

Domestic Violence and the Law: Children

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Many victims and perpetrators of domestic violence accessing legal support do so because there are children involved. Parents will fight for custody over children, residency orders or prohibited steps orders. Unfortunately, during this ordeal, many parents, and professionals, fail to consider the effect that these upsetting processes may be having on the children involved.

At least 750,000 children a year witness domestic violence. Nearly three quarters of children on the 'at risk' register live in households where domestic violence occurs (Dept. of Health, 2002) and in 40 - 70% of cases where women are being abused, the children are also being abused by the same perpetrator (Stark and Flitcraft, 1996; Bowker et al., 1998.) The majority of children witness the violence that is occurring, and in 90% of cases they are in the same room or in the room next door (Hughes, 1992).

Unfortunately, even after separating from their abusers, many parents/guardians find it extremely difficult to protect their children from ongoing abuse as a result of their requirement to comply with contact orders made by the family courts. Domestic violence services support a child's right to safe contact, but recognise that contact with an abusive parent may not always be in a child's best interest.

On average, only 1% of applications for contact (under the Children Act 1989) are refused – yet domestic violence is evident in up to 70% of family proceedings cases. When parents separate ongoing contact between the children and both parents is usually seen as a good thing for everyone concerned. This is supported by domestic violence services, provided the children's wishes are taken into account, and contact can take place safely.

However, when one of the parents is a perpetrator of domestic violence, the other parent (usually the mother) may be very concerned about his having contact with the children, and may fear for their safety if contact is enforced. Fear could be caused by past or anticipated abuse of the children, the potential for the perpetrator to use contact to trace her whereabouts and abuse her further, or even the fear of abduction of the children in extreme cases.

Contact arrangements can often be dangerous for previous victims of abuse as well as for any child meeting a parent who is a domestic violence perpetrator. For many victims who have fled their perpetrator, child contact is a time for the perpetrator to continue exuding power and control over the ex-partner. This may be through demanding the time of child contact or where meetings should be held, through to the use of physical or verbal abuse when father and mother do meet. Many parents feel anxious and scared when taking children to meet with the other parent, sometimes resulting in the parent refusing to take the child or children out of fear. It is therefore crucial that all these circumstances are considered when a contact agreement is drawn up, and all parties are aware of what the repercussions will be should there be a breach.

The wishes of the child or children involved are paramount and must be carefully considered. Many children who come from homes where domestic abuse is taking place believe their wishes and fears have been ignored by professional bodies. These concerns were finally acknowledged by HM

Inspectorate of Court Administration (HMICA) which in 2005 provided a detailed account of the numerous ways in which the Children and Family Court Advisory and Support Service (CAFCASS) failed to ensure the safety of domestic violence victims and their children in private family law proceedings. (CAFCASS is the body which looks after the welfare of children involved in family court proceedings.)

Following this, the Family Justice Council produced a report to the President of the Family Division (2007) recommending safe and positive contact, only, after a full assessment of any associated risks. Despite this, it is still the case that when a parent applies for contact in the family courts, this will almost always be granted, whether or not there is a history of abuse. The potential for abuse to continue is increased and this needs to be at the forefront of any service providers mind, as it will already be of primary concern to the victim.

Although only a brief insight in to the vast field of domestic abuse and lays a foundation for what may arise for professionals as well as a basis for future articles focusing on domestic violence and the law. For more information please visit www.martintrainingandconsultancy.co.uk or contact Luke Martin by e-mail martintandc@gmail.com.