-being and his or her emotional development. Without these, we also see contact as potentially raising the likelihood of the most serious of the sequelae of children's exposure, directly or indirectly, to domestic violence, namely the increased risk of aggression and violence in the child generally, the increased risk of the child becoming the perpetrator of domestic violence or becoming involved in domestically violent relationships and of increased risk of having disturbed interpersonal relationships themselves.

- h. respecting the child's wishes: while this needs to be assessed within the whole context of such wishes, the older the child the more seriously they should be viewed and the more insulting and discrediting to the child to have them ignored. As a rough rule we would see these as needing to be taken account of at any age; above 10 we see these as carrying considerable weight with 6-10 as an intermediate stage and at under 6 as often indistinguishable in many ways from the wishes of the main carer (assuming normal development). In domestic violence, where the child has memories of that violence we would see their wishes as warranting much more weight than in situations where no real reason for the child's resistance appears to exist.

In addition to the above, which are specific but by no means exclusive to domestic violence, the other evaluations of how the contact will benefit the child need to be made. In particular, the question of its purpose needs answering as there is a great difference between contact, direct or indirect, designed to provide information and, in the case of direct contact, direct knowledge of the parent and contact designed to re-establish, continue or develop a meaningful, father-child relationship.

## 5. Other relevant issues

We were not asked, which we are sometimes asked in instructions to us, what is the potential detriment to the child of having no direct contact with the non-resident parent.

Taking the case of past domestic violence, although the principles are the same in all cases, the most relevant issues would be:

- i. deprivation of a relationship with the biological father;
- ii. loss of the opportunity to know that parent first hand; loss of information and knowledge that will go towards the child's identity formation. While the reality testing may give the child a negative view of the parent, that may be less worrying than the unseen, imagined villain. Where it is a positive view and the child is able to see good in the parent as well as to understand that he did things that were very wrong will help the positive image of himself or herself.

While directly this may be more important for sons, daughters can be helped in their attitude to what makes a suitable partner to father her children. Children can have genetic fears – that he or she will be just like the father, sometimes fueled by their mother's attitude, and the reality of who their father is can be helpful; if the non-resident parent has been vilified beyond the facts, then the child will have the opportunity of assessing this for themselves.

- iii. loss of the opportunity to know grandparents and other relatives on the non-resident partner's side of the family. This can add to the loss of genealogical information (although the study by Humphrey et al indicates that clear genealogical knowledge in an adolescent is not a necessary pre-requisite to healthy identity formation and good self-esteem). Occasionally, successful contact with the non-resident parent's family can be achieved without contact to the parent himself or herself and without undermining the child by doing so ie where assessment indicates that such contact can be safely achieved and is in the child's interests.
- iv. loss of that parent if the child has had a positive and meaningful relationship with him and even where it has been negative if the relationship gave the child some sense of being cared about. Continuity can also be important.
- v. if the parent is able to provide positive and supportive contact and new and different experiences, then loss of that opportunity.
- vi. absence of the opportunity for any repair to the relationships or to the harm done;
- vii. lessening of the likelihood of the child being able to get in touch and/or form a meaningful relationship at a later stage.

### Other general comments

We would like to see greater creativity in addressing ways of resolving contact difficulties.

For example:

- Overcoming fear and resistance where this appears to be ill-founded: Some children can overcome their fears of seeing a parent if able to see them in a safe situation in which they are in control – for example, a one-way screen with an interviewer programmed by them interviewing the parent on the other side. The child can control what is explored and whether or not he or she wishes to enter the room to face the parent;
- Proxy contact where a trained person acts as the “go between” who can read and discuss correspondence and even meet with the child and parent separately to discuss issues that come up and convey messages or raise issues that one or other wants raised with the other;
- Identified resources or to be set up new services prepared to continue work where there are, have been or are likely to be contact difficulties after the conclusion of a Court case – possibly mediation services, the new amalgamated child advocacy service or Social Services’ Family Centres. In addition to the sorts of approaches mentioned just above, the resident parent may need support and advice in relation to any contact ordered and there may be work to be done with the child.
- **Contact and supervision:** We recognise the considerable problems in deciding whether or not to order supervised contact where this appears to be a reasonably safe way of maintaining or forging some sort of relationship.

The difficulties include:

The quality of such experiences for a child (or parent) if this is continued over a long time. It is an abnormal situation, it is often disliked by the child both because of its artificiality and because of the restricted opportunities for interest, fun and stimulation within it; such arrangements often make the child (and parent) feel tense and ill at ease and may result in the child simply holding that parent responsible for their having to put up with it. This may result in further alienation and no real benefit to the child.

There is a lack of resources: good Contact Centres with good facilities and good supervision are scarce and by and large not available for long-term arrangements;

It is expensive.

It is unlikely to lead to improvements in a parent’s sensitivity or parenting skills or to lead to a situation where it becomes safe for the child to be alone with that parent. There are a few situations where it might be considered if a time-frame is set. These are situations where change in the short-term is seen as likely eg where a parent is recovering from a mental illness, where a parent with learning difficulties is thought to be capable of improved input with a programme of work, or where there is a therapeutic purpose to the contact – see below.

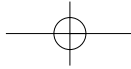
- **Specified types of contact:** We see the issue of supervision as needing specifying in any order or agreement. The supervision of contact can be looked at as having the following specific purposes:
  - i. **Safety from physical harm and emotional abuse:** This requires a very high level of constant supervision and the supervisor needs to be experienced enough and confident enough to immediately and firmly intervene if anything of concern arises.
  - ii. **Checks on the fitness of the parent at the start of contact and/or the availability of a supervisor to support the child if needed:** This requires an intermediate level of supervision. The supervisor might simply meet the parent and spend a little time with the parent at the beginning of contact to check the parent is, for example, sober or free from obvious mental disturbance and, thereafter, be at a distance or in and out.
  - iii. **Therapeutic purposes in the widest sense:** The contact might need to be managed so that the child is supported in resolving issues with the parent which e or she wishes or needs to understand; or to provide an opportunity for a parent to apologise or in other ways make amends; or to discuss an ending to contact. In managed contact, the supervisor can play a role in guiding the parent and improving the quality of the interactions and the parenting.
  - iv. **Support for the child:** Supervision provided to make the child feel more at ease or safe eg the presence of the other parent, another familiar person or a supervisor. This can be included in ii.

## Acknowledgements

The ongoing work of Drs Reder, Lucey and Fellow-Smith with myself in drawing together ideas for the principles on which contact decisions might be based has informed the content of this paper.

Drs Tufnell, Lucey and Lindsey have all kindly read and commented on this paper. Their comments are incorporated.

Dr Caroline Lindsey, as Chairman of the Executive Committee of the Child and Adolescent Section of our College, endorses the general position taken in this paper.



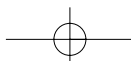
## Additional information

### Contact

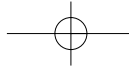
#### Principles of contact

We believe that the following principles apply to decisions about contact arrangements, whatever the nature of the case:

- The purpose of any proposed contact must be overt and clear.
- Contact must be for the benefit of the child and therefore take account of the child's perspective and emotional reactions.
- Contact should ensure the safety and well-being of the child at all times.
- Consensus is preferable.
- Contact arrangements can only emerge in the context of decisions about the child's living arrangements.
- Contact plans will need to be monitored and reviewed.
- Contact arrangements should be suited to the unique needs and circumstances of each individual child.





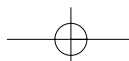


## Considering children's wishes and feelings

Eekelaar draws attention to the many practical difficulties such an approach encounters.

There are difficulties due to:

- Distinguishing between wishes and deeper feelings;
- Statements influenced by a specific context;
- Separating out the incidental or transitory;
- Pressure from disputing adults;
- Risk of being burdened with guilt;
- Risk of receiving hostility from others;
- Decision affected by information quality and provider bias;
- Articulation affected by age and how they might think it will be received;
- Whether they have promised someone what or not to say;
- Whether they have support;
- Where and how they are asked;
- Where it is difficult to explain the alternatives to children.



## References

### General references on development, temperament, attachment, loss, trauma, resilience and vulnerability

1. Psychological theories of emotional, intellectual and social development.

**Erikson, E.H. (1965)**

*Childhood and Society.*

London. Penguin.

**Rutter, M. and Rutter, M. (1993)**

*Developing Minds: Challenge and Continuity across the Lifespan*

London. Penguin.

**Papalia, D. and Wendkos-Olds, S. (1995)**

*Human Development*

(Sixth Edition) New York, McGraw-Hill.

**Schaffer, H.R. (1996)**

*Social Development,*

Blackwell Publishers, Oxford.

2. Theories of how children's psychological needs are met, their healthy development promoted and children's full potential achieved.

**Goldstein, J., Freud, A. and Solnit, A.J. (1973)**

*Beyond the Best Interests of the Child.*

New York: Free Press.

**Kellmer Pringle M. (1975)**

*The needs of children*

London: Hutchinson.

**Rutter, M. (1981)**

*Maternal Deprivation Reassessed.*

Second Edition: Harmondsworth. Penguin.

3. Attachment theory as the basis for the healthy development of relationships and personality.

**Bowlby J. (1988)**

*The Secure Base: Clinical Applications of Attachment Theory*

Routledge: London.

**Bowlby, J. (1982)**  
*Attachment and Loss*  
 Hogarth Press, 2nd Edition, Volume 1.

**Hetherington, EM and Stanley-Hagan M. (1999)**  
*The adjustment of Children with Divorced Parents: A Risk and Resiliency  
 Prospective Study.*  
 J. Child Psychol and Psychiat. 40 (1), 129–140.

### **Divorce and Separation: Their impact on children**

1. **Cummings E.M. (1994)**  
*Marital conflict and children's functioning*  
 Social Development 3:16–36
2. **Cummings E.M. and Davies P.T. (1994)**  
*Children and Marital Conflict: The impact of family dispute and resolution*  
 Guilford Press, New York.
3. **Cummings E.M., Zahn-Waxler C. and Radke-Yarrow M. (1981)**  
*Young children's responses to expressions of anger and affection by others in the family.*  
 Child Development 52 p1274–1282
4. **Humphrey, M. and Humphrey, H. (1986)**  
*A Fresh Look at Genealogical Bewilderment*  
 Br. J. of Medical Psychology: 59, pp.133–140.
5. **Jenkins J.M. and Smith M.A. (1991)**  
*Marital disharmony and children's behaviour problems: aspects of a poor marriage that affect  
 children adversely.*  
 Journal of Child Psychology and Psychiatry 32, p793-810
6. **Mcfarlane, A.H., Bellissimo, A. and Norman, G.R. (1995)**  
*Family structure, family functioning and adolescent well-being: the transcendent influence  
 of parental style:*  
 J. of Child Psychology and Psychiatry, 36, pp.847-864.
7. **Stevenson, M.R. and Black, K.N. (1988)**  
*Paternal absence and sex-role development: a meta-analysis.*  
 Child Development: 59, pp.793-814.
8. **Sturge C. and Glaser D. (2000)**  
*Divorce and separation: Impact of parental factors on children in:  
 No Fault or Flaw. Ed: N. Wall p.99–108.*  
 Jordans Press, London.

9. **Wallerstein J.S., Corbin S.B. and Lewis J.M. (1988)**  
*Children of divorce: a 10-year study* in:  
E.M. Hetherington and J.D. Arasteh (eds)  
Impact of Divorce, Single Parenting and Step-parenting on Children  
Erlbaum, Hillsdale.

### **Domestic violence**

1. **Black D. and Newman M. (1996)**  
*Children and Domestic Violence: A review*  
Clinical Child Psychology 1 (1) p79–88
2. **Emery R.E. (1989)**  
*Family violence*  
American Psychologist 44 p312–328
3. **Faller K.C. (1998)**  
*The Parental Alienation Syndrome: What is it and what data support it?*  
Child Maltreatment: 3 (2), p.100–115 (attached).
4. **Fergusson D.M., Horwood L.J. and Lynskey M.T. (1992)**  
*Family change, parental discord and early offending*  
Journal of Child Psychology and Psychiatry 33, p1059–1075
5. **Jaffe P., Wolfe D., Wilson S. and Zak L. (1986)**  
*Similarities in behavioural and social maladjustment among child victims and witnesses to family violence.*  
American Journal of Orthopsychiatry 56 p142–146
6. **McCloskey L.A., Figueredo A.J. and Koss M.P. (1995)**  
*The effects of systemic family violence on children's mental health*  
Child Development 66, p1239–1261
7. **Moffett T.E. and Caspi A. (1998)**  
*Annotation: Implications of Violence between Intimate Partners for Child Psychologists and Psychiatrists.*  
J. Child Psychol. Psychiat. 39, 2 p137–144
8. **Shantz C.U. and Hartup W.W. (eds) (1995)**  
*Conflict in Child and Adolescent Development.*  
Cambridge University Press, Cambridge.