

**A REPORT TO THE PRESIDENT OF THE FAMILY DIVISION
ON THE PUBLICATION BY THE WOMEN'S AID FEDERATION
OF ENGLAND ENTITLED *TWENTY-NINE CHILD HOMICIDES:
LESSONS STILL TO BE LEARNT ON DOMESTIC VIOLENCE
AND CHILD PROTECTION* WITH PARTICULAR REFERENCE
TO THE FIVE CASES IN WHICH THERE WAS JUDICIAL
INVOLVEMENT**

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**PART 1; INTRODUCTION AND EXPLANATION OF THE SCOPE AND
STRUCTURE OF THIS REPORT**

Introduction

- 1.1 In 2004, the Women's Aid Federation of England (WAFE) published a document written by Hilary Saunders, entitled *Twenty-nine child homicides; Lessons still to be learnt on domestic violence and child protection*. I will refer to it throughout this report either as "*Twenty-nine child homicides*" or as "the document" as the context requires. In order to avoid the need for substantial citation from the document, a copy of it is attached to this report as Appendix 1.
- 1.2 As its title suggests, *Twenty-nine child homicides* identifies 29 children from 13 families who, over a ten year period from 1994 to 2004, were killed by their fathers following the breakdown of the relationship between their parents. The document reported the government as acknowledging that in five of the families involved, the children had been killed in the course of contact which had been ordered by the court in private law family proceedings between the parents.
- 1.3 When your predecessor, Dame Elizabeth Butler-Sloss and I gave evidence to the Constitutional Affairs Select Committee in 2004, we were asked about *Twenty-Nine Homicides*. I expressed some scepticism about its conclusions and its methodology, particularly the implication that judges were indifferent to the safety of children when making contact orders. I also expressed the view that it would be very helpful if the cases in which it was alleged that an order for contact had led to a child's death or serious injury were investigated by a senior judge. I then went on to say:

One frequently has allegations, for example, that a woman in a refuge is required to make her children see the person whom she is fleeing. I would be interested to look at the file on that case, to look at the evidence put before the judge and to look at the judgment. What was the judge doing? Did he make an order like that? If so, why? If that sort of order is being made it is totally unacceptable; it is dangerous to children and it should not happen. I think this needs to be slightly more than anecdotal. I think it should be investigated properly.

- 1.4 Having discussed the matter with officials from the Department of Constitutional Affairs (DCA), Dame Elizabeth and I agreed, that in view both of the importance of the subject and the Select Committee's proper concern about it, I should examine all the available court files in all the cases identified by WAFE in which there had been court involvement. I would then report – either to her or, as was more likely, to her successor.
- 1.5 The files in the five cases in which there was court involvement were gradually assembled over the Spring and early Summer of 2005. It was necessary to be as rigorous as possible in searching for and identifying the cases in which there had been judicial involvement, as well as those in which there had not. I am, accordingly, very grateful to the officials in the DCA, and in particular to Jan Salihi for the thoroughness with which the trawl was conducted. I am also very grateful to Nicola Harwin, the Chair of WAFE, who was able to make sensitive enquiries of her own, and who provided helpful information. The upshot is that I am as satisfied as I can be that I have seen all the files in all the cases in which there was judicial involvement.
- 1.6 Some of the files were extremely bulky, and it did not prove possible for me to read them before the 2005 long vacation. Having done so, a number of queries inevitably arose, and I wrote to the judges involved in the five cases, asking questions and inviting their comments. By the time this process was completed, term had re-started, and I very much regret that it has only now been possible for me to set aside the time to write my report. I have written to Nicola Harwin with my apologies for the delay.
- 1.7 As I expected, I have received complete co-operation from all the judges involved, who have been, without exception, both frank and helpful.

The scope and structure of this report

- 1.8 WAFE's recommendations contained in the document are wide-ranging, and in many cases are addressed to agencies other than the Family Justice System. The remit of this report, however, is strictly limited to the involvement of the family justice system in the five identified cases, and any lessons which can and should be learned from them. My conclusions will be found in Part 8 of this Report.
- 1.9 The manner in which I have decided to structure the report is, firstly, to give brief, anonymised details of all 13 families and the 29 children concerned (part 2). I then examine in detail each of the five cases in which the courts were involved (Parts 3 to 7) In each case I give my opinion as to how the matter was conducted by the courts. I then give my conclusions and recommendations (Part 8).

- 1.10** In each case I have prepared a summary of the relevant documents in the court file, which I have supplemented where necessary with comments received from the judges who dealt with the individual cases. I have made these summaries as full, neutral and accurate as possible.
- 1.11** Although this is a report which is written for you, it is, I recognise, likely that you may wish to give it a wider circulation. In these circumstances I have decided, in the interests of the surviving family members, to identify the children only by initials. I have also decided not to disclose the identities of the judges involved. I have, however, identified them in separate correspondence addressed to you, and I would not want it thought that not revealing their names in this report was in any way designed to cover up any misdeed, or to protect them from proper criticism. My assessment of their conduct appears at the conclusion of the Part of the report dealing with the individual cases (Parts 3 to 7). Whether you wish to put their names in the public domain must, I think, be a matter for you. I hope that you will in due course feel able to make the final report available, in due course, to WAFE.
- 1.12** At your suggestion, I sent a copy of the draft to each of the judges involved for comment prior to finalisation. I have received responses from all five. None made any criticisms of the report or of my comments on the individual cases, and in general each was supportive of my recommendations to you.
- 1.13** Finally by way of introduction may I say that, whilst I by no means agree with everything in it, I welcome WAFE's initiative in publishing *29 Child Homicides*. However painful they are, practitioners in the Family Justice System need regular reminders of the evils of domestic violence. The document provides one such reminder.

PART 2: THE CHILDREN AND THEIR FAMILIES

- 2.1** WAFE helpfully sent me a single document which identified all 13 families and the 29 children who were killed. I think it appropriate to set out the detail of that document in this report, although, in the light of the confidentiality of its contents, I have decided to anonymise both the names and the locations.
- 2.2** What follows, therefore, is an anonymised version of the WAFE document.

Child homicides involving contact or residence arrangements in England & Wales from 1994 – 2004.

In recent years at least 29 children (in 13 families) have been killed as a result of contact arrangements (and in one case residence arrangements) in England and Wales. The Government has not kept statistics on child contact homicides, so the actual figure may be higher. In at least five of these cases contact was ordered by the court.

- 1.** JY, TY, CY and DY (aged 7, 6, 5 & 3) were asphyxiated in their father's car at (location) during a contact visit on 27th March 2003. Neighbours said there had been previous incidents of domestic violence. While killing the boys and himself, their father KY used his mobile phone to tell his estranged wife what he was doing, and she listened in horror as her children choked to death.
- 2.** ALM, CM, CM and AM (aged 12, 9, 7 & 3) were burnt to death by their father CM during a contact visit on 14th July 2002. Their father, who had recently separated from his wife, had taken the children out and they were found dead in his burnt out car on an industrial estate in (location). Later it emerged that Mr M's estranged wife had contacted the police a month previously because he had threatened to kill himself and the children.
- 3.** BRW and BW (aged 8 & 7) were stabbed to death on 6th February 2002 by their father SW. At his trial in March 2003 the boy's mother stated that four days previously she had separated from Mr W after enduring years of violence, but she arranged to meet him at McDonalds in order to see the boys who had remained with their father. After the visit he had assaulted her and driven off with the boys to a golf course, where he killed them with a knife and screwdriver. Apparently he did this to teach his wife "a lesson she would never forget" in revenge for her leaving him.

4. JH (6) was strangled by his violent father at their home in (location) in late August 2001. JH had remained in the family home with his father, after his mother and sister fled to a women's refuge in April 2001. The head teacher had contacted social services because she was concerned about the irrational behaviour of his father, who was apparently suffering from paranoid schizophrenia at the time. However, attempts to return JH to his mother were unsuccessful, as the father would not co-operate.
5. TB (aged 12) was strangled by his father during a contact visit in (location) on 28th December 2000. During the trial of his father, HB it emerged that he had also intended to kill his other two sons to take revenge on his wife for leaving him.
6. DH (aged 2) was killed by her father during a contact visit in (location) on 10th October 2000. Her body was found in his parked car in woodlands near (location).
7. SZ and ZZ (aged 7 and 6) were killed by their father, when he came to (location) to collect them for a contact visit on 18th March 2000. Their mother SZ was also stabbed to death. ZZ managed to dial 999 and the telephone operator heard him screaming and begging his father not to kill him before his throat was cut.
8. CF and OF (aged 6 and 9) were hanged by their father on 17th April 2000 in the village of (location). Their father had been allowed to have unsupervised contact, even though he was facing charges of rape and of assaulting his wife.
9. DP and JP (aged 7 and 3) were killed by their father during a contact visit on 2nd August 1000 near (location). Their father JP was allowed to have unsupervised contact with his sons, even though he was due to appear in the Crown Court on charges of threatening to kill his ex-partner and causing her actual bodily harm.
10. DB (aged 2) was found dead with his father after a contact visit on 13th March 1999 in (location).
11. IB was stabled to death in (location) on 20th January 1996, when she was collecting her son after a contact visit. Her son was found strangled in her husband's car and her three daughters (who had been living with him in (location)) were found dead in their beds with their throats cut.

12. NS and JS (aged 4 and 3) were killed by their father during a contact visit on 6th February 1994 in (location). Their mother, SH, had been persuaded by family court professionals not to oppose contact, although she was very worried about her husband's mental health.
 13. PL, KL and RL (aged 9, 6 and 2) were found dead in their father's car in (location) in January 1994. Their father IL killed himself and his daughters after his wife was granted a divorce due to suffering emotional and physical abuse from him. He had had regular contact with his daughters every Saturday.
- 2.3 The courts were involved in the cases which I have numbered 5, 7, 8, 11 and 12.

PART 3: THE CASE OF IB AND HER CHILDREN
(WAFE'S CASE NUMBER 11)

3.1 IB was the mother of six children, namely

- (1) TM born in October 1980 (M)
- (2) SK (the elder) born in December 1981 (F)
- (3) AM born in March 1983 (M)
- (4) SK (the younger) born in December 1984 (F)
- (5) UK born in September 1986 (F)
- (6) HM born in October 1993 (M)

3.2 For ease of reference, I repeat the WAFE summary of this case: -

IB was stabbed to death in (location) on 20 January 1996, when she was collecting her son after a contact visit. Her son was found strangled in her husband's car and her three daughters, who had been living with him in (location) were found dead with their throats cut.

3.3 THE COURT FILE

(Note IB is, throughout, represented by the initial W (for "wife"). Her husband, KM is, throughout, represented by the initial H (for "husband"))

26.9.95 W issues application out of the County Court in City 1 (signed on 8.9.95) seeking residence orders in relation to all six children. The application states five eldest children are living with their father. She says that she left H on 22 July 1995 but was only able to take HM with her. She says she has spoken to the other children regularly on the telephone, but H has now stopped contact. She seeks residence orders and would be happy for there to be good contact between the children and their father.

20.10.95 H applies in the City 2 CC for the return of UK to his care, and for interim residence orders relating to the five oldest children. His affidavit states that W had left the matrimonial home in City 2 on 22 July 1995 taking HM with her but leaving the other children behind. He says he has tried to negotiate a reconciliation. On 19 October W had collected UK from school and taken her to City 1. He seeks immediate order for UK's return.

Order by a district judge in the County Court in City 2 granting interim residence orders to H in relation to the five oldest children. Order that UK be returned to H on service of the order. Matter to be reconsidered on 24.10.95 by the Circuit Judge

- 23.10.95 W issues application out of the City 2 CC seeking prohibited steps order + contact. She expresses the fear that the children will be removed from the jurisdiction now that she had made it clear she does not wish to return to H. She says the children are frightened to same effect. She seeks contact prior to residence: she fears H is using children as a weapon to force her to return to him.
- 24.10.95 The Circuit Judge in City 2 directs that the interim residence order made on 20.10.95 by the district judge is to stand until the final hearing or further order: W is to have interim residence of HM; H ordered not to remove the children from the jurisdiction of the court without the leave of the court. H to lodge his and children's passports with his solicitor. Contact between H and HM on alternate Saturdays commencing 28 October – venue to be agreed. W to have interim contact alternate Saturdays commencing 4 November from 11.00 to 4.00 collection and return at the City 2 Bus station. Statements by 7 November: Court Welfare Officer's Report (CWOR) by 16 January 1996: Pre-Trial Review 22 January 2006: final hearing 2.2.96 (1 day).
- 6.11.95 H's statement. Deals with his version of history. Asserts that W had had associations with other men. Separations. W leaves with HM on 21.7.95. H unable to arrange a reconciliation. Says he is coping well, and children doing well. Inappropriate to change schools. Submits that it is in the children's best interests to remain with him.
- 21.11.95 W's statement. Alleges H "incredibly jealous and possessive". Accused her of having affairs; watched her: locked her in the house. Violent – on one occasion she had to have stitches in her mouth. She left in December 1993 – went to a refuge. H tracked her down and blackmailed her. Said he would burn the house down and kill himself and the children. Sobbing and crying. W gave in and returned.
- W left again in April 1995 – away for two weeks. H again threatened to kill himself and promised to reform. W again agreed a fresh start. Lasted only one night. Fresh allegations. W frightened he would beat or kill her.
- July 95 W leaves a third time and comes to City 1 + HM. Escaped from the house when H out with the other children. H has again threatened suicide. When she refused to return he cut off contact with the children. She says H cannot cope on his own – reliant on his family. W has obtained 3 bed accommodation in City 1 suitable for the children. Children's attempts to communicate with her thwarted by H: children terrified to talk to her.
- W has always allowed H to have contact with HM. If H given residence he would not allow W to have contact. She would be "quite happy" to allow "good overnight extended contact" between the children and their father if they lived with her + telephone contact
- 22.11.95 Proceedings in City 1 County Court transferred to City 2

- 15.1.96 CWOR. History refers to W telling CWO that she had become so stressed at one point in the marriage that she had taken an overdose. H's suspicious mind and continuous questioning had broken the marriage. H says W had left him 4x.
- H spoke emotionally about W whom he still professed to love. He is pursuing residence because he thinks she would return if he was successful. Strong cultural reasons for children to stay within the family and with him, rather than with a single parent.
- CWO gained the impression that H did little practically to look after the children except to take them to school. SK (the elder) and brothers' wives share the household duties.
- W acknowledged that separation could affect girls' marriage prospects – even though separation caused by his suspicions turning to violence. What made her come to court was not being allowed contact. H's plan was to move in with his brother and father – W not surprised by this.
- Profiles of each of the children – nothing untoward. They had been shown their mother's statement. Concern that SK the elder taking too large a domestic role would be obviated if H moves in with bother and father.
- CWO appears to think that perhaps SK (the ender) could live with her mother, but that the other four younger children should stay together in the continuing care of their father and his family. CWO hopes staying contact can be arranged – suggestion is alternate weekends.
- 20.1.96 H murders W, HM, SK (the elder) ,SK (the younger) UK.
- 22.1.96 Circuit judge in City 2 order that SSD to be informed of court's involvement. Hearing on 2.2.96 vacated but 15 minutes set aside for SSD to acquaint the court of the whereabouts and arrangements for TM and AM: CWOR to be disclosed to SSD.
- 24.1.96 Social worker applies for PSO in relation to the two surviving children, who are now on the CPR; order sought preventing their removal from the jurisdiction.
- Circuit Judge makes the order and orders a report pursuant to section 37 of the Children Act 1989 in relation to the two surviving children. Transfers case to High Court but released to s 9 circuit judge.
- 2.2.96 Order against members of the family restraining removal from the jurisdiction – to be reconsidered on 26 March.
- 22.2.96 Agency Management Report (by GM, a Social Worker, City 2 Central). This gives a social work chronology. Overall comment: "there is little information on the file. The minimal recording reflects the nature of the contact with the family, which was primarily short term assistance, regarding benefit advice and emergency

accommodation”. 1984-9 primary focus on welfare rights and debt advice. No explicit reference to domestic violence or concerns re children. Concerns about mother’s emotional state – depressed on occasions, threatened suicide and had attempted to take her life on two occasions. Amongst the references, however, is 18.12.93 – following domestic violence W placed in refuge with youngest child. Police visited father – coping with remaining children: H said he had been provoked after catching his wife in a compromising position with a friend. – 24.12.93. W persuaded to return home: case closed – no further action.

On 12.4.95 W complained that H keeping her a prisoner – very frightened of him. Women’s Aid contacted. 24.4.95 W had escaped from home + 4c – W collected and taken to women’s aid – H threatening friends and searched for W with other taxi drivers + threats of violence. However, case was closed with no further action. Summaries of interviews with surviving children.

Remaining entries relate to events after the deaths of W and the children.

- 13.3.96 Section 37 report (also by GM) Children visiting their father in prison. Arrangements with paternal uncle and aunt satisfactory – no change suggested
- 26.3.96 Circuit Judge awards the residence of TM and AM to their paternal uncle and his wife.
- 29.4.96 Circuit Judge releases passports previously retained by the court.

Commentary

- 3.4 In my judgment, no criticism can be made of the court in this case.**
- 3.5 On 3 October 2005, I wrote to the circuit judge who had made the orders for interim residence and contact on 24 October 1995, enclosing my summary of the court file and a copy of 29 *Child Homicides*. The judge asked to see the CWOR, which I forwarded. The response I then received was both full and clear.**
- 3.6 The judge had not been made aware of the tragic events of 20 January 1996, and all the hearings after that date had been taken by a senior colleague now retired. Unsurprisingly, therefore, the judge could not remember the case some 10 years later. The relevant part of the judge’s response was in the following terms: -**

3.6.1. I am unable to recall the case and I was not aware of the tragic events which occurred following my order dated 24.10.95. I note that the then designated family judge (DFJ), dealt with the case two days after the murder. I do not believe she mentioned the

case to me. I feel sure I would have recalled the case if I had been informed of such dreadful circumstances. I have spoken to the district judge who dealt with the case on 20.10.95. He has no knowledge of the case; the subsequent events were not brought to his attention.

3.6.2. (The then DFJ) was one of the most experienced and highly respected family judges. I know that she would have read the file in detail and discussed the case with me if she had any concerns as to my order. She would also have requested a transcript of my judgment and notes of evidence if appropriate. As far as I know, a transcript was not prepared. I am told that the tapes will have been destroyed some years ago; I am therefore unable to obtain a transcript in 2005.

3.6.3. I have made a thorough search for the relevant notebook. I have all my notebooks from 1996 but have only been able to locate some but not all of the earlier books. Unfortunately, I have been unable to find a note of this hearing.

My comments on the case made on the basis of the recorded facts rather than my recollection

3.6.4. I dealt with the case at a preliminary stage, prior to a court welfare report [CAFCASS report] and the filing of full statements.

3.6.5. The case was clearly complex involving six children. Cultural issues would have been very important. I would have ensured that any order I made complied with the welfare checklist, the children's welfare being the prime concern.

3.6.6. There is no suggestion that the five older children aged between 15 and 9 wished to leave their father, their home or their schools. The children were all of an age to express their wishes and these would have been taken into account fully.

3.6.7. On 24.10.95, my concern would have been to ensure the least disruption for the children pending a full enquiry by the CWO. The children's safety would be my first concern. The parents' subsequent statements give conflicting accounts. I would have informed the parents at the interim hearing that I would not prejudge the case or the final outcome without having the full facts.

3.6.8. This is not a case where the court ordered contact despite the mother and children living in a refuge following domestic violence by the father. The children were all living with father save HM aged 2 years. Mother alleges domestic violence and fear of the father in her later statement, however the summary indicates that although mother had applied for a residence order she was more concerned to achieve regular contact to all her

children, her subsequent application was for a contact order and a PSO, which I granted on 24.10.95.

3.6.9. When mother filed her statement on 21 November 1995 she said she would be 'quite happy to allow good overnight extended contact' to father if she was granted a residence order. Although she expressed fear of father in her statement, there is no suggestion that she feared he would harm the children, otherwise she would not have agreed to staying contact.

My Order

3.6.10. In summary, my order ensured that the children were able to have regular contact with their mother and that HM saw his father and brothers and sisters on a regular basis. The contact ensured that all the children were together each weekend either with mother or father.

3.6.11. The additional orders, preventing father from removing the children from the jurisdiction and requiring him to lodge passports with his solicitor, took account of mother's fear that he may leave the jurisdiction with the children.

The Court Welfare Report

3.6.12. After full consideration of the welfare checklist, particularly the children's wishes and feelings, the CWO recorded no concerns as to the children and recommended that they should remain with father save for HM and possibly SM (the elder). The report recommended staying contact on alternate weekends. It is therefore likely that the final order would have been in the same or very similar terms to my interim order.

3.6.13. An enquiry into the circumstances of six children would have involved thorough investigation by a highly experienced and competent CWO. If there had been any indication that the children or mother were at risk from father, I am sure steps would have been taken to protect them. Social services and the court would have been informed.

Social services file

3.6.14. I note that the file contains no explicit reference to domestic violence or concerns about the children between 1984 and 1989.

The events following the murders

3.6.15. The remaining children TM and AM visited their father in prison whilst they were living with their uncle and aunt. I can only presume that the visit was in accordance with their wishes and supported by their carers.

3.6.16. On 26.3.96 (the DFJ) made a residence order to paternal uncle and aunt in respect of TM and AM. She subsequently revoked part of my order by releasing the passports.

In conclusion

3.6.17. When the case was before me, there was nothing to indicate that father would behave as he did. The subsequent events could not be predicted.

3.6.18. This case was reviewed by a very senior judge between January and April 1996, following the detailed report of an experienced court welfare officer. I believe that the DFJ would have raised any concerns with me at that stage if she felt it necessary to do so.

3.6.19. I am always mindful of the safety of children, particularly when making interim orders. On 24.10.05 the full facts were unknown and it was necessary to ensure that directions were given for a final hearing following full investigation. I do not know whether the parents were both legally represented. There is no reference to the matter being brought back to court by either parent or their solicitors with concerns over the safety of contact.

3.7 There is little I can add to the judge's summary, except to say that I agree with it. I do not think that the order which the judge made on 24 October 1995 can be faulted. It was an interim order with a view to a substantive hearing the following February.

3.8 There was nothing to suggest that the children were at risk in the interim contact which the judge ordered: indeed all the children other than HM were living with their father after the mother had left the home. A court welfare officer's report was ordered and written, but before the court could hear the substantive application, the father had killed the mother, and four of the children. As the judge states, I do not think that this outcome was either predictable or preventable.

PART 4: THE CASE OF SZ AND ZZ
(WAFE'S CASE NUMBER 7)

4.1 SZ (a boy) was born on 8 May 1992: ZZ (a girl) was born on 3 August 1993. Their parents were S Z-AZ (H) and ShZ (W)

4.2 For ease of reference, I again repeat the WAFE summary of the case: -

SZ and ZZ (aged 7 and 6) were killed by their father, when he came to (location) to collect them for a contact visit on 18 March 2000. Their mother ShZ was also stabbed to death. ZZ managed to dial 999 and the telephone operator heard him screaming and begging his father not to kill him before his throat was cut.

4.3 The court file in this case is extremely extensive. It begins in 1997, and the proceedings were still ongoing when H murdered W and the two children in March 2000. However, in terms of the events of 18 March 2000, the file is uninformative.

4.4 The case reads like many intractable contact disputes. The principle of contact was never in dispute, and the final documents from W were a spirited defence of an application for her committal to prison, a cross-application by her for a penal notice on the contact order to enforce H's obligations, detailed proposals by her for contact and an affidavit in the ancillary relief proceedings which makes it clear that W was minded to fight hard over items of personal property.

4.5 Apart from occasional references (largely early on) to H's threats to commit suicide and kill W and the children, there is really nothing in the file which gives any inkling that H was going to behave as he did on 18 March 2000. From the case summary in the criminal proceedings comes the fact that H had become aware W had begun a relationship with another man – H had made a note of the man's car registration number in his diary. From the file, however, one is left to speculate why H behaved as he did, and although the court's attitude to the contact dispute may have been somewhat unimaginative (no Family Assistance Order or any other investigation suggested apart from a Court Welfare Officer's report) it does not seem to me that the judges who made the contact orders – largely by consent – could have had any indication or idea that H was going to kill W and the children.

4.6 In these circumstances, I do not see any point in summarising the enormous file in detail. The following are, however, the relevant entries.

4.7 **THE COURT FILE**

- 6.1.97 H issues application for a defined contact order. W has left H and is living with the children in her parents' home: also living there are W's two sisters and brother. H says W is not giving him reasonable contact; and refuses to allow staying contact. He asserts a risk of significant harm: ZZ said to be assaulted by his uncle. Children scared by a face mask. Seeks staying contact every weekend and extended contact during the holidays + telephone contact during the week. – alternatively residence in his favour: children at risk and house overcrowded
- 22.1.97 W files petition for divorce (MCA 1973, section 1(2)(b)). Detailed allegations of violence and controlling behaviour (not letting her out of the house on her own). Also says that H on a number of occasion threatened to kill himself, W and the children and in one instance left the gas on unlit in the property.
- 5.2.97 H's statement in support of contact application.
- 19.2.97 W's statement in answer. Asserts H "very possessive and jealous". Alleges frequent abusive language and physical assaults, sometimes when the children were present. Children traumatised and now wary. Says H had had regular contact - virtually every week on Sunday – frequently voiced complaints about time-keeping, feeding, routines, he was using children to attempt to achieve a reconciliation – joins issue with H's assertions
- 27.3.97 First CWOR. Competent report. Reports that neither family constitutes a danger to the children. Recommends residence to M and detailed provisions for contact with H, including alternate w/end staying contact from August, festivals to be shared and children to spend "part of school holidays + telephone calls midweek
- 1.5.97 Order follows CWOR's recommendations and is by consent. W's first affidavit in ancillary relief proceedings
- 12.5.97 H's Answer in the divorce proceedings. Marriage not IBD. No truth in any of the allegations: total lies at the behest of W's mother and sister. Statement attached to Answer is the same - complete and categorical denial
- 16.9.97 H's affidavit of means in AR proceedings
- 24.9.97 A district judge's order for a further CWOR relating to contact problems, H issues application seeking variation
- 8.10.97 Affidavit of H's brother in Ancillary Relief proceedings
- 27.10.97 F's second statement on issue of contact: complaint that W had taken ZZ to a psychologist without consulting or informing him. Complains about SZ being called by a different name (abbreviation)

4.11.97	H given permission to file Answer out of time
12.11.97	Further CWOR. Deplores lack of progress. Says both parents are either directly or indirectly using children as a conduit for the continuing difficulties in their own relationship. Detailed recommendations for contact
15.11.97	W's statement in relation to contact
17.12.97	Order for interim contact
19.1.98	H issues notice seeking a PSO preventing W from taking children out of the jurisdiction on holiday
30.1.98	PSO made by a District Judge (DJ)
22.5.98	Detailed contact order made by consent. (Circuit Judge). Undertakings followed by order for staying contact on alternate weekends + telephone contact + holiday contact at Christmas, Easter and during the school, summer holidays birthdays, family events, half Eid.
24.8.98	H seeks assessment by a child psychiatrist because of medical report from SZ's GP + penal notice – gives list of alleged breaches of contact order
10.9.98	W applies for order that H be debarred from defending: H resists
16.9.98	DJ directs divorce petition to be heard on 26 October before a circuit judge: W issues application seeking variation of contact order to take into account medical report on SZ
24.9.98	H withdraws application for psychiatric report: parties proposed cross-applications to be heard on 26.10.98
30.9.98	Circuit judge: directs that the divorce petition is to be heard on 26.10.98: W swears affidavit in support. Verifies incidents of abuse on oath
1.10.88	Circuit judge again directs the hearing of divorce petition fixed for 26 October 1998
5.10.98	Further statement from H: alleges various breaches of the order and seeks a penal notice
8.10.98	Application to adjourn divorce proceedings refused (a circuit judge)
13.10.98	H's application to adjourn refused. Draft affidavit of W confirming allegations
13.10.98	DJ's order: Divorce proceedings to go ahead on 26.10.98

- 14.10.98 W's statement. Revives allegations of physical abuse during marriage: "H has never physically harmed our children but he has threatened to kill me, our children and himself, threatening to leave the gas on without igniting it during the evening". Deals with contact difficulties, notably SZ's reluctance to go and her consequential ill health. She then deals in detail with H's affidavit, asserting that she had never denied H contact
- 5.11.98 Further consent order relating to contact. This does not, however, appear to have been drawn up until 16 February 1999. Previous undertakings repeated: W undertakes also to notify H of any appointment by SZ with a paediatrician or other medical expert to enable H to attend: to ensure unsupervised telephone contact: medical certificate if unable to attend contact; use her best endeavours to ensure members of her family not present when H comes to collect and return children. Others contact on identified dates (described as "interim" contact in November and thereafter. Hearing on 8.2.99 – half day – reserved to Circuit Judge
- 5.2.99 Further statement by H. Seeks penal notice
- 18.2.99 W's N/A seeking permission to take the children out of the jurisdiction for a holiday
- 22.2.99 W's statement in answer and in support of application for a holiday – detailed refutation of H's statement
- 1.3.99 W given permission to take the children abroad for a holiday between 18.3.99 and 12.4.99. H undertakes not to speak to the children about a reconciliation: W undertakes not to subject children to any further medical or psychiatric interviews other than with doctors they are currently seeking without H's consent or the leave of the court. Contact in a three weekly pattern (set out in detail): half school holidays (two weeks in Summer 1999) telephone contact: particulars of collection and return. Case not reserved to Circuit Judge
- 24.3.99 Court of its own motion agrees to reconsider the order: judge did not have W's counsel's written submissions
- 9.5.99 Letter from SZ complaining about F's behaviour: said by H to be contrived by W
- 12.5.99 Revised contact order
- 31.8.99 Application by H: he complains of further breaches and seeks a penal notice + residence
- 22.10.99 Different Circuit Judge, Further interim order for contact: penal notice attached. Matter reserved to judge to be listed on 31.1.00 (subsequently varied to directions to be heard at Slough with one hour allowed

20.12.99	Pre Trial Review in AR to be heard on 5.1.00
11.1.00	H swears affidavit in support of application to commit: returnable (?) on 14.1.00
13.1.00	Affidavit of service
14.1.00	Application adjourned to first open date after 28 days: directions – all applications to be heard together
21.1.00	W makes cross application for penal notice due to H's alleged breaches of the contact order
14.2.0	Directions in AR proceedings (DJ)
28.2.00	W's statement – a vigorous defence and counter-attack. She also sets out in details her proposals for on-going contact
6.3.00	Equally vigorous affidavit of means in the ancillary relief proceedings dealing in particular in details with items of personal property
Nd	Notice of hearing on 15 March 2000 – no record of what happened at that hearing on the file
18.3.00	H murders W and children.

4.8 The file does not reveal what happened on 15 March 2000, nor does it contain a copy of the decree nisi of divorce. The Case Summary for the criminal proceedings, however, states that : “Nothing was concluded” at the hearing on 15 March 2000. It also records that the couple “were eventually formally divorced”.

4.9 The criminal Case Summary, with which I have been provided, also refers to the contact arrangements and goes into detail as to how these took place. It refers to “strict rules in relation to the collection and dropping off of the children”. The detail in the Case Summary is much greater than that contained in the court orders, notably the suggestion that W was not to look into H's face.

4.10 The Case Summary in the criminal proceedings also suggests that H had become aware of W's affair with another man, and that the motive for the murders was jealousy.

Discussion and analysis

- 4.11** As I indicated at the outset, it may well be thought that the court's handling of the contact dispute was unimaginative. As with the case of IB and her children, however, there is nothing in the file to indicate that the father was going to behave as he did on 18 March 2000. The proceedings were certainly ongoing, but W had not only put in her vigorous defence and counter-attack in relation to the committal proceedings, she had throughout been supportive of contact, and as late as 28 February 2000 put forward her own terms for ongoing contact.
- 4.12** Whilst, therefore, there were allegations and threats of violence in the background, I do not think that the court should not have made the contact orders it did, nor was it reasonably foreseeable that the husband would behave as he did. If his motive was indeed jealousy, that is something about which the court was ignorant.
- 4.13** The circuit judges who handled the contact applications have either retired or moved on. I do not, accordingly, think that there are any particular lessons to be learned from this case. Whilst a more proactive approach to contact might have resolved some issues between the parents, it would have been unlikely to have prevented what was, plainly, a wholly unforeseen result.
- 4.14** I am concerned that there may have been arrangements for the handovers the detail of which was not known to the court – they certainly do not feature in the evidence. The court, however, can only act on what it knows.
- 4.15** I do not, for all these reasons, think that the court can be criticised in this case.

PART 5: THE CASES OF NS AND JS
WAFE'S CASE NUMBER 12)

5.1 NS (a girl) was born on 12 March 1989, JS (a boy) was born on 17 April 1990. Their mother (W) was SJS and their father (H) was SS. Both parents were professional people. H was a medical doctor and W was a research sister.

5.2 The WAFE summary reads: -

NS and JS (aged 4 and 3) were killed by their father during a contact visit on 6th February 1994 in (location). Their mother, SH, had been persuaded by family court professionals not to oppose contact, although she was very worried about her husband's mental health.

5.3 This case is more complex from a judicial perspective than the two cases previously discussed. I will, however, reserve further comment until I have set out the relevant portions of the court file.

5.4 The Court file

19.8.93 Notice of application by W seeking non-molestation orders in relation to herself and the children, + power of arrest +a residence order

20.8.93 Residence order application relates parties' separation and H's threats on more than one occasion prior to the separation to take the children to India

W's statement in support. Alleges violence by H during the latter part of the marriage. Details a number of incidents from June 1992 onwards, including a suggestion that H had sexual intercourse with her whilst she was asleep, as a result of which she conceived and then underwent a termination; trapping her against a wall with the kitchen table; pouring a can of pepsicola over her head in the children's presence; attacking her when she was in bed holding JS (black eye, bleeding nose, bruising over the temple and possible broken cheek bone) then placing his hands around her throat and telling her to shut up or he would really kill her; a threat to break her legs; a threat to "smash your face in" in a restaurant with the children present; telling her that he wanted her to leave but that if she tried to take the children he would certainly kill her; threats to remove the children out of the country. He also threatened to use his supply of insulin and hypodermic needles to administer a fatal overdose to himself. Finally on 19 August 1993, an incident at W's parents' house: when W confirmed she was leaving him he said that she had better watch out for a suicide note. Initial attempts to call the police thwarted by H pulling out phone sockets. Police eventually arrived.

20.8.93 Non-molestation order + power of arrest made without notice + interim residence. Case to be reconsidered in 7 days (the Circuit Judge)

- 23.8.93 H served
- 26.8.97 H's answer. Does not resist residence to W but wants contact
- Injunction continued until 9 September 1993 (a different circuit judge): proceedings adjourned 14 days to enable H to obtain representation
- 9.9.93 Order that H pay W (by consent) £150 per month per child.
- H to surrender children's birth certificates to W: CWO to report as to contact within 12 weeks: statements within 14 days: hearing 10 December (one half day set aside) CWO to attend hearing
- Interim residence to W: H to have reasonable contact
- H gives undertaking against assault and molestation
- 14.9.93 W issues divorce petition (MCA 1973 s 1(2)(b) dated 27 August 1993). Statement of arrangements says that H not seeing the children at present but negotiations will be made for H to have supervised contact with the children
- 27.9.93 H issues application for contact. He seeks reasonable contact to include staying contact at the former MH in which he continues to reside. He asserts that he has participated equally in the children's care and had been fully responsible for their upbringing
- 28.11.93 W's statement. Does not object to contact in principles provided the amount is reasonable and occurs in circumstances of which she approves. She says: -
- (H) is currently on sick leave from his GP practice due to his mental state. I believe he is suffering from depression and he has in fact expressed some suicidal tendencies. Ideally at this stage because of H's past behaviour and present depression, I would be happiest with some form of supervised contact occurring perhaps once a week at weekends for something like three hours in the morning. I am of course willing to discuss this, and once H is proved to be mentally stable I am prepared to consider increased contact.
- W then sets out allegations of violence and inappropriate behaviour (including smoking) and threats to disobey court orders and to disappear with the children. She expresses her anxiety about the children's safety on contact and says she cannot trust him. . With reference to H's violence she says: "I do not believe he would hurt the children on purpose".

6.12.93 CWOR reports. (My comment: I do not find the tone of this report appropriate). Example is paragraph 2: -

Although the dispute before the court relates to contact and at one time may also have related to residence, neither of these aspects are the real issues. The problems arise from the reasons for the marriage ending and for the confusions and heightened emotions of both parties. I have spent considerable time with each parent and both have reached the stage of being honest, not only with myself but with themselves and each other. By the week ending 12 November I felt an agreement had been reached, but unfortunately events over the 12th and 13th November resulted in the tenuous agreement being forgotten. Unfortunately both parties are again giving totally conflicting stories as to specific incidents.

Some points from the report. CWO reports H as having “admitted to be violent and feels very guilty that through his own actions he has caused both his wife and children and himself tremendous grief and pain. He is the throes of real grief at the end of the marriage and the loss of his children. As a result he had, by mid November, becomes depressed and desolate and had given up his new GP partnership now, by December, he is beginning to realise that many people were very concerned at his state of mind and feared that he might contemplate suicide”. H “refutes that such action was ever possible or contemplated by him”. Said to appear far calmer and rational when seen by the CWO on 3 December although still “distraught” at the loss of W and what he believes is her irrational and confusing behaviour – unlikely “in his opinion” to commit suicide

CWO says he has no doubt that H made “inappropriate comments and by his behaviour induced real fears. I certainly considered him to be depressed and possibly suicidal”.

CWO appears to have identified 5 choices for W, one of which was “to end the marriage, but to remain close friends and good joint parents”. Both agreed to attend Relate. W’s case was that once H had “begun to sort out his own emotional stability” then there would be no reason why he should not have regular overnight contact with the children on alternate weekends.

There was plainly an issue over what happened after 8 November. However, on 12 November “it is clear that during this weekend he was again distraught and at one stage was assisted by the police and collected by his sister and brother in law and taken to London for a short period.

CWO takes the view that W exaggerates the fear she has of him abducting the children. He comments

Because H is so emotionally upset he has pestered his wife and each time she had responded in a positive or normal way he becomes elated, then when this hoped for positive outcome fails to materialise into his expectations, he becomes even more depressed and acts inappropriately which results in his wife also becoming more inflexible and anxious and she then questions “are the children safe with him?”

On 3 December CWO saw H for the first time being “confident and realistic” He describes H as “still obsessed with his wife and wants her back”. It is said that “he has cooperated in seeing any psychiatrist or counsellor that has been suggested to him” (?)

W’s position was consistently that she would want the children to have a positive relationship and to spend alternate weekends with H “once she is assured there is no danger from (his) behaviour”. CWO comments: “If her fears are groundless there is no issue, but I am concerned that one or other of the parties was, on 3 December, being less than economical with the truth in the information they were giving me.

CWO suggests that one way of helping to inculcate an element of trust would be for the amount of contact to be slowly increased with the children spending 4 or 5 hours with their father prior to any sudden move for the children to spend a whole weekend with him.

9.12.93 H gives his version of events. Very much an old fashioned confession and avoidance. He specifically denies that he is suffering from depression or that he has expressed suicidal tendencies. He accepts “anxiety” He also asserts that he and W had sexual intercourse on 8 November, but that thereafter her attitude had dramatically changed.

10.12.93 Hearing before first circuit judge. Consent order. Residence to W:. Contact to H as follows: -

- (a) visiting contact on one occasion during the weekends of 11-12 December and 17-18 December and on Wednesday 22 December – each of 5 hours duration
- (b) staying contact from 10.00am on 28 December to 4.00pm on 29 December for the purpose of visiting paternal grandparents in London
- (c) staying contact from Saturday 8 January on alternate weekends between 10.00am on Saturdays to 4.00pm on Sundays
- (d) such further weekly contact as may be agreed

This is plainly a consent order. We have a transcript which the judge directed should be obtained, and provided to W. Counsel for W simply reads out what had been agreed. H's counsel, asked to comment, said he had no observations. The judge asked the CWO whether there was anything he wanted to add. He said "no" and that he was "just glad that they have managed to reach what I think is a very sensible consensus and agreement". The judge made a number of comments to the CWO, including this exchange: -

Judge: -

..... For my part I see nothing in (W's) affidavits to indicate that, provided he is in a condition where he's emotionally capable of it, H can't care for the children during staying access visits perfectly satisfactorily

CWO

I have no doubts about that. I have been worried, as I indicated in the report. When I visited him last week I found him much more stable, and I've just told him that while we were waiting to come in.

Judge

Yes

CWO

And I said to both counsel that I don't think there will be problems in the future once (W) gets the element of trust which is necessary

The CWO then expresses the view that although there is animosity in the statements, it is different when the parties are talked to. The judge then says: "when family breakdowns reach this stage there's very often a lot of emotional overlay and emotional disturbance and difficulty which in due course settles down and allows both parents to play their full part". This leads the CWO to suggest that the parties might still wish to go to Relate, to which the judge agrees.

- 6.2.94 H kills both children and commits suicide.
- 13.6.97 Pillarbox Productions write to the Circuit Judge, inviting him to participate in a programme on the subject of domestic violence and child contact. Judge thereby learns for the first time what has happened: he expresses his shock and sadness and asks that his sentiments are passed on to W.
- 1.7.97 Judge writes to M. Expresses sympathy and explains the court process where agreements are reached.
- Judge agrees to participate in programme to talk in general terms unrelated to the specific case.

9.7.97 Judge agrees to meet W but not on camera

17.7.97 Judge interviewed (transcript available)

The judge's response

5.5 The judge helpfully sent me the transcript of the hearing on 10 December 1993 (part of which I have already recited) and the transcript of his interview with Pillarbox productions on 17 July 1997. As to the former, it is clear that the judge had read the papers, including the parties' statements. Although the CWO did not formally give evidence, it is plain that the judge asked for his views on the consent order. As a result of the answers he received, the judge was plainly satisfied that the agreed order was in the interests of the children. The father's subsequent murder of the children and his suicide were not known to the judge until some three years later, and in my view were not reasonably foreseeable by the judge on the material available to him.

5.6 I applaud the judge's decision both to write to, and to agree to meet, the children's mother. I also applaud his decision to take part in the television programme. In both his letter to the mother, and in the television interview, the judge gives his views on the attitude of the court to consent orders. It is a point on which he is pressed by the interviewer. What he says is, perhaps, best encapsulated in the following exchanges with the television interviewer: -

Judge: -

The answer to the question can I over-rule an agreement made by the parties in practical terms is no, and let me explain why. Parents of children have what the law calls parental responsibility. That's laid down in the Children Act 1989 which governs children's law. It's for the parents to make decisions about the children, and the scheme of children's law is that the court should generally only intervene when there is an issue to be resolved.

If the court believes that the agreement is contrary to the interests of the children, I do believe that the court has the duty to express that opinion. It may express the opinion by asking the barristers or solicitors, or the parents themselves if they are unrepresented, to explain why it is thought that the agreement is one which is in the children's interests.

But at the end of that the court's only direct power is to refuse to make the agreed order.

Interviewer:

But you can do that?

Judge:

You can refuse to make the agreed order.

Judge

It is possible to do that, but, of course, the parents having reached an agreement, there is nothing whatever to prevent them putting the agreement into effect without the order of the court.

Interviewer:

Do you ever over-rule? Do you ever decide that it's an unwise agreement that's been reached and say: "Well, on the basis of what I know I don't think you should go ahead on these particular arrangements"?

Judge:

It's very rare. What I sometimes do is to ask whether, for example, it is appropriate to re-introduce contact as early as has been suggested, or in the form that has been suggested. That sometimes results in further discussion and an alteration in the terms of the agreement. But in my experience, that is the furthest it goes.

Interviewer

Do you worry though that pressures of time, pressures of money, mean that sometimes agreements are reached when the parties are under a bit of pressure to reach those agreements, and they don't actually represent what they really like and really think?

Judge

One is always very concerned if one were to think that there were such a possibility. Sometimes, as in the examples I've quoted to you, I have the feeling that perhaps the structure of the agreement hasn't been adequately thought out. But it is very rare indeed. Indeed, I can't think of an instance in which I have felt, from the judge's point of view, undue pressure has been placed on the parties.

There are possible sources of pressure. One source of pressure may be strong advice from the barrister. A barrister has a duty to give strong advice if he or she feels it to be correct, but of course the result of that is a parent can be made to feel under pressure, and it's important that at the end of the case it is the client, that is to say the parent's decision that is followed.....

Discussion

- 5.7** These exchanges between the judge and the television interviewer seem to me to identify a key theme both in this case, and the two which follow. What are the responsibilities of the court when the parties, both represented by competent lawyers, come into court and tell the judge that they have reached an agreement about contact in a case in which there has been domestic violence, or in which domestic violence has been alleged?
- 5.8** In the instant case, I do not think that the judge can be criticised for making the order. He was dealing with two professional parents. Both were represented. The mother was not opposed to contact in principle, and the judge had the advice of the CWO, whom he questioned on his report and on the father's current mental state. Whilst the CWO has no medical or psychiatric expertise, the judge was entitled to rely on the reassurances given by the CWO as to the father's state of mind and consequential capacity to care for the children on contact.
- 5.9** In my judgment, therefore, whilst this case raises the question of the judge's role in cases where domestic violence is an issue and where a consent order is sought, the factors which I have identified in paragraph 5.8 render it reasonable for the judge to have made a consent order for contact.

PART 6: THE CASE OF TB
(WAFE'S CASE NUMBER 5)

6.1 This case, and the case which follows in Part 7, are, in my judgment, the most worrying. I therefore propose to set out the contents of the court file in some detail.

6.2 There were three children involved in this case, all boys They were

- (1) PB, born on 9 April 1987**
- (2) TB, born on 24 September 1988 and**
- (3) JB born on 14 June 1990**

6.3 The Women's Aid summary states: -

TB was strangled by his father during a contact visit in N-W on 28 December 2000. During his trial (for murder) it emerged that Mr. B had also intended to kill his other two sons to take revenge on his wife for leaving him

6.4 The Court File

17.5.00 Mrs. B (living in the South-East) issues an application in a county court in the South-East of England (for present purposes the S-E County Court) for orders under section 33 of the Family Law Act 1986 (disclosure of the children's whereabouts) in relation to PB and JB, and residence and prohibited steps orders in relation to all three children. The children, she says, had been living with and had been cared for by her since 11 April 2000. Mr. B had taken PB and JB on holiday earlier in May and was refusing both to return them and to disclose their address.

On the same day a District Judge made an order requiring the Housing Department of a Borough Council in the North West of England and the Benefits Agency forthwith to give all the information they had about the whereabouts of Mr. B and PB and JB.

The District Judge also made ex parte interim residence orders in Mrs. B's favour in relation to all three children and ordered Mr. B to return PB and JB to her care forthwith upon service on him of the order.

22.5.00 Mr B served with the order of 17 May 2000 at 10.15am. He issues an application out of the S-E County Court (dated 19 May 2000) in which he opposes the making of interim residence orders and asserts that: (1) both PB and JB were adamant that they wanted to live with him and would run away if forced to return their mother's care; (2) Mrs. B had assaulted them on previous occasions; and (3) Mrs B regularly took cannabis and amphetamines. He also asserts his belief that Mrs B "would have grossly misrepresented the position to the court in order to obtain an ex parte residence order".

23.5.00

A process server swears an affidavit in N-W detailing service on Mr. B at the offices of his solicitor on 22 May 2000.

Mrs. B issues her application under FLA 1986, section 34 and makes her first statement. She records the date of the marriage and the births of the three children (paragraph 1). In paragraph 2 of that statement she says: -

I consider that my husband is a very aggressive and violent man. He has subject me (sic) to numerous attacks. I am very frightened of the Respondent. There has been so much violence over the years that I cannot even particularise the events and dates when the violence took place. I believe the police have been called to my home in excess of 20 times as a result of this domestic violence and I have sustained injuries over the years including black eyes, kicks, bruises and scars around my face which he has made with his nails.

Mrs. B states that the family used to live in council property in the Sough West. However, in 1999 Mr. B “ran up extensive debts and was in fear of his safety”. At his suggestion, the family moved to the North West, where they were temporarily housed in a hostel. The children were not going to school. Mrs B says that the violence continued in the North West. She says she sought help but “was told this might jeopardise their application for housing”. Mrs. B said that as a result she returned to the S-E area with the children on 11 April 2000. (paragraphs 3 to 5)

Mrs. B says that at the end of April Mr. B asked to see the children and she agreed. He stayed overnight, sleeping on the couch. Whilst staying at her house he took an overdose and was found by the children the next morning. This was the second overdose he had taken since the separation. He was admitted to hospital. He wrote Mrs. B a letter telling her that by the time she got it, he would be dead. She says that Mr. B knows she cannot read and that one of the children would have had to read the letter to her. (paragraph 6)

Mrs B says that on 9 May 2000, Mr. B asked if he could have the boys for a week’s holiday in the N-W. Although she had never been parted from the children she “did feel it right that they should continue to have contact with their father”. On reflection she realised that it was “very silly” of her to have allowed them to go away with him bearing in mind his attempted suicides (paragraph 7) TB, however, had not wanted to go, and remained with Mrs. B (paragraph 11). Mrs. B had been very upset when PB and JB went to N-W, as were the boys, but they had told her they were only going for a week and “not to be too worried” (paragraph 10)

Mrs B says she gave Mr. B money for the children’s fares and for food (paragraph 8). On 11 May 2000 she saw her solicitors and gave them

instructions to start divorce proceedings pursuant to MCA 1873 section 1(2)(b) (paragraph 9)

Whilst the boys were with Mr B he telephoned her on his mobile phone. She informed him that she had been to solicitors and was going to issue divorce proceedings. His response was that he was not going to return the children. (paragraph 10)

Mrs. B stated her belief that Mr. B had been running her down in front of the two boys, and that they blamed her because Mr. B had told them she was taking him to court. (paragraph 11)

On 16 May Mr. B telephoned Mrs. B on her mobile phone whilst she was with her solicitors. He refused to give his address (paragraph 12) Following the orders made on 17 May 2000, solicitors instructed by Mr. B informed Mrs. B's solicitors that Mr. B would be returning the children on 20 May 2000 (a Saturday) (paragraph 17). He did not, however, do so. He continued to telephone Mrs. B over the weekend informing her that he had had JB christened on 21 May (paragraph 22). Mrs. B felt that Mr B was pressuring her to go to the N-W she says, however, that she was "too frightened" to go to the N-W and did not want to come into direct contact with Mr. B again. She was becoming increasingly upset by his telephone calls (paragraph 22).

Mrs. B accordingly sought enforcement of the children's return by means of a recovery order under section 34 FLA 1986

A Circuit Judge makes orders under FLA 1986 section 34 relating to PB and JB

- 24.5.00 S-E County Court gives notice of a directions appointment on 2 June 2000 at 10.00 with a time estimate of one hour
- 24.5.00 Children returned by the police (Mrs. B's second statement of 8 June 2000, paragraph 8). She says Mr. B had telephoned her earlier in the day falsely stating that he was in the S-E with the children and producing PB to state the same lie over the telephone.
- 25.5.00 Notice of acting and CLS funding on behalf of Mrs. B
- Mrs B in her second statement (paragraph 9) records that the boys were very difficult. JB was destructive and aggressive. JB said the only reason he was with her was that he had nowhere else to go.
- 26.05.00 Mr. B issues an application in form C2 in the N-W County Court seeking ex parte residence orders in relation to all three children, expressing his concern for the safety of the children. He says the children have telephoned him "stating that they are being assaulted by their mother". He asserts that Mrs. B has "grossly misrepresented the position to the court" and that his children "are in grave danger. He claims that Mrs. B had told him on the telephone that "she might have

to put the children into care”. He also says that he has been in contact with S-E Social Services

A District Judge, sitting in the N-W County Court refuses Mr. B’s application for interim residence orders and transfers the case to the S-E County Court with a direction that it be listed as soon as possible.

31.5.00 Mr. B’s solicitors confirm service of the proceedings

1.6.00 Mr. B’s solicitors give Notice of emergency legal aid

2.6.00 A Circuit Judge in the S-E County Court suspends the district judge’s order of 17 May 2000 in so far as it relates to PB and JB. She orders a report under CA 1989 section 37 on the children’s circumstances from local SSD) (if need be enlisting the aid of the N-W SSD). The report to be filed by 11 August 2000. In the interim S-E SSD are to make available a report either orally or in writing on the circumstances of PB and JB to include a report of their wishes and feelings as to residence and contact for a hearing on 12 June 2000 at 10.00am

The judge also gives directions for filing interim statements and adjourns Mr. B’s application of 24 May 2000 to 12 June 2000. She also gives Mrs. B permission to serve a petition on Mr. B that day (forthwith) and within the precincts of the court.

9.6.00 Mrs. B’s second statement. In it, she asserts in paragraphs 11 and 12: -

“11. All three of our children have witnessed extensive domestic violence. They have become used to seeing their father beat me up and on occasions have witnessed me trying to defend myself against him. The final straw for me happened whilst we were living in the N-W when Mr. B was in the process of beating me up and I grabbed a small knife and cut his hand. I realised then that the violence was getting out of hand and could not go on. It is for this reason that I returned to live in the S-E area with my children.

“12. I began to feel that JB was copying his father’s aggressive behaviour in this treatment towards me. It was as if their father had managed to brainwash them in the few weeks that he had them alone in the N-W.”

Mrs. B explains the difficulties she had with the boys’ behaviour. She says that JB and PB ganged up on TB and that there was a really nasty fight. As a consequence she felt that she had to speak to Mr. B about the boys as their behaviour couldn’t continue. So, on 30 May 2000 she used her benefit money to take the boys up to N-W on the coach. She stayed at Mr. B’s address. Mr. B sought a reconciliation. She refused. He discovered that she had been offered accommodation in the S-E. She says she had insufficient money to return with the boys to the S-E and so, “reluctantly agreed” to leave them in the N-W (paragraph 21). She returned to the S-E on 1 June 2000.

In paragraphs 27 to 30 of the statement she says: -

27. The Respondent has been violent towards the children in the past, especially TB. I believe that the referral was made to the Social Services about an incident where Mr. B hit TB. I recall a social worker coming out but at the time Br. B was incredibly aggressive towards the social worker and they simply didn't pursue it.

28. Mr. B makes a habit of being aggressive towards people. Even when builders from the council would come round to do repairs he would be aggressive to them and see them off.

29. The police have been involved on numerous occasions being called to the property due to the domestic violence. This sort of behaviour must rub off on the children and I believe that all three of our children now need to have some sort of counselling.

30. I recall on one occasion when the respondent beat me up. I ran off and sat in a cemetery for at last an hour during the night. Mr. B woke the boys up, dragged them from their beds and went searching for me. I had nowhere else to go. I do not have any family in this area, and very few friends. I have throughout my marriage felt isolated, alone and frightened.

Mrs. B admits to smoking cannabis in the past, but says she no longer does so. She denies taking amphetamines. She says she had in the past taken anti-depressants "but am doing my best not to have to go back to the doctor for depression again". She attributes her depression to the domestic violence. (paragraph 30). She accuses Mr. B of smoking cannabis and says that TB told her Mr. B had given him some cannabis on 2 June 2000 when he saw some police officers approaching. (paragraph 32). She says Mr. B has moved again. She expresses the fear that she will lose touch with the children. She had been to a women's refuge and been offered counselling (paragraph 33)

She recognises that JB and PB will probably say that they wish to live with their father. She does not believe they would be safe with their father in the N-W. Mr B is pursuing residence in order to get himself housing and to punish Mrs. B for refusing to reconcile with him (paragraph 36). She therefore seeks residence orders for all three children.

9.6.00

Mr. B's first statement. He says he has been unable to work for approximately the last ten years. He says Mrs. B "has had a drug problem since we met". She regularly takes amphetamines and cannabis. He admits occasionally taking cannabis in the past, but says he has not done so for approximately five months. He says they reason they went to the N-W in November 1999 was because they owed

money to a drug dealer. He says Mrs. B promised to make a fresh start in the N-W, but drugs were more readily available and she soon became more heavily involved in drugs. He attributes the breakdown of the marriage to this.

As to violence he says: "I accept I have slapped her but only in self-defence". He still loves Mrs. B but does not feel able to trust her any more.

He admits to taking two overdoses of drugs when visiting the boys on contact in April 2000. He has now been prescribed anti-depressants and referred to a counsellor.

He says that on 6 May JB and PB said they wanted to return to N-W to live with him. TB had decided to stay with his mother. He denies that they came for a week's holiday. It was a permanent arrangement.

PB and JB were very upset when he told them Mrs. B had obtained an order and that they were going to have to return to S-E. PB said he would run away, and JB said he would commit suicide. On the days after their return the boys telephoned demanding that he travel to S-E to collect them. PB said Mrs. B had hit him. He went to the N-W County Court and applied on his own to the District Judge.

On 30 May, Mrs. B came to the N-W with the children. She said she wanted them to stay with Mr. B. When they returned to S-E for the hearing on 2 June 2000 TB said he wanted to stay with his mother and Mrs. B said she did not want to go to court. She gave him a note she wanted him to hand to the judge.

On 2 June Mr. B had telephoned Mrs. B from court and told her she had to attend. TB told him that his mother had asked him to carry some cannabis in his pocket. Mr. B says he showed the packet to his barrister. He returned to the N-W after the hearing.

He wants all three children living with him. Mrs. B cannot cope. He expresses concern for TB. He expresses his willingness to cooperate with Social Services and would like TB to be interviewed on his own as soon as possible "as I believe he will admit he has been pressurised by the Applicant to stay with her. I know (TB) will miss his brothers, who should be together as a family".

12.6.00 A Circuit Judge in the S-E County Court vacates the hearing and re-fixes it for 16 June 2000 at 9.30 (time estimate one hour)

15.6.00 Report by a social worker with the N-W Borough Council under CA 1989 section 37 in relation to JB and PB.

Report based on one meeting with Mr. B, PB and JB in an office of SSD. The plan had originally been to visit Mr. B and the children at home. "Unfortunately, Mr. B would not allow two social workers to visit, so the visit was cancelled".

Records that the N-W SSD were involved in 1990 (does not give the reason). Records that in 1999 the family returned to the N-W . Referral made expressing concern about boy's welfare. "The family had presented as homeless in the N-W, stating that they were fleeing violence from drug dealers in the S-E".

The report continues:

The family was declared intentionally homeless, and there were problems placing PB at school. I have liaised with the education department, who feel that school were reluctant (sic) to place PB in school at that time because of Mr. B's previous confrontational behaviour towards school staff. Although a school place had been located for JB, his attendance was very poor. This led to some concerns about the welfare of the children.

She records her understanding that Mr. B intends to remain in the N-W. He has told her that "he suffers from depression and is receiving input from the Community Psychiatric Services at present.

She has spoken to the two boys who told her they like living in the N-W and are well cared for by their father . They had many friends and school places had been found for them. They would like arrangements to be made so that they can have regular contact with their mother and TB

The Department will not be seeking any orders in respect of the children at this point

16.6.00 A Circuit Judge sets the case down for hearing on 12 September in the S-E, with a time estimate of one day. She specifies telephone contact each way (Mr. B with TB and the mother with PB and JB). She orders a week's staying contact for PB and JB with Mrs. B in S-E from 24 to 31 July and for TB to have a week with his father from 14 to 21 August. Other directions given, including for the social worker to attend the hearing.

(Both parties represented by counsel at this hearing)

Mr. B gives an undertaking not to harass or contact Mrs. B

16.8.00 Further section 37 report from the N-W. Relates recent history. Mr. B plainly labile "(his) mood could swing from anger outbursts to outbursts of crying". Records interview with F and with the children. A number of worrying factors – not least H's threats to have the two boys taken into care, but report concludes that LA does not consider it necessary to seek any court orders in the relation to the two children.

18.8.00 Mrs B makes her third statement in support of an application to terminate TB's period of staying contact with his father in the N-W. She records PB and JB being delivered for contact PB, she says, became distressed and wanted to speak to a social worker. PB told his mother he did not want to go back to the N-W. PB spoke to the social worker.

Mrs. B says that Mr. B was "extremely unpleasant" to TB over the telephone, telling him that Mrs. B had been raped by her brother when she was seven; that she had had an illegitimate child whose whereabouts he knew.

Mrs B says that TB was reluctant to go to N-W. She says: -

He did want to see PB and JB but her was growing concerned about his father's attitude towards him. His father was complaining apparently over the phone that TB was being cheeky to him and Mr. B said that he didn't want him up there and if was rude to him (sic) whilst in N-W he would hit him.

Mrs B nonetheless took TB to the N-W for the August contact. She continues:

Yesterday the 17th August TB telephoned me at about 2 o'clock and he was very upset. He was crying on the telephone. He said his father had hit him, was being unkind to him and was bullying him and as a result had forced TB to give Mr. B my telephone number. TB asked me to go and collect him.

Mrs. B says TB telephoned again on 17th August and again on 18th August repeating the same request. Mrs. B thus sought an order terminating TB's contact and permitting her to collect TB

18.8.00 Same Circuit Judge as made the order on 16.6.00 makes an order that Mr. B deliver up TB to Mrs. B "forthwith upon service of this order". Staying contact order in relation to TB suspended..

18.8.00 The social worker on the S-E's duty and assessment team (Mr. F) reports under section 37. (Somebody has written on the front sheet of this document, in pencil DO NOT SEND OUT. It is not clear from the file why this was done. It may be that it was because there was a hearing that day).

Mr. F has had access to social care and health department records. Gives both parents' family history. Mother comes from Irish travelling family. Seriously sexually assaulted by one of her brothers when she was pregnant at 18: child adopted. No formal education. Unable to read or write.

Mr B has spent considerable amounts of time in prison for offences including burglary, deception and TDA. Given 9 years in 1982 (offence unspecified) reduced to 6 on appeal. Fathered a child in 1972 (no subsequent contact)

The family known to the Department since 1988, shortly after the birth of PB. The following are relevant extracts from Mr. F's report: -

Reading through the file shows references to financial hardship and housing difficulties, including disputes with neighbours and rent arrears. There are also numerous references to incidents where Mr. B has been abusive and threatening to Social Services, social security, housing and health service staff including GPs, psychiatrists and health visitors, to the extent that multi-agency discussions have taken place at managerial level to review systems in place to deal with his behaviour and protect staff. There are also references to Mrs B being present with the children on some occasions with Mr. B.

TB was born on 24.9.88. He experienced some difficulties feeding and spent time in hospital. An operation was needed to rectify the matter. The parents were observed to be responding affectionately to both children, but concerns were raised at the impact Mr. B's abusive and threatening behaviour would have on the children. There were also concerns about the lack of access to the children which Mr. B afforded professionals wishing to monitor their development. The community midwife visited TB on two occasions at this time before withdrawing the service as Mr. B was verbally abusive to her. Mr. B refused the GP's offer of a six weeks check for TB. As a result of these concerns, a case conference was held on 25 November 1998 to co-ordinate the professional response and to determine how best to monitor the children's development. The children's names were not placed on the CPR

In January 1995, Mr. B was alleged to have hit TB 'around the head' whilst in the street with him. The incident was investigated by his department and by the police within child protection procedures. Mr. B admitted hitting his son in the way alleged, but said that he usually only chastised them with a smack on their hand. This was confirmed by Mrs. B. There were no physical injuries to TB and the matter was not pursued

On 21.3.96 the Health Authority convened a 'case conference' because of Mr. B's continued verbally abusive behaviour and threats of violence towards GPs and their staff. At this time the family were being removed from their GP list and being allocated a new GP practice approximately every 4 weeks. If a home visit to the family was considered necessary, a system was in place for the GP to first alert the police. The outcome of the meeting was that Mr. B was required to agree to a 'contract'

for services from the Health Authority, setting out ground rules to allow the family to remain on a GP's list.....

Recent events

Mrs B informed me that the reason for the sudden move (to N-W) was due to Mr. B owing considerable amounts of money to a local man, known to be a drug dealer. Mr. B was being harassed for the money and feared for his life. Mrs. B reported that Mr. B frequently used drugs during their marriage, including amphetamines and temazepam. It remains unclear whether the debt was for drugs purchased, Mrs. B reported that Mr. B also has a serious problem with gambling. References are made to this on this department's files as early as 1988. On the one occasion I have met Mr. B he appeared very frightened saying that he needed money to be able to leave the S-E as soon as possible, for fear of meeting the person to whom he owed money. Mrs. B attributed some of his aggressive behaviour and domestic violence (see later in the report) to drug mis-use.

Mrs. B has stated that the police were called to domestic violence incidents on at least 20 occasions when the couple were together. To date, I have been unable to verify this with the police Domestic Abuse Unit.

Mrs. B has stated that she has suffered domestic violence including serious physical assaults from her husband throughout their 13 year marriage. She has spoken in detail to me about some of the incidents, and the clarity with which she recounts them and the obvious trauma and distress they have caused would indicate to me that domestic violence has been endemic in their marriage. I hope that in due course Mrs. B will seek individual counselling either via her GP or the women's refuge project in the S-E, to help her deal with her experiences of domestic violence. It is also my view from these conversations that the children have witnessed very considerable amounts of domestic violence.

After 5 months in the hostel in the N-W, Mrs. B took the three children and left her husband on 11.4.00, following a serious domestic violence incident which she saw as the final straw. She recounts being beaten up by her husband on two occasions in front of the children, whilst at the hostel in the N-W. Mrs. B was being prescribed anti-depressants and sleeping pills at this time

Mrs. B said that she had wanted to leave her husband on many occasions before this but was always told by him that if she left him she would never see the children again. She alleges that Mr. B told her that he would tell the children that she had abandoned them. Mrs. B said that her isolation from her family and her poor literary skills meant she was never able to seek the

appropriate help or support to find out what her legal rights were in this situation, and therefore took his threats very seriously

Towards the end of April 2000, Mr. B had contact with the children in S-E. Whilst staying overnight on the sofa, Mr. B took an overdose of paracetamol. He was discovered by the children in the morning, an ambulance was called and he was admitted to hospital. Mr. B later returned to N-W. It would appear that Mr. B was suffering from depression associated with the separation from Mrs. B. Information on file indicates that Mr. B had been referred to psychiatric services in the past following threats of suicide, including a referral to a consultant forensic psychiatrist in 1988. However, due to abusive behaviour to staff, there appears to have never been any comprehensive assessment made of his mental health and therefore no clear assessment of the impact on the children. It was the view of Mr. B's GP and the consultant psychiatrist in 1988 that he has a personality disorder rather than a treatable mental illness. I understand that he has referred himself to the mental health services in the N-W for help with anger management and depression. I welcome these moves, however, it is my view that a thorough and up to date assessment is needed of Mr B's mental health to properly inform the court.

In May 2000, Mrs B agreed for the children to have a weeks holiday with their father in the N-W. TB decided to stay in S-E

Mrs. B has spoken in some detail about the behaviour of JB and PB when they returned to the S-E. It appears that they were both very aggressive and destructive, towards property and towards TB. It was Mrs. B's view that they were acting out some of their father's violence. All three boys seemed to be very distressed by the situation

The two boys' behaviour deteriorated to such an extent that on 30 May 2000 Mrs. B returned JB and PB to their father in N-W, where they are currently living.

TB

I have spoken to the deputy head of TB's school On two occasions. The first being on 23 May 2000 when the school expressed concern about the emotional impact the current family situation was having on TB. There had been a very noticeable decline in his behaviour both to staff and peers. TB was excluded from school from 11 May to 9 June 2000 for being very abusive towards staff. The exclusion coincided with a period of particular stress and uncertainty for him.

I spoke to the deputy head again on 6 July 2000. He reported that TB continued to be very unsettled at school and was prone to violent outbursts. He had recently punched a fellow pupil in the face in front of the deputy head. The school are very concerned that if such behaviour continues in September 2000 when TB starts at secondary school, he will be quickly excluded.

My observations more recently are that TB is calmer and more able to think about his behaviour before acting. He does however, believe that he has a serious problem with his anger, and has asked me on a number of occasions if he can see a psychiatrist to help him manage his anger more effectively. This is I believe a rather distressing request from a 12 year old boy. It is my view that given the level of domestic violence within the home, and particularly recently with the increase in hostility between the parents, such behaviours have been learned and ingrained upon the three children as a means of relating and communicating on a day to day level. I have discussed the matter with Mrs. B and have advised her that a referral to the CAMHS for work to address TB's anger and associated behaviours would be appropriate, and should be discussed with his GP I believe the work will be most effective when the wider family disputes are more resolved and settled.

[After a positive report on Mrs. B by the school, Mr. F reports:]

..... The school reported that they have had numerous dealings with Mr. B when he had been very abusive and threatening to staff, to the extent that he has been asked not to attend the school.

TB has stated clearly to me that he wishes to remain living with his mother in the S-E. I believe he is becoming increasingly able to take an independent view of the dispute going on between his parents. From several conversations with him he is upset as most children are when their parents separate, that the family structure will not be the same again. He misses his father and brothers, but he also appears to understand that his mother is much happier away from Mr. B and the constant fear of domestic violence. He is also aware that his mother is very distressed by how little contact she has with JB and PB and hold the view that his father frequently uses her telephone contact with them to try to persuade her to resume their relationship. He, as do his brothers, feel placed in an intolerable position of having to choose between parents. A position which should be avoided at all costs. TB feels particularly strongly that his father has put undue pressure on all three children to live with him in the N-W. From my observations of TB I have detected no evidence that Mrs. B has tried in any way to manipulate the situation for her own needs, rather than TB has

been allowed to make up his own mind about with whom he wishes to reside

Mr. F was unable to speak to JB who hid in the bathroom and locked the door. He reports Mrs. B as saying JB had a very close and protective view of his father and would probably want to live with him. Mr. F spoke to PB who was “open and willing to talk”. PB felt “very confused about the whole situation and wants his mum and dad to get back together, but knows that probably won’t happen”. He felt caught between his parents and did not want to have to decide. He was happy to live with either of them. Mr. F concludes on this point: -

“On balance my view was that PB has a close if not altogether calm relationship with JB and wants to live with him. The views of JB and PB will be explored in more detail by the N-W SS in their section 37 report”.

Mr F’s Summary and Conclusions are in the following terms: -

TB is a very amiable 12 year old boy, who has obviously been affected by events in his childhood so far. Most notably I believe he has been affected by observing considerable domestic violence directed by his father towards his mother, and his father’s abusive behaviour generally to professionals; and by his parents’ subsequent separation. TB appears to have a very warm and affectionate relationship with his mother . Reports from his school suggest that he has great difficulty managing his anger in situations in which he feels threatened or undermined, and finds it difficult to accept boundaries or authority. There are clear similarities emerging in relation to his father’s behaviour. As stated earlier, I believe that TB could benefit from attending the CAMHS to address his behaviour, and to help him reduce the likelihood of exclusion and therefore maximise his opportunities at secondary school.

(TB) has stated clearly that he wants to remain living with his mother in the S-E. However he has strong attachments to his father and brothers and a strong sense of family, and the decision has no doubt caused him distress, particularly if PB and JB appear to take sides against him as I understand happened when they came to the S-E on 13 May 2000. TB holds the view that his father is putting pressure on all three children to live with him, in an attempt to resume a relationship with Mrs. B. TB has considerable insight into the dispute between his parents and able to view the situation independently. Conversations with TB indicate that his mother has not attempted to instil any particular view of the current situation, preferring him to make his own choices.

In all my enquiries for this report I have found Mrs. B to be a rational and very co-operative participant. She loves all her children dearly and wants them to feel free to make their own choices in this difficult matter. It is clear that being separated from PB and JB for long periods of time is devastating for her. I have found nothing of concern whatsoever in her parenting of TB, or indeed of PB and JB when they have been staying with her. She is however, adamant that after 13 years of domestic violence, in a marriage which she has described to me as “hell”, she is not willing to resume a relationship with Mr. B. She is however very keen for TB to have as much contact as he wants with his father, believing it to be very important, as she does of her regular contact with JB and PB (my emphasis) but she remains concerned that to date Mr. B has attached conditions to telephone contact with the two boys which has been distressing for her. I foresee this to be a major problem in the future unless watertight arrangements are made to allow each parent and child to maintain and safeguard uninterrupted and letter contact as well as direct contact.

As stated earlier I am concerned about the mental health of Mr. B, and to date there does not appear to have been a full psychiatric assessment completed, and thus it is difficult to gauge the emotional impact on this children. I understand that he has now seeking help with anger management and depression which is to be welcomed, however, I am concerned that his dealings with these services will be short lived, given the history of threatening behaviour to professionals and a full assessment will not be possible.

After consideration, it is the view of the local authority that no orders are required to safeguard the welfare of TB. If it were the decision of the court to return all three children to reside with their mother I would have no concerns about her ability to parent them adequately. This department will offer Mrs. B social work support at least until the issue of residence is resolved. I understand that if it is decided the PB and JB are to remain in the N-W with their father, social work support will continue from the N-W SS whilst most importantly, Mr. B's mental health is assessed.

- 31.8.00 Mr. B makes his second statement. This largely comprises complaints about the telephone contact, including an allegation that Mrs. B had said to him on 17 June 2000: “after what has happened at court yesterday I will have you killed”. He agrees that he instructed his solicitors to tell Mrs. B's solicitor that he was returning PB and JB to Mrs B as they were upset when she did not telephone and were missing her. He also complains about threats to have him committed to prison from breach of his undertaking. However, he spoke to the boys further and “they were adamant they did not want to live with their mother”.

He says that on 12 August he spoke to TB. “Sadly, TB was rude and abusive to me. He used swear words to me and told me that I was not his father”. He denies telling TB that his mother had been raped when she was 7.

On 16 August Mrs B had taken TB to the N-W. He says TB enjoyed his holiday. He denies hitting TB and denies TB made calls to his mother on 17 August. Mrs. B collected TB on 23 August. He had on previous days telephoned his mother telling her he was having a great time in N-W and did not want to go back to the S-E. He alleges that Mrs. B tried to strangle him in the street on the way to the coach station to return TB, She also threatened to get him beaten up. He also accuses her of stealing his medication.

He says that at the end of June 2000 he was referred by his GP to the psychiatric department of a N-W Hospital. He had been interviewed by a psychiatric nurse who felt he did not need assistance. He was, however, taking Thloridazine for depression.

He had recently been back to his GP who had agreed to refer him to the CPN. He deals with his housing and the schooling for PB and JB,. He says they do wish to return to live with their mother. He expresses concerns about her ability to look after them. He describes Mrs. B as having “serious anger management problems – she loses her temper more quickly than he does. Her denies “all the allegations” of domestic violence. He is also “concerned about the number of boyfriends (Mrs B) has had since the separation. “TB has told me that (Mrs B) has had three different boyfriends since then. He has also made it quite clear to me that he didn’t like any of them”. He exhibits letters from Mrs. B and TB He sought residence orders for all three children.

31.8.00 Mrs. B files her fourth statement. She gives her versions of the telephone contact, and of Mr. B telling TB that she had been raped at age 7 and had had an illegitimate child. She also says that on the telephone “Mr B also warned TB that is he was rude to him whilst in N-W he was going to hit him”.

After returning from court on 18 August Mrs. B rang TB to say she would be coming to collect him on the Saturday. He asked her not to. He said his father had calmed down and that he wanted to stay until Wednesday.

Mrs. B collected TB on 23 August. Mr. B was abusive and there was a struggle between them when she tried to use her mobile telephone to call for the police.

Mrs B makes some comments on the section 37 report and says remains concerned about her sons’ safety while they are in the N-W. Her own attempts to involve CAHMS have been unsuccessful. She says she will accept the court’s decision if it is that it is in the best

interests of the children to live with Mr. B. If that happened, she would be concerned about the level of contact she would have.

She says: “I would want to have good staying contact with both PB and JB and accept the fact that TB must go to the N-W to see his father. Having had the allegation from TB that his father hit him, I would be reluctant for TB to spend as long in the N-W as I would want PB and JB to spend in the S-E (my emphasis)

Whatever contact arrangements are made on 12 September 2000, she would want them review in four months, by which time she would hope that “Mr. B will have filed some sort of report from his psychiatric nurse.

12.9.00 A Circuit Judge makes the following order, which is not expressed to be by consent, but which appears to have been agreed (see paragraph 4 of the statement by Mrs. B’s solicitor on 3.1.01):

1. PB and JB do reside with Mr B
2. TB do reside with Mrs B
3. Parents’ cross claims for contact and other outstanding issues including Mr. B’s release from 16.6.00 undertaking and the making of a further FAO be adjourned for hearing on 8.11.00 nb 12.00 with the rest of the day allowed
4. Order for contact made on 16.6.00 suspended: liberty to the parties’ solicitors to agree arrangements for contact in the interim
5. FAO to N-W BC in relation to PB, TB and JB until 12.3.01

3.11.00 (There is a curious memorandum in the papers which appears to say that on 3 November 2000 a different circuit judge, on the application of counsel for the mother made orders (1) discharging the residence “orders in result” (?); (2) “discharge contact orders – no contact or indirect; (3) “Residence M” “Liberty to apply: L/A Ass of (query pub fun(ded) costs”. There is, however, no order drawn up for that day.)

Undated There is a “Summary of Case” for the court’s use, plainly prepared by counsel, although it is unsigned and undated. It is in neutral terms, and records both Mrs. B’s case on domestic violence and Mr. B’s response.

8.11.00 A different circuit judge orders contact between the children and their parents in accordance with an agreed schedule: Mr. B is discharged from his undertaking given on 16 June 2000. The first two items of the agreed contact schedule are: -

1. On 22 December 2000, mother will take TB to the N-W
2. On 28 December 2000 mother will collect all three boys and take them to the S-E

(there is then a schedule of contact lasting through until 2001 and thereafter). The schedule has been signed by the judge.

- 22.12.00 Mrs. B takes TB to N-W in accordance with the terms of the agreed order
- 27.12.00 or
28.12.00 Mr. B murders TB by strangulation. His body is discovered by PB and JB. They inform Mrs. B who has travelled up to the N-W overnight in order to collect all three children in pursuance of the agreed order.
- 29.12.00 Mr. B located by the police and detained. A Circuit Judge makes an order permitting the S-E SS to disclose to the police any report under CA 1989 ss 7 and 37 and statements of the witnesses in their possession for these proceedings.
- 2.1.01 Mrs. B's notice of application seeking residence of JB and PB and no contact with Mr. B (issued 3.1.01)
- 3.1.01 Statement from Mrs. B's solicitor in support of application
- A Circuit judge discharges previous order: residence order to Mrs. B: no contact with Mr. B until further order. Liberty to Mr. B to apply on 7 days' notice
- 4.1.01 Mrs. B applies to change boys' surnames
- 5.1.01 Time abridged by circuit judge: matter to be listed on 19 January 2001
- 10.1.01 Directions (Circuit Judge)
- 12.1.01 Notice of application from the police seeking disclosure of documents in the family proceedings. The application gives a concise description of events on 27 and 28 December, from which it would seem that Mr. B killed TB some time between 100.00pm on 27 December and 1.30am on 28 December. He then disappeared, leaving PB and JB to find TB's body
- The police record that Mrs. B had received a number of telephone calls throughout 28 December saying "If I can't have you, you can't have TB". Letters found by the police in Mr. B's hand in various places were all to the effect that Mr. B had killed TB and the other children before filling himself.
- H when arrested had a fractured leg – query as a consequence of a suicide attempt?
- (see also the statement of Acting Detective Sergeant H (12.1.01) in which there is an allegation reported from Mr. B that Mrs. B had "sexually abused" TB
- 18.1.01 Circuit Judge orders disclosure of documents to the police.

- 30.1.01 Mrs B's statement in support of application to change the boys' surnames
- 1.2.01 Mr. B's response. He says TB told him on Christmas day that Mrs. B had sexually assaulted him. He says he will be pleading not guilty to the allegation of murder. Objects to change of name. Asks court not to deal with the application under after his trial.
- 9.2.01 Hearing adjourned to 23 February 2001
- 22.2.01 Further adjournment of change of name application to 23 March 2001: disclosure application to remain in the list
- 23.2.01 A Circuit Judge decides he has no jurisdiction to entertain application by police in relation to social services' files
- 16.3.01 Mr. F's section 7 report in relation to the change of name, which he supports.
- 23.3.01 Permission to amend application to read under CA 1989 section 13 + other directions (Circuit Judge)
- 2.4.01 Mr. B says he does not wish to attend the hearing, despite production orders being made
- Various advocates' documents, including summary of submissions on behalf of Mr. B in which he seeks an adjournment until after the criminal trial. He is alleged to have been on hunger strike. Defence lawyers hoping to instruct a psychiatrist to report on Mr. B's mental state. Mr. B said to be in the hospital wing of the prison, hearing voices and making threats to kill himself.
- Submitted that it may be Mr. B will be acquitted
- 11.5.01 Application to adjourn refused. Permission given to change children's surnames
- 24.4.02 Application by Mr. B for contact by letter and phone calls: to have the names changed back to B: "to have a blood test done to make sure they are my boys"
- 6.6.02 Mrs B's application under CA 1989, section 91(14)
- 13.6.02 Letter from father saying he is appealing against his conviction and is also applying to have TB's body dug up "to prove what Mrs. B done to him".
- 25.6.02 Another letter from Mr. B seeking an adjournment
- 28.6.02 A Circuit Judge: Mr. B's application dismissed. Section 91(14) orders until each child's 18th birthdays

- 16.7.02 Mr. B writes stating that he wishes to make a complaint against one of the judges of the S-E Family Court

The judge's response

- 6.5 It is, I think, unfortunate, that the judge who made the order for contact on 8 November 2000 was not the judge who had made any of the three previous principal orders, namely the order of 16 June 2000 (see page 3* above) for TB to spend a week in the N-W with his father; the order of 18 August 2000 order the return of TB to his mother and suspending the contact order made on 16 June 2000 in relation to TB (see page 36*) ; and the order of 12 September 2000 dealing with residence and further suspending TB's contact with his father (see page 4*). It appears, therefore, that the judge who made the order of 8 November 2000 was coming to the case for the first time, with the question already decided by another judge, and thus not before him.
- 6.6 The judge courteously made available to me a transcript of the hearing on 8 November 2000. Both parents were represented by counsel who were familiar with the case, each having appeared previously for the mother and the father.
- 6.7 The transcript is in two parts. In the first part, counsel for the father explains to the judge that he is having difficulty with his client, and asks for some more time in the hope of overcoming the difficulties and reaching an agreement. During this exchange, counsel for the mother does not speak. The judge in the exchanges with the father's counsel makes it clear that he has read the papers "very carefully" and also makes the comment that Mr B "is not the easiest of men". The judge says in terms that had there been an issue of residence before him, he would have required "some persuading" that that it would be in the interests of PB and JB to live with their father. He states that the problems over contact in the N-W appear to be caused by Mr. B, and states that there should be "free and uncomplicated" contact between the brothers over the phone and to their respective parents, with generous staying contact. The judge says that he "will not brook, I have to say, much difficulties about it".
- 6.8 The judge gives counsel more time, and when the court resumes it is counsel for the mother who first addresses the judge, and takes him through the draft of the proposed consent order. Much of the transcript is taken up with the judge's concern about the restrictive nature of the telephone contact proposed between the brothers and between the children and the parent with whom each is not living. In the event, however, the judge is persuaded by counsel that the draft is appropriate in this regard, and the transcript concludes with a perfectly proper homily from the judge on the need for contact to be encouraged by both parents against the backdrop that if it is not the question of residence can be reviewed.

6.9 The judge had plainly appreciated that Mr. B was a difficult and violent man. The judge's concern about the residence orders make this clear. However, the point which concerned me most, apart from the pervading atmosphere of violence in the case emanating from a father who was clearly unstable, was the fact that on 16 June 2000 a different judge had made an order for contact which (inter alia) involved TB going to the North West for a week from 14 to 21 August. However, during that week Mrs. B made an application to the same judge for TB's contact to be terminated – see her statement of 18 August. This resulted in an order that Mr B deliver up TB to Mrs B forthwith upon service of the order on him. Staying contact between TB and his father was also suspended. In fact, the order of 18 August 2000 for TB's return had not been enforced. None of this, however, formed any part of the discussion in court on 8 November 2000.

6.10 I put this point to the judge in correspondence. His response was in the following terms: -

As I indicated to counsel, I had read the papers carefully, and I would therefore have noted that the August contact was terminated by the court upon Mrs. B's application. My recollection is that, faced with the subsequent agreed order as to residence, I was concerned that Mr. B did not obstruct Mrs. B's contact with PB and JB.

With hindsight, the agreed residence order put Mrs. B in a very difficult position. I suspect that she felt that unless she agreed to TB visiting his father, Mr. B would make it very difficult for her to have contact with PB and JB.

This tragic case raises a difficult question. When is it appropriate for a judge to refuse to approve a consent order agreed between well represented parents as to arrangements for their children, in circumstances when the court has not made any findings as to cross-allegations of domestic violence?

I think the lesson to be learned is that there are some cases when the court should decline to approve an agreed order until it has heard evidence, and made findings. The difficulty is spotting such cases, particularly if the family court advisor is neutral, or largely supportive of contact.

Discussion

6.11 In my judgment, the judge sums up well the dilemma identified by this case in the third paragraph of the extract from his letter which I have cited in paragraph 6.10. This is a point to which I will return in part 8 of this report.

- 6.12** It can of course be argued, particularly with the benefit of hindsight, that no proper consideration was given to TB's welfare in the order which the judge made on 8 November 2000 that TB should have extensive staying contact with his father in the N-W . That said, however, the judge was, in my opinion, placed in a difficult situation by a number of the other factors in the case. Firstly, the mother had previously agreed that TB's brothers should reside with their father. Secondly, she had also gone on record stating her wish that TB should have regular contact with his father (see the passages in the file which I have highlighted). Finally, as the judge points out, he was being asked to make a consent order where both parties were represented by competent counsel.
- 6.13** I regard the lack of judicial continuity in this case as unfortunate. As I have already stated, the same judge made (1) the order for TB to spend a week with his father in August 2000; (2) the order revoking that order and suspending contact; and (3) the consent orders for residence. The judge who took the 8 November hearing was clearly concerned about the residence orders, but was bound by them. It must, however, be doubtful if judicial continuity in this case would have made any difference to the order made on 8 November 2000.
- 6.14** All in all, therefore, whilst I think there are plainly lessons to be learnt from this tragic case, I find it difficult to be critical of the judge who took the hearing on 8 November 2000.

PART 7: THE CASES OF CF and OF
(WAFE'S CASE NUMBER 8)

7.1 This case concerns two brothers. CF was born on 13 April 1991, and OF was born on 12 November 1993.

7.2 The WAFE summary is in the following terms:

CF and OF (aged 6 and 9) were hanged by their father on 17 April 2000 in the village of (location). Their father had been allowed to have unsupervised contact, even though he was facing charges of rape, and of assaulting his wife. (The father subsequently committed suicide)

THE COURT FILES

7.3 There are two court files, one relating to the children and non-molestation orders: the other relating to the divorce and ancillary relief proceedings. All reference are to the former, unless the entry is followed by the letters (D/AR).

2.11.99 W seeks (without notice) interim residence and non-molestation orders in the County Court. The application states that it is being made because H has absconded with the children on at least one occasion. CF does not wish to see his father and is very frightened of him. She also says that the school require a residence order.

W's affidavit alleges numerous, threatening telephone calls from H; she also makes a number of allegations of assault and harassment as follows: (1) an assault on 21 October 1999 in the car park of the hospital where W works – H blocked her in, got into her car, removed the keys, put his hands round her throat, banged her head against the car window; pulled up her skirt to see what she had on underneath, asked who she had been with and told her not to tell the police or her parents "or else I will know and come back and do it properly"; (2) on 11 October at about 9.00 to 9.30 H came into her parents' house and lunged at her. He banged the table. He then took CF out of bed and took him away. CF was sobbing. Police called. H telephoned 9/10 times making threats. CF not returned until the next day; (3) on 1 October an assault at the MH because she was 12 minutes later returning home than she had said. H put his hands round her throat, dragged her into the kitchen, threatened to smash her head through the kitchen window, pulled up her dress and put his hand between her legs – punched her left fore-arm. CF came down stairs and said "Daddy should not smack mummy". Refers to an incident about two years earlier when H attempted to force sexual intercourse on her.

She also alleges H had engineered his parents to attend at school so that W could not collect children. She says: "CF is adamant that he does not wish to see his father at present. He has witnessed too many violent episodes to be reassured. (OF) has a heart problem.

A district judge sitting in the County Court makes an interim residence order in favour of W in relation to both children + injunction against molestation with a power of arrest attached. Order to last until 18 November 1999.

5.11.99 H served (affidavit of service sworn on 10.11.99). H refused to open the door and prevented server putting documents through it.

12.11.99 W's divorce petition under MCA 1973 s 1(2)(b). Sets out the violence alleged in the children / non molestation proceedings (D/AR). Describes H as jealous and possessive and as accusing her of having affairs with colleagues, neighbours and school friends. Describes herself as bullied, domineered and physically and sexually assaulted.

Form 4: W says she would like the contact arrangements to be regular and "firmed up". She will afford H reasonable contact. Both children asthmatic: O has a heart condition (D/AR).

18.11.99 H gives undertaking not to enter road where W is living save for the purpose of visiting a named friend.

6.12.99 Residence application adjourned to 14.3.00.

8.12.99 W makes further application for a non molestation order.

Further statement from W explaining that she thought things had calmed down. She had been Christmas shopping with H. On 7.12.99 she went to the matrimonial home in the evening to discuss financial matters.. She then describes in graphic details H preventing her leaving the house and then raping her at knifepoint. She managed to get out of the house and drove to her parents' address. She says: -

I am now absolutely terrified of (H). I just don't know what he is going to do next.

I am also terrified for the children but, in the circumstances, do not want any contact to take place at the present time. The next contact is due to take place tomorrow (9.12.99) and it is H's turn to have contact for this coming weekend. I have been in touch with the children's school and warned the children's teachers that only me or my parents may collect the children from school.

9.12.99 The district judge makes non-molestation order + power of arrest. Return date 16.12.99.

10.12.99 H served (affidavit of service 13.12.99).

15.12.99 H acknowledges service of divorce petition. Does not intend to defend. Does not agree with the proposals in the Form 4 because "I am being denied contact. I seek frequent contact". (D/AR)

16.12.99 Non-molestation order + power of arrest continued to 7.1.00:
Directions for evidence.

Order for contact on 18, 25, 26, 28 December 1999 and 2 January 2000 (2 hours each time apart from Christmas Day (1 ½ hours)). On all occasions apart from Christmas day children to be taken by W's parents to and collected by them from a specified address. Contact to be reviewed by the district judge on 7.1.00.

19.12.99)

20.12.99) Supportive affidavits from W's parents about her state on 7.12.99.

4.1.00 Further statement by W's father alleging an assault by H on him on 22.12.99.

Statement by H, highly critical of W and putting all the blame on her. Critical also of her parents. Accuses W of having sexual intercourse with (unidentified) man. Admits getting into her car on 21 October and removing keys but denies the rest. Admits he was angry because he thought she was having an affair

Admits he was present on 11 October: says it was not as late as 9.00pm. Asked to see the boys – she agreed – CF asked if he could stay the night with H: H agreed and carried him away, despite protests from W's father;

Denies rape on 7 December – says consensual sexual intercourse. Allegations of violence false.

On 23 December he was in the vicinity “by mistake” – struggle in the car between him and W in which he was assaulted. Also assaulted by W's father.

Gave himself up to the police on 23 December and remained in custody until 27 December when he was bailed to appear at Gainsborough MC on 11 January. He says charged with assault on W and her father. Intends to plead not guilty.

Contact did not occur on 28 December

Says false allegations made against him – describes it as a snowball rolling which W cannot stop “for fear of making herself look utterly foolish, particularly to her own parents. Her allegations against me get more and more ridiculous”.

Statement by W dealing with incident on 23 December. Arriving home – opened garage doors – got into car to drive in – assaulted by H. Parents involved. Treated at local General Hospital.

Statement on H's behalf by a Mr. T. Says presence in road co-incident. W called across to H. Argument. He then left

Statement from H's father. Drove him to the police station on 24 December. Deals with attempts to arrange contact on 28 December. Said H should stick to times in the order.

Says that on 2 January 2000, CF did not want to go, although OF came out happily. CF said "I want to stay with mum. I haven't seen her all night". He says CF gave him a smile and a wave as he drove away "giving me very much the impression that he wanted to come". Present throughout the time OF saw his father: did not want to go home.

6.1.00 Statement from CW supportive of W.

7.1.00 Order by the district judge: CWO to prepare report on the issues of residence and contact by 30 March 2000: interim residence to W. In the interim contact to H "as agreed between the parties representative and if the children so wish": "Such contact to take place at the minimum of each Sunday between 10.00am and 5.00pm between H and OF (CF, if he so wishes) to be included " (sic)

Residence application be re-listed on 6.4.00 at the County Court.

(The order plainly follows a draft in a different handwriting to that of the DJ).

The non-molestation injunction was continued + power of arrest for 12 months (until 7.1.01) .

20.1.00 W seeks directions for trial in the divorce proceedings. Says she has become depressed (D/AR)

27.1.00 Directions given. Certificate relating to the children states that the court does not need to exercise its power under CA 1989 with respect to the children nor give any direction under MCA 1973, s 41(2). (D/AR)

7.2.00 Decree nisi (D/AR)

13.3.00 W issues proceedings for AR. Her affidavit refers to the MH being on the market at an asking price of £115k: mortgage £30k + endowment policies with S/Vs. She wishes to purchase a property outright with her share of the sale proceeds (D/AR)

23.3.00 **CWO reports.** Says police have charged H with assaults on W and her father: another incident being considered by CPS. Says that on 25 January H's solicitors informed him that H had obtained work abroad, was content with the current arrangements and would not be attending arranged interview. This was plainly not the case.

CWO records different versions of events from the parents. H referred to a "scuffle" shortly before Christmas which had led to the intervention of the police. Said "he could not remember any other

incidents and did not believe that our questions on these matters were in any way relevant to the children". He was pleading not guilty. CWOR continues:

- "18 W also told us in detail of a number of incidents where she was fearful for her own safety. The degree of violence and the premeditated nature of the behaviour which she described caused her to express concern to us for the safety of the children, should H behave in a similar way whilst caring for the children.
- "19 H could not recall any behaviour which might have given W cause to be concerned for her own security. He dismissed totally any suggestion that she might have any reason to be concerned about the children whilst they were in his care and told us that he believed that any potential difficulties were caused by the boys being 'brainwashed' against him.....
- "22 We understand from W that things changed after several incidents which caused her to be concerned for H's emotional stability. She became more worried about the effect of his behaviour on the boys and about their safety, particularly if they should stay overnight with H
- "23 CF is said to have become more reluctant to go to see his father and often asked to come home early, or would not go unless accompanied by a friend.
- "24 H denies that there have been any problems between him and either of his sons and sees no reason why the terms of contact are in any way the business of anyone other than himself and the children.
- "25 He was angry about the terms of contact being circumscribed by the court and feels that he should be able to see the children whenever he wishes to, with no form of imposed framework – whether agreed or otherwise.....
- "27 As the proposed employment (in Germany) did not materialise he had expected that the children would be made available to have more contact with him. ' I should be able to go round if I'm not doing anything. They are my kids – I can see them when I want".
- "28 We understood from W that the arrangements for weekly contact had come about as a result of the children's reluctance to see their dad so much - particularly CF's refusal to stay overnight and his insistence on coming home early after Sunday lunch in the local pub. Since the last altercation between the parents both an injunction and bail conditions prohibit contact between the parents and therefore the children are collected and returned at avenue close to their maternal

grandparents' home, with the involvement of both sets of grandparents.

“29 H would not acknowledge the significance of the criminal charges against him, which he sees as irrelevant to arrangements concerning the children. He could not tell us why the conditions for contact had changed from those which applied when the adults first separated.”

In relation to the children, the CWO reports that they were very aware of the difficulties in the relationship between their parents but quite confused about their situation. They “would benefit from a period of calm, consistency and security in their lives”. Reports from the school indicated that both boys had been selective in the information they had shared about the home situation. School reports positive, although concern over OF frequently told class teacher of things he and his father had done together over Christmas, which couldn't be possible, as H was not around. Concern from the school that boys are possibly caught up in an “adult situation “ which they did not fully understand and did not have the ability to cope with.

Children's expressed wishes and feelings not entirely clear. “In our office, CF expressed some reluctance to see H but was very unwilling to discuss the situation. He said he ‘didn't know’ whether he would want to sleep at his dad's house” and whilst saying that he had never been scared of anything in his life, seemed quite anxious and ill at ease during most of the interview. He did say “sometimes my mum says that if I don't go my dad might bite her legs again and run away with her”.

CWO takes the view it is inevitable that both boys will be adversely affected by such unpleasantness between their parents. O was very keen to give a positive characteristic of his father

The “Assessment and Opinion” section recommends residence to W, Contact with H “could be beneficial to them provided it take place in circumstances which are entirely focused upon *their* welfare and best interests.

The children had an inappropriate sense of responsibility for a situation they did not fully understand. They boys “would benefit from the knowledge that others had taken responsibility for imposing structures and frameworks within which CF and OF could feel safe. Both adults should be responsible for ensuring that their behaviour is entirely appropriate and does not cause any party to feel anxious or insecure.

Commenting that “it also seems to be agreed that they boys should have contact with their father” the CWO says that a framework should be set out and the parents should ensure that it is adhered to. . W had been anxious not to prevent contact but is very worried about H's ability to put the needs of the children first. There was a good deal of unfinished “adult business” in the case which needed to be settled

before any long term arrangements were finalised. This included the criminal proceedings, financial plans, etc. These should be resolved before firm recommendations could be made.

In the interim, contact should still be defined. The proceedings should be adjourned for three months to abide the outcome of the criminal proceedings and to test the behaviour of the adults. ***Contact should be defined but should not include overnight contact.*** (emphasis added) “If the terms of the court’s orders are adhered to it might be possible for the parties to move forward more positively at the end of the period of adjournment.

6.4.00 The District Judge makes a consent order. Residence to W: interim contact as per agreed schedule. Review / directions on 22.6.00

Schedule provides for weekly contact on Sundays from 10.00am to 5.00pm

However, contrary to CWO’s recommendation it provides for staying contact from Friday 28.4.00 to Saturday 29.4.00 (as well as visiting contact on 30.4.00) ; from Sunday 28 May to Monday 29 May; and from Friday 9 June to Saturday 10 June and Saturday 24 June to Sunday 25 June. There is the original of the Schedule in the file, signed by both parties

16.4.00 (?) Children murdered by H who then committed suicide

The response of the district judge

7.4 The two points which stands out from this case, of course, are (1) the fact that the order for contact made on 6 April 2004 was contrary to the recommendation of the CWO that contact should be defined, but should not include overnight contact; and (2) that the father was facing charges of assault relating to the mother and her parents. (I note that the WAFE summary refers to the father “facing charges of rape”. Whilst the mother describes an incident on 7 December 1999 in which she was raped at knifepoint, the CWOR does not refer to this, but to the police having charged the father with “assaults on W and her father”). I put the first point in a letter to the district judge who had made the order. It is, I think, appropriate to recite the bulk of his careful and considered response. I think it fair, also, to point that he is extremely experienced in family work. He told me that he specialised in it as a practitioner. He also told me that he had helped to set up and serve on the committee for the first women’s refuge in the locality. Following his appointment to the district bench, he had dealt with the vast majority of the family work in his court, including domestic violence.

7.5 The district judge points out that although the petition contained allegations of domestic violence, the statement of arrangements filed at the same time indicated that contact was taking place including staying contact but that the mother wanted it to be regular and “firmed up”. He

points out that there were interim contact orders made by consent on 16 December 1999 and 7 January 2000, both made at the time of injunction hearings which the father had indicated he would be defending the proceedings. The district judge continues: -

7.5.1 The mother had a very competent solicitor and I am absolutely sure that he would have given her appropriate advice and would not allow her to be pressurised. I have to say that I did not like or trust the father, not only because of the allegations, but also the general impression – gut feeling if you like. But there had never been any suggestion of bad behaviour towards the children and there was nothing so unusual to set the alarm bells ringing.

7.5.2 Moving on the hearing on 6th April 2000, I had read the CWOR before the parties came in. I can to this day recall the parties coming in, led by the mother's solicitor with a smile on his face informing me of the agreement. While my note is brief, I can recall the solicitor telling me that the contact had gone very well and I noted "Children have asked to stay overnight. ? trial contact – overnight. Schedule agreed up to 25/6". The father's solicitor confirmed that he agreed and consented to a residence order. I also noted that the criminal committal proceedings were on 23 May. The children were murdered on the first overnight contact. Of course, this does not mean that I had to make the order, but faced with the facts that contact had apparently gone well for over 3 months, and that the mother through her solicitor asked me to make the order, I felt that the arrangement agreed between the parties was the natural next step to progress the contact and all that the parties were doing was pre-empting the CWO and moving more quickly because of the success of the contact. The solicitors and the parties had had the report for nearly two weeks before the hearing and had therefore plenty of time to consider the contents – it was not the usual situation of the report being filed at the last minute and the parties being under pressure at the doors of the court. If the mother had not agreed to the overnight contact then I have absolutely no doubt about what I would have done. If the father had accepted the recommendation then I would have adjourned for 2/3 months and asked for an addendum. If the father had insisted on staying contact and the mother opposed it, I would have had to set it up for a defended hearing but would have made sure that it took place at least two months ahead and again ordered an addendum and up-to-date statements of evidence.

7.5.3 Important factors

1. This was not a defended case. At no stage did the mother oppose contact. All orders relating to contact were interim AND by consent. I have noted mother's concerns expressed to CWO but none so far as I recall were ever raised with me and certainly not at the last hearing. Despite the criminal and injunction proceedings everything pointed to the contact progressing well over a period of three months.

2. There was no evidence of pressure on mother re contact. She was not in a refuge but in the security of her own family and was represented by a competent solicitor.
3. The father was a jealous and violent man. There were three unresolved issues; his jealousy at mother's new relationship; the criminal proceedings; and the ancillary relief.
4. The father had defended the injunction until the last minute and was defending the criminal proceedings. It may be that he was in denial and, if so, nothing should have happened until he had come to terms with everything.
5. The deaths occurred on the first contact after the order BUT remember that the order also dealt with residence which the father had disputed. As I so often point out the practitioners who try to attribute significance to, for example, a child's behaviour after contact e.g. "the child is clingy", I am not a psychologist and having heard talks by Hamish Cameron, there may be several explanations for a child behaving as it does. I mention this because it may be, and I put it no stronger than that, that the residence having been determined the father may have had the attitude – she had taken the children away from me, if I cannot have them then neither will she. I accept that that may be speculation on my part.
6. It must also not be forgotten that the father was seeing the children regularly and could have acted against them at any time. We do not know what actually triggered him to act as he did.

7.6 The district judge doubts if much can be learnt from this particular case. He places emphasis, once again, on the fact that contact was already taking place with the mother's consent, and that in other cases on similar facts where contact had started and progressed, everything settled down without the tragic outcome seen in the instance was . He makes the sound observation: -

The important point, and I am sure that we all know it, is that where the mother expresses genuine concerns because of domestic violence, that matters are fully investigated before orders are made. We all know the steps what have to be taken before orders are made.

Discussion

- 7.7 The district judge makes a strong defence of his position, and the case raises once again the dilemma faced by the court when the parties come before it with a consent order.
- 7.8 I am, however, concerned by the further complication that the father was facing criminal proceedings in which the mother was a complainant. Whilst I do not suggest that a father who is facing criminal proceedings involving the mother of his children should *never* have contact with his children during the pendency of the criminal proceedings, this does seem to me to be an issue which requires to be addressed in any contact application. The district judge in the instant case was plainly aware of the criminal charges, and had the mother not consented to staying contact, would have adjourned the application for staying contact until after they were determined. I will return to this point in section 8.
- 7.9 Whilst it is, accordingly, possible to criticise the contact order made by the district judge on 6 April 2000, it seems to me that much of the criticism derives from what happened subsequently, not what the district judge was doing at the time, based on the material available to him.
- 7.10 The district judge also makes the point that parents who are determined to kill or injure their children will do so irrespective of any court order (for contact or otherwise) and are likely to breach such orders in any event. This, to my mind, is a fair point as far as it goes, but it plainly does not derogate from the court's responsibility to ensure, as far as it can, that any order for contact is safe for the child concerned. Plainly, if a parent behaves in a way which is unforeseeable and / or uncharacteristic, the court cannot be criticised if it has made a contact order which follows the guidelines and which is designed to meet foreseeable risks. It is, however, I think, a fair point to make that there are limits to the court's powers to control parental behaviour. If parents are determined to harm their children, they are unlikely to advertise their intentions in advance. It is thus for the court to make a proper assessment of the risk they pose. The court, however, can only do this on the material with which it is presented.

PART 8: CONCLUSIONS AND RECOMMENDATIONS

General observations

- 8.1 Nothing in what follows is intended, or should be read, as seeking in any way to minimise the appalling human tragedies represented by each of the 29 homicides identified by WAFE. Equally, nothing in what follows should be read as indicating that there are no lessons to be learned from the cases under discussion or that the system operating in the Family Courts does not require constant vigilance, re-examination and improvement. It is, however, only fair to the Family Justice System to make the following points.
- 8.2 The first is that *29 Child homicides* deals with a 10 year period. Eighteen of the twenty-nine children who were murdered were not subject to any form of court proceedings.
- 8.3 Of the eleven children who were the subject of court proceedings, I am satisfied that eight (the children of the families in Parts 3, 4 and 5) died as a result of parental actions which could not have been reasonably foreseen or prevented by the court, and in which no criticism can be made of the judges who made the respective contact orders.
- 8.4 Of the remaining three (the children of the families in sections 6 and 7) it is arguable that the court should have taken a more proactive stance and refused to make a consent order for contact. On the other side of the argument, however, is the case put forward by the judges for making the contact orders, and the fact that the orders were made in what the judges concerned genuinely believed to be in the best interests of the children.
- 8.5 It must, I think, always be remembered that the responsibility for murdering a child lies fairly and squarely on the murderer. The function of the Family Justice System is to protect children and to make contact safe. The system cannot, however, be foolproof, and parents who are determined to murder their children will find the means to do so whether or not an order is in place.
- 8.6 These cases, therefore, tragic as they are, represent a tiny proportion of the many thousands of contact orders which are made each year.
- 8.7 Furthermore, I am in no doubt that all the contact orders in the cases concerned were made in good faith and that the judges did their best conscientiously to apply section 1 of the Children Act 1989.

WAFE's questions and recommendations

8.8 In my view, six of the seven questions posed by WAFE in the executive summary on *29 Child Homicides* (page 4) are apt, although the question numbered 7 is not a matter for the Family Justice System. The first question, however, contains in my view a non-sequitur. For ease of reference, I set it out: -“Did the court knowingly grant unsupervised contact or residence to a violent parent – and, if so, has anyone been held accountable?”

8.9 Equally, in my view, the manner in which the second of WAFE's recommendations (page 32 of the document) is worded is unhelpful. Once again, for ease of reference, I repeat it: -

Mechanisms are required for holding family court professionals accountable for decisions that result in children being killed or seriously harmed. If found to be responsible, professionals (judges, magistrates, barristers, solicitors, expert witness or family court adviser) should lose their right to adjudicate, represent parties, provide evidence or report to the court in family proceedings.

8.10 I am the first to accept that contact cases involving domestic violence need the most rigorous examination by judges and magistrates who are properly trained in and alert to the risk factors posed by domestic violence. I am equally the first to accept that judges who prove themselves incapable of trying such cases appropriately, or who deliberately ignore good practice (including the Children Act Sub-Committee's Good Practice Guidelines) should lose their family ticket – the pre-requisite to the right to hear such cases.

8.11 In my judgment, none of the cases contained in sections 3 to 7 of this report would even begin to warrant the judges concerned losing their family tickets or being held “responsible” for the deaths of the children concerned. It therefore seems to me unhelpful, and indeed wrong to imply (as WAFE's question 7 and the second recommendation seem to me to do) that a judge who makes a contact or residence order in favour of a violent parent is responsible for the subsequent death of or serious injury of the child concerned.

8.12 The question and the recommendation also seem to me to overstate the power and influence of the judge. In the case of TB and his brothers, for example, the parental agreement that PB and JB should live with their violent father was one which the parents could (and in my view would) have implemented whatever the court said. The only way it could have been prevented was by the intervention of the local authority. The court sought a report under section 37 of the Children Act 1989 designed to address that very issue – and the local authority reported that it did not intend to take care proceedings.

- 8.13 I do not think that WAFE would suggest that a mother was responsible for the deaths of her children at the hands of their father in circumstances where (1) she had been the subject of domestic violence; but (2) in good faith and because she wanted her children to have a proper relationship with their father she allowed him to have unsupervised contact with them. These were the circumstances in the case of *Re H (children) (contact order) No 2* [2001] 3 FCR 385, [2002] 2 FLR 22. Although this is a decision of mine, I attach the report as Appendix 2. In that case, a voluntary agreement for contact nearly led to the immolation of the children and their father in the latter's car. I can perhaps add that on 22 November 2005, the Court of Appeal (Thorpe and Dyson LJ and myself) handed down a judgment in a case ([2005] EWCA (Civ) 1404) involving domestic violence in which we were highly critical of a circuit judge who had not followed the CASC Guidelines on domestic violence. We took the opportunity to re-emphasise the need to follow the Guidelines, which we attached to the judgment. The case is now reported as *Re H (a child) (contact: domestic violence)* [2006] 1 FCR 102
- 8.14 The mechanisms for preventing particular judges and magistrates hearing cases under the Children Act 1989 are already in place. Judges, whether full or part time, who wish to hear cases involving children are (1) selected on the basis of their aptitude to do so; and (2) undergo training by the Judicial Studies Board (JSB). Whilst, no doubt, these procedures need to be kept under rigorous review, a report to the Family Division Liaison Judge (FDLJ) for the circuit involved should lead, in an appropriate case to an application to yourself for a judge's ticket to be withdrawn. Similarly if the Court of Appeal hears a case in which legitimate criticism can be made of a judge's conduct in a case involving domestic violence, the court will refer the case to the FDLJ for action.
- 8.15 In summary, therefore, having examined the files of the five cases in detail, I am quite satisfied that it would be wrong to hold any of the judges "responsible" or "accountable" for the deaths of any of the children, nor would it be appropriate for any form of disciplinary action to be instituted.
- 8.16 As to the WAFE questions and recommendations, I have already stated that, with the exception of question 1, I find the other 6 questions (page 4 of the document) apt. These are useful and helpful question for judges to ask themselves when considering cases involving domestic violence.
- 8.17 As to WAFE's recommendations, I have already made the point that the mechanisms identified in the second recommendation already exist, and that I do not find helpful the manner in which the recommendation is framed. I specifically agree with the recommendation about training (recommendation 3 – and see paragraph 8.29 below). Recommendations 1, 4, 5 7, 8, and 9 are not addressed to the Family Justice System. I have already commented on 6, and I agree fully with 10.

Lessons to be learned

- 8.18 My conclusion in paragraph 8.15 does not, of course, mean that there are no lessons to be learned from the five cases, or from *29 Child Homicides* generally. Several areas seem to me to stand out from the cases, which I will address in turn.

Consent orders

- 8.19 Three of the five cases involved consent orders for contact. Applications for such orders, in my judgment, pose a difficult challenge for the court. On the one hand, as the judge in the case NS and JS pointed out, the philosophy of the Children Act is non-interventionist, and encourages settlements. Section 1(5) of the Act provides in terms that the court must not make an order “unless it considers that doing so would be better for the child than making or order at all”. So if parents come into court with a consent order, the judicial instinct is to welcome it. As the judge in the same case pointed out, if he had refused to make the order, there was nothing to stop the parents implementing their agreement without reference to the court.
- 8.20 It has, however, to be remembered that the responsibility for making an order remains that of the judge, and judges can only make orders in relation to children if they consider that the order is in the best interests of the child. A judge cannot therefore abnegate responsibility for an order because it is made by consent. Judges have the responsibility to scrutinise proposed consent order and satisfy themselves that the particular order is in the interests of the child.
- 8.21 In my judgment, the question of making consent orders in contact and residence orders involving domestic violence needs to be further considered. It may be that in such cases judges need to be more proactive, and that good practice should require a more interventionist and robust approach to such orders. At the same time, it is, in my judgment, essential that the court satisfies itself that each party had entered into the consent order freely and without pressure being placed upon them. It is a frequent complaint that because of what is perceived as the court’s bias towards contact, lawyers pressurise reluctant mothers into consent orders for contact which they do not believe to be safe for their children. The issues raised by such orders accordingly form the subject matter of the first of my recommendations to you: see paragraph 8.27 below.

Cases where violence is directed towards the mother but not the child

- 8.22 I was concerned to read at a number of places in the files that reliance was being placed on the proposition that it may be safe to order contact where domestic violence had been perpetrated on the mother, but not on the child. In my judgment it needs to be recalled that in their report to the court in *Re L (a child) (Contact: Domestic Violence)* [2001] Fam 260 at 271, Drs Sturge and Glaser pointed out that domestic violence involved “a very serious and significant failure in parenting - failure to protect the child and failure to protect the child emotionally (and in some cases

physically) - which meets any definition of child abuse". It is, in my view, high time that the Family Justice System abandoned any reliance on the proposition that a man can have a history of violence to the mother of his children but, nonetheless, be a good father.

- 8.23 An application of the principles set out by Drs. Sturge and Glaser has the effect, in my judgment, of ensuring that the risks of contact to their violent father by children who have not themselves been physically assaulted are better appreciated and taken into account.

Judicial Continuity

- 8.24 It was, I think, unfortunate that there was a breakdown in judicial continuity in the case of TB (see paragraph 6.5 above). As I have already made clear, however, I am not satisfied that it would have made any difference if the same judge had taken all three hearings, and therefore do not make any separate recommendation on the point.

Where a father is facing criminal proceedings

- 8.25 Where a father is facing criminal proceedings involving violence against the children's mother which are outstanding at the date of the contact application, especial care it seems to me is required before an order is made. It is, in my view, impossible to be categorical and say that there should *never* be contact in such circumstances, since there may well be cases in which the seriousness of the criminal charge is outweighed by the children's need for contact with their non-residential parents.
- 8.26 Any order in these circumstances (whether by consent or otherwise) requires a rigorous examination of the risks posed by the father and should not be made unless the court is satisfied that the child can be fully protected against such risks. An application of the CASC Guidelines to such a situation would, in my view, provide a proper framework for the assessment of risk, and I do not therefore think it necessary to make any separate recommendation about it.

MY RECOMMENDATIONS

(1) THE PROBLEMS RAISED BY APPLICATIONS FOR CONSENT ORDER

- 8.27 I recommend that you invite the Family Justice Counsel to consider and to report to you, 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. Possible terms of reference would be those set out by the judge in the case of TB, namely: -

This tragic case raises a difficult question. When is it appropriate for a judge to refuse to approve a consent order agreed between well represented parents as to arrangements for their children, in circumstances when the court has not made any findings as to cross-allegations of domestic violence?

I think the lesson to be learned is that there are some cases when the court should decline to approve an agreed order until it has heard evidence, and made findings. The difficulty is spotting such cases, particularly if the family court advisor is neutral, or largely supportive of contact.

In addition, any investigation by the Family Justice Council could consider the allegation that parties (and particularly mothers) are sometimes pressurised by their lawyers into reaching agreements about contact which they do not believe to be safe.

(2) WHERE VIOLENCE IS DIRECTED TO THE MOTHER BUT NOT THE CHILD

- 8.28 Reinforcement needs to be given to the lead provided by Drs Sturge and Glaser (and accepted by the Court of Appeal in *Re L*) that it is a non-sequitur to consider that a father who has a history of violence to the mother of his children is, at one and the same time, a good father. The opportunity should be taken, either in a judgment or a lecture to make this point, with the concomitant that it needs to be considered in all cases where there is domestic violence. This would, in my view, ensure a more rigorous approach to safety in these case.

(3) TRAINING

- 8.29 I am not currently aware of the curriculum provided by the JSB to trainees for family tickets. I strongly recommend, however, that no judge should sit for the first time in private law proceedings without having undergone training which includes multi-disciplinary instruction on domestic violence. I also think it imperative that all refresher courses contain updating on domestic violence issues.