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GREATER MANCHESTER FAMILY COURTS FORUM

EDUCATION AND TRAINING COMMITTEE

LUNCHTIME SEMINAR SERIES

The law OF DOMESTIC ABUSE AND THE APPROACH OF THE COURTS

**JACK HARRISON**

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**The law OF DOMESTIC ABUSE AND THE APPROACH OF THE COURTS**

JACK HARRISON

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1. **How does the law define domestic abuse?**
   1. PD12J FPR 2010 is just over 19 months old. The practice direction is entitled ‘*PRACTICE DIRECTION 12J - CHILD ARRANGEMENTS & CONTACT ORDERS: DOMESTIC ABUSE AND HARM*’, and is the starting point for family lawyers and judges when considering how to deal with a case involving domestic abuse.
   2. The practice direction sets down a wide definition of domestic abuse:

*“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment.”*

* 1. The practice direction expands on some of the key concepts used, thus:

1. ABANDONMENT: refers to the practice whereby a husband, in England and Wales, deliberately abandons or “strands” his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother;
2. COERCIVE BEHAVIOUR: means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;
3. CONTROLLING BEHAVIOUR: means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;
4. DEVELOPMENT: means physical, intellectual, emotional, social or behavioural development;
5. HARM: means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another, by domestic abuse or otherwise;
6. ILL TREATMENT: includes sexual abuse and forms of ill-treatment which are not physical.
   1. The practice directions further incorporates the principle that domestic abuse of any kind and at any level impacts adversely on the children of the relationship:

*“Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent, or live in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents.’”*

* 1. So we have as our starting point a wide definition of domestic abuse, which the rules confirm is harmful to a child. Therefore when the court considers the question of risk when determining arrangements for children, the presence of domestic abuse is a significant factor in that welfare analysis.
  2. This seminar will be limited to the family jurisdiction and the workings of the family law in relation to domestic abuse. The criminal jurisdiction deals with domestic violence in many ways either through assault provisions (the more conventional form of domestic abuse) or through new laws that criminalise coercive and controlling behaviour. However the criminal law in relation to domestic abuse is fragmented – there is no singular legal definition in crime.
  3. We live in enlightened times. It is perhaps useful to consider the context against which these rules have evolved. Mr Justice Baker in *Re G (Re-opening of fact finding) [2017] EWHC 2626* at para 21 commented that “courts have increasingly recognised the dangers posed by domestic violence and abuse to the welfare of children.”
  4. This has not always been the case, and the case law is littered with propositions and attitudes that we in 2019 would render unthinkable. By way of illustration:
  5. *Ash v Ash [1972] Fam 135*, per Bagnall J at para 140: *“that a violent petitioner can reasonably be expected to live with a violent respondent; a petitioner who is addicted to drink can reasonably be expected to live with a respondent similarly addicted; ... and if each is equally bad, at any rate in similar respects, each can reasonably be expected to live with the other.”*
  6. *Priday v Priday [1970] 3 All ER 554*: “*Up to 1968 [the husband] sometimes attempted intercourse by force in the hope that if he succeeded in intercourse, even by such method, that ... might stimulate her again emotionally to return to reality, but that was unsuccessful and he naturally abstained from such attempts. I am satisfied that his recourse to force in intercourse was not in any sense culpable but was a desperate attempt on his part to re-establish what might have been an important element in matrimonial consortium.”*
  7. Times changed and the law changed with the times, first with the development of the tort of harassment and a way of protecting families from abuse, then the outlawing of ‘marital rape’ in 1991, and then with the development of statutory remedies for the victims of domestic abuse, the ‘non-molestation order’.

1. **What are the Court’s powers?**
   1. In terms of powers, where serious domestic abuse may exist, the Family Court has some clout. The court can foremost determine that a parent has no contact with their children. The full extent of those powers can be seen in *PM v CF [2018] EWHC 2658*, where Keehan J terminated a father’s ‘parental responsibility’ for his children, ensured that mother only had to inform father of news of their death, gave permission for mother to change the children’s names and made an order to restrain father from bring anymore applications without the judge’s prior permission. The judge was “wholly satisfied that the children need protection from the father and the mother needs the confidence to know that the father cannot make any application to the court for any s.8 order in respect of the children without the permission of the court.” This was a case where the mother and the children were at extreme risk and under the protected persons scheme.
   2. The Family Court has real muscle in protecting those who come to it in need, and those children who are the subject of an application.
   3. In addition, the court can offer protection for individuals from the perpetrators of abuse in the form of injunctions: normally a Non-Molestation Order, an Occupation Order or the civil injunction under the Protection from Harassment Act 1998. These are not the focus of this talk, but for background.
   4. A Non-Molestation Order is a form of injunctive relief given to a party against an individual. Such an order will define behaviour that the individual concerned must not do – i.e. not to intimidate, harass or pester the applicant. If that individual fails to adhere to the order, they risk a criminal conviction for the same.
   5. The test for the court exercising its power to grant the non-molestation order is found at s 42(5) of Family Law Act 1996 and is as follows:

*In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—*

*(a) of the applicant ; and*

*(b) of any relevant child.*

* 1. There is little statutory guidance beyond the following three key criteria:

1. There must be evidence of some molestation having taken place (*C v C (Non-molestation order: jurisdiction)* [1998] 1 FLR 554);
2. The applicant or child must need protection; and
3. On the balance of probabilities the judge must satisfy herself that judicial intervention is required to control the behaviour (*C v C* [2001] EWCA Civ 1625).
   1. The Applicant and the subject of the injunction must be ‘connected persons’ – e.g. former spouses etc. If they are not, the appropriate order is the civil injunction above.
   2. An Occupation Order is a similar form of relief. *In extremis*, such an order will prevent an individual from returning to their own home. More normally, the order will regulate the occupation of the home (i.e. who can be in the lounge in the evening, who sleeps in the main bedroom, etc).
   3. An occupation order can be made under five different sections (ss 33-38) and under each section the court can make orders excluding an individual or regulating occupation of the home. Each section deals with different circumstances of ownership and occupation. The court’s powers, the factors to which they must have regard and what orders the court can make differ from section to section. It is important that the order is made under the right section.
   4. The most prevalent is under s.33 where the applicant is either entitled to occupy the dwelling-house or has home rights in relation to it AND that dwelling house has been the parties’ home or was intended to be the parties’ home.
   5. The other sections are:
   6. S 34 – where the applicant’s home rights are a charge on the property;
   7. S 35 – where the parties are former spouses or civil partners;
   8. S 36 – where the parties are cohabitants or former cohabitants, the respondent is entitled to occupy and the property is a home in which they lived or intended to live;
   9. S 37 – where the parties are spouses/former spouses/civil partners but neither is entitled to occupy;
   10. S 38 – where cohabitants or former cohabitants and neither is entitled to occupy.
   11. An order under section 33 may, pursuant to s 33(3):

*(a) enforce the applicant’s entitlement to remain in occupation as against the other person ( “the respondent”);*

*(b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;*

*(c) regulate the occupation of the dwelling-house by either or both parties;*

*(d) if the respondent is entitled as mentioned in subsection (1)(a)(i) (i.e. a legal estate or beneficial interest in land), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;*

*(e) if the respondent has home rights in relation to the dwelling-house and the applicant is the other spouse (or civil partner), restrict or terminate those rights;*

*(f) require the respondent to leave the dwelling-house or part of the dwelling-house; or*

*(g) exclude the respondent from a defined area in which the dwelling-house is included.*

1. **How does the Family Court approach allegations of domestic abuse?**

*“An experienced circuit judge – a designated family judge for a major court centre – observed to me recently that fact-finding hearings in private law children cases are often the most difficult forensic exercise required of a judge in the family court. I agree.” (Baker J in* ***Re A and R [2018] EWHC 2771****)*

* 1. The approach of the Family Court is laid down in PD12J FPR 2010. This, in essence, is an inquisitorial role during a ‘finding of fact hearing’, although the procedure is adversarial (like crime) as one party would be seeking to prove a fact against the other party. The practice direction outlines the expectation that the court, when allegations are raised pertinent to the welfare of the child, will ‘bottom out’ the allegations.
  2. One might see a ‘finding of fact’ hearing like a criminal trial – a whodunnit?
  3. Legal Aid was removed in most cases for private law applications by Legal Aid, Sentencing and Punishment of Offenders Act 2013. Many litigants within the Family Court are self-represented. The rise of self-representation often leaves victims of domestic violence to pursue a factual case against their abuser, and endure cross-examination by said abuser in Court. The problem is most clearly stated in Munby P’s ‘16th View from the President’s Chambers: Children and vulnerable witnesses: where are we?’ (2017). In this, Sir James quotes from the January 2016 Women’s Aid Report – *Nineteen Child Homicides* – which observes that “’*Allowing a perpetrator of domestic abuse who is controlling, bullying and intimidating to question their victim when in the family court regarding child arrangement orders is a clear disregard for the impact of domestic abuse, and offers perpetrators of abuse another opportunity to wield power and control.’ Who could possibly disagree?”*
  4. This is a deeply unsatisfactory state of affairs. PD3AA FPR 2010 was designed to structure an approach in such circumstances (where the court is faced with a vulnerable witness). In crime, the Court can simply prohibit an ‘abuser’ cross examining the ‘abused’, and appoint a lawyer on legal aid rates to undertake this task. There is no such luxury in the family court.
  5. The best we have is **FPR 2010, PD3AA.** This came into force in November 2017, and lays down guidance for how the Court is to deal with ‘vulnerable persons’. Rule 3A.4 FPR 2010 places a duty on the Court to consider if a party’s proceedings is likely to be diminished by reason of vulnerability and, if so, whether it is **necessary to make one or more participation directions.** Rule 3A.5 places a duty on the court to consider how a vulnerable party other than a child can participate in proceedings, or give evidence. The scope of this practice direction extends to a Court determining any of the following issues:

1. domestic abuse, within the meaning given in Practice Direction 12J;
2. sexual abuse;
3. physical and emotional abuse;
4. racial and/or cultural abuse or discrimination;
5. forced marriage or so called “honour based violence”;
6. female genital or other physical mutilation;;
7. abuse or discrimination based on gender or sexual orientation; and
8. human trafficking.
   1. In **January 2019**, the Government published **a draft Domestic Abuse Bill**. Note, the legislative process has not yet begun for this bill and it only exists in draft. The draft can be found here: <https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill>. This Bill is in similar form to the previous bill before Parliament which, sadly, did not progress into law prior to the General Election of 2017.
   2. Part IV of this Bill contains a provision in Section 50 to amend the Matrimonial and Family Proceedings Act 1984. This provision allows the Court to:
   3. Prohibit cross-examination of a ‘victim’ by the person convicted or cautioned for a specified offence on that victim;
   4. And vice versa;
   5. Prohibit cross-examination by the subject of an injunction or protective order by the party who holds the injunction;
   6. And vice versa, or;
   7. If the ‘quality’ or ‘significant distress’ conditions are met.
   8. For the purposes of the bill, the ‘quality’ condition is whether the quality of the evidence is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and would be likely to be improved if a direction was made. The ‘significant distress’ condition is met if cross examination of the witness by the party in person is likely to cause significant distress to the witness or party, and that distress is likely to be more significant that would be the case if the witness were cross-examined other than by the party in person.
   9. If the Court considers that these conditions are met, the Court MUST appoint a 'qualified legal representative' (chosen by the Court) to cross-examine on behalf of the party. Note - their duty is to the COURT, not the party. Prior to this, the Court should consider if there is an alternative to cross-examination. The costs are paid from central funds.
   10. This should be done in conjunction with the provisions of FPR2010 PD3AA.
   11. **BUT, this is not in force yet.**
   12. How should the court approach this situation in the mean time? **PS v BP [2018] EWHC 1987** sheds some light on the correct approach (although the learned judge commented that this case should not be elevated to guidance). This – Hayden J makes clear – is a sticking plaster over the problem until Parliament act to address the injustice of this situation (“a forensic life belt until a rescue craft arrives”). PS v BP was one such case and the learned judge, appalled by the iniquity of the situation, made the following remarks (at para 34):
   13. Once it becomes clear to the court that it is required to hear a case “put” to a key factual witness where the allegations are serious and intimate and where the witnesses are themselves the accused and accuser, a “Ground Rules Hearing” (GRH) will always be necessary;
   14. The GRH should, in most cases, be conducted prior to the hearing of the factual dispute;
   15. Judicial continuity between the GRH and the substantive hearing is to be regarded as essential;
   16. It must be borne in mind throughout that the accuser bears the burden of establishing the truth of the allegations. The investigative process in the court room, however painful, must ensure fairness to both sides. The Judge must remind himself, at all stages, that this obligation may not be compromised in response to a witness’ distress;
   17. There is no presumption that the individual facing the accusations will automatically be barred from cross examining the accuser in every case. The Judge must consider whether the evidence would be likely to be diminished if conducted by the accused and would likely be improved if a prohibition on direct cross-examination was directed. In the context of a fact-finding hearing in the Family Court, where the ethos of the court is investigative, I consider these two factors may be divisible;
   18. When the court forms the view, from the available evidence, that cross-examination of the alleged victim itself runs the real risk of being abusive, (if the allegations are established) it should bear in mind that the impact of the court process is likely to resonate adversely on the welfare of the subject children. It is axiomatic that acute distress to a carer will have an impact on the children’s general well-being. This is an additional factor to those generally in contemplation during a criminal trial;
   19. Where the factual conclusions are likely to have an impact on the arrangements for and welfare of a child or children, the court should consider joining the child as a party and securing representation. Where that is achieved, the child’s advocate may be best placed to undertake the cross-examination. (see M and F & Ors. [2018] EWHC 1720 Fam; Re: S (wardship) (Guidance in cases of stranded spouses) [2011] 1 FLR 319);
   20. If the court has decided that cross-examination will not be permitted by the accused and there is no other available advocate to undertake it, it should require questions to be reduced to writing. It will assist the process, in most cases, if ‘Grounds of Cross-Examination’ are identified under specific headings;
   21. A Judge should never feel constrained to put every question the lay party seeks to ask. In this exercise the Judge will simply have to evaluate relevance and proportionality;
   22. Cross-examination is inherently dynamic. For it to have forensic rigour the Judge will inevitably have to craft and hone questions that respond to the answers given. The process can never become formulaic;
   23. It must always be borne in mind that in the overarching framework of Children Act proceedings, the central philosophy is investigative. Even though fact finding hearings, of the nature contemplated here, have a highly adversarial complexion to them the same principle applies. Thus, it may be perfectly possible, without compromising fairness to either side, for the Judge to conduct the questioning in an open and less adversarial style than that deployed in a conventional cross-examination undertaken by a party’s advocate.
   24. In terms of how the case is presented, the matter should always return to the question of risk and to the children. Where does one draw the line? In *L v F [2017] EWCA Civ 2121*, at para 61, the Court commented that *“The correct approach to allegations of domestic abuse is set out in PD12J. It sets out a clear and helpful framework to ensure that full consideration is given to the grave effects of domestic abuse, and that proper weight is given to abuse where it is proved. At the same time, the framework requires an exercise of judgement by the court in each case where the issue may arise.* ***Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both.****”*
9. **How does the presence of domestic abuse affect a court’s decision to order   
   contact (or not)?**
   1. The relatively old cases of Re L and Re V[[1]](#footnote-1) are still very much good law: Domestic abuse is not a bar to contact. If domestic abuse if found by the court, it does not create a presumption against contact.
   2. The matter goes the other way – the perpetrator should prove why he (or she) can offer something of benefit to the child. Domestic violence, so said the court, involves a very serious and significant failure in parenting. It is a failure to protect the child’s carer and the child emotionally (and in some case physically), and this satisfies any definition of child abuse.
   3. In Re L, the court set down the following pre-requisites so to as avoid tipping the balance of harm away from contact:
10. some (preferably full) acknowledgment of the violence;
11. some acceptance (preferably full if appropriate, i.e. the sole instigator of violence) of responsibility for that violence;
12. full acceptance of the inappropriateness of the violence particularly in respect of the domestic and parenting context and of the likely ill-effects on the child;
13. a genuine interest in the child’s welfare and full commitment to the child, ie a wish for contact in which he is not making the conditions;
14. a wish to make reparation to the child and work towards the child recognising the inappropriateness of the violence and the attitude to and treatment of the mother and helping the child to develop appropriate values and attitudes;
15. an expression of regret and the showing of some understanding of the impact of their behaviour on their ex-partner in the past and currently;
16. indications that the parent seeking contact can reliably sustain contact in all senses.
    1. The court continued:

*‘Without these we also see contact as potentially raising the likelihood of the most serious of the sequelae of children’s exposure, directly or indirectly, to domestic violence, namely the increased risk of aggression and violence in the child generally, the increased risk of the child becoming the perpetrator of domestic violence or becoming involved in domestically violent relationships and of increased risk of having disturbed inter-personal relationships themselves.’*

* 1. See ***Re A (Supervised Contact Order: Assessment of Impact of Domestic Violence) [2016] 1 FLR 689, CA***: The court should always make clear how its findings on the issue of domestic abuse have influenced its decision on the issue of arrangements for the child. In particular, where the court has found domestic abuse proved but nonetheless makes an order resulting in the child’s future contact with the perpetrator, the court must always explain why it takes the view that the order made will not expose the child to the risk of harm and is beneficial for the child. When deciding the issue of child arrangements, the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child. In the light of any findings of fact or admissions or where domestic abuse is otherwise established, the court should apply the individual matters in the welfare checklist with reference to the domestic abuse that has occurred and any expert risk assessment obtained. In particular, the court should consider:

1. the effect of the domestic abuse on the child and on the arrangements for where the child is living;
2. the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
3. whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
4. the likely behaviour during contact of the parent against whom findings are made and its effect on the child, and;
5. the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.
   1. The Court will ultimately be guided by its own analysis of risk on a case-by-case basis. The court is bound by the injunction in section 1 Children Act 1989, that:

*When 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.***

* 1. The court must make its decision with reference to the ‘welfare checklist’ contained in section 1(3) of the 1989 Act:

*(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 each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;*

*(g) the range of powers available to the court under this Act in the proceedings in question.*

* 1. The court is also bound to follow the rules and practice directions, and the approach set out in the case law outlined above. The court’s discretion to make decisions about the arrangements for a child is guided by two overarching principles in respect of contact (from **Re M [2017] EWCA Civ 2164):**

1. The role of the Judge in the Family Court is that of the ‘judicial reasonable parent’, commenting at para 60: "the judge in a case like this is to act as the "judicial reasonable parent," judging the child's welfare by the standards of reasonable men and women today, 2017, having regard to the ever changing nature of our world including, crucially for present purposes, changes in social attitudes, and always remembering that the reasonable man or woman is receptive to change, broadminded, tolerant, easy-going and slow to condemn. We live, or strive to live, in a tolerant society. We live in a democratic society subject to the rule of law. We live in a society whose law requires people to be treated equally and their human rights are respected. We live in a plural society, in which the family takes many forms, some of which would have been thought inconceivable well within living memory."
2. Judges have a positive duty to (attempt to) promote contact. This function involves balancing all possible alternatives before ruling out direct contact (in line with ***Re C (Direct Contact: Suspension) [2011] 2 FLR 912***. The Court said “the judge must grapple with all the available alternatives before abandoning hope of achieving some contact; that the judge must be careful not to come to a premature decision; and that "contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.”
   1. In **Re C (A Child) [2019] EWHC 131**, Mr Justice Williams considered a no-contact order made HHJ Thorp. The learned judge considered that the Court must examine the long term harm to the child caused by the cessation of contact (as opposed to the short term). This follows the long line of case law referred to above and in this judgment.
3. **What about mediation?**
   1. Remember - private law applications are not like care proceedings, when a public body makes a decision to invite a court to exercise a protective jurisdiction. They come about because one party cannot agree. The key point is, if the parties agree to keep the matter out of court, they do not have to go down this path.
   2. It has been considered that mediation is unsuitable for a situation where domestic abuse exists, or there is a power imbalance in a relationship. Domestic abuse has traditionally been seen as a contra-indicator for mediation, and the prevailing view is that mediation entrenches a power imbalance.
   3. Lest we forget, it is an integral aspect of parental responsibility that parents should work to put aside differences and ensure that their children have relationships with both parents (Re W (Direct Contact) [2013] 1 FLR 494, CA; Re W (Contact: Permission to Appeal) [2013] 1 FLR 609, CA; Re J and K (Children: Private Law) [2015] 1 FLR 86, FD); Re H-B (Contact) [2015] EWCA Civ 389. **This is what the law expects.**
   4. A good starting point for mediation is that the parties have a will to sort things out. It is voluntary. They key lies in the screening and puts things in place. This is not for the faint hearted. It requires specialist training and experience.
   5. The starting point is to screen the parties to the mediation for domestic abuse. The Domestic Abuse Screening Toolkit (Resolution) suggests the following questions:
4. Have you been arguing a lot recently?
5. Do you generally have a lot of arguments?
6. When you argue, what usually happens?
7. Have you or your partner ever been convicted of any criminal offence, in particular those including violence and/or drugs or alcohol?
8. What happens when your partner loses their temper and/or you lose your temper?
9. When you and/or your partner drink alcohol does this ever result in arguments?
10. Do you and/or your partner ever become violent after consuming alcohol or any other substance?
11. How safe or afraid do you and/or your partner feel in your current relationship?
12. Has your partner ever threatened you with a weapon and have you ever threatened them with a weapon?
13. Has your partner threatened to harm himself or herself and/or the children and have you ever threatened to harm yourself and/or the children?
14. Has your partner ever stalked you and have you ever stalked your partner?
    1. Whilst a mediator does not make a decision, in using this toolkit one might find the criteria laid down in Re L (at 4.3 above) helpful in deciding whether or not mediation is appropriate.
    2. Mediation may also assist in addressing the factors outlined in this checklist. Without (a) – (f) of that checklist, the court could not see how the non-resident parent could fully support the child and play a part in undoing the harm caused to the child, and support the child’s current situation and need to move on a develop healthily. Mediation can adopt a multi-disciplinary approach where, for example, courses, therapeutic input or psychological input are made available to the parties to address the factors set out, so as to **enable a situation to develop whereby safe arrangements can be agreed for the child**. Mediation therefore needn’t be concerned with current risk. This takes time and resources – two things the courts do not have.
    3. Our understanding of domestic abuse has come on a lot since these ground rules were suggested (Girdner, 1990), but the following are some pro-forma ground rules which it was argued both parties must agree upon for mediation to be effective:
    4. Acknowledgment of past abuse;
    5. Encouragement of the abused partner to pursue an order for protection;
    6. Requiring and monitoring attendance at anger management classes or therapy for the abuser;
    7. Requiring and monitoring the participation of the abused partner in services for domestic abuse sufferers or therapy for the abused partner.
    8. The violence alleged by M will therefore have to be put to F. He will need to be seen separately. This will provide balance as M will already have been seen on her own. Also there could be risks to M from his reaction to any further allegations. If appropriate, he can be offered support with information about anger management courses or, if there has been coercive controlling violence, about domestic violence perpetrator programmes.
    9. The key to mediation success would appear to be screening and putting things in place.
15. **Conclusion**
    1. In recent times, the law has developed to recognise many types of domestic abuse. This increased awareness has enabled better protections to be put in place for families and individuals who have suffered domestic abuse. The family law has a comprehensive definition of domestic violence for all concerned to contend with, including a ‘forensic life craft’ of an approach to ensure that a child focussed process can take place until better statutory support comes.
    2. In terms of the approach of the Court towards issues of child arrangements, it is relatively well established and a comprehensive line of case law provides guidance. Welfare, however, is always king.
    3. It is likely that the law will develop within the next couple of years with statute and in response to growing political pressure where domestic abuse is concerned.
    4. With domestic abuse and awareness of the same becoming more prevalent, the courts and everybody involved with families are challenged to ensure that effective processes can be put into place, sensitive to issues of domestic abuse, to ensure the child’s welfare is best promoted and safeguarded.

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1. Re L (Contact: Domestic Violence); Re V (Contact: Domestic Violence); Re M (Contact: Domestic Violence); Re H (Contact: Domestic Violence) [2000] FLR 334 [↑](#footnote-ref-1)