

## **FAMILY JUSTICE COUNCIL**

### **Report to the President of the Family Division on the approach to be adopted by the Court when asked to make a contact order by consent, where domestic violence has been an issue in the case.**

#### **Introduction**

In 2004 the Women's Aid Federation of England published "Twenty-Nine Child Homicides: Lessons still to be learnt on Domestic Violence and Child Protection" which described the cases of twenty nine children from thirteen families who were murdered by their fathers during contact.

The children in five of the thirteen families were murdered during the course of contact ordered by the court. Domestic violence by the father had been alleged in every one of these five cases, in three of which the order for contact had been made by consent.

In February 2006 Lord Justice Wall presented a report to the President of the Family Division on the outcome of his review of the five cases in which there was judicial involvement. He was particularly concerned about two of the three cases in which a contact order was made by consent.

In one, a child was murdered by his father in December 2000 during staying contact ordered by the court by consent in November 2000. The court had ordered the suspension of staying contact earlier the same year, because the child had contacted his mother during contact to say his father had hit him and was being unkind to him. No reference was made to this by anyone at the hearing when the December staying contact was ordered.

In the other, two children were murdered by their father during staying contact ordered by consent, though the father was awaiting trial at the time on charges of assaulting the children's mother and maternal grandfather, the police were investigating an allegation that the mother had been raped at knifepoint by the father and the CAFCASS Officer in the case had recommended that interim staying contact should not include overnight staying contact.

Lord Justice Wall's report highlighted the court's dilemma when invited to approve a consent order agreed between well represented parents in circumstances when the court has not made any findings as to allegations or cross allegations of domestic violence. The philosophy of the Children Act is non-interventionist; it encourages settlement. If two parents present a court with an agreed order about issues relating to their children, the court's normal reaction is to welcome that agreement, on the basis that courts should be slow to interfere with or challenge people's arrangements for their own children. When is it appropriate for a judge to refuse to approve a consent order? What should the court do?

The Family Justice Council was asked to report to the President of the Family Division, in a multi-disciplinary context, on the approach which the courts should adopt to proposed consent orders in contact cases where domestic violence is in issue.

The Family Justice Council's Children in Families Committee met representatives of The Family Law Bar Association, Resolution, The Law Society's Family Law Committee, Families Need Fathers, Women's Aid, Refuge, CAFCASS, The Judicial Studies Board and Lord Justice Wall himself in the course of preparing this report for the Council to present to the President of the Family Division. They were assisted by members of the Family Justice Council's Domestic Violence Group, which includes representatives from the police and social services. The Committee also took note of the August 2000 HMICA (Her Majesty's Inspectorate of Court Administration) Report into CAFCASS Front Line Practice.

### **Summary of recommendations**

- A cultural change is required, with a move away from “contact is always the appropriate way forward” to “contact that is safe and positive for the child is always the appropriate way forward”.
- A Practice Direction embodying the decision in *Re: L (Contact: Domestic Violence)*; *Re: V (Contact: Domestic Violence)*; *Re: M (Contact: Domestic Violence)*; *Re: H (Contact: Domestic Violence)* [2000] 2FLR 334, suitably updated to reflect current best practice, should be issued. This Practice Direction should clarify what should happen in cases where there have been

allegations of domestic violence but the court is asked to make a consent order for contact.

- There should be renewed emphasis on the message that ensuring safety should be paramount when considering whether contact is in a child's best interests.
- A process of risk assessment should be undertaken by the court in every case in which domestic violence has been alleged or admitted, before a consent order is made.
- Form C1A should be amended to make it simpler for respondents to applications to complete. Details of allegations of domestic violence should be given to assist CAFCASS and the court in identifying at an early stage cases where domestic violence is an issue.
- There should be improved multi-disciplinary training on domestic violence issues for lawyers and the judiciary.
- The Law Society should strengthen the Family Law Protocol to make it clear that part of a solicitor's duty when acting for either parent in a contact or residence application is consideration of the effect of a proposed order on the safety and welfare of the child concerned. Where there are highly conflicted allegations of domestic violence, an application for an order for separate representation of the child should be considered.

- Consideration should be given to establishing a system of feedback to judges in cases in which contact orders are made which subsequently result in harm to the child or children concerned.
- HMCS and DfES should explore how the family court process should be included within Serious Case or Domestic Violence Homicide Reviews.

### **The principle of contact**

1. The Council's assessment of present practice is that the legal advice that is given, and the dynamics that exist with domestic violence, often lead to an agreement for contact. Research has shown that often the advice given to victims of domestic violence is that they should look to the future and not dwell on the past. There is an assumption that contact will take place in any event, which often means that domestic violence issues are not being given sufficient weight. The present presumption of contact may result in pressure being put on victims by lawyers or perpetrators to agree to an order, without a proper evaluation of whether the order will be safe for the child or the parent who is the victim.
2. In addition, the assumption that contact is in the child's interests has raised the bar for dismissing contact applications to a very high level. This appears to operate as a filtering in process, with cases involving allegations of domestic violence too often being dealt with in the usual way, without a finding of fact hearing, on the basis that no facts will be found that justify refusing contact. In

making these judgments the courts should recognise that there is no empirical evidence for the positive benefits of contact *per se* – it is the quality of relationships which contact supports that matter for children. <sup>1</sup>Put another way, contact with a loving and supportive parent is in the best interests of children, contact with violent and unstable parents may not be.

3. Contact is sometimes referred to as ‘a right’ reflecting both the ECHR art 8 right to family life and UNCRC art 9 –the child’s right to know etc his or her parents. There are 3 matters which need to be considered in relation to rights claims to child contact. 1) the ECHR does not give a parent a right to contact which is contrary to the child’s welfare<sup>2</sup> 2) English and Welsh law does not treat contact as a child’s right by requiring parents to exercise contact when they choose not to do so; and 3) rights-based language is an inappropriate basis for ordering contact which children themselves are rejecting.

### **The culture of decision making**

4. The “no order” principle set out in the Children Act 1989 is imbued in those working in the Family Justice System. If parents have reached an agreement, it appears that some members of the judiciary are hesitant to intervene robustly, even if it is clear that it would be right to do so. It is therefore worth emphasising that, although the welfare checklist does not apply to consent orders, the welfare test does. A judge making a consent order in a children case is making a judicial decision that the order is in the child's best interests

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<sup>1</sup> J. Hunt and C Roberts, *Child contact with non-resident parents, Family policy briefing paper no 3* Oxford University Department of Social policy and Social work (2004)

<sup>2</sup> *Johansen v. Norway* (1996) 23 EHHR 33

(s.1(1) and s.1(5) Children Act 1989). Consequently, there must be judicial scrutiny to determine that an order is required and that the order sought is in the child's best interests. In appropriate cases the judge will have to refuse to make an order despite parental agreement, if the statutory obligations are to be fulfilled.

5. The Council asked CAFCASS to try to establish the perspective and experience of Family Court Advisers on the issues raised by the Women's Aid Twenty-Nine Homicides report. CAFCASS undertook a survey of practitioners of their experiences in the past year, and the results of this have been made available to the Council. The case studies reported by the Family Court Advisers (FCAs) indicated that some FCAs had concerns about some judicial decisions to grant contact in cases involving a history of domestic violence, but had not been able to influence the decision so as to protect the child.

***Re: L (Contact: Domestic Violence); Re: V (Contact: Domestic Violence); Re: M (Contact: Domestic Violence; Re: H (Contact: Domestic Violence) [2000] 2FLR 334***

6. In *Re: L (Contact: Domestic Violence); Re: V (Contact: Domestic Violence); Re: M (Contact: Domestic Violence; Re: H (Contact: Domestic Violence) [2000] 2FLR 334* ("Re L"), in June 2000, the Court of Appeal provided clear guidance to the courts and practitioners about the approach to be adopted in contact cases in which there were allegations of domestic violence. The court

considered the report of the Children Act Sub-Committee of the Advisory Board on Family Law (*A report to the Lord Chancellor on the question of parental contact in cases where there is domestic violence* (Lord Chancellor's Department), 12<sup>th</sup> April 2000). The official solicitor acted as amicus in each case and instructed Dr Claire Sturge and Dr Danya Glazer, two consultant child psychiatrists, to provide a joint report.

7. A key message from the judgment was that the courts, family lawyers, other agencies involved with families and the public need to be more aware of the issue of domestic violence and the effect on children of assaults, threats and verbal abuse of one parent by the other.
8. The Court of Appeal gave the following guidance on the way in which courts should deal with contact cases in which an allegation of domestic violence has been made:
  - Family judges and magistrates need to have a heightened awareness of the existence and consequences (some long term) for children of exposure to domestic violence between their parents or other partners.
  - In contact applications where allegations of domestic violence are raised ***the court should consider***
    - the conduct of both parties towards each other and towards the children



- the effect of domestic violence on the children and the residential parent, and
  - the motivation of the parent seeking contact
- On an application for interim contact when allegations of domestic violence have not yet been adjudicated upon, *the court should*
    - give particular consideration to the likely risk of harm to the child, whether physical or emotional, if contact were granted or refused
    - ensure, as far as possible, that any risk of harm to the child is minimised and that the safety of the child and the residential parent is secured before, during and after any such contact
- In contact or other s.8 applications, where allegations of domestic violence are made which might have an effect on the outcome, those allegations *must be*
    - adjudicated upon and
    - found proved or not proved
- There is no presumption that domestic violence of itself constitutes a bar to contact. However, such violence is one factor in the difficult and delicate balancing exercise of discretion carried out by the judge applying the welfare principle and welfare checklist contained in s 1(1) and s1(3) of the Children Act1989.

- In cases of proved domestic violence, as in cases of other proved harm or risk of harm to the child, *the court has to weigh*
  - The degree and seriousness of the domestic violence.
  - The seriousness of the impact on the child and on the non resident parent of such violence.
  - The risks involved and the impact on the child against the positive factors (if any), of contact between the parent found to have been violent and the child. In this context, the ability of the offending parent to recognise his past conduct, to be aware of the need to change and to make genuine efforts to do so would be likely to be an important consideration when performing that balancing exercise

9. More recently, in *Re H (Contact: Domestic Violence)* [2005] 2FLR 950 Wall LJ :said "...Regard needs to be had to the Guidelines prepared by the Children Act Sub-Committee of the Lord Chancellor's Advisory Committee on Family Law in relation to contact cases where there has been domestic violence. There is an emphasis upon speed contained in those guidelines. The guidelines make it clear that 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*, ie the first appointment, consider the allegations made

and decide whether the nature and effect of the alleged violence was such as to make it likely that the order of the court for contact would be affected if the allegations were proved. If that is the case, the court must consider what evidence will be required to make the findings of fact. The court must make appropriate directions under s.11(1) of the Children Act 1989 at an early stage in the application to enable the matters in issue to be heard as speedily as possible, including whether or not a finding of fact hearing was required

### **Practice direction**

10. After *Re L* a practice note was issued embodying the substance of the President's findings in that case. It seems, however, that this has had little practical impact on the way cases involving issues of domestic violence are handled.
  
11. The Family Justice Council therefore recommends that a formal Practice Direction should be issued, embodying guidance from *Re L*, but suitably updated to reflect current best practice. The Practice Direction should specifically address what should happen in cases where there have been allegations of domestic violence but the court is asked to make a consent order for contact. (It might be possible also to tie this in with the revision of the Family Proceedings Rules, which the FPRC are currently undertaking, a project the Committee understands will probably only come to fruition in 2008.)

12. The Guidelines originally developed by the Children Act Sub Committee of the President's Advisory Board on Family Law also need to be embedded in the system by whatever means possible and their substance should be incorporated in the proposed Practice Direction.

### **Advice from lawyers and risk assessment**

13. The Council conducted a survey of the 5,000 individual members of Resolution to try to discover how solicitors practising family law approached this kind of case. The questionnaire was drafted by Professor Judith Masson (with input from other members of the Family Justice Council Children in Families Committee), and Resolution suggested that the letter to Resolution members asking them to complete the questionnaire should come from Jane Craig as she is a past Chair of Resolution. [A copy of the covering letter and the questionnaire and a summary of the results are appended to this report as **Annex 1.**] The letter went out during the week beginning 10 July 2006 and responses were received up to early September. The results of this survey were available by the beginning of October 2006. About 21% of those surveyed responded.
14. Overall, the responses to this questionnaire supported the view that solicitors could take more account of issues relating to domestic violence when advising on contact or residence matters. Similarly, practice in the courts does not currently appear to support identifying cases where violence is an issue, or

enquiring into the safety and suitability of arrangements when making consent orders in contact or residence cases.

15. Given what is known about the effects of domestic violence on victims (i.e. that they may agree arrangements out of fear, in the hope of placating the perpetrator, or minimise to fail to understand the potential risk to their children or themselves of contact with the perpetrator), the lack of screening for domestic violence by the courts and the pressure on all professionals and agencies to get agreement and to complete cases quickly, the picture is of a climate where unsafe arrangements are likely to be made in some cases. Current practices mean that this fact may not be picked up or acted on by parents' legal advisers. Even where solicitors are aware that a case involves domestic violence, they may not be able to persuade the court to take note of this.

16. The Council has been assisted in considering these issues by information about the development of risk processes in CAFCASS, the health service and the police. Effective communication with these separate agencies and disciplines needs to be maintained at policy level, as well as at individual case level, to ensure that the family court process is robust.

17. Mediators and CAFCASS officers may be insufficiently aware of domestic violence in the work they do. Where a client who has been the victim of domestic violence has no independent corroborating evidence, or where CAFCASS supports contact, it is highly likely that contact will be agreed. This

is the context within which some agreements for contact and consent orders are made.

18. There is a need for consideration of the issue of risk to be undertaken by lawyers and judges in all cases where domestic violence has been alleged or admitted. Lawyers need to be aware that for both perpetrators and victims, the existence of incidents of domestic violence is often a source of shame. They must be ready to encourage and support their clients to disclose these issues. Consideration of the issue of risk should ideally take place before conciliation appointments are arranged, and certainly before contact orders are made, to ensure that such contact orders are safe.

19. The Law Society's Family Law Protocol should be strengthened to make it clear that part of a solicitor's duty when acting for a parent in a contact application is consideration of the safety and welfare of the child. Solicitors should therefore scrutinise proposed agreements carefully. If a solicitor believes that the agreement their client wishes to make puts the child at risk, he or she should be under a professional duty to bring these concerns to the attention of the court. In such circumstances, an order for separate representation of the child may be appropriate.

### **Legal Aid Fee Structure**

20. If there were a move towards the legal aid fee structure providing a financial incentive for the early settlement of cases it would need to be considered

whether this was appropriate in contact applications, since it may provide an inappropriate incentive for lawyers to press their clients to settle for a contact order by consent which puts the child at risk.

## **The Application**

21. It is not clear how well Form C1A (“the gateway form”, which enables a party to proceedings to provide further information if an allegation of domestic abuse, violence or harm is made in the initial application) is being used by parties and their lawyers to inform the courts, or by the courts to determine how cases should be dealt with. The Council is aware that an evaluation of the impact of the forms is currently being carried out by HMCS.
  
22. The need to complete the Form C1A fully should be emphasised to lawyers and their clients. There should be notification on the form to the parties that basic screening on the information provided will be undertaken. The Form C1A at present requires further information about involvement with outside agencies before asking for details of incidents of abuse, violence or harm. This may confuse those completing the form, who may fail to provide details of incidents, simply because they did not lead to involvement with outside organisations. The form should be amended, to make it clearer and more user friendly. Feedback from the police is that if the form had space for previous names and for addresses in the past 5 years rather than just the current address, the information the police can provide would be much enhanced.

23. If the respondent alleges domestic violence, a full schedule setting out the nature of the violence should be completed on form C1A. This would give the court the opportunity to identify and then assess the risk and if, necessary, make a finding of fact. The court should as a matter of course copy the schedule to CAFCASS for them to make enquiries as to any previous history of domestic violence. Those completing the form need to be aware that CAFCASS will not routinely make enquiries from health professionals unless there is a specific reason given to do so, and it is good practice for solicitors to begin to gather information, such as reports from General Practitioners, as soon as they become aware that domestic violence is an issue.

#### **CAFCASS' role, screening and information sharing**

24. At present there is a widespread lack of information sharing between the relevant services. Screening for risk by CAFCASS in all s8 applications should take place in every court. There are effective schemes already operating in some areas of the country. The information produced by this screening is of great importance and assistance to the court. Sometimes it may reveal significant previous convictions or background of which the other party to the proceedings is unaware, and which was therefore not disclosed on Form C1A. There may be a history of police call-outs to “domestic” incidents.

25. Following screening, it will then be open to either party to seek formal disclosure of any relevant material from the relevant police authority utilising the National Information Sharing Protocol. Disclosed material may have



cogent evidential value in assist the court in assessing the veracity of claims, counter claims or denials. The Council is concerned that knowledge of the existence and terms of operation of the Protocol is not as extensive as it would wish.

26. Consideration should be given to the establishment of protocols and information sharing schemes, such as those currently operating in Manchester and Newcastle. Local Family Justice Councils should be asked to share other examples of good practice. (Brief details of good practice schemes are attached at **Annex 2**)

### **Finding of Fact hearings and Conciliation hearings**

27. The positive regard for agreements within the system, particularly under the Private Law Programme, does not encourage judges asked to approve consent orders to ask questions. The pressures on judges to get through full lists, particularly in those cases which have been listed for in court conciliation (dispute resolution), is likely to make detailed scrutiny of cases which are presented as agreed less likely. In addition, the existence or extent of domestic violence may not be clear from the papers, or even where it is mentioned, there may be no supporting information, which would encourage the view that the allegations would not be substantiated or were irrelevant. Therefore, in any case where the application or response to an application for contact mentions previous domestic violence, the case should not automatically go for conciliation, but should be listed for directions for consideration of whether

there should be a fact finding hearing to establish the nature and extent of the domestic violence alleged.

28. If the parties want a consent order in a case where there are allegations of domestic violence, the court needs to know whether the allegations are true, in order to assess the effect of the alleged violence on the child or children exposed to it and the risk of harm to the child or the residential parent if the order sought is made, following the guidelines in *Re L*. If the allegations are not admitted, or if the parent with care does not pursue them, or withdraws them having made them, the court should consider conducting a fact finding hearing. It should not simply ignore the allegations. If the allegations are “not pursued” or withdrawn, because this may be because the victim is too frightened to pursue them. It is only when the court has established the facts, whether by conducting a fact finding hearing or because the applicant for contact has made appropriate admissions, that it can properly exercise its responsibility to decide whether the proposed consent order is actually in the best interests of the child.

29. Fact finding hearings depend on the court having the necessary information. Further work may be needed to ensure that the relevant information is before the court. Both parties should be present at a fact finding hearing as well as their legal representatives. Fact finding hearings can also be fraught, especially if they fail to prove domestic violence, when they can simply increase the acrimony in the case. Nevertheless, they may be essential to determine whether a child would be at risk from future contact.

## **The assessment of risk**

30. First, the court needs to decide whether it requires the impact on the child of past exposure to domestic violence to be assessed, or whether it requires predictions about the likelihood of future risk to be assessed, including, specifically, the future risks that might be associated with contact. Second, the nature of any identified risk to be assessed must be defined:-

- Is the issue one of direct risk to the child or an indirect risk to the child through risk to their primary carer?
- Is it the risk of violence to the child or primary carer?
- Is it the risk of the child being exposed to uncontrolled and intimidating behaviour at handover or contact?
- Is it the risk of contact arrangements being abused to perpetuate power imbalances and access to the primary carer?
- Is it the risk of emotional harm through continuing exposure to inter-parental acrimony?
- Is it the risk of threats, stalking or other unacceptable intrusions into the child's life and stability?

31. Other risks, directly or indirectly related to the domestic violence, may be present and require assessment such as substance misuse, parental mental illness or significant learning difficulties, or violent criminality.

32. Once the nature of the identified risk is clarified, this will indicate the type of risk assessment required and the type of professional needed to make such an assessment. There is a wide range of expertise that could be accessed and where the issue is a significant direct risk to the child, the involvement of the Local Authority and an investigation under Section 47 of the Children Act 1989 must be considered.
33. The timescale of such assessments is a potential problem. If the guidance given in the case of *Re L* was followed, most risk assessments should and could be done quickly.

### **The voice of the child**

34. The wishes and feelings of children need to be given appropriate weight. A child who has lived in a violent household may not want to have contact with a violent parent, for sound reasons. How is that child's voice to be heard, particularly if there is no CAFCASS report, if the parents present the court with an agreement for approval?
35. In cases involving cross allegations of domestic violence, or highly conflicting accounts, such as the cases reviewed by Lord Justice Wall, it is difficult for a judge to perform his or her duty to assess risk in the absence of any appropriate admissions or findings of fact. In such highly conflicted cases, the court should consider referring the matter to CAFCASS and making an order under Rule 9.5 of the Family Proceedings Rules 1991 that the child should be

separately represented. It is essential that children's voices are heard in cases where it seems likely that neither parent is capable of properly protecting their interests.

36. The impact of the domestic violence upon the child must be determined, as must the impact of the proposed order. It will be necessary to know what might be said to the child during contact. This might require someone with appropriate training, perhaps a CAFCASS officer, to talk separately to the child or, again, it might require separate representation of the child. There should in any event be provision for the child's views to be reported back to the court, without putting the child into a difficult position. This is obviously more important the older the child involved. Children sometimes do not disclose abuse to their non abusing parent. Children's support workers can give children space and the opportunity to talk to someone. At **Annex 3** an example of how children's experiences of domestic violence can be missed by the court and others within the Family Justice System is attached.

- **Significant Harm**

37. The impact on a child of domestic violence in his or her family can in some circumstances amount to 'significant harm'. In such cases, the Local Authority has lead responsibility for investigation (s47 Children Act 1989 and Working Together to Safeguard Children 2006). Even where courts have concerns about the ability of the local authorities in their area to respond promptly and to a high standard, CAFCASS cannot take on the investigative function for

high risk cases. This would be to confuse their remit and cause delay – both factors which can increase the risk for children rather than reduce it.

38. The courts must use s7 and s37 of the Children Act appropriately for these cases. Where there is a reluctance owing to previous experience of delays or other problems, the way forward is contact between the court and the local authorities (possibly through the relevant Local Family Justice Councils), rather than attempting to find a different way of handling such high-risk cases.

### **Consent Orders**

39. The court can and should scrutinise any agreement where a consent order is sought, in case there are indications that either the child or the carer may be at risk. There are two elements to this scrutiny. First, the court should ascertain that the agreement is given freely, without fear or duress, and in full understanding of the implications (i.e. informed consent). Secondly, that the judge needs to be satisfied that the arrangements are safe for the child. Thorough risk assessment is necessary in all cases where there are potential risks identified, whether or not there is parental agreement, because it is well-known that in domestic violence situations the non-perpetrator parent frequently minimises or fails to recognise the potential risks to themselves and / or the child/ren. This was demonstrated in the cases reviewed by Lord Justice Wall.

### **Agreed contact and beyond**

40. Unsafe, unsupervised contact is not acceptable just because there is no supervised contact available, nor should it be considered inevitable that contact should move from supervised to unsupervised, or that there should be contact at all costs. In each area, the court needs to be aware of what services are available to support children and their families. As part of the implementation of the Children Act 2004 the Government is currently mapping these provisions at the level of each Local Authority. This information should be made available to the Local Family Justice Councils so that it is available for use by the court in individual cases. Paragraph 1.8 of the domestic violence guidelines on the DCA website already says that courts should take steps to inform themselves of local facilities.

41. Where appropriate facilities are available, the use of supervised, as opposed to unsupervised, contact should always routinely be considered by the court. For example, where a parent is facing possible imprisonment for a violent offence against another family member, supervised contact is likely to be necessary for the protection of the child. The use of supervision should be kept under review unless it is clear that the child and their carers are safe without this support.

## **Training**

42. There is insufficient training about domestic violence and its implications for solicitors, barristers and judges. Although domestic violence is already covered in both the public and private law training given by the Judicial

Studies Board, there is a need for further specialised training for solicitors, barristers and judges and a recognition that in domestic violence cases the parties are not in the same position as other separating couples involved in legal proceedings, but have to be considered differently.

43. The Bar has now said that compulsory training is needed for dealing with rape cases. In contrast, the FLBA have told us that it is still possible for barristers to undertake cases involving domestic violence without prior training.

44. Multi-disciplinary training should, therefore, now become the norm for all lawyers involved in family law cases. The Family Justice Council recommends that a mandatory domestic violence component be included in both the initial family law training provided to barristers and solicitors and in ongoing professional development training (e.g. the CPD system for solicitors).

45. The Family Justice Council recommends that the Judicial Studies Board continues to develop and expand its domestic violence training for judges dealing with children cases. In particular, we recommend that the mandatory induction training in private law work should include a more developed domestic violence awareness and risk assessment component, and that continuation private law courses regularly re-visit domestic violence issues.

46. Given the plans for the Family Proceedings Courts to hear many more of the injunction and contact cases currently listed in the County Courts, it is



essential that the magistracy and magistrates' legal advisers are fully aware of the current research based understandings of domestic violence and the importance of assuring children's safety. The Family Justice Council is concerned that the delivery of effective training for them on domestic violence issues is very patchy.

### **Framework of Questions for a Process of Risk Identification, Analysis and Management**

47. **Annex 4** to this paper (prepared by Children in Families Committee member Dr Claire Sturge) sets out a possible framework for questions a judge should ask himself or herself if presented with a consent order for approval in a case in which domestic violence has been alleged.

### **Involvement of the Courts in Domestic Violence Homicide Reviews or Serious Case Reviews.**

48. 'Working Together to Safeguard Children' (HM Government 2006) establishes a process whereby all child deaths arising from maltreatment will be the subject of a serious case review, irrespective of whether the Local Authority Children's Social Care Department is, or has been, involved with the family (Section 8.5). In addition, a new process for reviewing all domestic violence homicides is to be implemented (Domestic Violence, Crime and Victims Act 2004 s9). The extent of the involvement of the family justice

system, and the impact of any outcomes from the court proceedings, should form part of these reviews.

### **Feedback mechanism to the Court**

49. The Family Justice Council noted the understandable distress expressed by some members of the judiciary in Lord Justice Wall's report, because they had not previously heard of the tragic outcome of the cases in which they were involved. The two systems outlined above should prevent this from occurring in the future and help the courts and others in the Family Justice System to learn lessons from tragedies where children are seriously harmed by parents or carers after the intervention of the courts.

50. We recommend that HMCS should explore with the DfES how the family court process should be included within Serious Case or Domestic Violence Homicide Reviews.

### **Public Education**

51. The more general message that ensuring safety should be paramount needs to be emphasised to society at large, in order to counteract the widespread belief that contact with a non – resident parent must be always be good, irrespective of the presence of issues such as domestic violence. There should be support for publicising to the general public the risks of physical and emotional harm to children within or after domestic violence.

52. In addition, there might, for example, be an information pack available for parents where there is a finding of domestic violence or where a parent believes him or herself to be the victim of domestic violence. The DVD which is to be produced for women going through the court process in domestic violence cases should include a reference to child contact

### **Conclusion**

53. The cultural change required is a move from ‘contact is always the appropriate way forward’ to ‘contact that is safe and positive for the child is always the appropriate way forward.’ Agreement – seeking should never take priority over safety in cases involving domestic violence or child abuse. If an agreement is reached on the question of contact, it is important to be sure that the contact is safe. It also needs to be good quality contact and the harm already suffered by children who have witnessed domestic violence has to be taken into account in assessing this.

54. No single element of risk (whatever the risk factors in a family may be) should mean that contact is automatically negated. The presence of *any* of the factors, however, including domestic violence, should mean that the court will need to be satisfied about risk (**see the draft checklist of questions in Annex 4 to this report**), before contact can be possible. Family violence needs to be located within that culture rather than deemed a lesser risk. In short, nothing is automatically ruled *out* with risk, but nothing can be ruled *in* without the risk

being assessed and managed. Where contact raises questions of risk to the child and/or the parent with care, these must always be addressed in any arrangements made for contact. It should never be assumed that contact must occur without adequate safeguards, nor that safeguards can be abandoned simply because there have been no incidents whilst they have been in place.

55. Although the focus of the Council's inquiry has been on domestic violence, it is clear that the issues raised apply generally. The Council's recommendations should not be taken to apply only to physical violence, but also to other forms of abusive behaviour between parents, and by parents to children, which undermine the child's physical and mental health. Safeguarding children is 'everybody's business', - the courts, CAFCASS officers, solicitors and counsel.

**List of Annexes:**

<b>Annex 1 (paragraph [13])</b>	<b>Resolution letter, questionnaire and analysis</b>
<b>Annex 2 (paragraph [26])</b>	<b>Good practice schemes</b>
<b>Annex 3 (paragraph [36])</b>	<b>Barney's story</b>
<b>Annex 4 (paragraph [47])</b>	<b>Questions</b>

## ANNEX 1

Dear Resolution Member,

The Family Justice Council urgently needs your help!

In March this year Lord Justice Wall prepared a report for the President of the Family Division on thirteen cases in which twenty nine children, from thirteen different families, were murdered by their fathers during contact. In five of the thirteen cases contact was ordered by the court, and in three of those cases, an order for contact was made by consent. Allegations of domestic violence had been made in all the cases dealt with by the court.

Lord Justice Wall's Report can be accessed on the Family Justice Council website:  
[www.family-justice-council.org.uk](http://www.family-justice-council.org.uk).

The Family Justice Council has been asked to prepare a report for the President of the Family Division by October 2006, to consider, and make recommendations about, what approach should be adopted by the court when asked to make a residence or contact order by consent, where domestic violence has been an issue in the case. The Children in Families Sub-Committee, which I chair, has been asked to draft it.

What we need to know from you, the practitioners, is what you do in practice in such cases. What advice do you give? What approach does your local court adopt?

We have prepared a questionnaire, which is attached. Please will you spend a few minutes answering it and then return it to the address shown at the end. The responses will be analysed during September by researchers based at Bristol University, which is why we need you, please, to return the questionnaire **by 1<sup>st</sup> September**.

We have the chance to make a difference and perhaps prevent future deaths of children in such circumstances. Your experience and your views really matter. Thank you for helping us.

Best wishes,

**Jane Craig**

Chair, Children in Families Committee

Family Justice Council

## **Family Justice Council Solicitor Survey**

### **Consent Orders in Private Law Children Cases**

**Please complete and return in the envelope provided by 1<sup>st</sup>**

**September 2006**

**Please note that your name will not be associated in any way with the information you give us and you will not be identified in any of the publications relating to the research.**

**About you and your practice**

Age: under 25  26-35  36-45  46-55  over 55

Are you : Male  Female

Are you an accredited specialist in family law? Yes  No

**How large is the Family Law Department where you work?**

sole practitioner  2-5 fee earners  6-10 fee earners   
more than 10 fee earners

**What is your position?**

Para legal  Trainee  Assistant solicitor  Associate  Partner

**How many years have you worked in family law?**

less than 1  1-3  4-7  8-15  more than 15



Do you do exclusively family law work? Yes  If No, what percentage of your case load is family law?

Up to 25%  26-50%  51- 75%  more than 75%

How much of your work is private law children matters? less than 10%   
  
11-25%  
  
25- 50%  
  
51-75%  
  
More than 75%

Do you do publicly funded work (legal aid)? Yes  No

Location of your practice: Rural/ small town   
  
Suburban  
  
Large Town

## City Centre

In which Courts do you generally file applications ? (tick all that apply)

Family Proceeding Court

County Court

Principal Registry

High Court

1. When discussing arrangements for children after parental separation: Do you raise the question of domestic violence with

a) your female clients:

always  often  sometimes  rarely  never \*

*\*(never = discussed only if client brings it up)*

**b) your male clients**

always  often  sometimes  rarely  never \*

*\*(never = discussed only if client brings it up)*

**2. Are you confident that you know whether domestic violence has been a feature of the parental relationship where you advise on children matters?**

always  often  sometimes  rarely

**3.a) During the last 12 months approximately how many cases involving issues of residence or contact did you advise on?**

**b) How many of these cases involved**

*NB cases may involve more than one feature*

**i) findings of fact hearings?**

**ii) Orders for no contact?**

iii) **Orders for supervised contact (at a supervised contact centre or with other supervision)**

iv) **Orders for supported contact (contact at a contact centre)?**

v) **Orders for indirect contact**

vi) **Separate representation of the child  
(by you or another solicitor/guardian)**

vii) **No order being made**

**4. It is often said that pressure is placed on parents to agree contact arrangements**

a) **Do you think that generally**

**There is too much pressure put on parents to agree**

**About the right amount of pressure is put on parents to agree**

**Insufficient pressure is put on parents to agree**

**b) What are the main sources of this pressure?**

*Rank these items 1 (most pressure) to 5 (least pressure)*

<b>The other party</b>	<input type="checkbox"/>
<b>The court</b>	<input type="checkbox"/>
<b>The lawyers</b>	<input type="checkbox"/>
<b>Money worries</b>	<input type="checkbox"/>
<b>A presumption that there should be contact</b>	<input type="checkbox"/>

**5) In the last 3 years have you had a consent order for contact or residence refused by the court ?**

**Yes**       **No**

**If yes, please give brief details of the circumstances/ reasons why this occurred,**

**6) Have you ever had a consent order for contact or residence made by the court which you thought put the children at risk of harm (emotional or physical)?**

**Yes**       **No**

**If you want to add brief details of any case please do so here**

**7) Have you ever had a consent order for contact or residence made by the court which you thought would place the parent with care at risk?**

**Yes**       **No**

**If you want to add brief details of any case please do so here**

**8 a) If you were acting for a parent in contact or residence proceedings and you believed that he or she was a victim of domestic violence**

**Would you make a referral to social services (children's services) about the risk to the children?**

***Tick all that apply***



**Where I was concerned about the children**

**Where the client asked me to**

**No but I would advise the client to do so**

**No I would not make a referral**

**b) In the last 12 months have you made a referral to social services in a contact or residence case where you have been acting for parents?**

**Yes**

**No**

**If you want to add brief details of any case please do so here**

**9) When considering whether to make a consent order for contact or residence in a private law children case ...**

**a) Do you think that the court has sufficient information about the children's wishes and feelings?**

**Always**                       **Sometimes**                       **Never**

**b) Do you think that the court takes sufficient account of the impact of the proposed order on the children's welfare?**

**Always**                       **Sometimes**                       **Never**

**Please add comments here if you wish**

10. Do you regularly deal with domestic violence injunctions? Yes  No

a) How many domestic violence injunction applications were you involved with in the last 12 months acting for applicant?

0  1  2-3  4-5  6-10  more than 10

b) How many domestic violence injunction applications were you involved with in the last 12 months acting for respondent?

0  1  2-3  4-5  6-10  more than 10

c) Is there a domestic violence outreach service (a service to support domestic violence victims who are not staying in a refuge) in your area?

Yes  No  Not sure

**11) When did you last attend any training/ updating specifically on domestic violence issues?**

**Before 2000**

**2001**

**2002**

**2003**

**2004**

**2005**

**2006**

**If you can recall please state the name of the organisation/ person who provided this training**

**12) Do you advise clients from minority ethnic communities?**

**Many**       **some**       **few**       **none**

**Are there any particular issues which consent orders for contact or residence in private law children cases raise for these clients?**

**If so what?**

**13) Is there anything else you think we should consider in relation to consent orders for contact or residence?**

**Thank you very much for taking time to complete this questionnaire**

**The information obtained through this questionnaire will be included in a report provided by the Family Justice Council to the President of the Family Division. A short article will also be published in Family Law towards the end of 2006**

**Please return to: Family Justice Council Survey, Room E201 East  
Block, Royal Courts of Justice, Strand, London WC2A 3LL**

**DX 44450 RCJ Strand**

**By 1<sup>st</sup> September 2006**

**Detailed Report by Judith Masson on the FJC Survey of Resolution Members  
about consent orders in contact cases etc.**

A postal questionnaire was distributed to approximately 5,000 members of Resolution using the DX box system for return to the FJC's DX box at the Royal Courts of Justice. The questionnaire was prepared by Judith Masson with consultation with members of the FJC, family law solicitors and researcher colleagues at Bristol University. Replies to the questionnaire were entered into an excel spread sheet; text comments were collated into themes. The data preparation was undertaken by Mary Krow and assistance with excel was provided by Leo Masson. The analysis was undertaken by Judith Masson.

There were 1056 responses to the questionnaire but not all respondents answered every question. Overall, there was a 21 per cent response rate, which is normal for a single mail-shot, postal questionnaire. The respondents were predominately older, female solicitors; just under 30 per cent were under 36 and 73 per cent were women. Enquiries will be made to establish, if possible to extent to which the sample reflects the membership of Resolution. Almost half the respondent said that they were partners, 10 per cent were para-legals or trainees, 27 per cent assistant solicitors, and 15 per cent associates. Respondents came predominantly from small firms; 10 per cent was a sole practitioner, and only a third worked in firms with 6 or more fee earners. Nearly three-fifths worked in firms with 2-5 fee earners. Respondents' Practices were almost evenly distributed between rural/small towns, large towns and city centre with approximately 30 per cent of respondents from each of these; 12 per cent of respondent worked in suburban areas. Only a minority, 12 per cent said that they acted for many BME clients; a similar proportion had none and just less than 30 per cent said that they had some BME clients.

Two-thirds of respondents did publicly funded work; a few commented that the legal aid system created pressures in dealing with contact cases.

*0013 The automatic limitation on public funding certificate that funding is limited to a positive /favourable CAFCASS. Report places parent in an intolerable position. I have had an application to remove this limitation refused in a case where the children and mother were most likely at risk of emotional harm and the matter should have been decided by a Judge. Instead a consent order was entered into purely because of this funding problem*

*0489 pressure of work due to insufficient rates of pay on legal aid / public funding can lead lawyers to advise agreement without giving the client or themselves proper time to discuss things and for client to reflect.*

Another added that increasingly, tax credits and part-time work meant that single mothers could not obtain public funding.

A survey of Resolution members is a survey of solicitors and those working for solicitors firms with a specialist interest in family law. Over 80 per cent stated that their work was exclusively in family law and for almost three-quarters of the remainder family law accounted for at least half of their work. Just under half were



accredited specialists in family law. And three-quarters had worked in family law for 8 or more years. This was clearly a survey of experienced, specialist family law practitioners.

Within family law, many of the respondents had substantial practices in private law children matters. A third spent between a 25 per cent and 50 per cent of their time on such work. Only one-fifth said that these matters accounted for less than 10 per cent of their work. Slightly fewer, 15 per cent, said that more than half their work consisted of this type of cases. As might be expected, almost all respondents filed applications in the county court (92%). Eight per cent filed in the High Court and 17 per cent in the PRFD; only 36 per cent said that they filed in family proceedings courts. Where specific comments were made about courts, most of these related to county courts.

The respondents appeared to have less experience in domestic violence than in children work. Only two-fifths said that they regularly handled domestic violence injunctions, and almost a quarter had not acted for an applicant in such a case in the previous year; more than a third had not acted for a respondent in the same period. In contrast, a quarter of respondents had dealt with at least 6 injunction cases for applicants; only 7 per cent had this level of experience acting for respondents. The level of work in domestic violence was also reflected in levels of knowledge and recent training in this area. A third of respondents were unsure whether there were domestic violence outreach services in their area. A quarter last attended training specifically on domestic violence before 2000, compared with over 50 per cent who had done so since 2004. More limited experience in domestic violence may have impacted on their ability to recognise it as an issue in contact cases. Further analysis is necessary to compare responses of those with substantial experience with domestic violence cases.

In total, respondents had acted in 37,782 cases where they had advised on issues relating to residence or contact. Of these, 3590 involved no order being made at the end of proceedings. There were 3918 cases (10%) which involved supervised contact and 2295 (6%) with supported contact (contact at a contact centre without supervision). Only 1639 (4%) of cases involved a finding of fact hearing. There were specific comments about the difficulty of getting the court to hold such a hearing. For example:

*0121 the threshold to obtain findings of fact is high as in many cases the victim has sought limited 3<sup>rd</sup> party advice or help. The thought that findings may not be made frequently causes clients to agree to contact. One recent client felt that having worked hard to put the violence behind her to go through it again in court would be detrimental to her emotional well being and therefore agreed to contact.*

Respondents had acted in 1219 cases (3%) where there had been separated representation of children. It was a common theme in the comments that more attention should be given to hearing children's views. This is a high number given the number of such cases nationally (CAFCASS *Annual Report* noted that there were 1035 appointments under r.9.5 in 2005-6), but solicitors could have acted for either of the parents, or for the child in such cases. The solicitors had acted in only 830 cases (2%) where orders for no contact had been made. Despite the possibility of double counting, these figures both confirm the relative rarity of findings of fact hearing, use

of supervised contact, separate representation and orders for no contact which have been identified from national statistics and other studies and indicate that the respondents were dealing with the whole range of contact matters which come before the courts.

The questionnaire asked respondents about their practice in discussing domestic violence with female and male clients when advising on arrangements for the children after parental separation. A third of respondents said that they *always* discussed this with female clients; similarly just under a quarter *always* discussed it with male clients. Seventeen per cent *rarely or never* discussed this with female clients and almost a third similarly with male clients. For the full results see table 1.

**Table 1: Discussion of domestic violence when advising parents on arrangements for children**

<b>Discussion of Domestic Violence</b>	<b>With female clients %</b>	<b>With male clients %</b>
<b>Always</b>	<b>32</b>	<b>23</b>
<b>Often</b>	<b>26</b>	<b>19</b>
<b>Sometimes</b>	<b>25</b>	<b>29</b>
<b>Rarely</b>	<b>6</b>	<b>14</b>
<b>Never*</b>	<b>15</b>	<b>11</b>

N=1031 \*only if client raises the matter.

Respondents were also asked whether they were confident that they knew whether domestic violence had been a feature of the parental relationship when they advised on children matters. Only 20 per cent said that they were confident they always knew. Another 55 per cent they were confident that they often knew. The remaining 25 per cent said they were only confident they knew sometimes or rarely. One respondent commented:

*0751 Domestic violence is still a taboo issue. Not brought out to the open mothers frequently however use concerns about welfare of the children as a stumbling block to contact. The court process is now so geared up for speedy settlement that I can see that dangerous cases slip through the net.*

Another pointed out that domestic abuse should be considered more broadly than just an issue of violence:

*0034 If widening to issue to abusive relationships rather than obvious violence. Often the abused partner does not recognise the abuse it having become a way of life. The abuser is often dismissive, as are the courts. Mediators and inexperienced solicitors*

*also fail to recognise relationships of this nature and or bring such behaviour to the attention of the relevant authority e.g. CAFCASS or the courts*

And a third reflected on the difficulty of these cases

*0752 difficult to establish where truth lies in a s8 case. Violence can go unnoticed but then it is difficult for a non resident parent to maintain contact to their children if the resident parent wants to make this hard.*

All these comments would point to the need for lawyers to examine closely and sensitively issues surrounding parental arrangements when advising in children cases.

Respondents were also asked about pressure placed on clients to agree contact arrangements. This was the topic on which there were most additional comments at the end of the questionnaire. A third of respondents thought that there was too much pressure to agree, and only 13 per cent that there was insufficient pressure. The majority, 55 per cent, thought that the level of pressure was about right. There was little agreement about the sources of pressure. Respondents were asked to rank order 5 possible sources of pressure on parents to agree. Although money worries ranked higher than all other factors (3.0) there was little difference between the scores of the 4 others but the court was rated lowest and lawyers highest (range 2.03-2.49). (See the short report for more information about the comments about pressure on parents.)

Only 5 per cent of respondents thought that the courts always had enough information about the children's wishes and feelings when making consent orders for contact or residence; 8 per cent completely disagreed and said the court never had sufficient information. A slightly higher percentage (14%) were convinced that the court always took sufficient account of the children's welfare and fewer 3% (only 32 respondents) thought the court never did so.

Only 69 respondents (7 per cent) had had a consent order for contact or residence refused by the court in the last three years. However, a much higher proportion, 40 per cent, had experience during their careers of consent orders which they thought put children at risk of harm and 35 per cent such orders which they considered put the parent with care at risk. Respondents were asked about their practice of involving social services (now known as children's services) where they believed that a parent client was a victim of domestic violence. Just under 50 per cent said that they would make a referral to children's services if they were concerned about the children, and a similar percentage said they would make such a referral if the client asked them to. Respondents were more willing to advise the client to take such action, 61 per cent they would adopt this course of action. Seven per cent said that they would not make a referral.

One reason for clients and solicitors not contacting social services is the fear that children will be taken into care. This was reflected in a comment by one respondent at the end of the questionnaire:

*0313 clients may not always want to admit to domestic violence occurring and worry about children going into care.*

Despite this, almost a fifth of respondents said that they had made such a referral when they had been acting for parents in a contact or residence case in the last year.

Overall, the responses to this questionnaire do support the view that solicitors could take more account of issues relating to domestic violence when advising on contact or residence matters. Similarly, that practice in the courts does not currently appear to support identifying cases where violence is an issue, or enquiring into the safety and suitability of arrangements when making consent orders in contact or residence cases. Given what is known about the effects of domestic violence on victims, the lack of screening for domestic violence by the courts and the pressure on all professionals and agencies to get agreement and to complete cases quickly create a climate where unsafe arrangements are likely to be made in some cases. Current practices mean that this fact may not be picked up or acted on by legal advisers. Even where solicitors are aware that a case involves domestic violence, they may not be able to get the court to take note of this. Client who are victims may be reluctant to oppose the abuser or not be able to afford to litigate; mediators and CAFCASS officers may be insufficiently aware of domestic violence in the work they do. Where a client who has been the victim of domestic violence has no independent corroborating evidence or CAFCASS supports contact it is highly likely that contact will be agreed. This is the context within which some agreements for contact and consent orders are made.

## ANNEX 2

### Risk assessment':

#### elements of good practice in CAFCASS early intervention schemes

#### HULL – risk identification for domestic violence

The court sends copies of all S8 applications to CAFCASS. Where any possible domestic violence risk is identified at this stage from the documentation (or at any later stage in the case) the case is forwarded to a multi-agency group who meet the parties and undertake an initial assessment of risk before the first court hearing. This pilot process has been developed based on a joint agreement between the local Family Justice Council and the Safeguarding

Children Board.

MANCHESTER – screening with the police and children’s social care.

The court sends copies of all S8 applications to CAFCASS in advance of the first directions appointment. CAFCASS undertakes screening of all applications with the police and children’s social care. The police provide information that is wider than just criminal record information – for example, call-outs to domestic violence incidents even when this does not result in a criminal conviction.

At court on the day of the first directions appointment, the CAFCASS Family Court Adviser (FCA) meets with each party individually before the meeting with the judge. The FCA then sits with the district judge for the appointment in a round table exploration of the issues.

NEWCASTLE – work in advance of the first directions appointment

The court sends copies of all S8 applications to CAFCASS and at the same time sends out appointments at the CAFCASS office to both parties. These interviews are individual, and booked on separate days to minimise any risk of threat to either party. These meetings, including a standard process for risk identification, take place 4 weeks before the date of the first hearing. This allows the FCA to do any immediate follow-up work and provide a written outline for the court, identifying possible ways forward.

LEEDS – hearing from the children

The court sends copies of all S8 applications to CAFCASS, and CAFCASS does screening checks with the police and children’s social care. The family members are invited to meetings with CAFCASS on the day of the first directions appointment. The adults are invited to an appointment at court. Children aged 8 and over are invited to come to the CAFCASS office, in the company of an adult relative or friend. Information from the children can then be brought to the court by the FCA and incorporated into the meetings with the parties, and then into the first directions appointment.

NOTE:

*None of these schemes yet contain all the various 'good practice' elements and so they continue to change and develop. It should be emphasized that this work is resource-intensive and needs to be funded by CAFCASS by a reduction in 'traditional' Section 7 work at a later stage in cases. The various challenges continue to be addressed in local areas, by CAFCASS working in partnership with the local county and family proceedings courts under the remit of the President's private law programme.*

ANNEX 3

Barney's story:

Nine year old Barney told us that he did not like going on contact visits with his father because his father would never allow him to phone his mother and he would never tell Barney or his mother where they were going. It turned out that Barney had witnessed

a terrifyingly violent attack by his father on his mother in which he had tried to intervene but had felt completely powerless. This experience had never found its way into the narrative developed within the legal system, which tended to support the father's story that the mother was instilling anxiety into her son because of her own antipathy to contact. In fact Barney's mother was trying to persuade him to go with his father because she feared imprisonment if she flouted the court order for contact. We saw Barney becoming increasingly angry and frustrated with both parents because he did not think that anyone was listening to his story. He told us that he thought his mother was too weak to stand up to his father over contact just as she had not been able to protect herself from his violence.

Extract from: Whose story is it anyway? Children involved in contact disputes in A Vetere and E Dowling (Eds) Narrative work with children and their families London Routledge 2005

Kirsten Blow and Gwyn Daniel

### **RISK ASSESSMENT CHECKLIST FOR JUDGES**

Risk factors include any factor within the family or child, which may cause harm, or raise the risk of causing harm, to the child. Because of current knowledge about ‘cross-over’ between all types of harm and the various risk factors, no special link can be made between specific risk factors and any one type of harm. For example, domestic violence can lead to emotional harm and also to direct physical harm. Research indicates that it is also highly prevalent within families where neglect and sexual abuse is identified. The following list of risk factors is not inclusive and care must always be taken to be alert to other factors of risk:

- family (domestic) violence;
  
- parental mental health or learning difficulties;
  
- drug or alcohol abuse;
  
- presence of a person within the family / household who has been convicted of a ‘Schedule One’ offence;
  
- previous history of harm to child/ren by any adult in the family / household;



- the existence of acute family stress – for example from a difficult relationship breakdown or from social exclusion factors;

Any judge asked to sign a consent order for direct contact where there is an issue of domestic violence should ask herself or himself the following questions:

1. Is serious violence (even if not later pursued) against the residential parent alleged?
2. Has there ever been involvement of the children (direct or indirect) in the violence or a threat against the children?
3. Are there indicators of pathological jealousy, marked possessiveness or stalking?
4. Is there any reason to believe the non – residential parent is seeking contact as a way of continuing to control or maintain contact with the residential parent of the children? Is the driving motive for the non residential parent in wanting contact related more to his / her feelings about the residential parent than about the children?
5. Are there any indicators of the non residential parent's distress leading to suicidal ideas? Are there any indicators of significant mental illness in him / her?

6. Has there been a prior contested hearing about residence in which the residential parent 'got' the children?
  
7. Is it clear that the residential parent has agreed the order without pressure from others and having had an open discussion with her / his lawyer on the arguments for and against contact?
  
8. Has the CAFCASS officer, if one has been appointed, provided a Welfare Checklist?

If the judge has any reason for concern in any of these areas, then the following actions should be considered before consent is given to the contact order:

- a) Asking CAFCASS to make enquiries and, in particular, to consider the Welfare Checklist;

or

- b) Ordering a s7 or s37 assessment from the Local Authority

and/or

- c) Hearing the evidence to determine whether or not there has been significant domestic violence;

and/or

- d) Hearing the evidence regarding the contact issues.

and

- e) Consider how the child's voice is to be heard and whether the child should be made a party.

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