Domestic Abuse and the Family Court

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I attended my first of these conferences, together with David Hershman, in, I think, 1990. It would have been the 2nd ALC Conference and it was held in Oxford. David and I were already well embarked on writing our book, but we were simply two young barristers from Birmingham, used to motoring along the by-ways of the Midland Circuit and knowing little of the wider world of child-care lawyers. We were blown away by the experience of being exposed to the assembled body of ALC members. It was exciting to find that there were other child-care anoraks, besides ourselves and the small group that we knew in the Midlands. Child-care law was still very much in its infancy, and those attending included pioneers in the field, such as Katherine Gieve, Peggy Ray and others. We realised that if we were writing our book for anyone, then this was our target readership. We were struck by the level of knowledge and expertise of those attending, and this directly encouraged us to descend to levels of detail in our text, which hitherto we had been uncertain about doing so. We were also struck by how few barristers there were in attendance; like little children who have discovered the sweet jar, we could readily see the advantages that might accrue to our practices by membership of the ALC. But above all, it was great fun and we both made good and lasting friendships with other attendees.

Another memory from that time is of the 3rd Conference, held at Keele University only a week or two before the Children Act 1989 came into force. The court rules had only been published a week or so earlier and were an entirely new creature for us, and I recall giving a talk describing their format, style and content to an audience which was, for once, hanging on my every word.

These were very heady times. The Children Act itself was revolutionary, but those of us in the ALC at that time very much felt that we were leading the way in breaking

new ground and establishing the role of specialist children lawyer within the wider legal profession, in a way that had not been the case before that time.

Ian Robertson, Chris Derbyshire, David Jockelson, Mary Anne Edwards and others, who were responsible for drawing this small and disparate group of child care practitioners together by forming the Association of Lawyers for Children, should be seen by us now, 36 years later, as true heroes. The ALC is a most valuable community of expert professionals with the shared vocation of representing children and parties to proceedings involving the care of children. From that first encounter back in 1990, until my appointment to the Bench 15 years later, I think that I came to every intervening ALC conference. They were for me a 'must do' in the professional calendar. Two or three days to learn, to share experiences, to meet up with friends and to have fun I have much to thank the ALC and its members for, and I am most grateful for this opportunity to address the conference for one last time before I retire next April.

That I remain a fan of the ALC, is not only a matter of tribal loyalty. It is very good to see the organisation, which has been conspicuously well led down recent years, on such good form and functioning so well across a range of activities. Since the onset of Covid I have held a bi-weekly meeting with the leaders of the ALC, FLBA, Law Society and Resolution, chaired either by me, Theis J or Keehan J. These meetings have turned out to be a very useful forum for the exchange of information, not only to and from the PFD and the organisations, but also between each other. In this group the ALC plays a very full and effective part.

Domestic Abuse

I wish, if I may, to use this address to focus on the topic of domestic abuse in the Family Court. Issues of domestic abuse are, sadly but necessarily, too common in all forms of family proceedings including financial remedies proceedings. In a way, domestic abuse is so much a part of our professional lives that you are entitled to

think 'what is he going to say today that I do not already know?'. And you may, of course, be right to think that; but I think that there is value from time to time in stepping back and taking the 'long view' of a subject in order to place what is happening – today and close up - in true perspective. I have chosen to speak on this topic today because for me, as President, getting domestic abuse 'right' in the Family Court has been a priority throughout my time at the helm. The issue impacts on so very many of the cases that come before the court. A finding, or otherwise, of domestic abuse is likely to have a significant impact on the arrangements for the future safety and welfare of children and vulnerable parents. Yet, the forensic difficulties facing a court in engaging with and determining allegations of domestic abuse are complex. In terms of the court getting it 'right', what is the test and who is to say?

Another reason for focussing on the topic today is the publication last month of the Domestic Abuse Commissioner's report 'Everyday Business'. The role of the DAC was established by the Domestic Abuse Act 2021. Since the time of her appointment as the first DAC, I have enjoyed an informative and, I hope, mutually valuable professional relationship with Dame Nicole Jacobs and her team. One of the DAC's statutory responsibilities is to assess, monitor, and publish information about the provision of services to people affected by domestic abuse and that clearly includes the family court; this clearly includes monitoring and reporting on the operation of the Family Court. This first report, although it is inevitably not all positive, is welcome. It is important for any public agency to hold itself up to independent scrutiny and, where necessary, to learn from that process. I therefore intend to make some early comments in response to the report and its recommendations.

But, I spoke of the need for a 'long view' and, before looking at the present and the scene that the DAC describes, I propose briefly to go back and look at the journey we have all been on in developing a sound understanding of domestic abuse and the most effective way for a Family court to engage with these cases.

Of course, domestic violence, in the sense of physical assault on a spouse or partner, must have been a feature of human interaction since the dawn of time, with Bill Sykes in 'Oliver Twist' being no more than one representation of bullying manhood that could have been placed in any context in any century on any continent. But, surely, coercive and controlling behaviour must also have been just as much part of an abuser's repertoire, if not more so, throughout time, yet not, I suspect, so well recognised or understood as it has been in the last decade.

When I commenced practice in the late 1970's the focus was entirely upon 'domestic violence', as opposed to more widely defined 'domestic abuse'. The Domestic Violence and Matrimonial Proceedings Act 1976 had just come into force. This was, at its time, a ground breaking statute. It gave for the first time jurisdiction to the county court to grant non-molestation injunctions, to married or non-married former partners alike, and, for the first time to exclude a spouse from the matrimonial home. Importantly, and again for the first time, there was jurisdiction, provided there was evidence that the respondent had caused 'actual bodily harm' to the applicant or a child and the terms of the order expressly restrained the use of 'violence', for the court to attach a power of arrest to the order; thereby bringing the potential for police involvement into the process if 'violence' was reasonably suspected.

My recollection is that a judge hearing an application for a domestic violence injunction under the 1976 Act was only interested in the physical injury. The more severe the injury, or if there had been a series of assaults, the more likely it was that an injunction would be granted and the longer it would last. I don't think that I am doing my forebears any disservice, but my recollection is that findings made under the 1976 Act were not seen as relevant, or necessarily relevant, to any issues in relation to custody or access to the children, which were dealt with separately. Moreover, if the children had not themselves been injured, or witnessed any violence, the understanding was that they would have not been adversely affected by it, with the concept of 'not in front of the children' being very much in play.

Looking back on that time, and considering my very potted account of it, our eyes, informed as they are by the modern understanding that we have of domestic abuse, emotional abuse and grooming, must be wide with incredulity, but that was the way things were.

I have on other occasions spoken of the pattern that is known to exist of a society taking time to develop its understanding of abuse and, importantly, being prepared to accept that that form of abuse occurs. Intra-familial sexual abuse is a very clear example of this, but it is just as true of the physical abuse of children, as it is of more sophisticated forms of abuse such as factitious illness. The growth of understanding of categories of abuse, and the development of the strategies needed for effective intervention and protection, takes time; time that is measured in years and decades. The process can properly be described as a journey, but it is a journey on which neither the destination nor the route will be obvious at the start or for those who are, day by day, case by case, embarked on it. Progress can only really be seen by looking back and seeing where one has come from. Thus, for example, the first edition of the Royal College of Paediatrics and Child Care's guide to the identification of sexual abuse in children was in A5 format and ran to some 40 pages, it was a most important and ground-breaking document, yet so much more has since been learned and the current A4 edition is the size of a small telephone directory.

One example may serve to demonstrate the point that I am seeking to make. It is now not uncommon for an allegation or allegations of domestic abuse to include rape. But 'marital rape' was not always a criminal offence, let alone an aspect of domestic abuse, 40 years ago. It was only in 1990 when, in the case of *R v R* [1991] 1 All ER 747 a judge, Mr Justice John Owen, held it to be a crime.[1] The offence is now outlawed in statute, as is any offence of rape, by the Sexual Offences Act 2003, section 1.[2] This is all now very well established, and rightly so, but my point is that that was not always the case. Before Mr Justice Owen gave his ruling in *R v R*, there

[1] Upheld on appeal in a unanimous decision of the House of Lords; *R v R* [1992] 1 AC 599.

had been serious academic debate on the subject, with conflicting views strongly held. Those on the journey in the growth of understanding, and the development of strategies for court intervention, were undecided on the way forward. The ruling was given, the journey moved on and has now, rightly, reached the stage when any form of non-consensual sexually abusive behaviour in an intimate relationship is considered to be abusive and contrary to criminal law.

This process of gaining a greater understanding of abuse, and then, alongside that, developing effective strategies for court engagement with the resulting issues, applies just as much to the current time as it has done down the past 45 years that I have been working in this field. The more subtle, the more insidious, the abuse, the more challenging the task is for the court – the district judge or the magistrate.

As this audience will know so well, the modern law establishing the court's jurisdiction to grant injunctions in the domestic setting is the Family Law Act 1996, which followed a 1992 Law Commission report[3], which aimed to establish a clear, simple and comprehensive code. The court's jurisdiction to make an occupation order under s 33 of the 1996 is founded upon the court holding that the applicant or a child is likely to suffer 'significant harm' as a result of the conduct of the respondent, rather than any categorisation of that conduct as 'domestic violence' or 'domestic abuse'.

'Coercive and controlling behaviour' is at the centre of the modern definition of 'domestic abuse'. I hope that my description of the way things were in the 1970's and up to the early 1990's demonstrates that what we understood then in terms of the harm caused to the victim of domestic violence, is so far removed from our modern understanding as to be incomprehensible to us. From at least the mid-70's, there was already a strong voice crying out for acceptance that domestic abuse was an unacceptable part of their lives.. One very prominent and important book was '*Scream quietly or the neighbours will hear*' by the survivor and campaigner Erin Pizzey,

[3] 'Domestic Violence and Occupation of the Family Home' Law Commission 207.

which was published in 1974. Almost by definition, because of the reactive nature of the Parliamentary and judicial processes, the law and its practice are never going to be ahead of public opinion on issues such as this. As the dates on the core statutory provisions demonstrate, the speed of change is, as I have said, measured in decades.

The introduction of PD12J represented a serious attempt to provide courts with a route map where allegations of domestic abuse have been raised. It has been regularly revised and, although it is plainly the subject of continued criticism, it has undoubtedly required courts to afford proper priority to the issue of domestic abuse and, where it is relevant to the ultimate welfare decisions, determine the underlying facts.

A key event in the development of understanding in the ability of the Family Justice system to engage appropriately with domestic abuse was the Harm Panel established by the MOJ, which reported in 2020. The publication of the report was plainly a watershed moment and one that moved matters on significantly at a stroke. Despite the negative account that it gave of what was then the current landscape, I welcomed the Harm Panel's report as shining a light, not only on the current situation, but also on the way forward.

In the broadest summary, the Harm Panel identified four 'overarching barriers' to the court's ability to respond consistently and effectively to domestic abuse. They were:

- The court's 'pro-contact' culture;
- The adversarial system;
- Resource limitations; and
- The way the Family court works in a silo, lacking coordination with other courts and organisations dealing with domestic abuse.

With respect to those four, the Panel recommended:

- A move to a culture which prioritises safety and protection from harm;
- The development of an investigative, problem-solving approach, rather than an adversarial one;
- Resources which are sufficient and used more productively; and
- The Family court acting in a coordinated manner with other courts and agencies.

The Panel's additional specific recommendations included

- an urgent review of the statutory presumption of parental involvement in Children Act 1989, s 1(2A), (2B) and (6);
- improving the provision of special measures for vulnerable parties,
- IDVAs [independent domestic violence advocates] to be allowed to accompany supported parties in court as a matter of course and consulted when the court is assessing vulnerability.
- Widening the availability of orders made under CA 1989, s 91(14)
- A review of the current provision of DAPPs [domestic abuse perpetrator programmes].

With respect to PD12J, the Panel said this[4]:

> 'Several submissions and focus group responses suggested that fine-tuning or tweaking would not solve the problems identified [with PD 12J], and that there is a need to consider alternative models of family justice and take a more fundamental approach to reform in order to address the underlying barriers. The panel agrees. In chapter 11 we put forward a new model for child arrangements cases and make further recommendations intended to address these barriers comprehensively, including a proactive rather than reactive approach by the family courts to domestic abuse and other risks of harm to children, an investigative rather than an adversarial approach, improved coordination with criminal justice processes, police, and statutory and third

[4] Paragraph 7.8

sector services working with families, and the redirection of resources into more effective ways of working.'

In its recommendations, the Panel recommended piloting a reformed model with an initial investigation and information exchange phase and an adjudication phase which would be 'judge-led'.

Finally, the Panel recommended wide ranging training for all participants in the Family justice system.

It is not my intention to use this address to conduct a thorough audit of the implementation of the Panel's recommendations. I suspect that as I was going through the list, you were mentally putting a tick by all or nearly all of the recommendations as being at least 'work in progress' or, for example changes in the law relating to IDVAs and s 91(14), as tasks which were swiftly achieved. The Panel's recommendations have clearly been taken up. In that regard, it is clear to me that, with the striking exception of DAPPs, each one has been put into action and they continue to provide the road-map for the approach to be taken across the board.

I will turn to the 'pro-contact culture' in due course.

In terms of training, every single judge and magistrate who is authorised to sit in the Family Court was offered focused, and in terms of the judges extensive, training on domestic abuse and it remains a fixed element in every refresher course.

With regard to more integrated working with other courts and agencies, the current pilot of Domestic Abuse Protection Orders ['DAPOs'], which is running here in Manchester and elsewhere, represents a serious attempt to draw police, social work, criminal and family courts together.

In terms of the overall impact of the Harm Panel's recommendations, a great deal has been done, and successfully been done, to answer the call for there to be a new, proactive rather than reactive model child arrangements cases. I am, of course, referring to the new 'Pathfinder' courts, which were developed by the President's

Private Law Working Group specifically to deliver the outcome sought by the Harm Panel.

Before its launch as a pilot in North Wales and Dorset in 2022, the feeling was that this was a model that was worth trying. However, once it was up and running in these two areas it impressed and surprised even those who had been firm supporters as being (a) a wholly different process from the current PD12J model and, more importantly, (b) one that far better met the needs of the children and their parents for an informed and prompt resolution of parental dispute.

As is well known, Pathfinder is widely regarded as a far more appropriate and effective model for resolving disputes between separating parents, safely, in a less confrontational manner and with the voice of the child front and centre. Importantly, as I have witnessed for myself, local domestic abuse professionals are far more involved with the court process, and in many more cases, than is presently the case. The presence of IDVA's is not only permitted in these courts, it is actively welcomed by the judges.

The key difference between the current regime and Pathfinder is that currently the court has little independent information about the child until many months into a contested case when a welfare report is filed by CAFCASS or a local authority. In Pathfinder, before any hearing takes place, the court is provided with a full CAFCASS, Cafcass Cymru or local authority report, including an account of the wishes and feelings of the child. The 'Child Impact Report', as it is called, is then the focus of discussion between the judge and the parents along the lines of

> 'Is this an account of the current circumstances?'
>
> 'Yes'
>
> 'Well look at the <u>impact</u> on your child; what are <u>we</u> going to <u>do</u> about that?'.

Immediately it becomes a problem-solving approach. Rather than looking backwards and picking over highlights of the adults' dispute, the court's perspective

is to look forward and to do so through the lens of the child's own views and welfare needs (as identified in the Child Impact Report).

Addressing and engaging with any issues of domestic abuse is an integral part of the new model, and the Child Impact Report is expected to offer analysis and advice concerning domestic abuse, just as it does in relation to safeguarding more generally.

Both the Domestic Abuse Commissioner and I are on public record as being wholly supportive of a national roll-out of Pathfinder, which is already 'live' in every Family court in Wales, as it is in Dorset, Birmingham and Leeds. This week it started up in Staffordshire, The Black Country and Hereford+Worcester, and by the early January it will be live in Hampshire and the Isle of Wight. These 10 court centres are around one quarter of all of the Family Courts. The question of whether Pathfinder is established at any further courts from 1st April 2026 onwards is currently being considered, as part of the overall 'Spending Review', consideration by MOJ ministers, and I will and can, therefore, say no more about it.

Moving on from the Harm Panel, and bringing matters up to date, earlier this year, I convened a 'Non-molestation Injunction Roundtable' in which a widely based group of professionals and judiciary, including the Domestic Abuse Commissioner, met to consider a range of interventions primarily aimed at addressing a number of practical and procedural difficulties which had been identified relating to the process of applying for and obtaining protective relief in cases of domestic abuse. The group drew up a plan of work and has now met on four occasions. Much has been achieved. Some of this has been the result of positive engagement by group members with some of the key providers of legal representation for these cases on a national basis. I have from the start acknowledged the need to keep the current '*Practice Guidance Family Court - Non-Molestation Injunctions Under the Family Law Act 1996*' promulgated on 14 July 2023 under active review. The 'roundtable' undertook this review in detailed discussion with district judges and other group members. The

main fruit of all this endeavour is going to be the imminent publication of two documents for implementation in January 2026:

- President's Practice Guidance: '*Protective Orders under the Family Law Act 1996*'; and
- Family Justice Council '*Best Practice Guidance for Practitioners on making an application for a Protective Injunction*'.

The new PFD Practice Guidance will entirely replace the 2023 Guidance.

These materials will include two important new templates:

- An example model witness statement in support of an application for protective injunction; and
- A model template injunction order (using plain, simple and non-legal language).

I am extremely grateful to all who have supported the work of this roundtable, the aim of which is to unify practice across all courts, and to do so within a simplified procedural framework.

In contrast to the 2023 Guidance, I am clear that the new guidance must be followed in every court centre. A notable occasion for local variance under the current scheme relates to 'without notice' hearings. The new guidance will remind courts that, when deciding whether it is "*just and convenient"* to make an order without notice, the court's approach must be informed by a modern understanding of domestic abuse, referring to the modern definition set out at s1 of the Domestic Abuse Act 2021 with its specific reference to controlling or coercive behaviour and psychological, emotional or economic abuse. It might, for example, be appropriate to make an order where the initial evidence suggests a pattern of coercive or controlling behaviour, and the court considers it is likely that the applicant could be further coerced or controlled into withdrawing the application if notice is given; or where the court considers that the abuse (if proven) is likely to have had such an impact on the applicant that they

are likely to be deterred from proceeding if the respondent is given notice of an application. Such examples are not intended to be exhaustive as, in each case, the court should carefully consider the provisions of s 45(2) before deciding how to proceed.

It is not my intention to 'publish' the Guidance by providing a detailed account of it in this address, but it will proscribe the options open to a court on receipt of an application for a without notice order so that the court may:

A. If it is satisfied that sufficient evidence has been provided to meet the merits test for a without notice order, and if it is otherwise just and convenient to do so, make a without notice order on the papers in the terms sought or as deemed necessary and proportionate by the judge, listing a 'return date' hearing in no more than 28 days, or

B. Refuse the application for a without notice order on the papers with reasons and list the application on notice in no more than 21 days. The applicant may, however, seek a without notice hearing for reconsideration of the application within 2 working days, which should be listed within 5 working days. Where the bailiff is to serve the order, the order should specify the date from which the bailiff can attempt service allowing time for the applicant to seek reconsideration, or

C. List a without notice hearing to be attended by the applicant within 1 working day to enable them to give such evidence as may be required to enable the court to determine the application. Consideration should also be given when listing, particularly in cases with an applicant representing themselves, to any further directions necessary for the without notice hearing. Court lists should not include the details of the parties.

We hope this is a sensible way forward for these very numerous applications that make up a big part of the family court's work.

The second important event in the current period in this context is, of course, the publication last month (October 2025) of the '*Everyday Business*' report from the Domestic Abuse Commissioner, which addresses the issues of domestic abuse and continuing harm through a family court review and reporting mechanism. The 'review and reporting mechanism' involved in-depth research, led by Professor Mandy Burton and Professor Rosemary Hunter KC (Hon), looking at a significant number of court files and observing court hearings at three dissimilar court centres across England and Wales. The report is also based upon the testimony of survivors who were identified by local domestic abuse support groups in the three court areas and who met the researchers in focus group sessions. A good number of these individuals are quoted in the report and complain about the very negative experience that they had each had in proceedings related to domestic abuse before the Family Court. The complaints recorded in the report are striking and of concern, in equal measure.

As President, I welcome the publication of this report. Just as in other ways, for example the early review of how the Family Court was delivering justice during Covid, or how we deal with deprivation of liberty cases or new-born babies in care proceedings, it is both right and of great value for the work of the court to be subject to independent, professional scrutiny. It is part of being transparent. As with the Harm Panel five years earlier, the observations and recommendations of the DAC Report provide an impetus for the court to change, look at what it does and improve further.

It is not the place here to work through the detail of this report. That must be done thoroughly and with an eye to identifying yet further ways in which understanding and practice can be enhanced. But one or two aspects of what was found at the three court centres is of note and worthy of report. Firstly, in contrast to the national data

for England produced by CAFCASS which puts the average degree to which domestic abuse is alleged in private law children proceedings at 60 % of cases, and the more general working assumption that I have had that the issue is raised in two thirds of cases, the researchers found domestic abuse in 87% of the closed files they reviewed and in 73% of the live cases that they observed. A second statistic of note is that, whilst counter-allegations of domestic abuse were seen in 22% of the file sample, allegations of alienating behaviour were 'much less frequent', with only 9% of files containing such allegations against a mother, and 3% against a father.

As I have described already, significant progress has been achieved already in delivering the recommendations of the Harm Panel in the five years between its report and the DAC's report. The 'introduction' to the Executive Summary of the report states: 'It is important to note that the Family Court, CAFCASS and Cafcass Cymru have made and continue to make considerable advances in their response to domestic abuse'. However, the researchers found that the four structural barriers identified by the Harm Panel remain prevalent.

Based on those findings, the DAC, Dame Nicole Jacobs' overall conclusion was that there is 'a disturbing truth: that the level of change required remains largely unfulfilled'. Of the four barriers, it is the first two, the 'pro-contact culture' and the 'adversarial system', which are more readily in reach of those of us inside the system, with 'lack of resources' and 'silo working' being more the responsibility of policy makers. I will therefore focus shortly on these first two.

The report found evidence of a continuing 'pro-contact culture' and a 'failure to recognise abuse', which 'contributed to decisions that may have put children in harms way'. A clear theme of the accounts given in the focus groups of those who alleged abuse was that they were dissuaded from raising allegations as, they were advised, it would have no sway over whether the alleged abuser would in the end be granted contact. The researchers also found evidence of an outdated understanding of domestic abuse amongst some legal professionals who saw physical violence and

sexual abuse as more serious than the coercive and controlling behaviour and yet that often underpins other more physical abuse.

From my perspective, there is a danger in the phrase 'pro-contact culture' being seen as a label, with those who hear of it, or read it, going no further than that label. There is, I believe, a need for caution and care in the use of this phrase. On one view, there should be nothing remarkable in the Family Court having, as its default position, the likelihood of it being in the interests of any child to have some continuing relationship with both parents and, indeed, their wider family, post-separation. If you were to go out into the road outside this hotel and ask any passers-by whether, when a child's parents, separate the child should, or should not, stay in contact with both parents the answer, I suggest, would be overwhelming 'yes'. We are a 'pro-contact' society. As a child grows up, and, in particular passes through the choppy waters of adolescence and on to adulthood, their need to establish a sense of identity will be strong. They want to know who they are, and where they came from. Knowing, and having a relationship with, their parents, grandparents, aunts, uncles, sisters and brothers is, in normal circumstances, a key and healthy part of that process.

When parents cannot agree, and come to court, the question of whether, and if so, in what way, these key relationships can be maintained is what the cases are all about. The courts have always placed the importance of maintaining a relationship with each parent into the overall welfare balancing exercise. That is not to be 'pro' contact, it is simply to acknowledge the value that is placed on doing so. In what I have just said, the key word is 'balancing'. The single, all-encompassing, principle is that the welfare of the child must be the court's paramount consideration. The value of maintaining contact with a parent is properly part of that, but it is not a trump card. It is but one tile in the overall welfare mosaic. How prominent that tile may be in a particular child's welfare pattern will differ, like a fingerprint, from case to case. In some cases, other tiles, for example the risk of harm from abuse, may dictate the colour and shape of the overall picture and the court's final order.

It is easy to pass over the statistics of how many private law children cases involve domestic abuse. Whether it is 60% or higher, it would seem that the cohort of cases coming to the Family Court are not typical of the ordinary population. The views of the person in the street outside the hotel are therefore only of value in informing the general default position: 'all other things being equal a child should maintain contact with both parents'. The task of the court, and it is often a difficult and complex task, is to tease out the various elements relevant to the welfare of the individual child before the court as part of an holistic, overall, evaluation to determine what, if any, court orders are made.

If, as the DAC focus groups describe, those who allege abuse have been told that, whatever they say, and whatever the other parent may have been found to have done, the court will order contact in any event, then that is both wrong and deeply troubling. What is described there would, indeed, make contact a trump card, rather than one element in the overall welfare jigsaw.

Equally worrying, is the understanding that was apparent in the media following the government's recent announcement that it intends to repeal of CA 1989, s 1 (2A)(2B)+(6) the presumption in favour of contact. I was surprised to hear one commentator, during a Radio 4 interview, stating that the current statutory presumption was that there should be 'contact at all costs'. This audience will know that that is not so. The statutory presumption is balanced. It is in these terms:

> 'A court' [in the relevant circumstances] 'is to presume, unless the contrary is shown, that the involvement of that parent in the life of the child concerned will further the child's welfare.'

But 'parent' in that context means a parent who 'can be involved in the child's life in a way that does not put the child at risk of suffering harm'. A parent will be treated as such 'unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of involvement.'

The wording of that provision, albeit in necessarily algorithmic statutory language, is aligned with the long-established approach to welfare evaluation in the courts. Where there is a risk of harm to a child or parent arising from future contact, that risk must be evaluated and the outcome determined by affording the child's welfare paramount consideration. This is, as I have said, what these cases are about. If either the need to preserve contact with both parents, or, at the other end of scale, findings of domestic abuse, were to be a trump card, then the task of the courts would of course be straight forward, but the welfare of the subject child would not, then, be the paramount consideration. That's not the way we do it.

Since the DAC report was published, I have, in the ordinary course of my Presidential ramblings, visited a number of courts. At each, I have raised the report with the local district judges, who, with the magistrates, hear many of these cases. None of the judges I have met recognise the scenario described by those who have spoken of their experience of the Family Court to the DAC's team. On the contrary, the judges describe the norm as being that, where allegations of domestic abuse are raised, the other parent is denied any contact with their child for many months (and often longer) while the court investigates the issues, and, if significant domestic abuse is proved, the prohibition on future contact is maintained. That is also my experience from reading many judgments and orders in the course of High Court or Court of Appeal applications down the years.

If those who have been abused are being advised that the court will ignore their allegations, or, even if proved, will always order contact 'come what may', then those who give such advice are wrong, and if those acting for a complainant encounter a court that acts in that manner then, I would suggest, there would be clear grounds for appeal.

In saying what I have about the statutory presumption, I should not, as a judge, be taken as arguing either for or against its retention. That is a matter for Parliament. But I would note that I am, as a member of the Norgrove Family Justice Review in

2011, on record as recommending that a presumption of this nature should not be introduced in the first place.

Looking more generally at the first two barriers, in terms of the implementation of the Harm Panel's recommendations, I would suggest that to ignore the development of the Pathfinder model, initiated by the President's Private Law Working Group, and then lead with conspicuous diligence and commitment by Mrs Justice Gwynneth Knowles, is something of a 'What have the Romans ever done for us' moment. To say that 'the level of change required [by the Harm Panel] remains largely unfulfilled' is, I would suggest, to ignore all that those of us in the Family Court have done to develop and promote Pathfinder. Pathfinder, on all accounts, meets and exceeds the goals set for a new, proactive, investigative and problem-solving model described by the Panel. It goes a long way to draw domestic abuse more effectively into focus in a contact application and it moves well away from any adversarial model. Pathfinder has been now well proven and is delivering in nine, soon to be ten, court centres. It is acknowledged to be a significantly better, that is a safer and more protective, way of engaging with domestic abuse.

As long as the less effective model of intervention, represented by PD12J, has to be followed in the non-Pathfinder courts, researchers are likely to continue to find that evidence of the Harm Panel's four barriers continues to exist. Whilst that may be so, my role as President is to accept the research findings of the DAC report and redouble our efforts to ensure that all judges and magistrates have a full understanding of issues of domestic abuse and approach the cases by affording paramount consideration to the welfare of the child, through an holistic evaluation as I have described. And, if pathfinder is not rolled out, that is what we will have to do.

I would make one final, overarching point. Domestic abuse, where it occurs, is likely to be the all-pervasive factor which takes over the life of the victim and all family members. Coercive and controlling behaviour, has many elements akin to grooming,

may well involve 24 hour a day, 7 day a week, dictatorial domination of a victim, so as to sap any sense of autonomy or freedom from them. The psychological and emotional impact of such sustained abuse, is likely to have a longer and more profoundly negative impact on the victim than any but the most severe physical or even sexual abuse. Such physical or sexual abuse is but part of the overall coercive and controlling environment that totally surrounds the victim. Any child of the family unit who lives in that environment will be just as much a victim, and will be harmed. Domestic abuse is totally intolerable in the context of an intimate family relationship and is responsible for pervasive and damaging harm to children and adult victims.

The lead Family judge in Australia, the Chief Justice William Alstergren, has recently produced a film in which prominent Australian male role models drawn from sport and the media speak out about against domestic abuse. It has been shown at football grounds, cricket grounds and cinemas across the country. Our system is different and it is not for an English judge to be so … Australian … but I do think that the time has come for domestic abuse to be called out by society at large, and not just by the admirable women campaigners, from Erin Pizzey onwards, who have done so for so long. Indeed, the need is not just for society to do this, but for the men in our society to stand up and call out domestic abuse for what it is.

The criminal and family courts will continue to deal with the fall out where domestic abuse has occurred, but the message needs to be that this behaviour should not be tolerated by any person in society. It is harmful, it is dangerous, indeed, it can, tragically, be deadly, for both adult and children. It needs to stop.

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That is the end of my address, but can I close by simply saying that, as I described at the start, I am grateful to you, to the ALC for so many things given to me through the past 35 years. The ALC itself, together with the concept of there being expert children's lawyers, came of age a long time ago. In that regard, I am proud to have

been the first child law specialist, and the first ALC member, to have been the President of the Family Division. I am very confident that I will not be the last. Thank you, individually and collectively, for all that you do for children, their families and the law.