

**This Guidance aims to assist frontline staff working with families experiencing domestic violence/abuse and child contact arrangements.**

**In addition it aims to support individuals who choose to represent themselves in court proceedings (self litigants).**

# Families experiencing Domestic Violence

## Child Contact Guidance

Belfast Domestic & Sexual Violence  
Partnership

15<sup>TH</sup> August 2013 updated January 2015

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### Family Proceedings Court Forms

- 1 Form C1** Application for an Order
- 2 Form C1A** Summons to Respondent to attend court
- 3 Form C1AA** Supplemental information form including accompanying guidance notes
- 4 Form C3** Notice to parties of a direction application
- 5 Form C4** Acknowledgement
- 6 Form C5** Confidential address
- 7 Form C2** Application for leave to commence proceedings; for an order or direction in existing proceedings; to be joined as, or cease to be, a party in existing family proceedings
- 8 Form C7** Supplement for an application for financial provision for a child or variation of financial provision for a child

Copies of all the above Forms can be accessed at;

[www.courtsni.gov.uk/enGB/AboutUs/UsefulForms/FamilyForms/Pages/FamilyForms.asp](http://www.courtsni.gov.uk/enGB/AboutUs/UsefulForms/FamilyForms/Pages/FamilyForms.asp)

## 1.0 Introduction:

When parents separate, on-going contact between the children and both parents is usually seen as a good thing for everyone, provided the contact can take place safely and is a positive experience for the child/children.

However, when one of the parents is a perpetrator of domestic violence/ abuse, the other parent may be concerned for both their own and their children's safety. The perpetrator may also have abused the children - or there may be fears that they will use contact to trace the victim's whereabouts and continue the cycle of abuse.

Practitioners working with families experiencing domestic violence/abuse are often challenged by the complex and opposing dynamics which feature when child contact arrangements are being agreed and by the legal process involved.

In response to issues raised by victims and staff, members of the *Belfast Domestic Violence Partnership* Protection and Justice working group have developed the following guidance. It aims to clarify the legal process for staff and victims focusing on Residence and Contact pre-proceedings requests and proceedings applications. Some individuals also choose to represent themselves (self-litigants) and this guidance will assist their understanding of the process and their self-reporting to court.

### General Principles:

- It is acknowledged that children have a right to safe contact with both parents when this is in the child's best interests.
- It is also recognised that perpetrators of domestic violence/abuse may continue to control and abuse victims following separation and can use informal and formal child contact arrangements to do this.
- It is important that a parent experiencing domestic violence/abuse informs their legal representative of all relevant information at the earliest opportunity or at least at the commencement of any proceedings in order that decisions made regarding contact/residence minimises any opportunity for a perpetrator to further manipulate or abuse.

## 2.0 Aims

- To enable staff in the community, voluntary and statutory sectors to support victims in a timely and appropriate manner through the pre proceedings and court process.
- To support and encourage victims to highlight all relevant information to solicitors immediately upon receipt of a request from a perpetrator(or their solicitor) and /or at the commencement of proceedings in the Family Proceedings Court.

# **RESIDENCE AND CONTACT**

## **PRE-PROCEEDINGS REQUESTS**

### **1.0 Introduction**

Pre- proceedings can take the form of;

- A letter (and or)
- Pre-proceedings mediation

Parents who are victims of domestic violence/abuse and/or their solicitor may be contacted by a solicitor on behalf of the perpetrator to request that arrangements for contact or residence be agreed between the parties. These arrangements are not yet before the court and therefore not enforceable by a court. It is important that at this stage a victim seeks legal advice and informs their solicitor of their experience of violence/ abuse in order to promote their own and their children's safety.

Many victims feel anxious about court proceedings. However victims may benefit from formal court proceedings. Decisions made by a court with full knowledge of the domestic violence/abuse history potentially offers better protection to the victim and contact arrangements are set around the needs of the child.

Mediation may be recommended as a means of assisting parents reach informal arrangements. Mediation takes place in the presence of and with the assistance of an agreed and independent facilitator. It is important to understand that mediation is a voluntary process and may not be suitable for all cases.

Mediation is contraindicated in cases of domestic violence/abuse *"where an ongoing co-operative relationship between parents carries a significant risk of harm e.g. one party cannot be protected from the threat of domestic violence or child protection concerns exist"* (COAC Best Practice Guidance 2<sup>nd</sup> Edition 2010, page 186, 5.29.8 Contra Indications to Family Mediation)

### **2.0 Issues to be considered**

- Staff should be aware of the use of pre-proceedings in the contact and residence legal process(private law), and be in a position to support the victim to understand that pre-proceedings in this context are informal arrangements
- Staff should be aware and should inform victims that they are not legally obliged to agree informal arrangements. A decision made at this point may later be viewed by the court as having set a precedent for contact/residence issues
- Staff should communicate appropriately with partner agencies and with consent share relevant information including risk assessments
- Victims should inform their legal representative of all relevant information upon receipt of any requests for informal arrangements to be made

## ***RESIDENCE AND CONTACT***

### ***PRE-PROCEEDINGS PATHWAY***

**The DV Perpetrator/Parent (or their Solicitor)** contacts the **DV Victim/Parent (or their solicitor)** in writing to request arrangements be made for child contact and/or residence.

**DV Victim/ Parent** should discuss in detail with their solicitor, their and their children's experience of domestic violence including any relevant child protection proceedings. They should carefully consider the appropriateness of informal contact/residence arrangements and make decisions as to how they wish to proceed.

#### **Agreement of Informal Arrangements**

**The DV Victim/Parent (or their solicitor)** should seek arrangements which are in the child's best interests and safe for the victim. These should reflect the issues and concerns raised by the victim.

**The DV Victim/Parent (or their solicitor)** should outline in writing all relevant issues regarding the DV history and relevant child protection considerations.

There is no pre-set format for this letter. However the areas outlined in pre-proceedings Guidance for Victims may be beneficial to include.

#### **No Agreement of Informal Arrangements.**

**The DV Victim/Parent (or their solicitor)** should explain in writing that informal arrangements will not be agreed. Any relevant information re their experiences of domestic violence/ abuse should be provided and held for use in any future court application.

# **Residence and Contact Pre-Proceedings Guidance for Victims**

Pre-proceedings requests for contact are usually in the form of a letter therefore any response, usually via a solicitor is also likely be in the form of a letter.

These letters may be requested by the court if proceedings are issued therefore care, attention and accuracy are important in any response.

This guidance outlines areas to consider in your response.

## **1.0 About You**

- Provide your name and date of birth.
- Provide your address and telephone number **only if it is safe to do so**. You can use your solicitors address and telephone number as contact details.
- Provide your solicitors name, address, and reference and telephone numbers.

## **1.1 About the Child(ren)**

- Confirm the full name and date of birth for each relevant child.

## **2.0 Your experience of Domestic Violence and Abuse or Harm**

As far as possible outline each incidence of violence, domestic abuse or harm. If possible please provide the following:

- The date on which the incident occurred
- The nature and seriousness of the alleged abuse, violence or harm
- By whom and against whom it was directed
- How frequently the alleged abuse, harm or violence occurred and the date of the most recent occurrence
- Details of any hospital or medical treatment required in respect of injuries sustained
- Whether you consider there is a likelihood of further harm, abuse or violence occurring

## **3.0 Involvement with other services as a result of Domestic Violence and Abuse or Harm.**

Please outline your involvement with other agencies e.g. Police, Social Services, Mental Health Services or other support services. This includes involvement that was in the past and is now closed, current involvement, or pending involvement (expected in the near future.)

Please provide details and identify:

- Which agency or services has been involved

- The name of the person who has been the main contact in that agency or service
- The dates of involvement

### **3.1 Involvement with the Police and/or Court as a result of Domestic Violence and Abuse or Harm.**

Please outline relevant details regarding previous, current and/or pending matters.

- Police investigations
- Court cases
- Restrictive Orders (e.g. Non- molestation orders, occupation orders etc.)

### **4.0 Children**

Do you believe that your experience of Domestic Violence and Abuse or Harm has had an impact on the child(ren) named above?

**NO**

**YES** – see below

#### **4.1 Involvement of the child(ren)**

If the child(ren) named above have seen or heard any incidents of abuse within the household or have been aware of any abuse and its impact on the family, please give details.

- The date on which the incident occurred
- The nature and seriousness of the abuse, violence or harm
- By whom and against whom it was directed
- Which child(ren) saw, heard or was aware of the alleged incident of abuse within the household?
- Where was each child at the time of the incident?
- How do you believe each child has been affected by this experience?

#### **4.2 Medical treatment or other assessment of the child(ren) as a result of their experience of Domestic Violence and Abuse or Harm**

If any named child(ren) has been referred for treatment or psychiatric or psychological assessment, by any medical or health service relating to his/her emotional, social or behavioural development, please state:

- When and to whom a referral was made
- Details of treatment or assessment recommended
- Whether there is any continuing involvement with the relevant service in relation to the referral

# **PROCEEDINGS**

## **RESIDENCE AND CONTACT APPLICATIONS**

### **1.0 Introduction**

When court proceedings are issued this has reached a formal stage. The court will intervene and decide on the best interests of the child/children regarding contact and residence. Parents who are victims of domestic violence/abuse may be required to attend court when the perpetrator applies to the Family Proceedings Court for a Contact or Residence Order.

### **2.0 Issues to be considered**

- Information regarding domestic violence/abuse should be highlighted and communicated to legal representatives by victims at an early stage in the process
- Staff should be aware of the legal process and court forms required and support the victim accordingly
- Staff should communicate appropriately with partner agencies and share relevant information including risk assessments
- Parents who are victims of domestic violence/ abuse should not assume the court is aware of the violence/abuse that they have experienced
- The courts may not know that a Multi-Agency Risk Assessment Conference (MARAC) relating to the parents has been convened
- The courts may not know about:
  - Previous or current offending by a parent including violence
  - Previous or current police investigations regarding a parent
  - Convictions
  - Previous or existing non-molestation orders, occupancy orders and breaches of same pertaining to a parent
  - Previous or current social service involvement



### 3.0 Fact Finding Hearings (Re L Hearings)

When there is a dispute and allegations of domestic violence/abuse the solicitor / court may view it necessary to hold a fact finding hearing.

Sometimes these hearings are described as Re L Hearings. Re L is a case in law {Re L (A Child) (Contact: Domestic Violence) [2001] Fam 260}, which held that courts should consider the nature and effect of alleged violence at the earliest opportunity when determining contact arrangements.

The fact finding hearing will determine if violence/abuse occurred and will include a risk assessment to ascertain further risks of harm before making consent orders for contact.

In effect, this will help ensure that safety is the paramount consideration when determining whether contact is in the child's best interest.

It is important that the possibility of a fact finding hearing is considered by the victim and their legal representative at the **initial** stage of proceedings.

# ***PROCEEDINGS***

## ***RESIDENCE AND CONTACT APPLICATIONS***

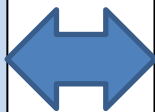
**Form C1**  
**Application for an Order**  
The **Applicant** (DV Perpetrator/Parent) applies to the Family Court via their solicitor for a Contact and/or Residence Order regarding a child via a **Form C1**



**Form C3**  
**Notice of Parties of a Direction Application**  
The **Respondent** (DV Victim/ Parent) is advised of this application via a **Form C3**. A copy of the application **Form C1** should be enclosed with the **C3 Form**



**Form C4**  
**Acknowledgement**  
The **Respondent** (D V Victim/Parent) is requested to acknowledge receipt of the **C3 and C1 Forms** via **Form C4**



**Form C1AA**  
**Supplemental Information Form**  
The **Respondent** (DV Victim/Parent) should **also complete a Form C1AA** to include all relevant details of domestic violence and child protection which should be returned with the **Form C4**



**Form C5**  
**Confidential address**  
If the **Respondent** (DV Victim/Parent) wishes to have their address kept confidential **Form C5** should be completed and returned with the **Forms C4 and C1AA**



**Form C1A**  
**Summons to Respondent**  
The **Respondent** (DV Victim/Parent) will be summoned to attend court on a set date via a **Form C1A**

- The Children Order (N.I)1995 Part 111, Orders with respect to children in family proceedings  
[www.legislation.gov.uk/nisi/1995/755/contents/made](http://www.legislation.gov.uk/nisi/1995/755/contents/made)
- The Children Order: A Guide COG 1 DHSSPS  
[www.dhsspsni.gov.uk/cog1-children-order-a-guide.pdf](http://www.dhsspsni.gov.uk/cog1-children-order-a-guide.pdf)
- A Guide to Case Management in Private Law Proceedings  
[www.courtsni.gov.uk/enGB/Publications/Family\\_Law\\_and\\_Childcare\\_Literature/Documents/p\\_fam\\_guide\\_private\\_law/p\\_fam\\_Case-Management-Private-Law-Guide.pdf](http://www.courtsni.gov.uk/enGB/Publications/Family_Law_and_Childcare_Literature/Documents/p_fam_guide_private_law/p_fam_Case-Management-Private-Law-Guide.pdf)
- COAC Best Practice Guidance  
[www.dhsspsni.gov.uk/child\\_advisory\\_bestpractice.pdf](http://www.dhsspsni.gov.uk/child_advisory_bestpractice.pdf)
- Court Forms  
[www.courts.gov.uk/en-GB/AboutUs/UsefulForms/FamilyForms](http://www.courts.gov.uk/en-GB/AboutUs/UsefulForms/FamilyForms)
- Courthouse Useful Information  
[www.courtsni.gov.uk/en-GB/ContactDetails](http://www.courtsni.gov.uk/en-GB/ContactDetails)
- Children's Law Centre [www.childrenlawcentre.org/lawgreenfamilylaw.htm](http://www.childrenlawcentre.org/lawgreenfamilylaw.htm)
- N.I. Network of Child Contact Centres [www.childcontactni.org](http://www.childcontactni.org)
- CAFCASS [www.cafcass.gov.uk](http://www.cafcass.gov.uk)
- CAADA [www.caada.org.uk](http://www.caada.org.uk)
- Respect [www.respect.uk.net](http://www.respect.uk.net)
- Practice Direction: Residence and Contact Orders: Domestic Violence and Harm [www.familylawweek.co.uk/site.aspx?i=ed31300](http://www.familylawweek.co.uk/site.aspx?i=ed31300)
- Rights of Women: A Guide to Child Contact ,Picking up the Pieces: Domestic Violence and Child Contact, A Research Report 2012  
[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)
- Child Contact Proceedings for Children Affected by Domestic Abuse Briefing paper for Scotland's Commissioner for Children and Young People  
[www.sccyp.org.uk](http://www.sccyp.org.uk)

## Appendix 2

### **The Children (Northern Ireland) Order 1995**

#### **Welfare Checklist**

There are a number of basic principles upon which courts must decide issues relating to the upbringing of children. The child's welfare is the court's paramount consideration. To assist the court to produce more coherent decision-making in relation to children, the Order provides a list of items which the court must take into account, this is known as the Welfare Checklist (Article 3 Children's Order (NI) 1995), as outlined below;

#### **Child's welfare to be paramount consideration**

3.—(1) Where a court determines any question with respect to—

- (a) the upbringing of a child; or
- (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that—

(a) the court is considering whether to make, vary or discharge an Article 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) The court is considering whether to make, vary or discharge an order under Part V.

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

### **Reports on child's welfare**

4.—(1) A court considering any question with respect to a child under this Order may ask an authority to arrange for a suitably qualified person to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

(2) The Lord Chancellor may make regulations specifying matters which, unless the court orders otherwise, must be dealt with in any report under this Article.

(3) The report may be made in writing, or orally, as the court requires.

(4) Regardless of any statutory provision or rule of law which would otherwise prevent the court from doing so, the court may take account of—

(a) any statement contained in the report; and

(b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which it is considering.

(5) An authority shall comply with any request for a report under this Article.

## **Part 111, Orders with respect to children in family proceedings**

### **Residence orders and parental responsibility**

(1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under Article 7 giving him that responsibility.

(2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person shall have parental responsibility for the child while the residence order remains in force.

(3) Where a person has parental responsibility for a child as a result of paragraph (2), he shall not have the right—

(a) to consent, or refuse to consent, to the making of an application with respect to the child under Article 17 of the Adoption Order;

(b) to agree, or refuse to agree, to the making of an adoption order, or an order under Article 57 of the Adoption Order, with respect to the child; or

(c) to appoint a guardian for the child.

(4) Where paragraph (1) requires the court to make an order under Article 7 in respect of the father of a child, the court shall not bring that order to an end at any time while the residence order concerned remains in force.

## **Residence and contact orders**

**28.** After Article 12 of the Children (Northern Ireland) Order 1995 (residence orders and parental responsibility) there shall be inserted the following Article—

### **Residence and contact orders and domestic violence**

**12A.**—(1) Where a court is considering whether to make a residence or contact order in favour of a prohibited person, the court shall consider whether the child has suffered or is at risk of suffering any harm through seeing or hearing ill-treatment of another person by the prohibited person.

(2) A person is a prohibited person for the purposes of paragraph (1) if either he is or the court considers that he should be prohibited by a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1997 from molesting another person.

(3) Paragraph (1) is without prejudice to Article 3.

## Appendix 3

### **Prohibitive Steps and Specific Issue Orders**

#### **Specific Issue Order**

Either parent can apply for a Specific Issue Order. This usually happens when parents disagree about the way they exercise their parental responsibility and feel strongly about how the child should live. For example, which school the child attends or what medical treatment they should receive.

#### **Prohibited Steps Order**

A parent/guardian can apply to court for a Prohibited Steps Order to stop the other parent from exercising their parental responsibility in a particular way without the consent of the court. For example, this could be to stop a parent sending a child to a particular school or removing the child from Northern Ireland.

Source: Children's Law Centre

[www.childrenslawcentre.org/lawgreenfamilylaw.htm](http://www.childrenslawcentre.org/lawgreenfamilylaw.htm)

## Appendix 4

### COAC Best Practice Guidance 2<sup>nd</sup> Edition 2010

#### 5.14 Domestic Violence

5.14.1 Domestic violence has been defined as a “pattern of behaviour which is characterised by the exercise of control and the misuse of power by one person over another within an intimate relationship or a family”<sup>15</sup>. Its perpetrators may be male or female; it takes many forms including physical violence and emotional abuse and may include controlling behaviour such as isolation from friends and family, control over access to money and personal items, destruction of property and stalking. It is vitally important that there should be an awareness of its harmful effects on children whether they are direct victims of, or witnesses to, such violence or whether one of their parents or a sibling is inflicting or suffering such violence. Articles 12A, 57A and 63 A of the Children (NI) Order 1995 specifically require the Court to consider such violence in determining certain applications.

**There should be a particular awareness of the view endorsed by the Court of Appeal in *Re L etc (Contact : Domestic Violence) [2000] 2 FLR 334*, that it is a non-sequitur to consider that one parent who has a history of violence towards the other parent is at one and the same time a good parent. See (Appendix 18) for Guidance note issued following *Re: L*.**

5.14.2 While past domestic violence does not necessarily mean that direct contact between the perpetrator and the child will not be permitted, the Court will not minimise the weight to be attached to the need for the perpetrator to demonstrate that s/he is a fit person to have contact before a contact order is made<sup>16</sup>. If the Court is satisfied that there has been significant domestic violence it will consider, in determining the application,

- the effect of the violence on the child,
- the effect of the violence on the other parent,
- the response of the perpetrator including whether s/he recognises the wrong s/he has done, is aware of the need for change and whether s/he has taken any steps to effect change
- the reasons why the application has been made.

5.14.3 The Court will also consider, if it is satisfied that there has been significant domestic violence, whether direct contact (unsupervised, supervised or in a contact centre) or indirect contact between the perpetrator of that violence and the child is consistent with the welfare of the child.

5.14.4 In weighing up these considerations the Court will recognise the right to family life of parents and of children pursuant to article 8 of the European Convention on



Human Rights and the right of children to protection pursuant to article 19 of the United Nations Convention on the Rights of the Child.

5.14.5 The Court will also wish to consider how to hear the voice of the child in a case where there are allegations of domestic violence and in this context the guidance in sections 3.8, 5.7 and 5.8 of this Guidance is relevant.

5.14.6 A particular issue arises in respect of consent orders in cases where domestic violence is an issue. While judicial instinct may be to welcome proposals made by agreement between the parties, the responsibility for making any order under the Children (NI) Order 1995 is that of the Judge who can only make an order which he considers to be in the interests of the child. It is also essential that the Court satisfies itself that each party has entered into an agreement freely and without pressure being placed upon him or her. There may be cases in which a Court will decide to refuse to approve a consent order agreed between well represented parties until it has heard evidence and made findings in respect of allegations of domestic violence.

5.14.7 ***In a private law case***, where allegations of domestic violence are raised, there there should be a special hearing<sup>17</sup> at the earliest possible stage<sup>18</sup> in the proceedings to make findings in respect of the allegations and the Judge<sup>19</sup> who conducts that hearing should be the same Judge who determines the application. In preparation for the special hearing, complainants are likely to be directed to file a schedule of all incidents and relevant documentary evidence including photographs, medical reports, statements made to the PSNI and criminal records. The special hearing should precede a request for an Article 4 report; it is not for Social Workers to investigate allegations of domestic violence in private law cases but rather to report on the implications of the Court's findings and the parties' responses to those findings and to make specific recommendations in respect of available programmes to enable a perpetrator to address violent behaviour.

5.14.8 If there is an application for a non-molestation order arising out of the allegations made in the private law proceedings the Court should consider whether it would be appropriate to determine that application at the special hearing.

15 *Tackling violence at home: a strategy for addressing domestic violence and abuse in NI, Produced by Department of Health, Social Services and Public Safety October 2005*".

16 *Re L [2000] 2 FLR 334*

17 Commonly referred to as a *Re L* hearing – see footnote 16. This definition is for guidance only and has not been adopted as definitive by COAC or by any judge

18 *Re H (a child) [2005] EWCA Civ 1404*

19 In the Family Proceedings Court it should be the same DJ and Lay Magistrates

## **COAC Best Practice Guidance 2<sup>nd</sup> Edition 2010** **(Appendix 18)**

**The advisory board on family law: children act sub - committee guidelines for good practice on parental contact in cases where there is domestic violence extracted from section 5 of the report of the children act sub- committee to the lord chancellor on the question of parental contact in cases where there is domestic violence**

### **Court to give early consideration to allegations of domestic violence**

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

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

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

1.2 Where the allegations are disputed and the Court forms the view that the nature and effect of the violence alleged is such as to make it likely that the order of the Court will be affected if the allegations are proved the Court should:

- (a) Consider what evidence will be required to enable the Court to make findings of fact in relation to the allegations
- (b) Ensure that appropriate directions under section 11(1) of the Children Act 1989 are given at an early stage in the application to enable the matters in issue to be heard as speedily as possible; including consideration of whether or not it would be appropriate for there to be an initial hearing for the purpose of enabling findings of fact to be made
- (c) Consider whether an order for interim contact pending the final hearing is in the interests of the child; and in particular that the safety of the child and the residential parent can be secured before, during and after any such contact.

### **Interim Contact pending a full hearing**

1.4 In deciding any question of interim contact pending a full hearing the Court should:

- (a) Specifically take into account the matters set out in section 1(3) of the Children Act 1989 (“the welfare 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**

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

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

## **Matters to be considered where findings of domestic violence have been made**

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

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

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

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

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

## **Information about local facilities**

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

## **Reasons**

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



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[www.belfastdvp.co.uk](http://www.belfastdvp.co.uk)

A banner for the Domestic &amp; Sexual Violence Helpline. The background is dark blue at the top and teal at the bottom. In the top left corner, a white box contains the text "24 HOUR". The main text "Domestic &amp; Sexual Violence Helpline" is in white, bold font. Below this, a white box contains the phone number "0808 802 1414" in large, bold, blue font, with "FREEPHONE" in smaller text above it. Below the phone number, it says "Open to all women and men affected by domestic &amp; sexual violence". At the bottom, there are icons for text support and email, with the text "text support to 07797 805 839" and "24hrsupport@dvhelpline.org".