

APPENDIX 6

Guidelines For Good Practice on Parental Contact in cases where there is Domestic Violence

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Extracted from Section 5 of the Report on the Question of Parental Contact in cases where there is Domestic Violence.

Court to give early consideration to allegations of domestic violence

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

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

- 1.2 Where the allegations are disputed and the court forms the view that the nature and effect of the violence alleged is such as to make it likely that the order of the court will be affected if the allegations are proved the court should:
 - (a) consider what evidence will be required to enable the court to make findings of fact in relation to the allegations;
 - (b) ensure that appropriate directions under section 11(1) of the Children Act 1989 are given at an early stage in the application to enable the matters in issue to be heard as speedily as possible; including consideration of whether or not it would be appropriate for there to be an initial hearing for the purpose of enabling findings of fact to be made;
 - (c) consider whether an order for interim contact pending the final hearing is in the interests of the child; and in particular that the safety of the child and the residential parent can be secured before, during and after any such contact;

- (d) direct a report from a Children and Family Reporter on the question of contact unless satisfied that it is not necessary to do so in order to safeguard the child's interests;
- (e) subject to the seriousness of the allegations made and the difficulty of the case consider whether or not the children in question need to be separately represented in the proceedings; and, if the case is proceeding in the Family Proceedings Court whether or not it should be transferred to the County Court; if in the County Court whether or not it should be transferred to the High Court for hearing.

Directions to the Children and Family Reporter in cases involving domestic violence

- 1.3 (a) Where the court orders a welfare report under section 7 of the Children Act 1989 in a disputed application for contact in which it considers domestic violence to be a relevant issue, the order of the court should contain specific directions to the Children and Family Reporter to address the issue of domestic violence; to make an assessment of the harm which the children have suffered or which they are at risk of suffering if contact is ordered; to assess whether the safety of the child and the residential parent can be secured before, during and after contact; and to make particular efforts to ascertain the wishes and feelings of the children concerned in the light of the allegations of violence made.
- (b) Where the court has made findings of fact prior to the Children and Family Reporter conducting his or her investigation, the court should ensure that either a note of the court's judgment or of the findings of fact made by the court is made available to the Children and Family Reporter as soon after the findings have been made as is practicable.
- (c) Where in a case involving allegations of domestic violence the whereabouts of the child and the residential parent are known to the court but not known to the parent seeking contact; and where the court takes the view that it is in the best interests of the child or children concerned for that position to be maintained for the time being, the court should give directions designed to ensure that any welfare report on the circumstances of the residential parent and the child does not reveal their whereabouts, whether directly or indirectly.

Interim contact pending a full hearing

- 1.4 In deciding any question of interim contact pending a full hearing the court should:
- (a) specifically take into account the matters set out in section 1(3) of the Children Act 1989 ('the welfare check-list');
 - (b) give particular consideration to the likely risk of harm to the child, whether physical and/or emotional, if contact is either granted or refused;
 - (c) consider, if it decides such contact is in the interests of the child, what directions are required about how it is to be carried into effect; and, in

- particular, whether it should be supervised, and if so, by whom; and generally, in so far as it can, ensure that any risk of harm to the child is minimised and the safety of the child and residential parent before, during and after any such contact is secured;
- (d) consider whether it should exercise its powers under section 42(2)(b) of the Family Law Act 1996 to make a non-molestation order;
 - (e) consider whether the parent seeking contact should seek advice and/or treatment as a precondition to contact being ordered or as a means of assisting the court in ascertaining the likely risk of harm to the child from that person at the final hearing.

Matters to be considered at the final hearing

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

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

Matters to be considered where findings of domestic violence are made

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

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

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

- 1.7 Where the court has made findings of domestic violence but, having applied the welfare checklist, nonetheless considers that direct contact is in the best interests of the child or children concerned, the court should consider (in addition to the matters set out in paragraphs 5 and 6 above) what directions are required to enable the order to be carried into effect under section 11(7) of the Children Act 1989 and in particular should consider:
- (a) whether or not contact should be supervised, and if so, by whom;
 - (b) what conditions (for example by way of seeking advice or treatment) should be complied with by the party in whose favour the order for contact has been made;
 - (c) whether the court should exercise its powers under section 42(2)(b) of the Family Law Act 1996 to make a non-molestation order;
 - (d) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period;
 - (e) setting a date for the order to be reviewed and giving directions to ensure that the court at the review has full information about the operation of the order.

Information about local facilities

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

Reasons

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

Note

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