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FOR THE SAKE OF THE CHILDREN: THE LAW, DOMESTIC VIOLENCE AND CHILD CONTACT IN ENGLAND

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Synopsis — This article draws upon findings from a qualitative research study of the arrangements made for children to have contact with the nonresident parent following separations that resulted from domestic violence to women. In the article, we review recent developments in the law's response to domestic violence in England, showing how the criminal law and the family law, particularly in relation to children, have been at odds with one another. Within the criminal law efforts have been made to tackle the problem of "no-criming" and to afford victims better protection. Within the family law, procedural and substantive changes have made it harder for women and children to break free from violent men. A contact presumption and focus upon agreements made "for the sake of the children" through mediation/conciliation compound the battery of women and children by the law and expose them to intolerable risks. In the article we critically review the value of contact with fathers for children who have lived through domestic violence and briefly consider efforts made to enhance the safety of women and the welfare of children in other jurisdictions. © 1997 Elsevier Science Ltd

Policies on domestic violence have been under scrutiny in the UK and have given cause for considerable concern, public debate, and activity in the 1990s. Much of the activity has centred on the criminal law and policing and the identification and response to domestic violence as a serious crime. Less attention has been given to the family law, particularly in relation to children, where recent changes have increased the risks of both further violence to women and

abuse by proxy through manipulation of the law. In this article, drawing upon findings from a recent research study, we review the legal response to domestic violence in England, particularly in relation to child contact arrangements after separation or divorce.

Family law and policy in England, especially since the *Children Act 1989*, has contradicted the more "interventionist" stance now adopted by the criminal law, by downplaying violence. A wave of changes, some old, some recent, have aimed to reduce the significance of conduct in order to focus minds upon the interests and welfare of children. The child welfare discourse in family law has served as a "carrier pigeon" for fathers' rights. Child welfare has become fundamentally linked to continued contact with fathers — the contact presumption — arranged

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with mothers through a process of "agreement" rather than legal litigation. Parents are expected to look forward into the future and ignore any "past" behaviour/grievances. Children's needs are considered separate to the needs of the mother, who is usually the primary care giver. Thus, women who assert the need for protection from further domestic violence when arranging child contact are in danger of being viewed as selfish, obstructive, or hostile to the father as parent and, hence, to the welfare of their children. Responsibility for any harm that is caused to children when contact is set up with a violent man is shifted back on to the mother. Her fears of the father, rather than the persistent violence that gave rise to them, are invariably deemed to be the chief source of damage to a child and the main obstructive forces to continued contact. Responsibility also shifts back on to her, and often the children, to continue to manage the man's violence after separation. To encourage responsible parenting, the current government have adopted a non-interventionist stance that "allows" parents to arrange child contact with minimum involvement from outside agencies. It is assumed that parents are the best guardians of their children's welfare. On contact, parents are expected to sort things out for themselves as much as possible and there exists a noticeable lack of practical support and resources to make contact work safely. Women's safety is traded off against (a mostly rhetorical concern with) child welfare. This is clearly unacceptable.

Domestic violence is a crime primarily against women, but it is also a crime that has a significant impact upon children. If child welfare is to remain the priority of family law, there needs to be a careful questioning of the value of contact for children with violent men.

THE POLICY CONTEXT — DOMESTIC VIOLENCE IS A CRIME . . .

In the early 1970s, events in the UK gave a catalyst to the developing refuge/shelter movements in a number of countries (Dobash & Dobash, 1992). The government response to domestic violence has, however, achieved little and lagged behind the initiatives undertaken by governments in the US, Australia, Canada, and New Zealand. Policies on domestic violence in the UK have been piecemeal, uncoordinated, and under-resourced. In the mid-1980s, research

into policing in the metropolitan area of London showed a reluctance to enforce the criminal law and a tendency to "no-crime" incidents of violence against women¹ (Edwards, 1989). Following on from this research, and further work undertaken by feminists in the West Yorkshire area (Hanmer, 1989), there have been substantial changes in attitudes and in policing policy toward providing more active support, although less active intervention. Policy "at the top," within the Home Office (which is the government department responsible for law and order and now lead agency for domestic violence matters in England) has shifted radically toward the recognition of domestic violence as a crime for which a range of statutory and voluntary agencies have responsibilities to take action. The British Crime Survey, previously criticised by feminists for ignoring violence to women from men known to them (Hanmer & Saunders, 1985), now publishes figures that indicate the prevalence of domestic violence among the survey population. The latest figures show that nearly half (46%) of all incidents of violence against women in 1991 were domestic violence (Mirlees-Black, 1995).

The Home Office Police Force Order, Circular 60/1990, was an important step against "no-criming" domestic violence. This recommended that "all police officers involved in the investigation of cases of domestic violence regard as their over-riding priority the protection of the victim and the apprehension of the offender." The circular urged police forces to keep accurate records on incidents of domestic violence, to enforce the criminal law, and to offer more sympathetic treatment and realistic support to victims. Since the mid-1980s, specialist police "domestic violence units" have spread across the country, commonly staffed by nonuniformed, dedicated police officers, many of whom are women. Domestic violence units (DVUs) exist as units of "expertise on domestic violence" (Home Affairs Committee, 1993, p. xi) to give advice and training to the police on domestic violence issues. Staff from DVUs do not, however, attend incidents nor do they investigate crimes. Many work only during normal office hours, 9 to 5 on weekdays, and are, thus, not available at times when women are most likely to require emergency protection. Many do, though, generally take on responsibility to follow up on calls, monitor the progress of any charges and ensure that victims receive

adequate information on services and sources of support or advice.

In a few areas of the country the police, particularly from DVUs, have assisted refugees in the development of interagency methods of working, drawing local agencies into coordinated actions that prioritise women's needs for safety and practical support. Whereas in the early 1980s, women's refuge activists in England, (one of the authors among them) found it hard to muster up interest from local agencies, in the 1990s most have seen, and helped organise, an exhausting proliferation of conferences on domestic violence for the police and other practitioners.

In February 1993, the House of Commons Home Affairs Select Committee published a report on domestic violence that contained a number of recommendations for improving the government's response. Later that year the government set up interdepartmental working groups on domestic violence to take forward some of these recommendations and promote a coordinated response at national and local levels. A recently published interagency circular now sets out the government's approach and the responsibilities of all the key agencies. The aim of this circular will be primarily to advance interagency work, rapidly blossoming throughout the country, but as yet, in its infancy. The circular urges, but does not require, interagency action directed toward: "encouraging those who are experiencing domestic violence to come forward and address their situation through the help available"; addressing the needs of children; the provision of emergency and long-term safe accommodation and support services; ensuring adequate legal protection under civil and criminal law; bringing perpetrators to justice and helping them to understand and address reasons for the behaviour in order to stop the abuse; prevention through education and community initiatives (Home Office, 1995, p. 9).

About 150 interagency initiatives currently exist in the UK, but working practices, output and resources, vary from area to area (Hague, Malos, & Deer, 1995; Home Office, 1995). Most neglect the issues arising for women around child contact, despite the stated government aim of "addressing the needs of children affected by domestic violence" (Home Office, 1995, p. 9).

. . . BUT NOBODY IS AT FAULT

The area of family law that covers child contact fails to address the problem of domestic violence. Family law in England assumes responsible parents who will prioritise the welfare of their children. Indeed, legislation has recently renamed parental rights, "responsibilities." Responsible parents put aside issues of conduct, including domestic violence, in order to address the needs of their children on separation. The welfare of children is undermined by this failure to support the mother and confront and challenge the violent behaviour of fathers.

Under the law, prior to the recent changes, the courts would make orders for sole or joint custody and access to a child. Mothers most often would be given sole custody and fathers would be in the position of a visiting parent, having access to children usually at weekends and for a few hours after school in the week. The current law casts relationships on separation differently. Both parents, if married, continue to hold "parental responsibility" for children on separation. The *Children Act 1989*, abolished the notions of custody and access for children on divorce and replaced them with the concept of parental responsibility. Both (married) parents are deemed to have responsibility for their children during a relationship and this continues to exist after a divorce. Together with procedural changes, in practical terms, this means that upon divorce there is now no automatic court hearing over visiting arrangements and where the child will live. In most cases there is only consideration as to whether the arrangements made by parents for children on separation are satisfactory. Where it is necessary and in the interests of the child, a parent can apply to the court for a Section 8 Children Act order to determine the arrangements for child contact and residence and other issues that may be in dispute.

For many parents the change in terminology has not drastically altered the division of domestic labour and the fact that mothers continue to care daily for children and fathers, at best, do it part-time. However, the notion of continued parental responsibility increases the scope for fathers to remain involved in the control of women through a child-care relationship. There is no clear definition in the legislation of what parental responsibility involves, so its meaning for fathers, particularly abusive men, has been

open to interpretation. Parental responsibility can be acquired through the courts by fathers who never marry (*Illegitimacy Act 1987*, now covered by the *Children Act 1989*). Unmarried fathers are now more likely to obtain parental responsibility and contact with children if they apply to the courts. In the first year of the Children Act there were 2941 parental responsibility applications from unmarried fathers. These had a high withdrawal rate, the most likely explanation being that fathers made parental responsibility applications to increase their chances of gaining other orders, especially for contact (*Family Law*, January, 1995). There has been only one case reported where a court's refusal to grant parental responsibility to an unmarried father was upheld on appeal (*Re T (A Minor) Parental Responsibility: Contact*, 1993). In that case, the father had been found guilty of serious violence to the mother and of "cruelty and callous behaviour" toward the children. Proving, to this degree, that violence had occurred would be difficult for many women.

An important part of parental responsibility has been continued contact between parents and children after separation. Contact is viewed as being a right of a child. Although each case must be decided on basis of its individual facts, there is a strong presumption of maintaining contact in the English law.

For the court to deprive a good parent completely of access to his child is to make a dreadful order . . . the impact on both parent and child must have life-long consequences. Very seldom can the court bring itself to make so Draconian an order, and rarely is it necessary. It is the duty of parents, whatever their personal differences may be, to seek to inculcate in the child a proper attitude of respect for the other parent. (Edmund Davies, 1971)

The right to know and have a relationship with one's parents has been recognised by the United Nations as a basic human right (United Nations Convention, 1989), so in principle, a commitment to preserving contact for children with parents is a good thing. Problems occur, however, where contact has no value for a child. The legal test applied as to whether contact is of benefit to children is summed up in the following extract:

. . . whether the fundamental emotional need of every child to have an enduring relationship with both his parents . . . is outweighed by the depth of harm which, in the light, inter alia, of his wishes and feelings . . . this child would be at risk of suffering . . . by virtue of a contact order . . . [Re M (Contact: Welfare Test), 1995]

The Children Act 1989 made it easier for other relatives, such as grandparents, to apply for S8 orders for contact and residence. This has affected women with extended families where contact with the grandparents has been used by fathers as a route of abuse of the mother. The legislation further allows indirect contact orders to be made so that parents and children unable to meet can maintain a relationship via letters, telephone calls, by sending photographs, etc. This again causes problems for women separating from violent men. To maintain this type of contact, the father would generally need to know the children's address and telephone number, which the mother will have good reason to keep secret from him. Parental responsibility gives fathers the right to information about their children's schooling, including the right to know where the schools are. This obviously increases the likelihood that women will be found by violent partners after separation.

The Children Act came into force alongside changes in the courts that were designed to simplify and speed up the decision-making process in cases affecting the welfare of children. Within the family law the tide of change has been away from intervention and enforcement through the courts toward agreements made through informal negotiation and mediation. Apart from saving money for the government's Legal Aid fund² by diverting cases toward the voluntary and informal sectors, supporters of the mediation, agreement, and negotiation trend have claimed this to be generally better for children. It cuts delays and acrimony by keeping cases out of court (Lord Chancellor's Department, 1995). Courts are empowered to make no order if this is in the interests of the children concerned. Scope to make agreements via mediation, conciliation appointments, and directions hearings, are now built into the working practices of the courts and associated personnel. Mediation, of the in-court and out-of-court varieties, has been steadily growing and,

with the passing of the Family Law Act 1996, will soon become routine. The governments' latest reforms to the law of divorce will bring a much greater use of mediation to secure agreements on child-care matters. After an initial information interview, mediation will become the next step for most divorcing couples. The penalty for refusing mediation will be the reduced right to apply for Legal Aid. Although the government gives domestic violence survivors the option to refuse mediation without penalty, beyond this concession, little consideration has been given in the UK to the "process dangers" (Grillo, 1991), which a mediation approach poses for women. The focus upon agreement and cooperation is clearly more difficult for women separating from abusive men and our research found that it resulted in "agreements," which were invariably unsafe for women, and often for children as well. One of the last-minute amendments to the Family Law Act 1996 brought by the opposition Labour party introduced a responsibility for mediators to screen for domestic violence among couples with whom they work, so that safety and fairness in the process of mediation can be ensured. As yet, there is no agreement among mediators as to how screening should be done, nor who decides whether or not domestic violence is a relevant issue to be taken into account. There is potential here for women's fears and experiences to be judged mostly by reference to mediators' perceptions of "real" or "significant" violence.

Keeping cases out of court has meant that justice has become less accessible for women. The Legal Aid fund has been dramatically cut and further cuts are planned to accompany the divorce reforms (Legal Aid Board, 1995). Women, who are the main beneficiaries of Legal Aid, have been the main losers. Cuts mean that fewer women are able to gain help with the costs of domestic violence injunctions and divorce cases. Women earning relatively low incomes in need of a domestic violence injunction face legal fees of around £1,000. These economies have aggravated the power imbalance between men and women on separation and divorce, as generally wealthier men are more able to find funds to contest cases relating to children and can continue to batter women with the law.

THE RESEARCH

The research, conducted between 1992–1995, looked at the contact arrangements made by 53 women recently separated from violent men and the work of 77 professionals and advisers commonly involved with contact cases. The study was qualitative, based upon in-depth interviewing, observations, and documentary work. Where possible we kept in touch with the women for periods varying from 3 months to 2 years to monitor the contact arrangements. The women were approached mainly through the professionals we interviewed, enabling us to talk to some who had never asked a women's refuge for advice.

The professionals interviewed included solicitors, refuge workers, court welfare officers, mediators, contact centre workers, and police domestic violence unit officers.

The professional/adviser group of research participants had different levels of involvement and responsibilities in setting up and sometimes helping with the practical arrangements for child contact. Court welfare officers are required by the courts to safeguard the welfare of children in family proceedings. Their main work for the courts involves producing welfare reports based upon their investigations into a particular family's circumstances, although many are also involved in encouraging parents to reach agreements over child-care matters through interviews, formal meetings at the court or through a range of methods that may resemble mediation. Mediators in the UK are mostly voluntary sector professionals who, for a variable, usually income-related fee, work with couples who choose this method of facilitating agreements to present to the courts. Choice to enter mediation — voluntarism — has been an important principle steering the work of voluntary sector mediators in England. Like court welfare officers, mediators tend to see their work as primarily concerned with the welfare of children.

The involvement of refuge workers in child contact arrangements varies in relation to the resources available to a particular group and how an individual refuge worker interprets her job responsibilities. Most refuge workers in the UK are overworked dealing with day-to-day crises within refuges. Unless they have responsibility for follow-up (outreach) work with women and children leaving the refuge, many

will have limited involvement in contact cases. Refuge workers interviewed varied in their views about their relationships with women who use the refuge. Some of those interviewed adopted a "hands off" approach to self-help and tried not to get too involved with women's problems so as to prevent the development of dependencies. Others saw their primary responsibility as being women's safety and took on protection as part of their work. They saw their work as including acting as a chaperone in court, defending and advising women about their rights in negotiations with statutory agencies and the courts. Many as a result, often had long-term contact with women after they had left the refuge and thus played a major role in providing help and advice on child contact matters. Surprisingly, only a small proportion of the child-care refuge workers interviewed for the research saw their responsibilities extending to child contact. Two refuge groups, had however, developed very comprehensive child-care work, which included looking at the problems that contact posed for children.

THE CONTACT PRESUMPTION AND THE VALUE OF CONTACT BETWEEN CHILDREN AND VIOLENT FATHERS

Whether there was a history of violence or not, many of the legal professionals we interviewed for the research saw the major problem in contact cases as being the mother's obstruction and hostility. Yet the majority of the women we interviewed for the research initially saw some value in maintaining contact between fathers and children and, indeed, made great efforts to ensure that it happened. Women supported the idea of continued contact for a variety of reasons. Three of the women interviewed saw the man's relationship violence as separate from his parenting ability and described him as a "good father." The rest had concerns about their own safety during contact and about the impact that witnessing abuse might have upon the children, but were willing to try to establish contact so that children could know their fathers and sometimes, the father's family. Some of the women said that the children needed a father or father figure in order to feel part of a "normal" family. The strong commitment to biological fathers in the current family law reinforced these beliefs. Contact was further seen as a way of ensuring

that fathers took responsibility for children, especially if the father had not been married, had denied the paternity of the child, or had been generally "irresponsible" during the relationship.³ The child's survival in a racist society also had an influence upon women's decisions. Five of the Black women we interviewed had arranged marriages and only had the ex-partner's family nearby. Women felt it was important to try to maintain contact between the children, the family, and the community because there were no other options for Black Asian children to develop a positive identity otherwise. In situations where the child and father were Black but the mother was White, mothers (and fathers) also saw contact as useful in maintaining links for the child with a Black family and a Black community.

. . . he says I want to show "Tina" where she's coming from sort of thing, why she is the colour that she is, and the people she's living with are white, do you know what I mean, she'll have her own culture as well . . . She does really enjoy him sort of thing and like she talks about him every day . . . They are close now. But I don't think that he is that good for her because he just drops her off at his mum's and goes off. . . "Cheryl"

Some of the women did not want to be seen as being responsible for stopping contact. They did not want to carry the burden of blame from their children in later years. Women felt they were in a particularly difficult position where children asked to see fathers who had exercised a form of "mind control" over the children as well. It was not easy to see whether children said they wanted to see fathers in order to keep the peace or because they genuinely wanted to see them.

. . . my solicitor has put forward that (contact) wasn't doing the children any good and I had bent over backwards to allow the children to see him even though it's been really hard for me, frightening from the beginning just to have to face him . . . But the court said that it is important that the children should keep in contact with the father and I think it is, to a point, if the fathers behave . . . but he uses contact as a means to alleviate his anger against me . . . and I've threatened quite a few times to say right that's it, I will not let them go, but then I don't want the children to

say to me that you stopped me going to see my Dad. Because however frightened they are of him, they don't like upsetting him . . . "Sally"

Women wanted their children to have "quality" contact but very few of the fathers provided this.

I had sort of wanted them to have contact with him, but I wanted them to have good access, you know, like quality contact . . . but he was taking drugs and he was drunk all the time and he'd say things . . . he used to say to the kids, "I'm going to cut your mother's throat" and you know, he was really warped. And one incident, he were in the pub, and he had the kids with him . . . he was crying and he was saying to them, "I'll give yer a pound, but you've got to tell your mum she's a slag on the phone . . . "Rebecca"

Two questions were important for women making decisions about contact: (a) whether contact could go ahead without risking their own safety and (b) whether or not there was any value for the child in maintaining contact with a violent father. These considerations should be priorities for the courts and for the professionals involved in contact cases, but, unfortunately, we found that this was rarely the case. The first question has been largely irrelevant in the English law as it has been assumed that violence is "past conduct" and that the parents' relationship with each other is separate from their relationships with children. Violence to mothers is generally regarded as irrelevant to the child's contact with the father and only occasionally have courts seen this as grounds for contact stopping. Even then, the degree of harm to the woman's health may well be questioned, especially if this involves psychological damage. In a recent case at the Court of Appeal, a mother who appealed against a contact order made to the (unmarried) father of her 5-year-old son had psychiatric evidence of the harm caused to her discounted by the court. The court held that the mother was a stronger person than the psychiatrist suggested and could cope with contact (*Re P*, 1994). Courts have the power to overrule expert testimony and seem particularly likely to do so in child contact cases.

All but three of the women interviewed for the research had been assaulted by ex-partners

when taking or collecting children from contact visits. Two of the women who had not been abused later returned to live with their partners, the lack of violence may well have been part of the man's efforts to bring about a "reconciliation." Women who were assaulted during contact visits suffered the whole range of abusive behaviour — attacks with knives, threats to kill, kidnappings, rapes, and forced sex, punches, slaps, verbal abuse, damage to property, and harassment. The small number of men who were imprisoned for breach of injunction, criminal assault, or attempted murder, continued to harass and assault their ex-partners on release from prison.

A particular problem for women and children was the way that fathers used contact with the children as a route to further abuse the mother, either directly, by harming the children, or indirectly, by a proliferation of court cases. Threats to kill, harm, or abduct a child, especially when the woman tried to leave, appeared often to be primarily designed to hurt the mother. Nearly all of the women interviewed mentioned the emotional abuse and harm caused to children who were forced by the father to witness violence, especially during contact. Pumping the children for information on the mothers' whereabouts and involving them in plans to kill the mother were common complaints made about fathers who had contact.

. . . he'd sort of take the kids around, Kay was four, and he'd like go to areas he'd thought the refuges were in until he'd get to a street where Kay would know and she'd point out the place where it was, twice . . . and both times, I mean what he would do like is get me on the street and take me home . . . I must have gone back to the refuge four or five times . . . "Alyson"

Safety matters played an important part in the continued viability of contact. At the end of the research contact was still ongoing for the majority of the women's children (the children of 35 out of the 53 women interviewed). But only 7 out of 53 women were eventually able to set up contact between fathers and children so that there was no further violence or harassment.

Twenty-two of the women mentioned solicitors, social workers, or court welfare officers making temporary provisions for safety, by referring them to a contact centre, giving help

with supervision or taking and collecting children from visits. Support was, however, limited and soon withdrawn. Contact centres are few and far between. After a brief period of time, the responsibility for managing contact safely generally fell back upon women. Many women were expected to make their own arrangements for supervision of the contact between father and child. All the women tried to find ways to prevent the abuse from happening on contact visits, often making use of "safe" public places, such as McDonald's fast food restaurants, as meeting points for the father and children. One woman arranged for her children to walk to their father across a bridge. Another got herself a very large dog. Others (temporarily) drew upon the support of refuge workers, family, friends, or their older children to prevent further abuse from the ex-partner. Some of the refuge workers interviewed were particularly inventive at trying to find ways to make contact safer for women and children. Refuge workers, family, friends, and relatives, however, were also commonly assaulted or threatened by the father during contact visits.

Women with legal "protection" were often in more difficult situations regarding contact than women who lacked court orders. If a woman had an injunction, professionals assumed this would give her adequate protection and thus saw no problem in encouraging fathers to come to the house for child contact. In one case where the man had been excluded from the matrimonial home because of violence, the court ordered the mother to hand over her baby to the father at the end of the garden path. Four mothers with very young children were required to stay without protection with the children during the fathers' contact visits.

Once fathers applied for contact it was very difficult for women to get their fears of violence taken seriously. Mothers who tried to stop contact were usually seen to be "hostile" or obstructive by the courts. Fathers' hostility, shown through ongoing violence to mothers, has rarely been considered by the courts or by legal professionals. A number of women involved in the study were forced to leave their children behind with the violent partner because, past experience had shown them, that they would be unable to leave with the children.

The spectre of maternal hostility gives women little choice but to comply with the father's wishes. Many of the women felt they

had been pushed into agreeing to unsafe contact arrangements because solicitors or court welfare officers had advised them they must concede to appear "reasonable." A number of the legal professionals interviewed freely admitted that this was what they did. One of the court welfare officers interviewed described her approach:

... it was very optimistic, it was Children Act mode, forget the past, do a deal, go on for the future, the child must have a father, the highest concept was the child must have contact with its father, anything, any fears were seen as blocking, as ruling the party.

Women who do not "cooperate" with father's wishes to arrange contact have been described by judges in the higher courts as "selfish" and "making a fuss" (Butler-Sloss in *Re H (A Minor)*, 1994) or "implacably hostile." One of the women we interviewed, who we shall refer to as "Olive," had a 4-year-old son who had been sexually abused by his father during a contact visit. The judge re-named the father's touching the child's genitals as "inappropriate parenting" rather than abuse and ordered Olive to make arrangements for contact.

... [the Judge] just dismissed everything that was in the reports ... there's been five or six different welfare reports, psychiatric reports and in every one of them the children have stated that they do not want to see him ... they just tried to make out that I'd manipulated all these professionals into believing me ... The judge said that it was my fault for turning the children against him and that if — he gave me six months to arrange supervised access and that if I didn't do it, he would take draconian measures by putting me in prison or taking my children off me and putting them in care ... Olive

Women who are seen to be "hostile" run the risk of losing residence of the children to the father. Contact puts domestic violence survivors into a no-win situation. If contact goes ahead, women usually end up compromising their own safety. A woman may have nothing to gain herself but she must concede, otherwise she will be seen as hostile, uncooperative, and not a good mother.

Courts are reluctant to stop contact with fathers unless there is evidence of harm to the children (*M v. H*, 1990). The professionals interviewed for the research overwhelmingly believed that courts would not allow contact to stop unless there had been physical violence to the child. But proof of harm meant more than showing that a child had been previously abused. Almost half of the women (21 out of 53) said that their children had been directly physically or sexually abused by their partners as well, but contact went ahead for all but six of the families. There were many accounts of child abuse and neglect by the father during contact visits. These included threats to kill the children, physical abuse, punching, slapping, kicking, sexual abuse, child snatching, failure to treat a sick or injured child (this led to the death of a 4-year-old boy who was taken overseas), leaving a child in a soiled nappy for prolonged periods of time, failing to feed the children. Some fathers insisted that the children watch the abuse of the mother. Child witnesses to abuse as a result took on a caring role for one of the parents. They tried to manage or intervene in the violence in order to protect the mother and, sometimes, the father from the result of his own actions. Children often had to hold back information from the father or mother, to mediate between the two and cover up or tone down the violence and threats of abuse, in order to minimise the harm or keep the peace. This is an onerous responsibility to put on to children.

Harm to the children caused by the contact needed to be shown or, as one refuge worker put it, "proved and double proved." A high level of proof was required in order to satisfy a court, especially if the child was young or the abuse was sexual violence⁴. The rigorous assessment of proof of harm meant that some children were forced into contact with abusive fathers against their will and their mothers were coerced into compliance.

I was in that awful position where I had been told by the social workers, I had been told by the solicitors if I didn't make her go every week that I would lose her . . . And so we spent an hour calming her down and we had to make her go on a visit after what had happened (father's assault on mother witnessed by child). She came back and she just laid on the sofa all limp and just like curled up . . . I felt guilty beyond belief at making

her go and it was this awful trap you are in, that you are told you have to make this child go and this child is looking at you for protection . . . "Martha"

He grabbed hold of her and snatched her out of the house and she was screaming Mummy, Mummy, Mummy, Help me, I don't want to go, Mummy, Mummy, up to the car park . . . all the way along they were all going on this theory that it's all my fault, you know. I am hysterical. She's upset because I'm upset. And you know, they decided I needed psychiatric help. "Brenda"

Repeated applications by fathers for contact meant that children were further abused by a court system that subjected them to investigation after investigation to show why it was not in their interests to see their fathers.

Some of the legal professionals interviewed felt that getting children to "confront their fears" and renew contact with fathers would be beneficial:

Even when the child has been abused by the father there's still the question of whether it's better for the child to have some sort of supervised contact with this man and keep this demon under control, or just to have this whole level of fear . . . Solicitor

Bringing offenders and victims of crime together is one of the methods employed in reparation where it is done to encourage offenders to take responsibility and realise the consequences of their actions. This is unlikely to happen where there has been domestic violence, as the perpetrator has seen the consequences of his actions already on a daily basis and usually has fixed views about responsibility resting solely with the victim. Bringing the victim and offender together is likely to be dangerous, rather than therapeutic or remedial. The assumption that, to move on as survivors, women and children need to "confront their fears," shifts attention even further away from the perpetrator's responsibility for his violence. The fears women and children harbour as a result of abuse, rather than the man's continued threats and violence, become the problems.

Because of this misguided belief that victims will grow strong if they face their abusers, court welfare officers and some of the mediators in-

interviewed said that they had forced women into joint or family meetings with the perpetrator, making minimal provisions for safety. This put women and children into situations with unacceptable levels of risk. One welfare officer admitted that a woman he had "encouraged" to attend a joint meeting had been stabbed by her ex-partner, in front of her children, as she left the court welfare offices. Another told us how a client had been axed to death at the door of her home following a joint meeting with her ex-partner. The killing was witnessed by her children. Some welfare officers said that they told clients they would be safe on court welfare premises, the welfare officers would be there and meetings would be videoed. But during one joint meeting a woman was beaten up by her ex-partner before the camera.

The value of contact for children who have lived through domestic violence requires very careful consideration, particularly if the abuse has involved an element of mental cruelty or "mind control." "Nina's" daughter, discussed earlier, asked to see the father who had sexually abused her. During contact he gave the child undivided "special" attention, very similar to the "special" attention he had given her as part of the sexual abuse. "Zoe's" 13-year-old daughter asked if she could leave the refuge and return to live with the man who had physically and sexually abused her mother and dominated the whole family's way of life. Zoe feared that the child was unable to freely make a decision because of the degree of control that her ex-partner had exercised over the child. When she returned to live with her mother's ex-partner, all contact with the mother ceased. The current law puts emphasis upon ascertaining the views and wishes of children but does not allow children's welfare, nor the impact that domestic violence has upon children, to be adequately explored. Reference to a child's wishes, as Zoe's experience suggests, may indeed act as a diversion away from the consideration of a child's welfare:

Before we had to dig around and if there was a problem we had to work at it . . . now we can actually go to the children, say this is what the child is saying and I can almost use that in order not to go further . . . Welfare Officer

The time that court welfare officers have available for work with children has been cut due to the principle that there should be "no delay" in cases relating to children. This puts pressure upon welfare officers to speed cases along so that contact can be settled quickly. In England, court welfare officers have very limited training for work with children. As probation officers, even those working in specialist court welfare units have training that is predominantly geared toward work with adult offenders. They are coming from a profession where priorities rest with the needs of the offender, rather than the safety of victims. Recent proposals to remove the social work element from probation officer training can only aggravate this problem.

CONTACT, CONFLICT AND AGREEMENT

Recent reforms of the family law in England have aimed to reduce conflict in order to make divorce and separation less traumatic for children, parents, and taxpayers. To reduce conflict, considerable emphasis has been placed upon the avoidance of issues of conduct and the processes of mediation, conciliation, and agreement between parents. Conduct in family law has, up until recently, been one of the "facts" needed to prove that a marriage had come to an end. Within the concept of conduct, all "shades of behaviour" from allegation to persistent and life-threatening abuse were collapsed. Many of the legal professionals interviewed said that solicitors would often "hype up" incidents of violence in order to get the best deal out of the law for clients, especially if this meant gaining a quick divorce or rights to remain in the matrimonial home. Because of this there was a general climate of disbelief among the court-related professionals about allegations made regarding conduct, including domestic violence.

Documentary materials alerting professionals to the possibility of abuse are now less likely to be available. There has been a decreased emphasis upon affidavits that invite allegations and counter allegations from separating couples. The latest divorce law reforms will take this trend further so that irretrievable breakdown of a relationship, the sole ground for divorce, will no longer rely upon matters of conduct. The decline in documentation means a greater reliance upon oral communication be-

tween professionals and separating couples to establish whether or not violence is an issue likely to affect contact. But, there is no incentive to directly ask clients whether domestic violence has occurred, indeed there is a resistance to doing so because of the assumption that allegations are easily made, likely to whip up hostility that could become entrenched. Unlike some mediation services in the US, Canada, and Australia, screening for abuse is rarely done in mediation services in the UK. Many mediators believe there is no need for screening or directly asking about abuse because victims of domestic violence will screen themselves out. We have found that this is not necessarily so (Hester & Pearson, 1993). Mediators and welfare officers rely upon their interviewing skills to detect abuse, yet they do not always make it safe for women to say that there has been violence.

Agreement-seeking and mediation in England generally involves bringing parties together to talk, frequently in joint meetings⁵. Few of the mediators and welfare officers interviewed considered whether or not women sitting in the same room as the abusive partner may feel too frightened or intimidated to express their true feelings.

. . . we did have one meeting together, him, myself and the court welfare worker, to see if we could come to any arrangement, and you see I just kept saying no, no, no. And it were really disgusting, in this tiny little room with him and this woman who I didn't know, and he was just like badgering this woman, badgering me, and every time she didn't look he'd be like hinting . . . we'd said no, you know (to the joint meeting). But all the time I tried to seem as if I was cooperating with the courts, I had to do that so that I didn't look as if I was being vindictive. "Rebecca"

The "future focus" upon arrangements for children meant that issues arising from the relationship were seen as history and a reluctance of the woman to become forward looking. Confronting domestic violence in this context of implicit condonation would be impossible.

Many states in the US, Canada, and Australia have ruled out mediation as an option where there has been domestic violence because outcomes that are safe for women and children are unlikely to result (Attorney General's Department, 1996). Where there has been domestic

violence "arms' length" negotiations between the parties' solicitors may be a much safer and less conflict-ridden approach for settling disputes. In New Zealand women's groups have challenged the relevance of a contact presumption for children who have lived through domestic violence, arguing instead that there should be no contact, unless this can be safely and adequately supervised (Busch & Robertson, 1994). If we are to take on a firm commitment to stop domestic violence in the UK, the safety of women and children involved in contact arrangements after leaving violent men needs to become a higher priority. It is worrying that, although the reality of violence to women and children after divorce and separation is at last being recognised, as yet, so little attention has been given to looking at the practical support women need if their children continue to have contact.

ENDNOTES

1. That is, the failure to act on and record crimes, on the ground that they are "just domestics."
2. State funds that cover the costs of court cases for eligible persons, usually on low incomes.
3. The denial of paternity caused some difficulty among our participants. We eventually could not use the experiences of some of the women we interviewed because contact did not go ahead due to disputed paternity.
4. Five out of the 21 women who talked of direct violence to children (other than emotional abuse and neglect) mentioned sexual violence to the children from the father. Three said that the sexual abuse had happened during contact. These figures are probably an underestimate of the incidence of sexual abuse to the children because not all of the women were asked about sexual abuse, and, some of the women were recently separated. A child will often not tell anybody about sexual abuse until they feel safe to do so. Sometimes this can be many years later.
5. Joint meetings in mediation and agreement seeking were routine when we carried out the research, particularly in court welfare work.

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