

Can I begin by thanking 1 Pump Court for the invitation to address this conference today. Rights of Women is a voluntary organisation committed to informing, educating and empowering women on the law and their legal rights. Since our inception in 1975 we have over the last 30 years assisted thousands of women across the country through our free legal advice telephone help line, our publications, our training courses and our policy work.

I have been asked to speak to you about the affects that contact arrangements can have on a child's primary carer. 80% of single parents are women and it is therefore from a woman's perspective that I speak. Many of the issues I am going to talk about, however, may have relevance for single fathers too.

I am not a psychiatrist or a psychologist. I am not therefore qualified to talk about the psychological impact of contact arrangements on women. The very eminent speakers who follow me will do that. But at Rights of Women we hear the experiences of women who are having difficulties with child contact arrangements on a daily basis. Typically a quarter of all calls we receive to our legal advice line for women relate to private law children disputes, the majority about child contact. It is the biggest area on which our solicitors and barristers give advice and the reason why Rights of Women has a long history of working in the area, culminating most recently in the publication of our Child Contact Handbook. So although I am not a psychologist, I am qualified to share with you the common experiences of women contacting us and to talk to you about some of the issues affecting them.

Women calling our advice line express a great deal of frustration – frustration that their solicitors or the courts are not listening to their concerns about contact or taking them seriously, frustration that their children's voices are not being heard, frustration that they cannot find a solicitor in their local area and frustration that when they do they are not eligible for legal aid.

Women tell us they are frightened – frightened to speak out about the abuse they have experienced for fear of not being taken seriously and for fear of the repercussions, frightened that they will never be safe from their abusive ex partner and frightened that their children will come to harm when they are away.

And women tell us that they are angry

Domestic violence is undoubtedly one of the most high profile issues of significant concern for women in child contact disputes. We know that as many as 1 in 4 women will experience domestic violence in their lifetime and that, according the then Lord Chancellor's Department, domestic violence featured in 19% of all child contact cases which came before the courts in 2001. It is certainly more common than not for a woman calling us about child contact to be concerned about the impact on both the children and her of her former partner's violent and abusive behaviour.

Statistics show us that the most dangerous period for women and children involved in a violent relationship is the period immediately after the relationship has broken down – exactly the time during which child contact arrangements will be made. In Women’s Aid’s “Routes to Safety” research as many as 76% of women surveyed experienced post separation violence. We know too from a study of 1,000 women living in refuges that 70% of children who fled with their mother had also been abused by their fathers. A woman’s concerns about the safety of not only herself but also her children are not therefore entirely unfounded.

In 1997 we undertook our own research and published a report entitled “Contact between children and violent fathers: in whose best interests?”. In one third of cases surveyed the father’s violent and abusive behaviour continued after the court proceedings begun. Whilst the cases of fathers killing their children during contact visits are thankfully few, the continuing physical and emotional safety of women and children in contact arrangements is a serious issue. It is not enough for professionals to assume that having left their abuser a woman and her children will be safe. Living with this constant fear is undoubtedly a source of great anxiety to women.

Two of the recommendations of our research report included

- an amendment to the definition of harm to include the psychological harm experienced by children who have directly or indirectly witnessed domestic violence
- and perhaps most controversially, the introduction of a presumption of no contact in circumstances of domestic violence

Along with other women’s groups we have long believed there needs to be a change to the law in contact cases where domestic violence is an issue. Rights of Women have welcomed the judicial guidance given in cases such as *Re L* and most recently embodied in the guidance published by the Department of Constitutional Affairs. These have sought to ensure that in every case where domestic violence is raised as an issue there will be a proper judicial enquiry into the allegations and, if proven, consideration given to the children’s safety and the impact which experiencing that violence has had on those children. Although anecdotal evidence tells us that these guidelines have not yet been uniformly implemented they are most certainly a step in the right direction.

We have also welcomed the legislative change to the definition of significant harm which will be brought about by the Adoption and Children Act 2002 to include the affect on children of having directly or indirectly experienced domestic violence.

But do these changes go far enough? We are told not to talk about presumptions and that there is no presumption of contact operating within the law. This is not something that will comfort many of the women who contact us and who feel bullied, sometimes by their own solicitors, into agreeing contact arrangements which they are not comfortable with and without a thorough investigation of her concerns.

Father's groups talk with frustration about the frequency with which the courts and the law stand in the way of their contact with their children. Yet this is simply not borne out by the statistics. We know from judicial statistics that in 2002 61,000 contact orders were made by the courts and that only 500, less than 1%, were refused.

To suggest there should be a presumption of no contact appears radical but is in fact something that has been operating in New Zealand since 1968. Such a presumption is not to say that all children whose father has been found by the court to be violent should have no relationship with him. The New Zealand legislation states that having been satisfied that violence has occurred the court should not make any contact order until it is satisfied that the child will be safe. This surely is the correct perspective and something which ensures, as the Children Act seeks to do, that contact is about ensuring that a child is able to maintain an emotionally and physically safe relationship with her father. To us at Rights of Women, and I hope to all of you, this does not seem so radical.

Even if the court does take on board the issue of safety the options for safe, supervised contact are extremely limited. Fantastic work is done every week by contact centres around the country but the majority are not able to ensure the safety of the children and their mothers attending. The contact they offer is not professionally supervised and monitored. Those who do offer that level of supervision are scarce, even more so outside the big cities. We welcome the Government's pledge of additional resources to establish a network of specialist contact centres. They propose too that family assistance orders and CAFCASS should play a bigger part in ensuring safe contact – this too will need additional resources.

Yet it is not only the physical safety of their children during contact that concerns women. Many of our callers are concerned also about the emotional and psychological affect contact has on the children. Callers talk of their concerns about their children being questioned about what's going on at home, being shown letters between solicitors or hearing their mother being talked about in offensive and derogatory ways. This is undoubtedly something which again adds to a mother's anxiety about contact but which has serious implications for the children.

In a quarter of cases in our research solicitors reported that a major issue for women and children was the father's failure to comply with contact arrangements – another common area of enquiries to our advice line. Women callers tell us of the frustration and disappointment felt by their children when their fathers do not appear for the agreed contact visits. They say that it is they who have to deal with the aftermath, to explain to the child why her father did not come to pick her up. There is a clear responsibility for both fathers and mothers to adhere to contact arrangements agreed or ordered by the court. After all, with rights come responsibilities.

Pressure to reach agreement about contact was another area of concern identified by the research and continues to be an experience shared by many women to the advice line. The push towards alternative ways of resolving family law disputes is something that is of great concern to us at Rights of Women. Already women feel pressured into attending

mediation or conciliation for fear of being labeled unreasonable. We fear that this will only become worse with the widening of the Legal Services Commission's Family Advice and Information Service pilot and the proposals for alternative dispute resolution set out in the Government's Parental Separation consultation paper.

Whilst it is right that children should remain the focus of the court's concern when making a decision about contact, we would say that the court should also have to consider the impact that such arrangements will have on the person who will be responsible for providing them with the majority of their day-to-day care, in most cases their mother. There is a real need for greater understanding of the issue of domestic violence and the impact it has on women and children. Until you understand this, how can you make decisions about contact? At Rights of Women we endorse the definition in the United Nations Declaration on the Elimination of Violence against Women that domestic violence encompasses but is not limited to "physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

We are greatly encouraged by the high profile the issue of domestic violence has had but are concerned that there is still no legal definition of domestic violence in this country. Again in New Zealand a statutory definition has ensures consistency across statutory agencies and other organisations.

Whether we get a legal definition or not, we also believe that an adequate awareness of domestic violence should be compulsory for all professionals working with families and child contact including solicitors and barristers, mediators and CAFCASS officers. All of these people come into contact with women for whom domestic violence is an issue and it is important that they understand how those issues have affected and may continue to affect them when they are supporting them through the court process.

An integral part of any training programme for judges must be to focus on the impact that living in and escaping from a violent relationship has on women. Only when members of the judiciary understand this do we believe that they make better informed judgments about the lives of women and children. A nationally coordinated and compulsory domestic violence awareness training programme not only for judges but for solicitors, barristers, mediators and CAFCASS officers was one of the other recommendations of our 1997 report

Moving away from the issue of safe contact but onto another very important factor affecting women involved in child contact disputes, one of the key aims of Rights of Women is to work to attain justice for women. There are very many barriers to women seeking to access the law. One that is of grave concern to us at Rights of Women at the moment is the availability of representation and legal aid to women involved in both domestic violence and children cases. Many women calling our advice line find themselves unable to access legal representation for lots of different reasons.

It is not only in rural or even provincial areas that people are finding it difficult to find a solicitor. Solicitors firms committed to providing legal aid are becoming an endangered species in cities throughout the country too. We know from the Legal Services Commission's own annual report that the number of solicitors offices with contracts to do civil work including family has now fallen to only 4,715 nationwide and that the number of cases started under the controlled work scheme has fallen by just under 100,000. If the situation is not bad enough already the proposals in the Legal Services Commission's latest consultation paper on civil legal aid make grim reading.

So even if you are eligible for legal aid there may not be a solicitor near enough for you to go to and as a single mother with one or more children traveling a great distance for advice may simply not be possible. Taking on a court case unrepresented without an understanding of the law and against someone who has been abusive, physically, emotionally or otherwise, towards you must only add to what must be extremely difficult and frightening experience.

It is because of our concerns about access to justice that earlier this year we launched our very popular Child Contact Handbook to guide women whether represented or not through the court process.

There are many other women's organisations also working tirelessly behind the scenes to support these women and to raise the profile of the issues that affect them. We do feel however that all the other institutions a woman will come into contact with treat her empathetically including the courts, the Legal Services Commission and other professionals.

We are often asked why women don't speak out more loudly on these issues, allowing father's groups to dominate media coverage. The answer was put very eloquently by a caller to our advice line when she said "women are too busy looking after their children to climb cranes"!