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

Nicholas Wall, a Lord Justice of Appeal
Royal Courts of Justice,
Strand, London, WC2A 2LL

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REPORT TO THE PRESIDENT OF THE FAMILY DIVISION ON THE PUBLICATION BY THE WOMEN'S AID FEDERATOIN 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.

N.B. Parts 2-7 of Lord Justice Wall's report to the President have *not* been made available online as they contain detailed case summaries and details of court proceedings that were heard in private.

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 LJJ 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 change 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.