

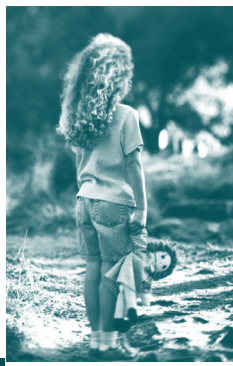
CHILD CUSTODY AND ACCESS IN THE
CONTEXT OF DOMESTIC VIOLENCE

Women's Experiences

and the

Response of the Legal System





WOMEN'S AID WOULD LIKE TO THANK THE FOLLOWING SERVICES
FOR THEIR SUPPORT IN COMPILING THIS REPORT:

Adapt Services Limerick

Adapt Kerry Women's Refuge and Support Service

Cuan Saor Women's Refuge and Support Services

Donegal Domestic Violence Service

Drogheda Women's Refuge and Children's Centre

Esker House Women's Refuge

Inishowen Women's Outreach

Kilkenny Women's Refuge Project

Longford Women's Centre

Mayo Women's Support Services

Meath Women's Refuge

Offaly Women in Crisis

Sonass Housing Association

Southill Domestic Abuse Project

Teach Tearmainn

Tearmann Support Service

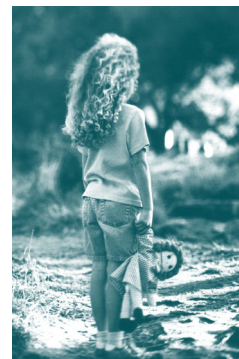
Waterside House Women's Refuge

Women's Aid Dundalk

Wexford Women's Refuge

And all other organisations and individuals who contributed to this report





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Introduction

This report is concerned with the issue of custody and access issues in cases in which there has been a history of male domestic violence. In instances of non-abusive relationship breakdown it is recognised that the welfare of children is best served by having regular contact with their parents and other family members. In situations of relationship breakdown children should be central to, and consulted about decisions affecting their lives. Where domestic violence is a feature of the relationship, however, the issue of child contact must be considered differently and with due regard to the effects of the abuse on the children.

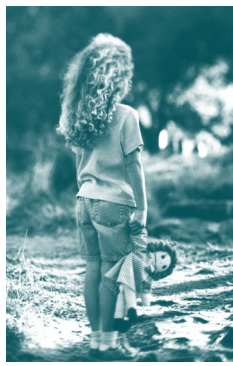
This report was compiled by Women's Aid to highlight the experiences of women as reported to our support services, regarding their abusive partner's continued control of them via access to children and their experiences with the courts in relation to custody and access issues. Refuge and other frontline workers throughout Ireland were also consulted regarding their experiences.

Women's Aid has become increasingly concerned about the experiences of women regarding their interaction with abusive partners in relation to custody and access issues.

Victims of male violence who have managed to leave their violent partner or obtain a barring order, are nonetheless exposed to repeated violence and abuse where the couple have children in common and the woman is legally obliged to facilitate her ex-partner/spouse to have continued access to their children.

Evelyn Ring, 'Child killings Information Needs to be Centralised' in
The Irish Examiner, 28th March, 2002.





Children also, are regularly victimised by the abusive parent through access visits. There is evidence to suggest that men who are violent are given access to children without the courts having the benefit of expert reports, detailed perpetrator risk assessment or specialised services such as probation and welfare. In this regard, the Law Reform Committee of the Law Society in a survey among legal practitioners, found that only one percent of respondents felt that access arrangements never resulted in further problems (in cases of domestic violence) and recommended the reinstatement of the Probation and Welfare Service in family law cases as a matter of urgency.

In addition, there has been growing concern about the increase in child murders, in the two years up to April 2002, 24 children were killed at the hands of parents, relatives and carers . Many were killed by their father and a custody dispute was cited in at least 3 cases. As no official body monitors the non-accidental death of children very little information is available on these deaths. The Children's Rights Alliance continues to campaign for the introduction of a Child Death Review Committee that would investigate the circumstances surrounding such deaths and make recommendations in relation to policies and practices that would help prevent such fatalities.



The Link between Domestic Violence and Abuse of Children

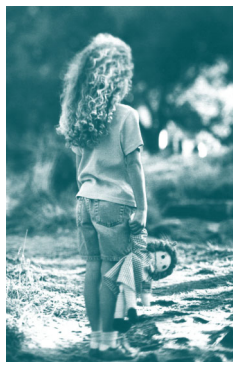
Over the past two decades, research into the nature and extent of violence against women by male intimates, has increasingly made explicit the likely co-existence of physical and emotional abuse of children in cases where their mothers are the victim of domestic violence (Stark and Flitcraft 1998; Kelly 1997; Jaffe et al 1990, Peled et al 1995; Dobash and Dobash, 1992).

At the very least, children witnessing violence and abuse directed by their father towards their mother is a form of emotional abuse. National research commissioned by Women's Aid found that 64% of respondents who had experienced abuse by a male intimate said that their children had witnessed the abuse (Kelleher and Associates and O'Connor, 1995).

Research also indicates that in a large percentage of cases where women experience domestic violence, there is evidence that the children are also being directly physically and sexually abused at the hands of their father. Dr Evan Stark and Dr Anne Flitcraft (1996), US experts on domestic violence who have researched the issue extensively found that in 45% of child abuse cases the mother had been battered by her male partner and concluded from their work that 'battering was the typical context for child abuse' (p.88). Research studies note the following in relation to this link:

- Irish research found that of 287 child protection referrals received by the Mid-Western Health Board, domestic violence was an issue in at least 27% of those cases (Ferguson, 1997). This figure corresponds to UK figures where research found that one third of child protection cases feature domestic violence directed towards the children's mother (Hester and Pearson, 1998).
- An Irish study of 127 women who had used refuge accommodation because of their partner's violence, found that in 28% of cases, the children had been severely physically abused by the men also (Casey, 1987).
- A UK study of 108 women experiencing domestic violence found that 27% of the children had also been directly physically abused by their fathers (NCH action for children, 1994).
- A UK study which examined the experiences of 200 women and 14 children, who had been victims of domestic violence, found that 25% of the women cited fear for their children's lives as their main reason for leaving their violent partner (Humphreys and Thiara, 2001).





Dr Liz Kelly (1994) of the Woman and Child Abuse Studies Unit, in London Metropolitan University, has written extensively on the links between child abuse and domestic violence. Significantly she describes particular forms of abuse where there is a ‘double level of intentionality’ (p.29). Kelly defines this as:

‘an act directed towards one individual [which] is at the same time intended to affect another/others’ (p.29).

Examples of this include:

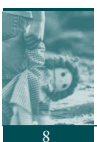
- Physical, sexual and/or mental abuse of the woman in front of her children in order to increase control over both.
- Abuse of child/ren in front of the mother in order to threaten/control her.
- Encouraging or forcing children to participate in the abuse of their mother.

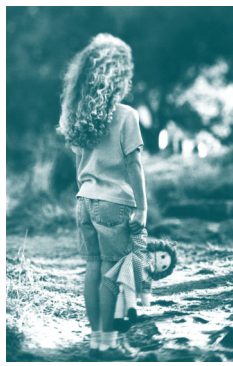
Violence and Abuse Post Separation

Many women leaving violent men find that the violence and abuse continues after they separate and studies have shown that women are at elevated risk of serious and/or lethal violence when they are attempting to leave or after they leave a violent partner. Research notes the following in this regard:

- National research that examined domestic violence and the enforcement of the law in Ireland, found that in one research site ex-spouses and ex-partners made up 14% of applicants for protective orders under domestic violence legislation. This study found that a protective order was in place in between 17 % and 43% of the Garda call-outs to domestic violence incidents analysed, suggesting that in these cases violence and abuse continued after separation and/or the issuing of a protective order (Kelleher and O'Connor, 1999).
- Research in the United States found that 'the most frequently and seriously battered women are those who are separated or divorced from their partners' (Zorza, 1994: p.386).
- A UK study of 200 women who had experienced domestic violence found that 76% suffered post separation violence. Of these women 76% were subjected to continued verbal and emotional abuse. 41% were subjected to serious threats, either towards themselves or their children. 23% were subject to physical violence and 6% were subjected to sexual violence (Humphreys and Thiara, 2001).
- Research carried out in the United States has shown that 70% of female homicide is committed by a current or former male partner of the woman. Over 50 % of women had been murdered by partners after they had left them (Campbell, 1995).

Where the couple have children in common access arrangements can provide the offender with opportunity to further abuse and control his partner. Research has noted that many men who are abusive to their partners deliberately seek out opportunities for contact in order to continue their control and abuse of the woman (Dobash and Dobash, 1992). Applying for access to children affords the abusive parent an ideal opportunity in this regard. Some studies in the US have in fact noted that 'Batterers seek custody more frequently than do nonbattering fathers' (APA Presidential Task Force 1996; Liss and Stahly, 1993. Cited in Bancroft and Silverman, 2002, p.98).





The dual intentionality of abuse referred to by Kelly, is very apparent in situations where the violent man can only maintain contact with his partner by seeking access to the child/ren. Research indicates that where domestic violence is present in the relationship, violent men will use access to children as a means of maintaining control over the woman (Hester and Radford 1996; Saunders 2001; Radford, Sayer and AMICA 1999). This report highlights the myriad of ways in which abusive men are using access to their children to continue the abuse and control over their partner. Women and frontline service providers described abusive men:

- Using access visits with the children to relay threatening and abusive messages to the woman.
- Threatening to abduct the children or threatening to not return the child/ren after the access visit.
- Abusing and threatening the woman when collecting and dropping children back after access visits. Such abuse included physical assaults, threats of violence and threats to kill.
- Neglecting and abusing the children during access visits – one woman described how her partner did not feed their three year old during his access time.
- Using access visits with the children to probe them for information about their mother; who she sees, where she goes and so on.
- Using access visits to turn the children against their mother- one woman described how her children were continually being told by their father during access that she did not love them.
- Seeking access to the child/ren through the courts as a means of discovering the whereabouts of the woman and thus continuing the control over her.

ACCESS AND CUSTODY ARRANGEMENTS IN THE
CONTEXT OF DOMESTIC VIOLENCE:

The Role of Family Law Courts

In Ireland, family law cases are held *In Camera* in order to protect the anonymity and privacy of the individuals involved in these proceedings. The way in which these cases are held restricts the qualitative data available from the courts. The statistics currently available indicate that access to children is rarely denied to applicants in the courts. In 2002 for example, 2,572 access applications were made and of those only 76 were refused (Court Service, 2003). Considering that in the same year 1,740 barring orders were granted it is reasonable to assume that many custody and access applications are being made in the context of domestic violence (Court Service, 2003). In the absence of any qualitative data from the courts, however, it is almost impossible to accurately determine on what grounds access is refused or indeed why it is granted where domestic violence is a feature of the relationship.

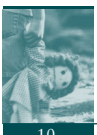
This report sought the views of frontline service providers providing refuge and other support services throughout Ireland, to women and children experiencing domestic violence. Overwhelmingly workers expressed their concern that the Irish courts were not dealing appropriately with access and custody cases where domestic violence was also present. Their experiences are also echoed by lawyers dealing with such cases. One family law solicitor consulted by Women's Aid noted:

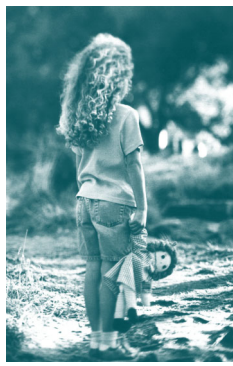
'I believe that on a daily basis there is great damage being done to children who are voiceless and the whole system as it presently stands needs to be completely changed ... The reality of domestic violence is that in many cases it is a silent crime and we merely compound it by rendering the children caught within it voiceless.'

In England and Wales the increasing number of women and children murdered through contact arrangements led to growing concern about the handling of access and custody cases in the context of domestic violence. According to figures compiled by the Women's Aid Federation of England since? 23 children have been murdered through contact arrangements. The murders demonstrated the urgent need for a review of

For details of the consultation and a full copy of the guidelines see A Report to the Lord Chancellor on the Question of Parental Contact in Cases where there is Domestic Violence, The Advisory Board on Family Law: Children Act Sub-Committee, 2000.

This report was initially commissioned for a court of appeal case and later appeared in the Family Law Journal.





family law procedures and highlighted the dangers of child contact with violent men. In 2001, following a wide consultation, the Children Act Sub-Committee of the Family Law Advisory Board (who have an advisory role to the Lord Chancellor's Office) recommended guidelines to the courts for use at every level regarding the granting of child contact orders where domestic violence is a feature of the relationship (see Appendix) . Essentially these guidelines instruct the court to consider the motivation of the parent seeking access and whether that parent can demonstrate that his continued contact with the child/ren is in the best interests of the children and the other parent.

In the UK, an expert report by consultant psychiatrists Drs. Sturge and Glaser (2000) and used as background material by the Children Act Sub-Committee in their work on child contact and domestic violence notes :

'a parent who has been found to be domestically violent to the child's carer should need to show positive grounds as to why, despite this, contact is in the child's best interests in order for an application to be even considered...domestic violence involves a very serious and significant failure to protect the child's carer and failure to protect the child emotionally and in some cases physically- which meets any definition of child abuse' (Sturge and Glaser, 2000: pp.623-624).

The information contained in this report starkly highlights the nature of abuse which women and children are being subjected to on a daily basis due to the necessity of continued contact with abusive men. It is the belief of Women's Aid that until urgent attention is afforded to this area by the legal system, then the lives and wellbeing of women and children will continue to be seriously undermined.

Recommendations

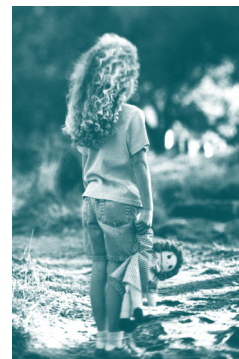
WOMEN'S AID RECOMMENDS THE FOLLOWING:

1. National research should be carried out on child custody and access in the context of domestic violence and should include clear recommendations detailing how the legal system can deal more effectively with this issue in order to maximise the safety of women and children

In this report serious issues in relation to women and children's safety were highlighted however, it was limited to 65 individual cases and the experiences of service providers. National research into domestic violence and custody and access should be carried out to further explore the issues raised here and in particular should focus on:

- Women and children's experiences of the legal system
 - Women and children's experiences of access arrangements
 - Current court practice
 - Recommendations for how the legal system can be resourced to deal more effectively with this issue in order to maximise women and children's safety.
2. A working group should be established to examine recent developments in family law in relation to child custody and access in the context of domestic violence and examine their relevance to the Irish system. Models such as those introduced in jurisdictions such as New Zealand, the United Kingdom and Northern Ireland should be examined.

This report highlights the inconsistencies in practice between individual courts and the lack of information available to the courts when arbitrating custody and access issues in the context of domestic violence. Good practice guidelines that ensure that all relevant information is provided to the court and that the safety of women and children is central to all custody and access decisions have been developed in England and Wales and have been in use since May 2001 (see Appendix). In New Zealand, in all cases where there has been a demonstrated history of domestic violence, the courts will not permit unsupervised access unless it is satisfied that the children will be safe. In Northern Ireland the Family Homes and Domestic Violence (Northern Ireland) Order 1998 provides that in making a contact order a court must consider: "whether the child has suffered or is at risk of suffering any harm through seeing or hearing ill treatment of another person" (article 28).



The working group should be chaired by a member of the judiciary and draw on expertise in family law, child protection and direct service provision to build on recent international developments in this field.

3. The Probation and Welfare Service should be reinstated in the family law courts to provide the courts with reports on the perpetrator's level of risk to children and their mother.

Given the highly sensitive nature of domestic violence and the level of understanding that is required about the nature and dynamics of domestic violence, it is imperative that decisions being made by the courts maximise women and children's safety. Since the withdrawal of the Probation and Welfare Service from Family Law, the courts have not had the benefit of detailed reports to enable them to make informed decisions regarding the granting of custody and access orders in contested cases. The involvement of the Probation and Welfare service is especially critical in custody and access cases in circumstances of domestic violence.

The importance of the role of the Probation and Welfare Service in family law has been highlighted in a number of reports . The government Task Force on Violence against Women (1997) recommended that the District Court should have access to Probation and Welfare reports in coming to its decisions in family law cases and re-instatement of this service in family law has been recommended by the Law Society's Law Reform Committee (1999).

As already noted, reports can be ordered by the courts and private assessments can be requested, however waiting times are long and the costs can exclude many people. These issues would be alleviated if the Probation and Welfare Service were adequately resourced to be reinstated in this role. In addition, as many issues in relation to access arrangements are on-going, Probation and Welfare would be the most relevant agency to undertake a monitoring role and provide reports to the courts on orders granted in the context of domestic violence.

Evaluation of the guidelines is planned over a 2-3 year period. The initial phase involved an evaluation of awareness of the guidelines within the family law system – see Lord Chancellor's Department (2002) Children Act Sub-Committee Guidelines for "Good Practice on Parental Contact in cases where there is Domestic Violence": A summary report on findings from the Lord Chancellor's Department's survey to monitor awareness of the guidelines.



4. The family law courts should be adequately resourced and more family law judges appointed to ensure that delays are minimised.

The government Task Force on Violence against Women (1997) recommended that delays in family law cases should be eliminated as far as possible and the Working Group on a Court's Commission (1998) acknowledged that much work had been done to deal with the backlog and alleviate delays. However, there is growing concern that delays are once more escalating and in this report some women experienced long delays when seeking legal remedies such as judicial separation and divorce, and custody and access orders. Hearings to vary access and for breach of access order were also subject to delays.

Problems with access can be distressing for both the woman and children involved, and can impact on children's safety and well-being. Additional District Court Family Law judges should be appointed to minimise delays currently being experienced by court applicants. In addition, an overhaul to the District Court listings system is required to ensure that re-entered cases, already being arbitrated by a particular judge, come back before that judge to be dealt with. The family law system should be adequately resourced to ensure that custody and access cases in the context of domestic violence can be dealt with promptly.

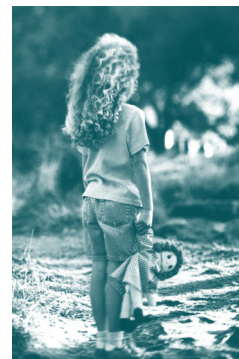
5. Appropriate supervised access should be frequently used where the court has information that domestic violence is an issue in the case.

The information highlighted in this report in relation to supervised access is of great concern. Most supervised access was not supervised by a trained professional but by a member of the man or woman's family, and in some cases supervised access was being supervised by the woman who had been abused. In access cases in which there has been a history of violence it is essential that supervised access only be carried out by professionals trained in the dynamics of abuse and child welfare. Supervised access should only be held in a safe, suitable venue and the woman who has been abused should not be the person to hand over the child as this may provide opportunity for the abusive man to intimidate, threaten or abuse the woman.

The government Task Force on Violence against Women (1997) recommended that the Probation and Welfare Service are the appropriate agency to fulfil supervised access requirements. The Law Society has made similar recommendations calling for the service to be adequately resourced to fulfil this role noting that it should extend to the provision of access centres .

See Family Courts: A Law Reform Commission Consultation Paper, 1994; A Law Reform Commission Report on Family Courts, 1996; Report of the Working Party on the Legal and Judicial Process for Victims of Sexual and other Crimes of Violence Against Women and Children, 1996.





SAC (Supervised Access Centres) is an initiative being piloted by Children at Risk Ireland with a number of local interested groups in the Southwest to allow safe supervised access to children and to provide information to the courts should the issue return to court. This pilot, subject to evaluation, should be extended throughout the country to ensure that safe supervised access facilities available to all children.

6. Legislation should be enacted to deal with child abduction by a parent or guardian within the state.

In this report abusive men used child abduction as a threat to women and in some cases abusive men had attempted to abduct children or refused to return children from access visits. Section 16 of the Non-Fatal Offences against the Person Act, 1997 establishes the offence of abduction of a child outside the state by a parent or guardian but does not apply to the abduction of a child within the state by a parent or guardian. These cases must be dealt with through ordinary custody proceedings. Writing in the Law Gazette solicitor Geoffrey Shannon (2003) of the Law Society, highlights this issue and recommends that Section 16 of the Non-Fatal Offences Against the Person Act, 1997 be amended to include this offence but noting that it must be done 'in a manner that will not prejudice domestic violence victims who leave the family home to escape violence' (p.11). In addition he recommends that Section 36 of the Child Abduction and Enforcement of Orders Act, 1991 be amended to allow the court to order the disclosure of a child's whereabouts.

Recent high profile child abduction cases (by a parent) within the state underline the urgent need for these amendments and Women's Aid supports relevant amendment to legislation with consideration to the safety of women and children fleeing the family home to escape violence and abuse.

7. Training and awareness on the dynamics of domestic violence and the impacts of violence on women and children should be introduced for all personnel engaged in the family law system, including professionals engaged to compile reports to the court.

The information reviewed in this report suggests that court decisions concerning child custody and access in the context of domestic violence have a great impact on women and children's safety from male violence and abuse. The lack of information available to the courts about the man's abusive history was seen as impacting on the outcomes for women and children. It was identified that there was a lack of information available to the court in relation to the:

- history of abuse
- continuing threat to the women and children
- long-term impact of domestic violence on the child/ren's welfare.

It is essential that the judiciary and court personnel have available to them specialist training on the complex issue of domestic violence. The need for training for all those involved in the family law court process on the issue of domestic violence has been recognised and recommended in a number of other reports .

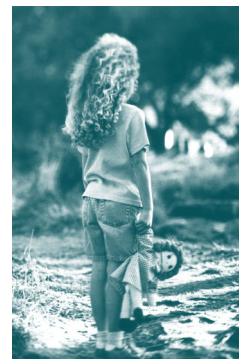
As already noted, the withdrawal of the Probation and Welfare Service from the area of family law, has impacted on the information available to the court when making decisions regarding the granting of custody and access orders in situations of domestic violence. At present the court has the power to order reports under section 20 of the Child Care Act (1991). This report highlighted concerns that individuals preparing reports sometimes have a limited understanding of the nature and dynamics of domestic violence and in particular the ways in which abusive partners can use access to children as a means of furthering the control and abuse of the other partner. To ensure that these reports adequately address the safety of women and children and that the courts are provided with accurate information on the perpetrator's risk only professionals trained in the dynamics of domestic violence and child welfare issues should compile reports.

8. There should be a safe lifting of the In Camera rule in a way that maintains the anonymity and confidentiality of parties involved in cases of family law in order to facilitate provision of information in relation to such cases.

See Report of the Task Force on Violence Against Women, 1997, Report of the Working Party on the Legal and Judicial Process for Victims and other Crimes of Violence against Women, 1996. Domestic Violence: The Case for Reform, 1999.

Safety and Sanctions, 1999 highlighted the need for both training and support for court personnel who deal on a daily basis with the extreme trauma and distress of victims of domestic violence. The Working Group on a Courts Commission, 1998 noted that 'judges should be enabled to attend meetings and seminars, particularly in regard to newly enacted legislation in the family law area' (p. 34).





As previously noted all family law proceedings are held In Camera. In practice this means that no members of the public or media can attend hearings and judgements or decisions are not recorded. The anonymity and privacy of parties involved in family law proceedings are protected. However, as decisions made in the family law courts are not recorded statistical information is limited. Careful relaxation of this rule would enable more in-depth statistics to be compiled and provide information on the nature of family law proceedings and trends in this area.

It is essential that any changes be implemented in a way that maximises women's safety, privacy and anonymity. If the In Camera rule is to be relaxed it must be done in a considered way and not act in any way to discourage women from applying to the courts for protection from domestic violence. Many reports have highlighted the need to consider changing the In Camera rule. Women's Aid welcomes the commitment in the current programme for government in this regard and the recent announcement that legislation will be enacted this year to allow reporting from the family law courts (Irish Times, 11th June, 2003). Women's Aid supports the resumption of the Courts Service's pilot project and the appointment of a court reporter to provide information about the decisions made in the family law courts.

9. A Guardian Ad Litem Agency should be established to ensure separate representation of the interests of children in child custody and access cases in which there is a history of domestic violence.

A Guardian ad litem is a separate legal representative for children who represents their wishes and best interests. To date provision has been made through legislation for this service in private law proceedings, however the provision has yet to be enacted. The system is currently under review by the National Children's Office. This service would be well placed to represent the best interests and wishes of children in domestic violence cases and Women's Aid supports the establishment of an independent agency providing that the following criteria are met:

- Only child welfare professionals with expertise in the nature and dynamics of domestic violence and its effects on women and children are engaged in cases in which domestic violence is a feature
- Guidelines are developed and made available to the judiciary on the appropriate use of a Guardian ad litem
- In all custody and access cases in the context of domestic violence a Guardian ad litem is engaged to represent the children's best interests and wishes.

See The Sixth Report of the Working Group on a Courts Commission, 1998 recognised the absence of knowledge of the workings of the Family Law Courts and recommended the establishment of a pilot project in which a qualified solicitor or barrister be appointed to report on family law cases and compile statistics. The Court's Service embarked on this project but it has been suspended pending amendment to legislation. The Report of the Task Force on Violence against Women, 1997 also recommends a safe relaxation of the rule.

See An Agreed Programme for Government between Fianna Fáil and the Progressive Democrats 2002, p.29



Aims and Information Gathering

AIMS OF THIS REPORT

- (i) To learn more about, and to document, the ways in which abusive men use child access arrangements to further abuse and control their female partners.
- (ii) To document the concerns and difficulties, for women who have left abusive relationships, arising through custody and access arrangements.
- (iii) To document women's experiences of the family law courts in relation to domestic violence and child custody and access.
- (iv) To highlight the impacts and effects of unsafe access arrangements on children.
- (iv) To recommend changes to the legal system in relation to child custody and access in the context of domestic violence.

INFORMATION SOURCES

In order to gather information on women's experiences two methods were used:

- (i) Cases from Women's Aid services were collected over a 6-month period. Women's Aid provides services for women experiencing emotional, sexual and physical abuse in the home. This includes a free phone National Helpline, a one-to-one Support Service and a Court Accompaniment Service. Custody and access issues are a concern for most women leaving abusive relationships, however information was collected on cases in which custody and access was the main issue of concern for the woman and the reason for seeking support. 65 cases were documented. As this was not a survey of service users, only information volunteered by women was recorded. Throughout the report this set of information is referred to as the 'compiled cases'.
- (ii) A survey was sent to all women's refuges and domestic violence support services in Ireland. This survey asked about the experiences of women using the services in relation to child custody and access and domestic violence and their experiences of the Family Law Courts, within in the previous year. Of the 32 questionnaires disseminated, 21 were returned and these represented:
 - 13 women's refuges (of 18 women's refuges)
 - 2 supported transitional housing services for women leaving violent relationships
 - 6 domestic violence support services (of 13 domestic violence support services) .

Throughout the report this set of information is referred to as the 'survey data'.

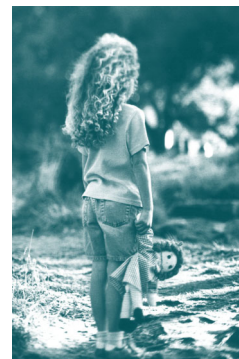
Of the 21 frontline services, 14 provided statistical information on their service users and they had given refuge, support and/or information to over 2,000 women and children in the previous year.

Follow up with services who did not return the survey indicated that for many, lack of resources and staff shortages had meant that they were unable to compile the requested information.

Not all services were able to provide statistical information on the numbers of women contacting or attending their service.



Women and Children’s Experience of Access Arrangements in Domestic Violence Situations



This section looks at access arrangements as experienced by women who came to Women’s Aid for support and information over a 6-month period (compiled cases). The women had sought support due to on-going difficulties and concerns about child access arrangements. The access arrangements were for the most part court ordered with a number being agreed informally between the parties or by mediation. Some additional information from the survey data is also included in this section.

In order to set the context for the difficulties that women described with on-going access arrangements the first part of this section briefly describes the abuse experienced by women prior to the relationship breakdown as described to support workers. The second part looks at the difficulties and concerns with on-going access arrangements for the women and describes how abusive men can use access to children to further abuse and control their former partners. It also looks at the effects of these difficulties on the women. The third part looks at child welfare concerns as described by the women who had sought support from Women’s Aid and how access to children can be used by an abusive man to further abuse and control his former partner. This part concludes with a description of the effects on the children involved.

A number of case histories have been included to illustrate the types of issues that women described to workers. Names and identifying information have been changed to protect the confidentiality of the women and children involved.

ABUSE PRIOR TO SEPARATION (TABLE 1)

The vast majority of the women in the compiled cases, 63 out of 65, reported that they had been abused by a male partner prior to separation. In the remaining cases the worker did not note any information on past abuse as contact with the organisation concerned a current issue in relation to access or custody. However, it is important to note that in both cases the women had concerns about child access arrangements. In all 65 cases the man had access to or custody of the children. 25 of the women either had a current or past order (barring or safety order) for their protection.

ABUSE OF WOMEN PRIOR TO SEPARATION	
Total number of women	65
Men who have access or custody	65
Abused prior to separation	63
Information not recorded	2
Sexual Abuse	8
Physical abuse	48
Emotional/psychological abuse	63

Table 1: Abuse of Woman Prior to Separation



48 of the 65 women reported that they had been physically abused by their partner prior to leaving the relationship. The physical abuse that women described included: being kicked, slapped, punched, being choked, hair pulling. Specific instances of physical abuse included:

- woman described how her arm and fingers were broken in an attack from her partner
- woman described how her partner tried to run her over with a car
- woman spoke of “constant beatings” while with her abusive partner
- woman was severely abused by her partner; he beat her and threatened to burn the house down with her and the children in it
- woman miscarried after an attack from her partner while she was pregnant.

“The woman said that he had been physically and verbally abusive to her. He put his hands around her neck and threatened to strangle her”

“The woman reported that she had ended up in hospital on other occasions [due to her partner’s violence] she was too embarrassed to tell the truth of her injuries to the hospital staff”

WOMEN’S AID SERVICES

The abuse that the women experienced was on going throughout the relationship and women had been subjected to multiple forms of abuse from their male partners. All of the women who spoke of being abused described emotional and mental abuse and many women spoke of fearing their ex-partner. Women described how their fear of their partner continued even though the relationship had ended.

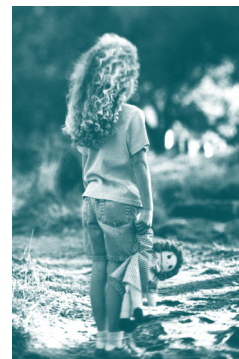
Sexual abuse can be the most difficult form of abuse for women to disclose and accordingly a small number, 8 of the women, spoke of their male partner’s sexual violence. The sexual abuse that woman described included:

- Coerced sex
- Rape
- Rape resulting in pregnancy
- Women described being beaten or verbally abused by their partner when they did not want to engage sexual intercourse

“[The woman] said that her ex-partner was very abusive. She said that he raped her resulting in a pregnancy”

WOMEN’S AID SERVICES





Arrangements in Domestic Violence Situations

In all 65 complied cases, the women had sought support as they were experiencing difficulties with custody and access arrangements. In 54 cases the children were residing with their mother and in the remainder, 11, with their father. The latter cases will be dealt with separately later in this report (see p.34). Many of the women reported feeling that their partners were using access arrangements to continue to harass, control, intimidate and abuse them. It is important to note here that in all but 2 of these cases women had described being in an abusive relationship prior to separation.

POST SEPARATION VIOLENCE

As already noted, many women are at elevated risk of abuse by a male intimate after they have left an abusive relationship and for many women violence and abuse continues after they have left the relationship. Women in the cases reviewed described on-going abuse from their partner after the relationship had ended. Abuse outside of access arrangements included:

- Abusive phone calls and text messages
- Threats of violence
- Stalking
- A woman who has a barring order described how her partner comes to her house and threatens her life. She said that he has smashed up her car and has threatened her family and friends.
- Constantly phoning or phoning through the night

For women with children this situation can be compounded by access arrangements as this gives the abusive partner reason to contact and see the woman and can be used as an opportunity for further assault, harassment, intimidation and abuse.

ABUSE OF WOMEN THROUGH CHILD ACCESS (TABLE 2)

In 54 cases the children were residing with their mother and 48 of these women had experienced abusive behaviour from an ex-partner through access arrangements. The survey findings indicated that the vast majority, 19 of the 21 domestic violence support services, said that in their experience abusive men use access to children to further abuse women. Nearly all rated this as a significant problem, and none thought that this was not a problem.

ABUSE OF WOMEN THROUGH ACCESS ARRANGEMENTS	
Total number of women	65
Number who are custodial parent	54
Number of women abused through access	48
Physical abuse	9
Emotional/psychological abuse	48

Table 2: Abuse of Women through Access Arrangements

“One of our clients was constantly abused and spat at [by her ex-partner] when she attended access visits”

SURVEY RESPONDENT

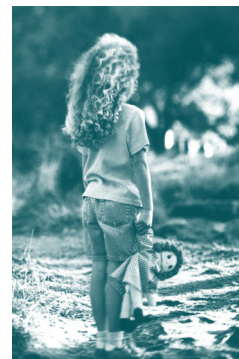
A review of the compiled cases suggests that unsupervised access to children in the context of an abusive history can provide many opportunities for an abusive man to further control and abuse his ex-partner. On-going physical abuse from an ex-partner through access arrangements was described by 9 women and specific instances included:

- woman reported that she was beaten up by her ex-partner on his last access visit
- woman described being physically abused by her ex-husband during the child over
- woman said that her ex-partner attacked her outside the location of a supervised access visit
- woman, who has a barring order, described how she was abused and kicked by her partner at the access visit
- The woman who has a safety order reported that she was assaulted by her ex-partner during access
- The woman described how her ex-partner has hit her more than once at the hand over point

J has a barring order against her violent ex-partner. She has had to change her phone number due to his abusive calls. The court granted him access to their 2 year old son. Her ex-partner has been very intimidating when collecting the child. On a recent visit he was verbally abusive and hit her in front of the child. The child is very upset when attending access. J said that she feels that she is totally under her ex-partner’s control.

WOMEN’S AID SERVICES





Both sets of data indicated that verbal abuse, threats, and intimidation of women by male ex-partners through access arrangements are a fact of life for many women who have left abusive relationships. 48 women in the 54 compiled cases in which the children lived with the mother, reported emotional and psychological abuse at the hands of their partner, through access arrangements. Emotional and mental abuse described included:

- Threats to kill
- Threats of violence
- Man threatening to kill both himself and the children
- Stalking women and children
- Verbal abuse
- Abusive phone calls and text messages
- Harassment
- Putting the woman down
- Breaking into the woman's home
- Smashing furniture
- Telling the woman that she will lose the children.

The woman has a barring order against her husband. [The] husband is now very emotionally abusive. [He is] threatening to kill himself and take children with him if she does not let him see them. [He] uses the collection of the children to further intimidate the woman. [He is] often late back with the children and uncontactable during access visits which causes huge anxiety for their mother.

CASE CITED BY SURVEY RESPONDENT

Q's partner was extremely abusive. He regularly beat her, she was slapped, kicked and punched, and he tried to choke her with a telephone cord. Since they separated 4 years ago he has continued to harass her. In the most recent incident he threatened to kill her and "kicked in" the door of her house. Access has been arranged by court order for one day a week. Q's ex-partner will not keep to the arrangement and arrives unannounced demanding to have the children. Q lets him have the children as she is terrified of him. She has not called the Gardai due to her fear of her ex-partner.

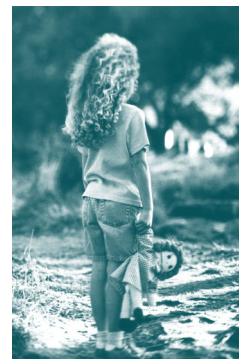
WOMEN'S AID SERVICES

OTHER CONTROLLING AND ABUSIVE TACTICS

A significant theme emerging from both sets of data is the ways in which abusive men use children and access arrangements to undermine and further control their former partners. Many of the behaviours described below, while designed to harass and abuse the mother of the children, are also abusive towards the children. Abusive tactics described by both women survivors of domestic abuse and survey respondents included:



- Undermining the woman's ability to parent, for example, telling her that she is a bad mother, telling her that she is neglecting the children, threatening to report her to social services.
- Using access to children to inconvenience the mother and disrupt the woman and children's routines, for example, not taking all the children at once or arriving late, especially if they know that it will disrupt the woman's routine for example, by making her late for work or miss an appointment.
- Failing to attend access without notice or explanation was an issue in 14 of the 65 compiled cases and women reported the negative effect it was having on their children. In some of these cases the man had applied to the court for access and then did not avail of it, leaving the woman feeling that he had used the legal system to extend his control of her, rather than from a genuine desire to have a relationship with the children. Women reported that they had to comfort distressed children and many of them believed that their partner's behaviour was deliberate and intended to disrupt their lives and the children's lives. Other issues included: leaving the children back early, not giving a contact number while with the children or refusing to say where the children were being taken.
- Using children by encouraging and rewarding them for abusive behaviour towards their mother and her family for example, children being used as messengers to verbally abuse women and children. Women also described children mirroring their father's abusive behaviour. Abusive behaviour that women experienced from their children included spitting, kicking and verbal abuse.
- Using access visits to question children on their mother's activities and the people that she sees.
- Not returning the children or threatening to abduct the children. A fear for women who have left abusive partners is that their ex-partner will abduct the child, and harm him or her. In one case, the woman fears for her 6-month old child as her abusive ex-partner threatens not to return him at every access visit. In several of the compiled cases women had sought support regarding their partner's refusal to return children after an access visit.
- Applying for access yet not spending the agreed time with the children for example, leaving them with a babysitter or another family member. This behaviour seems to indicate that in these cases continued contact with the woman rather than a desire to have a relationship with the children was the motivating factor for pursuing access.
- Child safety while in the father's care was an issue of concern emerging from both sets of data. Concerns included: arriving drunk or under the influence of drugs to collect children, drink driving with children in the car, taking children to the pub for access visits and leaving children without supervision.



“During a recent case the judge did not ask the mother why she did not want her two children (aged 3 and 7) to see the father. [The] mother had grave concerns about how upset they were leaving for access and on their return. The 7 yr old was told by the father to urinate on the walls of his mother’s home and to lie to her at all times. The woman said that the judge did not want to know and insisted that the woman continue to allow the children to see their father.”

CASE CITED BY SURVEY RESPONDENT

THE EFFECTS ON WOMEN OF UNSAFE ACCESS ARRANGEMENTS

In the compiled cases, women spoke of a variety of impacts that on-going access problems were having on them and these included:

- Fears for children’s safety while in their father’s care.
- Fears about children returning upset from access as father has been directly abusive to them or had spoken abusively about their mother.
- Worry that they will lose custody of the children.
- Feeling let down by the legal system and its failure to protect them and their children.
- Feeling let down by the court which seemed to dismiss or trivialise their ex-partner’s abuse

Specific impacts described by women in the compiled cases included:

“The woman said that her ex-partner was very abusive. He has applied for joint custody and the woman said that the worry of losing her children has placed her under a huge mental strain.”

“The woman said that she does not know where to turn to protect herself and her child”

“The woman said that her ex-partner’s erratic access visits are preventing her and her children from establishing a routine. She said she is angry that her ex-partner lets the children down and she is left to comfort and reassure them.”

“The woman said that she is fearful for her children’s safety when in [their father’s] company. She said that she is afraid that he will arrive drunk and cause havoc and that he will be drinking while he has the children.”

WOMEN’S AID SERVICES

“[The] client was seriously intimidated during access visits. This client was worn down to the extent that she felt that she couldn’t fight any longer and returned to the relationship”

SURVEY RESPONDENT



Abuse of Children through Access Arrangements

As already noted, research indicates that domestic abuse towards women is linked to the abuse of children. Many of the support services surveyed noted that they have seen this link through their work with women and children.

Both sets of data suggest that many abusive men physically, verbally and emotionally abuse their children during access. In 18 of the 65 compiled cases, women had sought support due to concerns about their ex-partner's abuse of their children while in his care; abuse described included physical, emotional and verbal abuse.

Physical Abuse of Children during Access Arrangements

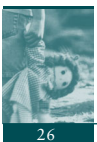
In a number of the compiled cases, women sought support due to concerns about physical abuse of children by their father during access. This was of particular concern to women with younger children who are unable to articulate what may have happened to them. Physical abuse included:

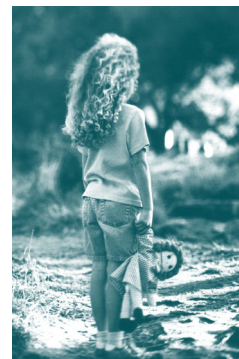
- Bite marks.
- Pinching.
- Bruising.
- Black eyes.
- Unexplained injuries.
- Child told her mother she and her siblings had been punched and slapped by their father.

Emotional and Psychological Abuse of Children during Access Arrangements

Women expressed concerns about their abusive ex-partner's treatment of, and behaviour towards the children during access. Women described concerns about children being indirectly abused, for example, witnessing their father's abuse of their mother and being directly abused, emotionally and verbally. Specific instances of emotional and verbal abuse of children by abusive men described in both sets of data included:

- attempting to abduct children
- children witnessing abuse of their mother by their father
- screaming and shouting at children
- stalking children
- calling children and their mother offensive names
- using offensive language in front of children
- threatening the children that they will lose pets or toys if they live with their mother
- telling the children that the mother hates them or does not love them





- telling the children to lie to the mother
- telling the children that the mother is to blame for the separation
- telling the children that they have to choose between the parents
- children being used to put pressure on the woman to return to the relationship
- telling children inappropriate information about the relationship
- using access visits to turn children against their mother

“The child often rings home during access visit and is very upset as her father shouts at her”

“The child becomes hysterical when her father arrives to collect her”

WOMEN’S AID SERVICES

M’s partner was physically and mentally abusive to her. They have 2 children and have been separated for a number of years. She agreed to access through mediation. However M’s former partner, will not keep to the arrangement and calls without notice to collect the children. He is verbally abusive, telling her that she is useless and an unfit mother and he threatens to have the children taken from her. He tells her that if they went to court he would get full custody. The children return from the visits very upset and they have told her that their father says that she hates them. Her eldest child cries a lot and the younger child keeps asking her why she doesn’t love them. M is very upset about the impact that this is having on the children, she is worried that the children will start to believe him. She has tried to talk to her ex-partner about his abusive behaviour, but he just repeats his threats. M has contacted the Gardai, but they said that there is nothing they can do and advised her to apply to the courts to formalise access arrangements. She would like to arrange access through the courts but she is terrified that she will lose custody of her children.

WOMEN’S AID SERVICES

NEGLECT OF CHILDREN DURING ACCESS

Many women in the compiled cases were concerned about neglect of children during access, such abuse included:

- Children not being properly fed during visits
- Established routines such as mealtimes and bedtimes being ignored or deliberately undermined.
- One woman spoke of her 3-year-old child being denied food during access.
- Not allowing children to take prescribed medication during access.

Neglect of children during access was an issue of concern echoed by survey respondents, one service cited a case in which the woman knows that her children are not being fed properly during access, but she cannot bring the issue up with her former partner due to his on-going threats of violence.



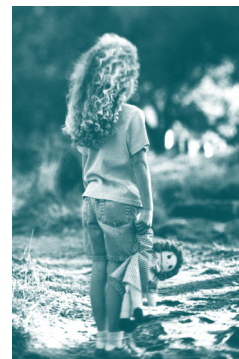
R separated from her abusive partner. They have 3 children, the youngest is a baby. She agreed access with her ex-partner informally. When R arrived to collect the children from the last access visit she found the baby locked in a car and her ex-partner drunk. R does not want her ex-partner to have anymore unsupervised access to the children and has applied to the courts.

WOMEN'S AID SERVICES

THE EFFECTS ON CHILDREN OF UNSAFE ACCESS ARRANGEMENTS

Many women in the compiled cases were concerned about the safety and well being of their children and the negative effects that unsafe access was having on them. The survey data indicated that service providers had seen similar concerns in their work supporting women who had left violent relationships. A wide range of effects on children were described in both sets of data:

- Many women reported that their children were distressed before and after access visits and the survey data indicated that nearly all services, 20 out of 21, noted this as a problem.
- The vast majority of services, 15 out of 21, have dealt with cases where the child is frightened of their father. Specific cases noted in both sets of data included:
 - A survey respondent described a child who was so traumatised that she became distressed if brought near the hand over point.
 - A woman spoke of her 4 year old child being so frightened of his father that he hides before access visits and has to be dragged “screaming and kicking” to the car.
 - A woman described how her child fears that he will be abducted by his father during access and never see his mother again.
- The stress and trauma on children affects other areas of their life and other effects on children included:
 - Behavioural problems (for example aggressive and disruptive behaviour).
 - Self harm.
 - Schoolwork suffering.
 - Bed-wetting.
 - Sleep walking and nightmares.
 - Speech difficulties.
 - Escalation of medical condition during access periods.
 - Negative effect on child's relationship with his/her mother.
 - Child anxious before access visit.
 - Child withdrawn after visit.
 - Disappointment when father does not arrive for access.



“Women have told me that their children hide so that they don’t have to attend access or they get tummy pains. Women have told me that it takes [the] child days to get over the access and that they are stressed coming up to visits.”

SURVEY RESPONDENT

C is living apart from her abusive partner. They have 2 children aged 5 and 2. Her husband left when the children were young and they have a limited memory of him, he has never financially supported the family. C’s partner recently resumed contact with her as he wishes to have access to the children. C has agreed informal access but the 5-year-old is “disturbed” after visits and wets the bed. He has started to injure himself and scratches himself. He has threatened to cut himself with a knife and is refusing to go on anymore access visits with his father.

WOMEN’S AID SERVICES

CONCLUSIONS

In the compiled cases, 48 of the 54 women with whom the children resided, had been directly abused by their male partners through access arrangements. All of the women in the compiled cases had sought support from Women’s Aid as they and their children were experiencing difficulties with custody and access arrangements.

The experiences of women leaving abusive relationships, considered here, outline the ways in which access to children can be used by an abusive man to further abuse and control his ex-partner. Children can also be exposed to abuse by witnessing the abuse of one parent by another, or being directly abused. In the cases reviewed here, abusive men used a variety of tactics to further undermine and control their ex-partners. Women reported that the effects of this ongoing abuse on themselves and their children were wide ranging and damaging.

The information reviewed in this section highlights the dangers of access arrangements that have been made without consideration of the risk that an abusive man poses to women and children after separation. The experiences of the women in the compiled cases suggest that access to children in circumstances of male domestic violence must be carefully considered and executed to ensure that the woman and children are not placed at further risk of abuse.

44 of the women in the compiled cases had arranged access through the family law courts and many of them had returned to court to re-negotiate access due to their partner’s abuse of themselves, their children and access arrangements. Most concerning is the fact that many of the issues of abuse of women and children discussed in this section had occurred in the context of access arrangements negotiated through the family law system.



Family Law Proceedings: Child Custody and Access in the Context of Domestic Violence

This section focuses on the experiences of women as reported by frontline workers (survey data) in relation to how the legal system makes and enforces decisions on child custody and access in the context of domestic violence. Additional information is provided from the compiled cases.

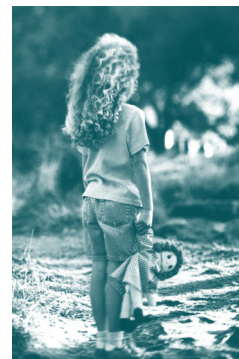
The first section looks at the type of information considered by the courts when arbitrating applications for custody and access in situations of domestic violence. The second section focuses on the circumstances in which access is denied, cases in which sole custody had been granted to an abusive man and the practice of granting joint custody. Supervised access is the focus of the third section and this looks at how often this is mandated, who supervises it, where it is held and difficulties that have been experienced with these arrangements. The final section looks at how Family Law Courts respond to breaches of an access order and the ways in which abusive men have used the system to further control their partners.

INFORMATION CONSIDERED BY THE COURTS WHEN MAKING CUSTODY AND ACCESS DECISIONS

Every day the judiciary and court personnel face the injury, trauma and distress of victims of domestic violence. Providing adequate protection to victims of such violence is a major priority of the family law courts and the courts are acutely aware of the physical and psychological impacts of domestic violence on victims.

When arbitrating custody and access cases in the context of domestic violence it is imperative that family law courts have available all relevant information (such as whether domestic violence is an issue and the extent to which the perpetrator poses a risk to the women and children concerned). Additional information (such as reports from experts in domestic violence) should be available to further enable the court to consider what is in the best interests of the non-abusing custodial parent and their children. The family law courts are extremely busy and overstretched. Lack of resources and supports to the court impacts on the availability of information such as expert reports, detailed risk assessment and input from probation and welfare services.

Domestic violence support services and refuges were asked about the type of information that is considered by the courts when custody and access decisions are being made, based on their experiences of supporting women who have experienced domestic violence through the legal system. Table 3 details their responses.



In your experience, in cases where the mother is a victim of domestic violence, do the courts take the following issues into consideration when making decisions about child custody and access?	Never	Rarely	Sometimes	Often	Don't Know
The risk the violent man poses to the woman's safety	1	14	4		2
The risk the violent man poses to the child's safety	1	6	9	2	3
Barring/Safety/Protection orders that are in place in respect of the man	1	8	8		4
Reports from professionals e.g. social worker		2	9	5	4
Information from the refuge/frontline support service which the woman and/ or her children has attended	7	6	5		3

Table 3: Information considered by the Courts when making Decisions about Custody and Access

PERPETRATOR'S LEVEL OF RISK

The majority, 14 of 21, survey respondents said that, in their experience, the risk a violent man poses to a woman's safety was rarely taken into account by the courts when making decisions about child custody and access. In the experience of one service provider it was never taken into account. None of the services said that barring and safety orders in respect of the man were often taken into account when making decisions about child custody and access. 8 services thought that this information was rarely considered by the Family Law Courts and 8 thought that it was sometimes taken into account.

This seems to indicate that insufficient information is being provided to the courts in order to for a fully informed picture of the perpetrator's risk to be established. In some instances, courts are left to balance the need to resolve the case without delay to minimise the impact on the welfare of all involved, especially the children, and the need for detailed information which is not readily available.

Only 2 services (of 21) said that the risk to children's safety was often taken into consideration when making decisions about child custody and access, and 9 services, said that it was sometimes taken into account. One service thought that child safety was never taken into consideration. Children's safety is central to custody and access decisions and this raises questions about the role of children in such deliberations. At the moment there is no separate representation available for children to ensure that court outcomes serve their best interests and that their rights are protected.

REPORTS FROM PROFESSIONALS

In the experience of service providers, reports from professionals (such as social workers, psychiatrists and psychologists) are the most common type information considered by the courts when arbitrating custody and access cases in which there has been a history of abuse. In many cases no reports are ordered or submitted to the court.

It is essential that such reports are carried out by professionals trained in the dynamics of abuse and are premised on the considered risk which the perpetrator poses to the safety of the woman and the children. Reports can be ordered by the court or privately requested by either party in the proceedings. In the latter case if the couple are married the other partner must consent to such an assessment. In reviewing both sets of data a number of issues of concern arose in relation to reports:

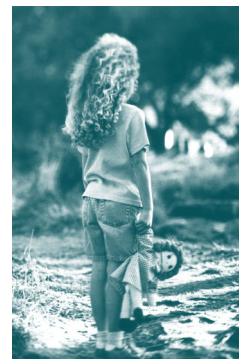
- Women spoke of their children's wishes not being adequately reflected
- Some women felt that the abuse they had experienced had been minimised.
- Concerns about the knowledge and understanding of domestic violence by those compiling the reports.
- Delays in obtaining reports, further delaying the court hearing. In the Law Society's (1999) report on reform of the legal system in relation to domestic violence 45 percent of legal practitioners reported delays of 12 weeks or over in obtaining reports.
- The cost of private assessments can be prohibitive, especially for low income court applicants who do not qualify for legal aid.
- Women have been prevented from seeking private assessments as their partner would not consent to the report.

In the compiled cases many of the women felt that their concerns about their own safety and their children's safety, were not taken into account when child custody and access was being determined. The vast majority of women's refuges and domestic violence support services, 18 of 21, agreed that child custody and access issues, where the man has been violent to his partner, should be treated differently to those in non-abusive relationship breakdown. The information reviewed here suggests that in family law cases where domestic violence is an issue, the courts do not have adequate resources or supports available to them to develop a fully informed picture of these cases. The lack of information such as perpetrator risk assessment, information from the criminal justice system and probation and welfare service reports provided to the court can lead to custody and access applications by violent men being treated as a separate issue to their violent behaviour towards their female partner.

'The issues of custody and access in violent relationships require far greater consideration and sensitivity than ordinary relationship breakdown. The courts need to take greater account of the history of the relationship, and the safety and support needs of victims of domestic violence and their children.'

SURVEY RESPONDENT





G has a 3-year barring order due to her former partner's violence; while they were together he was extremely violent and abusive and subjected her to severe beatings. He has breached the order on numerous occasions and has been arrested for breach of the barring order 5 times. Following a number of arrests, he was given a custodial sentence. As he was appealing this sentence he was released on bail with the condition that he stayed away from the area in which G lived. G's ex-partner applied to have this condition discharged as it infringed his right to see his children. The court discharged the bail condition to allow him to see his children. This meant that G was forced to have contact with him and he continued to be abusive. Some months later when G went to court for her judicial separation, the court elected not to hear evidence about her ex-partners violence, saying that this had no bearing on the case. Joint custody was awarded to G's ex- partner. G says that she feels very let down by the legal system and is living in constant fear

WOMEN'S AID SERVICES

'The 12 yr old does not want to go on access visits to her father (who is a heavy drinker) and his new partner. The father is constantly verbally abusive about the girl's mother. The child is very upset on return from access, crying and asking her mother why she makes her go. The mother tried to have access stopped in court. The judge sent the mother, father and child to a psychologist for a court report. The psychologist said that the child needed to maintain contact with her father and stressed the importance of children seeing both parents even if one of the parents was inconsistent with care.'

CASE STUDY CITED BY SURVEY RESPONDENT

P's partner was verbally and physically abusive to her and they have been living apart for 3 years. She has two children aged 7 and 11. Her ex-partner applied for joint custody – and he requested a private assessment of the family. The 11 year old child is strongly opposed to living with his father. P said that the report was biased and dismissed her partner's abuse of her and she feels that it did not address her children's concerns. Joint custody was ordered by the courts and P is really worried about the impact that it will have on the children. Her eldest child is very upset about the outcome and feels that her views were not taken into account in the report

WOMEN'S AID SERVICES



Child Custody and Access and Violent Men

VIOLENT MEN WHO ARE DENIED ACCESS

Women’s refuges and domestic violence support services were asked to recall cases they had dealt with, in the last year, where access to children had been denied to a violent man, Table 4 details there responses.

Not aware of any cases in which access had been denied	Aware of a case in which access had been denied	Number of cases cited in which access was denied
12 refuges and support services	9 refuges and support services	11

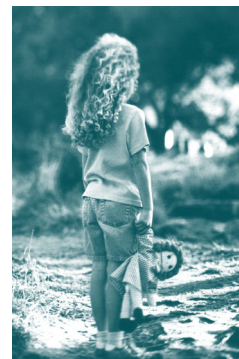
Table 4: No of service providers who cited cases in which access had been denied to a violent man in the previous 12 months

12 of the 21 support services questioned did not know of any cases in the previous year where access had been denied to a violent man. Only 9, less than half of the respondents, were aware of a case in the last year where access to children had been denied by the courts due to a man’s violence. One service knew of 2 cases and the others knew of only one case each. These figures are extremely low bearing in mind the nature of the work of these organisations.

Refuges and support services were asked to provide details of cases in which abusive men had been denied access. Survey respondents indicated that there must be evidence that the children had been directly abused by the man before the courts recognised that access should be stopped. In addition, they indicated that access was sometimes stopped if evidence of extreme violence against the woman came before the court and the court recognised that access was proving detrimental.

Examples of why men had been denied access included:

- The father was also abusing the child.
- The father had assaulted the 12 year old child.
- The father had abused one of the children – he was given supervised access to the younger children.
- The father is extremely violent. He had supervised access but this was dismissed after he attacked the workers supervising the access.
- The father is currently serving a 4-year prison sentence for an attack on his former partner. He was initially charged with rape and assault. The child witnessed the attack on his mother. Social services advised that the child would be taken into care if the woman did not leave the father. He is still pursuing access.
- Father denied access due to his violence toward the mother and the children
- Judge denied access due to the nature and extent of violence



Many of the 65 compiled cases involved extreme incidents of abuse and severe violence, however in all these cases men had access to children and in all but 5 cases this access was unsupervised. The small number of services who were able to recount cases in which access was denied to a violent man suggests that the courts are currently not being provided with sufficient information in relation to the history of the case and the perpetrator's risk, in some instances, resulting in custody and access issues being considered in isolation to any past violence and abuse directed by the one parent against the other.

ABUSIVE MEN AND SOLE CUSTODY OF CHILDREN

3 women's refuges and domestic violence support services (of 21 surveyed) recounted cases, within the previous year, in which a man who had abused his partner was given sole custody of the children (survey data). They cite 5 cases and details of 2 cases were provided. In the cases where details were provided the men had abused their partners, physically, sexually, emotionally and financially.

In 11 of the 65 compiled cases the children were residing with their father. In 7 of these cases the man had sole custody of the children, in the remaining cases the court hearing was pending. The following information was obtained from these cases:

- All 11 women reported that they had been abused prior to the end of the relationship and 5 described physical abuse. 3 of them had court orders to protect them from their partner's violence and abuse.
- The women who had access to their children had sought support due to difficulties with access arrangements including mental and physical abuse from their former partner.

In a number of these cases the impacts of the violence and abuse on the women had been so significant that it had affected their ability to parent and impacted negatively on their application for custody. Examples included: homelessness, mental health problems such as attempted suicide, nervous breakdown and addiction issues. Although beyond the scope of this study, the impacts of long term violence and abuse on the victim and on her ability to adequately parent requires further investigation and the support needs of women in these circumstances need to be assessed. This emerging issue was also noted by service providers.

Women in these cases felt let down by the system and the agencies that they had been in contact with. They felt that the abuse they experienced had been minimised and they were concerned that their children's wishes had not been taken into consideration. This is an issue of concern and further suggests that custody and access can be viewed as separate and unrelated to, domestic violence.

ABUSIVE MEN AND JOINT CUSTODY

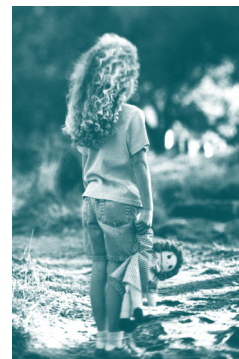
Six services were aware of cases in the previous year in which a violent man was granted joint custody, and one service was aware of 14 cases in the last 12 months. The practice of granting joint custody can leave many women survivors of domestic violence under their ex-partner's control. Joint custody, even if the children reside with one parent only, means that many decisions cannot be made without the consent of both parents. While this can be workable for couples where there has not been a history of abuse, it places women who have been in abusive relationships at risk and increases the perpetrator's opportunities to control aspects of his ex-partner's life.

'Granting access or joint custody to a violent father further endangers the mother. Even where there is no direct violence to children, witnessing further abuse to their mother is very distressing. The mother and children's safety need to be taken into account at all times.'

SURVEY RESPONDENT

When L left her abusive partner one of the deciding factors was the effect it was having on their children as he was becoming increasingly verbally abusive towards them. She applied for a divorce and, despite her objections, the court granted her and her ex-husband joint custody. The children now live one week with each parent. L is very upset about the outcome and she says that she would never have left the abusive relationship if she had known that her ex-partner would be given joint custody. She feels that she is now unable to protect her children from her ex-partner.

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Supervised Access

Supervised access when held in a safe venue and supervised by a trained professional can offer a means of allowing access to take place (if it is in the best interests of the children) while protecting women and children. Supervised access, to adequately protect women and children at risk of domestic violence, must be carefully thought out and planned. However, it may not be suitable in all cases. A refuge worker described a case she had dealt with in which supervised access was not working: “[The man] was using access to find out where the family was living and [the case] went back to court”. In this case despite the man’s misuse of access to his children no changes were made to the access order and the supervised access continued.

A frontline service provider gave an example of access that was being supervised by a social worker and a support worker. The father, who had a history of extreme violence, attacked the workers and the Gardai had to be called.

Supervised access should only be mandated when it is in the best interests of the children to have a relationship with the non-custodial parent and should not be considered as an alternative to denying access.

NUMBER OF CASES WHERE ACCESS TO CHILDREN IS SUPERVISED

Service providers were asked about cases they had dealt with, in the past year, in which access was supervised. Table 5 details their responses. 9 out of 21 services were not aware of any cases in the last year where supervised access was mandated by the courts. 11 services were aware of supervised access arrangements, but the majority of the women in these cases were not satisfied with the arrangements. A further look at arrangements (see below) throws light on the women’s concerns.

Services who knew of cases in the last year where access was supervised	Services who did not know of any cases in the past year where access was supervised	No answer
11	9	1

Table 5: Number of services that knew of supervised access arrangements

Of the 65 compiled cases there were only 5 in which the father’s access to his children was supervised. It appears from the information considered here that supervised access is only ordered in a small number of cases. This highlights the difficulties for the court as the options available for safe supervised access are extremely limited.



WHO SUPERVISES ACCESS TO CHILDREN

Services who had dealt with cases in which access to children had been supervised were asked about who had supervised the access (see Table 6).

Supervisor of Access	Number of Services
A trained professional with experience in child welfare issues e.g. social worker	3
A member of the woman's immediate family	4
A member of the man's immediate family	6
Mother of the children	4
Other: Family friend Refuge support worker	2

Table 6: Supervisor of Access

Only 3 domestic violence support services (of 21) knew of a case in which access had been supervised by a trained professional with experience of child welfare issues in the past year. More worryingly, 4 services knew of cases in which the woman who had been abused was supervising her ex-partner's access to the children. This practice is extremely inappropriate in cases of domestic violence and place the woman at considerable risk.

Service providers indicated that in cases where supervised access was not carried out by a trained professional many difficulties had arisen. The following quotes illustrate specific difficulties that survey respondents have encountered with supervised access in their work with women who have experienced domestic violence:

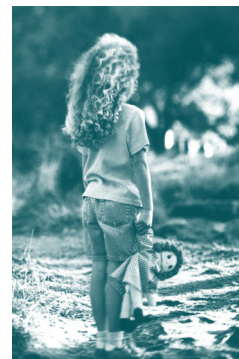
"The woman would rather have a trained professional e.g. social worker, supervise access as sometimes her husband can be quite abusive towards her sister"

SURVEY RESPONDENT (COMMENTING ON A CASE IN WHICH A WOMAN'S
SISTER SUPERVISES HER ABUSIVE EX-PARTNER'S ACCESS)

"The man repeatedly turned up without a supervisor, his mother was the named supervisor but only turned up on two occasions. The man was abusive to the woman when she would not hand over the child unsupervised."

SURVEY RESPONDENT

Despite the problems with unsafe supervised access arrangements, there is not always a worker available to supervise access. A survey respondent described the difficulties for a woman who was supervising the access herself: "The woman would have preferred the social worker who was working with the children but the social worker said that they did not have the resources".



It should not be left to the mother of the children, her family or the perpetrator’s family to supervise access to children. Facilities need to be developed to allow safe supervised access to children and statutory family supports such as social services should be adequately resourced in order to ensure that only trained professionals carry out supervision.

VENUES USED FOR SUPERVISED ACCESS

There are few suitable venues for supervised access to take place (see Table 7). 7 services noted cases in which supervised access had taken place in a public place such as local fast food restaurant, hotel, shopping centre or local park. This reflects the fears that women have and as a survey respondent noted: “Some women feel they are safer in the shopping centre rather than going to the man’s home.” Only 4 services knew of supervised access that had taken place in a health centre. Services cited cases in which the woman who had been abused was supervising her former partner’s access to children in his home or her own home.

Venue for Supervised Access	Number of Services
Woman’s home	1
Man’s home	4
The home of a member of the man’s immediate family e.g. his parents	5
The home of a member of the woman’s immediate family e.g. her parents	2
Health centre	4
Other Venue : hotel, shopping centre, fast food restaurant, local park, home of family friend	7

Table 7: Venues for Supervised Access

Survey respondents described some of the difficulties they had seen in the past year with supervised access and the lack of suitable venues:

“In some cases the place of the supervised access has changed e.g. man’s home then to a hotel and a member of the man’s family because each access venue became untenable due to father’s behaviour.”

“[The] court ordered access to take place in man’s mother’s home but the child reported being in the pub. [The] mother of man did not supervise access as agreed.”

The following case study illustrates some of the difficulties that can arise if supervised access is not carefully thought out and managed:

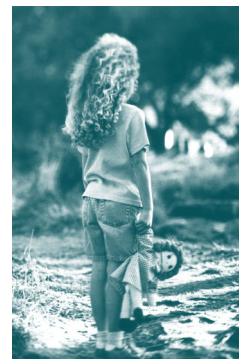
The information reviewed here suggests that in access cases in which a man has a violent or abusive history the courts rarely mandate supervised access to children as there are no adequate facilities to allow safe supervised access to take place. In addition the relevant statutory agencies such as social services do not have the resources to carry out this function. Much of the supervised access detailed here, was not carried out by a trained professional or in a safe venue. Supervised access should be available in order to provide protection to both the non-abusing parent and the children, where access has been deemed in the best interests of the children. The practice of allowing access to be supervised by the woman who has been abused is dangerous for both women and children.

M left her violent partner of 6 years. The court granted her ex-partner weekly access to their young child. M objected as the child is terrified of his father. Following her objections the court agreed that access be supervised by her elderly mother. M's mother is scared of her daughter's former partner but supervises the access, as she is also concerned about the child's welfare. M's ex-partner does not always arrive for the access and has on occasion been abusive towards M's mother.

WOMEN'S AID SERVICES

P's ex-partner has supervised access to their 2 children (aged 3 and 10) due to his continued violence to her. The children have witnessed their father's abuse of their mother and are afraid of him. The eldest child does not want to see her father. P brought the children to the supervised access. When the children went into the room the supervisor had not arrived and they were alone with their father. The children were upset, and they refused to stay in the room. P's ex-partner was verbally abusive to her and threatened to kill her. The children were extremely distressed, and P was upset and frightened. She feels that no one is taking his threats seriously.

WOMEN'S AID SERVICES



Breach and Variation of an Access Order

Service providers were asked about their experiences in relation to how courts deal with violent men who breach access orders. Services indicated that, in their experience, abusive men are rarely sanctioned when they breach an access order. Only 2 services were able to identify cases in which access was actually terminated. They each cited one case. In the first, the father had abducted the children and removed them from the country, in the second access was stopped after the father had applied to court for more access and then did not use it.

An additional concern, arising from the information reviewed, is the length of time that it can take to have a breach of access order case or application for variation of access case heard. One woman, for example, described how she applied to court to stop access due to serious concerns about her young child's welfare while in his father's care. The case was deferred for 3 months and access continued during this time.

The family law courts are extremely busy and overstretched, in 2002 the waiting time for a barring or safety order hearing in the Dublin Metropolitan District court (family law court for the Dublin region) was 13 weeks from the issue of the summons (Courts Service, 2003). There is a concern that cases that are considered a priority can be subject to long delays. For example, applications for variation to an access order can take between 10-12 weeks in the Dublin Metropolitan District court. If the case is then listed before a judge who did not hear the initial case, and application is made to adjourn to the judge who issued the initial order delays can be in excess of 5 months.

If a judicial separation or divorce hearing is pending and one of the parties applies to the court to change access arrangements, the court will often defer the access issue until the separation or divorce hearing, with current long delays these issues can go unresolved for many months. In cases in which child safety and welfare is a concern it can be extremely damaging to both the mother and the children to have to continue with access while waiting for a court hearing and these delays are unacceptable.

F's partner was extremely abusive. She applied for a barring order and due to the severity of the abuse that she had suffered a 3-year barring order was granted. Since then she has had to move house and change her phone number due to her ex-partner's threats. They have a 4-year-old child and F's ex-partner refuses to pay maintenance. He was granted access to the child and she meets him in the local park. F is very scared of him, but feels she has to go along with him in case he harms the child. He has breached the barring order a number of times at the hand-over by physically abusing her. He is also abusive to the child and F is "worried sick" about what might be happening to the child while with his father. The child wets the bed after the visit. F is seeing a social worker who has said that access should be stopped and she is waiting for another hearing; she would like the access to be supervised. Until the hearing she must continue with the access yet she is extremely worried that her ex-partner will harm the child before the court hearing. F is also worried that the court may not listen to her concerns and she will have to continue with the current access arrangements.



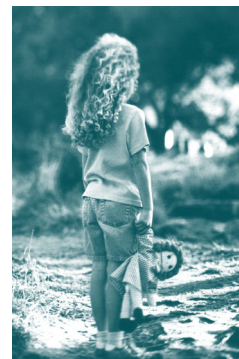
Survey respondents raised concerns about cases in which more access was granted following a non-abusing parent's application to change access arrangements due to concerns about child welfare, or due to their partner's on-going abuse. This issue although beyond the scope of this study requires further investigation.

ABUSIVE MEN'S USE OF THE SYSTEM TO CONTINUE ABUSE OF THE WOMAN

Many women in the compiled cases believed that their ex-partners were using the legal and other statutory systems as a means of harassment. Women reported that their ex-partners had applied to court for access and then failed to attend the hearing, or failed to avail of the access. Some women reported that they had been taken to court repeatedly over the same issues. This was especially a problem if the woman did not qualify for legal aid. The following case studies illustrate the ways in which abusive men can use the legal and statutory systems to continue to threaten and harass former partners

G is separated from her abusive partner. They have a child who is 9 months old. G's ex-partner has supervised access with the child every 2 weeks, due to his violence towards her. G's ex-partner has taken her to court 5 times over access arrangements. When supervised access is taking place G waits outside. She says that the baby cries for the duration of the visit and she finds this very distressing. G is worried that the next time her ex-partner takes her to court he will get unsupervised access and she fears for her child's safety should this happen.

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Conclusions and Recommendations

CONCLUSIONS

Information provided by survey respondents suggests that there are inconsistencies in the way in which access and custody issues are dealt with in the courts. Survey respondents indicated that varying levels of weight were given to the history of abuse and the perpetrator's risk to both women and children when assessing custody and access applications. The lack of information available to the courts could in some cases lead to these issues being treated in isolation from past abuse of one parent by another. Information from both sets of data indicates that abusive men regularly get unsupervised access to children and many of them use this to further the abuse of women and children. There is an indication that some abusive men are given sole custody of children and many are granted joint custody, despite the fact that they have a history of violence towards the mother of the children concerned. In this section serious concerns were noted about the information available to the court and how this impacts on the way in which these issues are currently dealt with.

The concerns raised in relation to unsafe supervised access arrangements and the availability of safe supervised access facilities suggest that the court is often not in a position to avail of safe supervised access. Long delays in court hearings and in obtaining professional reports further exacerbates the problem and the information considered in this section suggests that custody and access issues in the context of male domestic violence demand far greater resources and supports to the court than is currently afforded.

Women's refuges and support services were asked to assess a list of changes to the way that custody and access issues, in the context of domestic violence, are dealt with in the family law courts. Overwhelmingly, service providers supported the following changes and indicated that they believed that they would have a positive impact on women and children's safety:

- Guidelines on dealing with child custody and access in the context of domestic violence for the judiciary
- Training on domestic violence for all court personnel and professionals who are consulted in relation to custody and access issues
- Probation services to compile reports on the perpetrator's level of risk to the children
- Professional trained in the dynamic of abuse should be appointed by the court to supervise access
- Lifting/relaxing of the "in camera" rule in Family Law proceedings, in a way that maximises women's safety and anonymity, to enable more information from the Family Law courts.

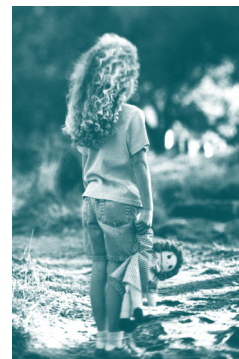
Access to children can afford abusive men the opportunity to further abuse and control their ex-partners. In addition, children can be used by abusive men as the conduit to further this control. In the cases reviewed here abusive men used a variety of tactics to further undermine and control their ex-partners. Women reported that the effects of this ongoing abuse on themselves and their children were wide ranging and damaging.

The information reviewed in this report highlights the dangers of unsafe access arrangements for both women and children. The lack of sufficient information, risk assessment and resources to enable courts to deal effectively with such cases was highlighted. The information from both sets of data suggests that access to children in circumstances of male domestic violence must be carefully considered and executed to ensure that women and children are not placed at further risk of abuse.

The way in which Family Law Courts make decisions about child custody and access in the circumstances of male domestic violence requires immediate attention and review in order to ensure that the safety of women and children is paramount in all decisions made.

M was living with her abusive partner for 2 years, they separated due to his physical and emotional abuse. They have a child now aged 1. She offered to work out access arrangements informally but he said that he wanted custody of the child and applied to the courts. M was very upset and feared that he would get custody. On the day of the court hearing M's ex-partner did not attend. M feels that he used the threat of taking her child away to punish her for ending the relationship.

WOMEN'S AID SERVICES



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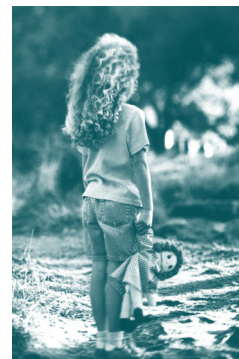
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Appendix – Child Contact and Domestic Violence Guidelines (England and Wales)

INTERIM CONTACT PENDING A FULL HEARING

5.4 In deciding any question of interim contact pending a full hearing the court should: -

- (a) specifically take into account the matters set out in section 1(3) of the Children Act 1989 (“the welfare checklist”)
- (b) give particular consideration to the likely risk of harm to the child, whether physical and/or emotional, if contact is either granted or refused.
- (c) consider, if it decides such contact is in the interests of the child, what directions are required about how it is to be carried into effect; and, in particular, whether it should be supervised, and if so, by whom; and generally, in so far as it can, ensure that any risk of harm to the child is minimised and the safety of the child and residential parent before during and after any such contact is secured
- (d) consider whether it should exercise its powers under section 42(2) (b) of the Family Law Act 1996 to make a non-molestation order;
- (e) consider whether the parent seeking contact should seek advice and/or treatment as a precondition to contact being ordered or as a means of assisting the court in ascertaining the likely risk of harm to the child from that person at the final hearing

MATTERS TO BE CONSIDERED AT THE FINAL HEARING

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

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

MATTERS TO BE CONSIDERED WHEN FINDINGS OF DOMESTIC VIOLENCE ARE MADE

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

- (a) the effect of the domestic violence which has been established on the child and on the parent with whom the child is living;
- (b) whether or not the motivation of the parent seeking contact is a desire to promote the best interests of the child or as a means of continuing a process of violence against or intimidation or harassment of the other parent;



- (c) the likely behaviour of the parent seeking contact during contact and its effect on the child or children concerned;
- (d) the capacity of the parent seeking contact to appreciate the effect of past and future violence on the other parent and the children concerned;
- (e) the attitude of the parent seeking contact to past violent conduct by that parent; and in particular whether that parent has the capacity to change and/or to behave appropriately.

MATTERS TO BE CONSIDERED WHERE CONTACT IS ORDERED IN A CASE WHERE FINDINGS OF DOMESTIC VIOLENCE HAVE BEEN MADE

5.7 Where the court has made findings of domestic violence but, having applied the welfare checklist, nonetheless considers that direct contact is in the best interests of the child or children concerned, the court should consider (in addition to the matters set out in paragraphs 5 and 6 above) what directions are required to enable the order to be carried into effect under section 11(7) of the Children Act 1989 and in particular should consider:

- (a) whether or not contact should be supervised, and if so, by whom;
- (b) what conditions (for example by way of seeking advice or treatment) should be complied with by the party in whose favour the order for contact has been made;
- (c) whether the court should exercise its powers under section 42(2) (b) of the Family Law Act 1996 to make a non-molestation order;
- (d) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified;
- (e) setting a date for the order to be reviewed and giving directions to ensure that the court at the review has full information about the operation of the order.

A Report to the Lord Chancellor on the Question of Parental Contact in Cases Where there is Domestic Violence (pp. 56- 58, The Advisory Board on Family Law, 2002)

