

## **Evidence submitted by Women's Aid Federation of England**

### **1. INTRODUCTION**

Women's Aid Federation of England (Women's Aid) is the national domestic violence charity which co-ordinates and supports a network of over 270 local organisations in England, providing nearly 500 refuges, helplines, outreach services and advice centres. Women's Aid's work is built on 30 years of campaigning and working in partnership with national and local government, health authorities, the justice system and voluntary organisations to promote the need for an integrated approach to prevent domestic violence and to protect abused women and children.

Local Women's Aid organisations work annually with thousands of children and mothers who have experienced domestic violence, and for whom contact problems and post-separation violence are everyday concerns. Last year these local Women's Aid services accommodated 23,500 children and supported over 110,000 children.

We welcome the opportunity to submit evidence to the Select Committee on Parental Contact, particularly as our national network of services has many concerns about the safety and well-being of children involved in contact or residence proceedings with violent parents. It is this knowledge and experience that informs the concerns and recommendations set out in this paper.

### **2. IS THE FAMILY COURT SYSTEM BEING RUN EFFECTIVELY**

Contact and residence cases involving domestic violence tend to be the most difficult and intractable cases in private law family proceedings, frequently involving more than 10 or 15 hearings. As the granting of unsafe contact orders to abusive parents is a major cause of repeat applications and non-compliance, Women's Aid considers that the family court system could be run much more effectively, if measures were taken to ensure that safety is prioritised in cases of abuse.

Women's Aid believes that the granting of unsafe contact orders to abusive parents has in many ways helped to fuel the fathers' rights lobby, because fathers who have been granted contact orders are understandably angry when their ex-partners do not comply and the enforcement procedure becomes protracted. We do not support any woman who refuses to comply with a court order without good reason. However, when orders for unsupervised contact or residence are often being granted to violent or abusive parents, we think there is an urgent need to scrutinise family court practice.

Women's Aid agrees with the Government, that "contact arrangements which put the safety of the child or the resident parent at risk should not be put in place."<sup>[6]</sup> However, we do not consider that the safeguards proposed in the Green Paper are adequate to protect abused women and children.<sup>[7]</sup> This is a complex problem involving not only the family justice system but also statutory and voluntary agencies, so it needs to be addressed in many different ways.

If contact is going to be safe for children in cases of abuse, Women's Aid thinks that the following measures need to be taken:

— Ensure that family court professionals differentiate between cases involving domestic violence and those which do not and prioritise safety in cases of abuse;

— Provide training to enable family court professionals, including expert witnesses, to understand the dynamics and risks of domestic violence;

— Establish effective procedures for assessing risk in cases involving allegations of abuse;

— Provide funding for specialist assessments of children involved in private law family proceedings where there are allegations of abuse and, if necessary, separate representation so that their voice can be heard;

— Make supervised contact available in every area of the country;

— Amend the Children Act 1989 to overrule case-law precedents which have undermined the welfare principle and to require the courts to prioritise the safety of the child in cases involving allegations of abuse.

We provide additional information on these issues in our response to the third and fourth key areas specified by the Select Committee.

Here, however, we want to stress that well run family courts should never lose sight of the need to safeguard children. To demonstrate why we are so concerned about the issue of safety, we outline the known risks to children who have experienced domestic violence and evidence that the family courts are failing to ensure their protection in private law contact proceedings. We emphasise the need for a differential approach in contact cases involving domestic violence, and we also identify the case-law precedents, which have become such an obstacle to effective court practice in these cases.

### **3. THE RISKS TO CHILDREN AFFECTED BY DOMESTIC VIOLENCE AND THE CONSEQUENCES OF NOT PROTECTING THESE CHILDREN IN FAMILY PROCEEDINGS**

In 2003 the Department of Health stated: "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." Research commissioned by the Department of Health shows that domestic violence is a major indicator of risk of harm to children, and that children are often abused physically sexually or emotionally by the same perpetrator who has abused their mother. Children whose mothers experience domestic violence also tend to have the worst outcomes in child protection cases. Indeed, it is worth noting that research indicates that domestic violence accounts for about half of all child deaths. Women's Aid has compiled a list of 29 children (in 13 families) who have been killed as a result of contact (or in one case residence) arrangements in England and Wales over the last 10 years. In five of these cases contact was ordered by the court. Anonymous details of three of these cases are provided in the briefing, The need for accountability in the family justice system. (See Annex).

In 1999 a survey of 130 abused parents found that out of 148 children who were ordered by the courts to have contact with a violent parent, 76% were said to have been abused in the following ways during contact visits:

— 10% sexually abused

— 15% physically assaulted

- 62% emotionally harmed
- 36% neglected
- 26% abducted or involved in an abduction attempt.

Most of these children were under the age of five.[13]

In 2001 research revealed that children involved in private law contact proceedings "were highly distressed (46% had significant levels of emotional and behavioural difficulties). Levels for children who were interviewed were comparable with those reported for children subject to child protection proceedings and nearly twice the level expected in the general child population. Distress in children was linked to distress in the resident parent and to domestic violence. For boys, it did not alleviate once proceedings were over and it remained high for girls"

In 2003 a survey involving 178 refuge organisations in England and Wales revealed numerous examples of children and mothers being put in danger or harmed as a result of current family court practice with regard to child contact and domestic violence. Here are some of the key findings:

- Only 3% of respondents thought that appropriate measures are now being taken to ensure the safety of the child and the resident parent in most contact cases involving domestic violence;
- Only 6% believed that children who do not want contact with a violent parent are being listened to and taken seriously in most cases.
- 12% reported cases where contact orders were granted to parents whose behaviour had caused children to be placed on the Child Protection Register, and 6% reported cases where contact orders were granted to Schedule 1 offenders. This involved a total of 82 children, and 21 of these were ordered to have unsupervised contact with the known abuser.
- 20% knew of cases where residence orders had been granted to abusive parents, often because the abuser had remained in the family home and could offer "stability."
- Respondents knew of 175 women who had been threatened with sanctions to make them comply with contact orders. In many of these cases there was evidence of police involvement, breached injunctions or convictions for violence to the mother or child. The most common threat used was that residence would be granted to the abusive parent, and in some cases this is what happened. (See Appendix 3).

#### **4. THE NEED FOR A DIFFERENTIAL APPROACH TO CASES OF ABUSE**

While promoting contact is essential in most cases for the well-being of children whose parents have separated, in cases of domestic violence there is an urgent need to adopt a differential approach which emphasises the need for contact to be safe. This means recognising that cases of domestic violence are fundamentally different from cases where abuse is not an issue, and that these cases require different remedies. This distinction needs to be made as a result of initial enquiries and before any attempt is made to

promote family resolution.

Women's Aid supports the approach outlined by Peter Jaffe, who is renowned for his work on domestic violence at the Family Court Clinic in London, Ontario. For your information, we enclose a table setting out his Differential Approaches to Custody Disputes in the appendix to this document. (see Appendix 4)

## **5. THE UNDERMINING OF THE WELFARE PRINCIPLE IN THE CHILDREN ACT 1989 BY CASE-LAW PRECEDENTS**

Why are children being ordered against their wishes to have unsupervised contact with abusive parents, when the Children Act 1989 contains a welfare checklist and states that the welfare of the child is paramount? When Women's Aid has raised this issue with solicitors, barristers and judges, often they have referred to the following rulings in case-law precedents:

— That contact is "almost always in the interests of the child"—Re O (Contact: Imposition of conditions)[1995];

— That a higher standard of proof than the simple balance of probabilities should be required in cases involving more serious allegations (Re H & R (Child sexual abuse: Standard of Proof) [1995]).

— That the welfare of the child is not paramount in committal proceedings— (Re A v N (Committal: Refusal of Contact)[1996];

It is frequently stated that judges must be able to exercise their discretion in each individual case, but the judges appear to be fettering their own discretion as contact is refused in less than 1% of cases. Women's Aid believes that this is a direct result of the Re O judgment. (In this case the father had been given a suspended sentence for breaching an undertaking not to pester or molest his ex-partner, but the court focussed on the mother's "unreasonable" hostility to contact).

It is no coincidence that many of the worst cases detailed in our recent Failure to Protect report involved allegations of child sexual abuse. The AMICA survey also made the bizarre finding that direct contact is slightly more likely to be ordered in cases involving allegations of physical or sexual abuse to the child (as opposed to cases involving allegations of violence to a parent).(See Appendix 2) Women's Aid regards this is a direct consequence of the Re H & R judgment, which requires a higher standard of proof in such cases, even though there will usually be no independent witness to a crime which is committed in the family home and the child will often be too young to give evidence. Lord Browne Wilkinson, who dissented from this ruling, expressed concern that it would "establish the law in an unworkable form to the detriment of many children at risk", because child abuse, particularly child sexual abuse "is notoriously difficult to prove in a court of law".

Unfortunately our experience indicates that he was right. This judgment makes it much harder to protect those children who are most at risk ie. those who are involved in cases where there are "more serious allegations." It is also not surprising that the family courts sometimes enforce contact orders against mothers in cases where fathers have been convicted of violent offences against their ex-partners —as this is exactly what the Appeal Court did in Re A v N. (This case was quoted at length in the consultation paper, Making Contact Work, without mentioning domestic violence).

Women's Aid hoped that court practice would improve following the Appeal Court judgment in *Re L, V, M & H* [2000] with regard to four test cases involving child contact and domestic violence. However, despite emphasising the need to minimise any risk of harm to the child, this judgment unfortunately states that it is no way inconsistent with earlier decisions on contact. In our opinion, the beneficial effects of this judgment are also undermined by the House of Lords ruling on the standard of proof.

Women's Aid does not agree with the Government's claim that the broad effect of the current law and case-law is that both parents should continue to have a meaningful relationship with their children as long as it is safe, because case-law has undermined the welfare principle in the Children Act 1989, particularly with regard to private law family proceedings.

In fact, the paramountcy of the welfare of the child has been weakened to such an extent that the NSPCC recently commented; "It is striking that some professionals in the field appear to be under the impression that there isn't a welfare checklist in private law.

The new safeguards proposed in the Green Paper on Parental Separation cannot solve this problem, because they do not overrule these damaging case-law precedents. It is for this reason that Women's Aid believes that the Children Act 1989 must be amended to require the courts to prioritise the safety of the child in cases of abuse.

## **6. DO FAMILY COURT JUDGES HAVE SUFFICIENT POWERS**

Women's Aid believes that judges in the family courts have too much power, because they have discretion to make whatever order they consider appropriate under the Children Act 1989. Although there is a right of appeal, in practice the wide discretion given to judges under the Act means that the grounds for appeal are very narrow. If the judge has considered every relevant aspect of the case and has not made a mistake in law, the applicant is likely to be told that another judge might have made a different decision but there are no grounds for appeal.

This would not matter if the courts always made orders, which are safe for children and in their best interests. However, despite the introduction of Good Practice Guidelines in 2001, some judges still consider it appropriate to grant orders for unsupervised contact or residence to abusive parents, even when there is evidence of violence and every reason to believe that the child will be at risk. The failure to take account of the child's safety in cases of domestic violence has already had tragic consequences (See Annex).

For this reason Women's Aid wants the Government to consider how family court professionals can be held accountable, if they knowingly make decisions which place children in danger.

We believe, however, that the best solution would be to amend the Children Act 1989 to require the courts to prioritise the safety of the child in cases of abuse. This would have the additional benefit of helping to reduce non-compliance with contact orders, as research indicates that concerns about domestic violence or child abuse feature in 58% of contact enforcement cases.

Women's Aid does not support any parent who refuses to comply with a court order without good reason. However, in our experience many women who have fled from domestic violence then find themselves in a desperate battle with the family courts to

protect their children from unsafe contact with their abusive ex-partner. In these cases it is not unusual to have numerous court hearings—we know of a current case involving 36 hearings—because arrangements usually break down due to continuing violence and yet the courts grant contact to the perpetrator again and again. These women are very afraid not only of their ex-partner but also of the family justice system.

The family courts are not powerless. Women who do not comply with unsafe contact orders are often warned that they will be fined, sent to prison or that their children will be ordered to live with the abusive parent—and Women's Aid is aware of an increasing number of cases where unsupervised contact is being enforced in these ways despite evidence of violence to the mother or the child.

Women's Aid recognises that in some cases it may be helpful for the courts to have the power to order a parent to attend parenting classes or counselling sessions, but such measures are unlikely to reduce non-compliance with unsafe contact orders, as mothers who care about their children will always try to protect them from harm.

However, Women's Aid would like the courts to be given new powers to require parents who are alleged to be sexually abusive to submit to specialist assessments by organisations such as the Lucy Faithfull Foundation. In non-compliance cases involving allegations of child sexual abuse hopefully this would end the dangerous practice of transferring residence to the alleged abuser without requiring any specialist assessment of that person.

We would also like the courts to have the powers to:

- Ban an applicant from applying for contact for several years in high risk cases;
- Deny legal aid to a parent who has used family proceedings or contact visits to harass or abuse their former partner and child(ren);
- Order abusive parents to contribute to the cost of providing supervision;
- Refuse or reduce contact, if supervision cannot be provided for as long as there is an identifiable risk.

## **7. ISSUES SURROUNDING DELAYS CAUSED BY THE CURRENT SYSTEM**

It is important to consider the various reasons for delays, before deciding whether these delays are justified and whether they are being handled appropriately. In particular, Women's Aid would highlight:

- The massive increase in private law contact cases;
- The numerous hearings involved in domestic violence cases, and
- The need to carry out adequate assessments in cases involving abuse.

The Green Paper on Parental Contact acknowledges that it is best for parents to avoid court proceedings and to reach agreement informally about contact and residence arrangements for their children. Yet the Judicial Statistics for England and Wales show that recently there has been a huge increase in the number of contact orders being granted:

	2000	2001	2002	2003
Contact orders granted	46,070	55,030	61,356	67,184
Contact orders refused	1,276	713	518	601[29]

This increase in private law contact cases must be exacerbating delays in the family courts, but we hope that the "diversionary" measures outlined in the Green Paper on Parental Separation will help to reduce the number of contact cases coming to court.

However, Women's Aid is extremely concerned that the pressure of numbers and the need to deal with cases quickly could result in domestic violence cases being scheduled for conciliation hearings or included in Family Resolution Pilots. It is essential that enough time is allowed for screening and safety checks to ensure that domestic violence victims are not treated in this way.

The judicial statistics also show an alarming decrease in the number of cases where contact is refused (now in less than 1% of cases). As domestic violence survivors typically apply for non-molestation orders after leaving a violent partner, the 601 contact refusals in 2003 are in stark contrast to the 19,112 non-molestation orders with power of arrest attached, which were granted during the same period.

If so many adults need protection, why should the courts assume that their children do not? The low number of contact refusals is also very worrying when set against an annual figure of about 16,000 contact cases involving domestic violence, where a court welfare report is ordered. Our experience leads us to conclude that many abusive parents are now being granted contact orders without the necessary safeguards being put in place.

As domestic violence and child abuse are a major reason for non-compliance with contact orders, it is not surprising that these cases often involve numerous hearings, which again contributes to delays in the family court. In our experience it is not unusual for such cases to involve more than 10 or 15 hearings, and this considerable distress not only to abused women but also to their children. At our recent Listening to Children event, one child asked:

"Why do our mums have to go to court so many times about our dads seeing us? Why can't it be dealt with pretty quick so we don't have to worry so much?"

Women's Aid knows of one case involving 46 court hearings over four years where a domestic violence perpetrator with serious mental health problems was given legal aid to demand contact with a child who was traumatised by witnessing his violence to her mother. In this case litigation only stopped when the father committed suicide. The child, fortunately, was not with him at the time. This girl did not appreciate the enormous amount of time and money that the family justice system spent in trying to promote contact in her case. At our Listening to Children event in June, she asked a Home Office Minister:

"Why do the courts force children to see their dads when they are frightened of them?"

It is also important to remember that it takes time to assess children and their families, especially when there are allegations of domestic violence or child abuse. Children who

have been traumatised by witnessing violence or experiencing physical or sexual abuse, could be placed in even greater danger, if the new measures to promote resolution result in these cases being rushed through the courts.

At present, if an allegation of child abuse is made during private law family proceedings, the judge will usually order social services to investigate the situation and prepare a report under Section 37 of the Children Act 1989. Often this will involve a home visit lasting for perhaps an hour and including a private discussion with the child(ren). In many of these cases young children do not mention the abuse, the social worker reports that s/he could find no evidence to substantiate the allegations, and the court then concludes that there is no reason to refuse contact.

However, the survey involving 178 refuge organisations found that 83% say that young children usually do not disclose abuse during a one-off interview with a professional (such as a social worker, psychiatrist or psychologist). This is because abuse is a very sensitive issue, and there is no time to build a trusting relationship with the child.

In these cases specialist assessments are needed, because it is only by assessing the child in a child-friendly environment over several weeks that professionals are likely to gain an insight into how the child views his or her family. To our knowledge, very few organisations provide specialist assessments of children involved in private law family proceedings, and those who do (eg Barnardo's Keeping Children Safe Project in Liverpool) are heavily oversubscribed. As this service is vital for the protection of children in cases of abuse, it should be made available throughout the country. We hope that the new children's trusts and children's centres will help to make this possible.

Women's Aid would also point out that delay might be very necessary to protect children and adults who have been seriously injured or traumatised by abuse.

## **8. DO PEOPLE USING THE FAMILY COURTS GET THE SERVICE THEY DESERVE**

Children and parents who have been subjected to domestic violence need and deserve to be protected by the family courts. It is crucial to consider the reasons why this often does not happen at present and to identify ways of addressing these problems.

We have already outlined our concerns about the case-law and also the need for a differential approach to cases of domestic violence and for specialist assessments of children. Here we focus on the need for training on domestic violence, for effective risk assessment, for more supervised contact centres, and an amendment to the Children Act 1989 to require the courts to prioritise the safety of the child in cases of abuse. Finally we include comments on the family justice system by children who have experienced domestic violence.

## **UNDERSTANDING THE DYNAMICS OF DOMESTIC VIOLENCE**

It is widely acknowledged that domestic violence perpetrators have an obsessive need to exert power and control over their partners and also over their children.

The vast majority of domestic violence perpetrators are men, and the abuse often starts during pregnancy or soon after the birth of a child. In our experience perpetrators usually maintain control by seeking to ensure that their victims are too frightened or too ashamed to mention the abuse to anyone else or to flee from the family home. Key tactics include

making dire threats, isolating their partner and their child(ren) from friends and relatives, blaming them for the violence, and humiliating them so that they lose any confidence that they will be supported and believed if they seek help. Women who have been subjected to violent and controlling behaviour will often return to their abuser several times before making the final break.

It can be very difficult to provide evidence of domestic violence, because this usually takes place in the family home when no independent witness is present. In most cases women and children will not feel able to disclose abuse until they are in a place of safety and they are confident that they will be protected. These mothers are also likely to distrust and avoid social services, because most women who experience domestic violence say that their greatest fear is that their children will be taken into care. (The information sharing databases being set up under the current Children Bill may help to improve the recording of abusive incidents and the effects on children so it vital that this information is made available to CAFCASS (the Children and Family Court Advisory and Support Service)). As perpetrators have such a strong need to maintain power and control over other family members, they are often most dangerous when they can no longer control the situation eg. when the non-violent parent has fled from the family home taking the children. Research shows that women are at greatest risk of homicide at the point of separation or after leaving a violent partner, and Home Office homicide statistics for England and Wales show that on average two women a week are killed by their partners or ex-partners. The 1996 British Crime Survey states with regard to domestic assault: "For women, risks were particularly high for those who were separated from a spouse." The murder of Georgina McCarthy is a classic example of post-separation homicide in a case of domestic violence. We have already outlined the very serious risks to children who are affected by domestic violence, particularly in the context of family proceedings (see pages 3 and 4).

Despite this wealth of information, there are still some family court professionals who:

- believe that allegations of domestic violence are usually exaggerated;
- assume that the violence will stop if the woman is no longer there to provoke it;
- do not believe that anyone would assault a pregnant woman;
- assume that domestic violence is "all about drugs and alcohol";
- decide the violence "can't have been that bad" if the woman returned to her abuser;
- assume that allegations are untrue, if the woman did not report the violence to a statutory agency before leaving the family home;
- disregard children who say they are frightened and do not want to see a violent parent;
- assume that contact is a "good thing", even when there is clear evidence of violence and no reason to believe that the perpetrator has changed.

Any solicitor, CAFCASS officer, expert witness, magistrate or judge who holds such views with regard to domestic violence is likely to make decisions which put children and non-violent parents in danger. For this reason it is vital that all family court professionals have training to enable them to understand the dynamics of domestic violence and the associated risks.

With regard to expert witnesses, the survey involving 178 refuge organisations found that only 12% think that psychiatrists and psychologists have a good understanding of domestic violence, while 45% say they do not and 44% answered don't know.

As the family justice system deals with so many cases of domestic violence, this finding suggests that there is an urgent need to ensure that expert witnesses have appropriate training and experience to offer advice on such cases.

## **THE NEED FOR NATIONAL RISK ASSESSMENT PROCEDURES**

Although CAF/CASS was set up three years ago, it still has no national policy on risk assessment. We have been told that a new policy on domestic violence is likely to be introduced soon, and that a national risk assessment policy will be introduced in 2005.

In the meantime Women's Aid hopes that CAF/CASS and other agencies with child protection responsibilities will consider making use of the significant risk indicators and risk assessment procedures developed by the Cardiff Women's Safety Unit, NSPCC and the South Wales Police.

The introduction of a mandatory risk assessment checklist into the Children Act 1989 would also help to improve family court practice with regard to domestic violence. For example, the risk assessment checklist in the amended New Zealand Guardianship Act 1968 provides a clear framework not only for welfare reports but also for any hearing involving allegations of abuse. This legislation has been in place for the last eight years, and a recent review concluded that it was effective and should not be changed. (Copy enclosed with our written evidence, but not available on disk)

In many cases of abuse there will also be a need for specialist assessments of children, especially if there are conflicting allegations and no independent witnesses (see page 10).

## **MAKING SUPERVISED CONTACT AVAILABLE THROUGHOUT THE COUNTRY**

The Green Paper on Parental Separation states that judges have complained about the insufficient provision of supervised contact centres, but the judicial statistics (quoted on page 9) suggest that this has not affected their willingness to grant contact in many cases of domestic violence. Clearly this remains an urgent problem despite additional funding being provided recently.

CAF/CASS's current consultation paper on contact states that contact centres are used in only 1% of cases. It should also be noted that the vast majority of contact centres do not offer individual supervision for high risk cases.

Frequently relatives will be asked to supervise contact visits involving violent parents but, in the experience of Women's Aid, this can be dangerous because perpetrators often abuse their relatives as well. Problems are also likely to arise if the relative believes that the perpetrator is innocent. In these circumstances there is not likely to be much protection for the child.

Women's Aid hopes the development of children's centres and children's trust will provide further opportunities to expand the provision of supervised contact.

However, we would also point out that the acute shortage of supervised contact is

exacerbated by the granting of contact orders in very high risk cases (eg Schedule 1 offenders) where supervision is likely to be needed for much longer. When resources are so limited, it does not make sense to allocate significant amounts of supervision time to cases where there is very little prospect of an abuser changing his or her behaviour.

## **THE NEED TO AMEND THE CHILDREN ACT 1989 TO REQUIRE THE COURTS TO PRIORITISE SAFETY**

The Green Paper on Parental Separation acknowledges that the implementation of the Good Practice Guidelines on child contact and domestic violence has been "patchy". However, the Government believes that the problem of safety will be resolved in January 2005, when new court application forms will ask questions about domestic violence and the definition of "harm" in the Children Act 1989 will be extended to include impairment suffered due to seeing or hearing the ill-treatment of another.

Women's Aid does not believe that these measures will be sufficient to resolve the serious child protection problems outlined in our written evidence to the Select Committee, mainly because they will not overrule the case-law precedents which have undermined the welfare principle in the Act (see pages 5 and 6). There will always be problems in deciding whether a child has been "impaired" by witnessing violence, particularly when young children do not have the vocabulary to disclose abuse or to express their fears. Section 120 of the Adoption and Children Act will not safeguard children who have been physically or sexually abused, and because of the Re H & R judgment with regard to the standard of proof these are the children most likely to be denied legal protection (see pages 5 and 6). We also do not think that new forms designed to highlight allegations of domestic violence will alter the decision-making of judges, who see nothing wrong in granting unsupervised contact in cases where there is clear evidence of violence or abuse (see the Failure to Protect report—Appendix 3).

Women's Aid considers that the family justice system should have a clear legal duty to ensure that contact and residence arrangements are safe for children. We are not seeking a ban on contact in cases of domestic violence, but we are demanding safety. That is what children and mothers fleeing from domestic violence need and deserve.

Having examined various different models, Women's Aid has concluded that the New Zealand legislation on child contact and domestic violence offers the most effective and practical means of tackling this issue. Their legislation includes a mandatory risk assessment checklist and states that if a parent is found to be violent within the family the court must not grant unsupervised contact or residence to that parent unless the court satisfied that this will be safe for the child.

## **THE VIEWS OF CHILDREN WHO HAVE EXPERIENCED DOMESTIC VIOLENCE**

When asked what children living with domestic violence need, children involved in a recent study "were astonishingly clear and consistent". Most commonly cited was safety, closely followed by someone to talk to. One or both of these themes featured in every response to this question.

The need for safety was also emphasised repeatedly during a Listening to Children event on 16 June 2004 at Portcullis House, Westminster, which was organised by Women's Aid with the help of the Ragdoll Foundation. Fifty children and young people attended this event and put questions to Paul Goggins, the Home Officer Minister responsible for

dealing with the Domestic Violence, Crime and Victims Bill. This included several very challenging questions about the family justice system:

— My father was given unsupervised access after I had given my views to CAFCASS of why I didn't feel safe. I was asked my views and not listened to. They didn't understand my views, can you do anything to change this for others?

— Will the government help my mum and me be safe from my dad? He beat us and we don't want to see him.

— Why aren't we allowed to go to court with our mums? We may be young but we still have a right to show our own feelings and wishes.

— Why don't the courts make sure it is safe for mums and children when they know the dads are violent?

— Who tells the judge off when he doesn't listen to the children?

As family court decisions are supposed to be made in the best interests of children, it is vitally important that the views of children who are not happy with their experiences of the family justice system should be taken into account—particularly when they relate to the crucial issue of safety.

We enclose three children's drawings which show clearly how they have been affected by their experiences of domestic violence. We also hope that members of the Select Committee will have time to look at the CD enclosed with our evidence, as this contains 10 postcards which were sent by children living in refuges to the Minister for Children, Young People and Families as part of our Listening to Children campaign.

## **CONCLUSION**

Women's Aid is aware that the family courts have come under enormous pressure from the fathers' groups not only to enforce contact orders more rigorously but also to make a 50:50 division of the child's time the default arrangement in family proceedings. As a result of all the publicity on father's rights, political leaders have made pledges to end the scandal of fathers being denied contact with their children. We regard this as a very dangerous situation for mothers and children fleeing from domestic violence, because their needs are being completely ignored in this debate.

We hope that the Select Committee on Parental Contact will recognise that there is another side to this story, which has remained concealed due to the confidentiality rules with regard to family proceedings involving children. Indeed, within the context of these Select Committee hearings, we have been told that we should not talk about individual cases even anonymously but should focus mainly on providing numerical evidence. Inevitably this makes it very difficult to convey the fear and distress that many children and mothers experience as a result of contact and residence orders being granted to abusive parents. (We hope that members of the Committee will also have time to look at the Newsnight video, which includes three statements by mothers, who have suffered trauma and loss due to contact disputes with their violent ex-partners).

While many of the proposals in the Green Paper on Parental Separation may be very helpful in cases not involving abuse, we hope that the Select Committee will bear in mind

the need to ensure that safety is always prioritised in cases of domestic violence.

It is crucial that adequate legal safeguards are provided before new initiatives are introduced to promote resolution and to enforce contact more rigorously.

Hilary Saunders

Children's Policy Officer

Women's Aid Federation of England

29 October 2004

## **Annex**

### **THE NEED FOR ACCOUNTABILITY IN THE FAMILY JUSTICE SYSTEM**

#### **THE FAILURE TO PROTECT CHILDREN IN FAMILY PROCEEDINGS**

In recent years children have been abused, neglected, abducted and even killed as a result of contact orders being granted to violent parents.

In 2003 a survey involving 178 refuge organisations also reported numerous child protection concerns relating to private law family proceedings, including several cases where orders for unsupervised contact had been granted to Schedule 1 offenders convicted of offences against children.

Women's Aid Federation of England has compiled a list of 29 children who have been killed over the last 10 years as a result of contact or residence arrangements in England and Wales. 10 of these children have died in the last two years. As the Government has not collected statistics on child contact homicides, the actual number may be higher. The Government has confirmed that in at least five of the 13 families concerned contact was ordered by the court.

Due to the strict confidentiality surrounding family proceedings and the limited information provided, it is not possible to identify the five cases in which contact was ordered by the court. However, by requesting information on Serious Case Reviews carried out by Area Child Protection Committees, Women's Aid has compiled the following details. We have not named the families concerned or the relevant local authorities.

In three cases it is clear that not only did the court grant orders for unsupervised contact or residence to violent fathers but that these decisions were made against professional advice, without waiting for professional advice or without seeking professional advice:

— In one case the father was on bail, awaiting trial for injuring the mother during a violent incident. The executive summary of the Serious Case Review states that Family Court Welfare Officers had recommended that the children's contact with their father should not include overnight stays. In spite of this, the mother's lawyer "encouraged her to make a compromise" and the judge "made the decision on contact, contrary to the recommendations in the Family Court Welfare report." The children were killed during the first overnight stay. The local authority confirms that they brought this case to the attention of the Lord Chancellor's Department. Neither the judge nor the solicitor was involved in the

Serious Case Review. The local authority states: "We took advice on this from SSI and were advised it would not be possible."

— In another case a judge granted residence of two children to an extremely violent father without waiting for a mental health assessment of the father, although the Social Services report outlined an expectation that the father would receive treatment for his mental health needs. (He had apparently taken an overdose recently and declined hospital admission). The court also determined "detailed direct and indirect contact between each child and the non-custodial parent". The child, who chose to live with the mother, was subsequently killed by the father during an unsupervised contact visit. The father also left a note indicating that he had intended to kill all three children to take revenge on his wife for leaving him. The Serious Case Review states that "with hindsight, it could be argued that the Court should have waited before making a final decision until all the recommended reports were placed before them". However, the executive summary does not contain any recommendations on court practice.

— In a third case two children were killed by their violent father after their mother was reluctantly persuaded to agree to a contact order by consent. The mother states that she asked in vain for reports from the police, the GP and a psychiatrist to be added to the court welfare report. After the children were killed, a member of her family wrote to inform the judge of what had happened, and she was appalled to discover subsequently that his secretary had concealed this letter from him because she was afraid that he would find it upsetting. No Serious Case Review was carried out in this case despite previous involvement with the police and medical services. The mother states: "I cannot tell you how upset I am that a serious case review was overlooked. Right from the beginning I felt badly let down by the court system. ( . . . ) Now, I find out that a lot could have been done at the very beginning to learn lessons. I am absolutely furious and devastated to realise that not only did the legal team not care about the children's safety when they were alive, but they don't care that they are dead. And they don't care about learning lessons."

These cases raise serious concerns about the accountability of the family justice system, particularly when children are killed after contact or residence orders have been granted to violent parents in private law family proceedings.

Recently there have also been major concerns about decisions made in public law family proceedings. On 19 January 2004, after the release of three mothers wrongly convicted of murdering their children due to unreliable diagnoses of Munchausen's syndrome by proxy, the Solicitor General announced that social services would review numerous family court cases, in which children had been removed from their parents following a cot death.

If these serious child protection issues had arisen in any other area of public life, there would almost certainly have been a public enquiry with extensive media coverage and professionals would have been held accountable—as happened in the case of Victoria Climbié. However, these cases have remained shrouded in secrecy because of the strict confidentiality which applies in family proceedings involving children.

## **CHILD CONTACT AND DOMESTIC VIOLENCE—THE WIDER CONTEXT**

If a child wants to see a violent parent, Women's Aid believes that contact should be provided so long as the arrangements are safe for everyone concerned. We do not want to ban contact in cases of domestic violence, but we are demanding that contact should be safe. Various research studies have shown that men who are violent to their female

partners are likely to abuse their children physically, sexually or emotionally as well[

Indeed, this is a major child protection issue, as the Department of Health has stated: "Nearly three quarters of the children on the "at risk" register live in households where domestic violence occurs."

Although judges have complained about insufficient provision of supervised contact centres, the courts are continuing to grant contact orders in thousands of domestic violence cases. In 1999 the Association of Chief Officers of Probation revealed that domestic violence is involved in about 16,000 cases a year, where Section 7 welfare reports are ordered.[50] However, the Judicial Statistics for 2003 show that contact was refused in only 601 cases (less than 1% of cases).[51] We have quoted ACOP's overall figure because this can be compared with the actual number of cases where contact is refused, but more recent statistics on contact cases involving domestic violence are provided in the footnotes.

Despite the introduction of Good Practice Guidelines in 2001, a survey of 178 refuge organisations in 2003 found that only 3% think that appropriate measures are now being taken to ensure the safety of the child and the resident parent in contact cases involving allegations of abuse.

Women's Aid believes that the failure to protect children can largely be attributed to damaging case-law precedents in cases involving allegations of abuse, particularly the Appeal Court rulings in *Re O*, 1995 and in *Re A v N*, 1996 and the House of Lords ruling in *Re H & R*, 1995. These judgments exert a powerful influence over decision-making in private law family proceedings and will continue to do so after new measures are introduced to improve safety in January 2004.

The Green Paper on Parental Separation states "It is vital—particularly if we are to provide for better enforcement of contact orders—that issues of domestic violence are fully and properly dealt with by the courts. Contact arrangements which put the safety of the child or the resident parent at risk should not be put in place."

Women's Aid agrees with this principle, but we are concerned that extending the definition of 'significant harm' to include impairment suffered due to seeing or hearing ill-treatment of another person will not protect children who have been physically or sexually abused (and these are the children most likely to be denied protection due to the *Re H & R* judgment). Nor is there any reason to believe that new court application forms identifying cases of domestic violence will significantly alter the practice of some judges who consider it appropriate to grant contact orders even to parents convicted of violent offences against children or against their former partners.

## **CONFIDENTIALITY IN FAMILY PROCEEDINGS**

For years it has been a criminal offence and potentially a contempt of court to publish any material which might identify a child as being involved in family proceedings, unless the court permits disclosure.

In the most sensitive and contentious cases the courts can also make "gagging" orders. A parent who is subject to a gagging order will typically be forbidden to say anything about the case until the child reaches the age of 18. Even if the parent has serious concerns about the child's safety, s/he cannot discuss the case with contact centre staff or seek help

from the local MP or any advice agency. There is no point in contacting the media, because the case cannot even be referred to anonymously.

On 19 March 2004 the situation became even more difficult, when Mr Justice Munby ruled in *Re B* that publication of any information about a children case whether or not it would identify the child is almost always prohibited without the permission of the court. He also ruled that the term "publication" covers almost all forms of communication whether by word or in writing.

The Government has now tabled an amendment to the Children Bill to amend the Administration of Justice Act 1960 so that a criminal offence will only be committed by publishing material to the public which is not authorised by Rules of Court. This move is intended to enable Ministers, MPs and statutory agencies to fulfil their statutory functions, to facilitate research and to permit parties involved in family proceedings to seek advice and support.

The amendment is very welcome—but it does not ensure that in future the family justice system will be held accountable for decisions which result in a child being killed.

## **THE CONSEQUENCES OF THE CONFIDENTIALITY RULES**

The confidentiality rules are supposed to protect children from unwanted media attention, but in reality they have prevented any effective scrutiny of the family justice system by the Government or by the media.

In recent years Women's Aid has given the Lord Chancellor's Department (now the Department for Constitutional Affairs) anonymous details of many cases where abused women and children have been put in danger because of decisions made in the family courts. We urged the Government to inspect the court records for these cases and offered to obtain case numbers, but we were told that they cannot intervene in cases which are ongoing. (Women's Aid accepts that the Government cannot intervene in judicial proceedings, but we wanted them to know what was happening). We offered to arrange meetings with domestic violence survivors who have experienced major problems with child contact, but this too was declined. A parliamentary question about the current outcomes for the children involved in the *Re H & R* ruling also could not be answered on the grounds of confidentiality. Inevitably this means that the Government and MPs are denied information about what is happening in the family courts.

Meanwhile anyone wishing to make a formal complaint about an expert witness in family proceedings first has to seek permission from the judge and the expert witness—and there is no guarantee that permission will be granted for all the papers to be scrutinised. This is the process that a mother wrongly diagnosed as suffering from Munchausen's syndrome by proxy would have to go through before being able to make a formal complaint. (There is a connection here with domestic violence, as a survey of 130 abused parents in 1999 found that 7% had been accused by their violent ex-partners of suffering from Munchausen's syndrome by proxy).

The confidentiality rules have also ensured that the current debate about fathers' rights has been one-sided. This is because anyone can publicly criticise their former partner for not complying with a contact order, but it would be contempt of court in any individual case to say that the court has made an order which is not safe for the child. This is the dilemma facing many mothers who have experienced domestic violence and are trying to protect

their children from abuse. The problem of non-compliance with contact orders is likely to continue until the Government requires the courts to prioritise the safety of the child in cases involving allegations of domestic violence or child abuse.

## **THE WIDE DISCRETION GIVEN TO JUDGES BY THE CHILDREN ACT 1989**

It is frequently claimed that there is no need to amend the Children Act 1989, because the welfare of the child is paramount, there is a welfare checklist and there is the right of appeal. However, because judges have very wide discretion to make whatever order they consider appropriate under the Children Act, the grounds for appeal are very narrow. Unless the judge has clearly failed to consider something that should have been considered or has made a mistake in law, an applicant is likely to be told that a different judge may have made a different decision but there are no grounds for an appeal.

## **HOW CAN THE FAMILY JUSTICE SYSTEM BE MADE ACCOUNTABLE**

1. The Children Act 1989 should be amended to require the courts to prioritise the safety of the child in cases involving allegations of abuse to a child or to a parent. This would provide stronger grounds for appeal, if a court makes a dangerous decision.
2. A mandatory risk assessment checklist should be introduced and used in all family proceedings involving allegations of domestic violence and also in family justice initiatives currently being proposed in the Green Paper on Parental Separation: Children's Needs and Parents Responsibilities.
3. The Children's Commissioner should be given the power of *amicus curiae*, so that s/he can investigate problems relating to legal cases and have a role in legal proceedings. (The Children's Commissioner in Northern Ireland has this power).
4. The Government should implement Clause 122 of the Adoption and Children Act 2002 without further delay, as this would require the courts to consider whether a child involved in private law family proceedings needs separate representation.
5. There should be an urgent review of expert witnesses to ensure that they have appropriate training and experience to enable them to provide reliable evidence in cases involving allegations of domestic violence, child abuse or Munchausen's syndrome by proxy.
6. Court professionals should be required to monitor the outcomes of decisions made by the family courts by means of home visits and also talking to the child in a neutral child-friendly location.
7. The rules of confidentiality should be amended to allow the media to report family proceedings anonymously. Women's Aid believes that this is the only way to restore public confidence in the family justice system.

The third contact homicide case quoted in this briefing shows how important it is for the family courts to have access to information held by statutory agencies. For this reason Women's Aid also recommends that in the Children Bill CAF/CASS should be included in the list of organisations required to share information about children.

## **NOTES:**

### **DAMAGING CASE LAW PRECEDENTS:**

— In *Re O (Contact: Imposition of Conditions)*[1995] the Court of Appeal ruled that contact is "almost always in the interests of the child". In this case the father had been given a suspended sentence for breaching an undertaking not to pester or molest the mother, but the judgment focussed on her unreasonable hostility to contact.

— In *Re A v N (Committal: Refusal of Contact)* [1997] the Court of Appeal upheld a decision to commit a mother to prison for six weeks for failing to comply with a contact order and ruled that the welfare of the child is not paramount in committal proceedings. In this case the previous judge "accepted that the father had a history of violence, including a very serious assault on his former wife for which he was sent to prison."

— In *Re H & R (Child sexual abuse: Standard of proof)*[1995] the House of Lords ruled that a higher standard of proof than the simple balance of probabilities should be required in cases involving more serious allegations. (This judgment is particularly damaging in private law cases involving allegations of child sexual abuse, where the child is too young to give evidence but may be ordered to have unsupervised contact or residence with the alleged abuser).

— The Appeal Court made many helpful comments in *Re L, V, M & H (Contact: Domestic violence)*[2000] but unfortunately this judgment also states that it is in no way inconsistent with earlier judgments.