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Contact: Private Law

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Decisions about contact arrangements between children and members of their birth families are part of most private law family court proceedings. The recommendations of practitioners are central to the often highly contested decision-making processes.

INTRODUCTION

This knowledge set seeks to explore the main messages from research and the wider professional literature on contact and the implications for family court advisors in CAFCASS. Some key considerations include:

- International laws and conventions, including the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR)
- Children have psychosocial developmental needs that must be considered when making assessments and recommendations about contact.

Contact refers to a range of activities. Contact can be 'direct' in the form of face-to-face meetings, or can be 'indirect' through an exchange of letters and photographs, telephone, email, Skype and social media sites, such as Facebook. There are no easy answers and no 'one size fits all' solutions.

PRIVATE FAMILY LAW

Following much deliberation after the *Family Justice Review*, the Children and Families Act 2014 amends section 1 of the Children Act 1989 so that there is a presumption that it is good for a child to have involvement with both parents (unless it would cause harm or risk of harm to the child), but that involvement can be 'of some kind, direct or indirect, but not any particular division of a child's time'.



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The empirical research demonstrates many benefits to children's development of engaged, supportive and loving relationships with their non-resident parent, usually their father (Kelly, 2006). A close relationship with both parents is also associated with children's positive adjustment after divorce (Rodgers and Pryor, 1998). Conflict between the children's parents is generally associated with poorer adjustment, especially in high conflict situations when children are exposed and not protected (Wallerstein, Lewis & Blakeslee, 2001; Hetherington & Kelly, 2002). Research tends to show that it is the quality of the relationships and the parenting offered by the non-resident parent that matters more than the frequency (Gilmore, 2006). Clearly in some circumstances, such as where there is poor parenting or even abuse, contact can be very damaging. It is important that the diversity of family styles and relationships that are meaningful to children are considered in assessments and decision-making, for example non-biological parents in same-sex relationships and grandparents and other close family members.

Families who have to turn to the family courts have unusual levels of difficulty and conflict (Trinder *et al.*, 2006) with conflict resolution often being difficult, protracted and in some cases irresolvable (Hunt & Macleod, 2008).

Over the past few decades practitioners and academics have paid much attention to factors that impede the possibilities for children to have healthy relationships with both parents. For some children contact is not safe because of domestic abuse. Domestic abuse is the most common welfare issue raised in proceedings (Hunt & Macleod, 2008). A number of studies have indicated that women and children can be at increased risk following separation from a violent partner; that contact proceedings are frequently invoked by perpetrators as a means of seeking to continue to control women and children; and judicial decisions about contact can fail to take the safety of women and children into account (Mullender *et al.*, 2002; Harrison, 2008; Coy *et al.*, 2012). It has been argued that in child contact proceedings contrary discourses collide with women on the one hand required to be 'good' mothers who protect their children, yet also good mothers who do not shut fathers out (Coy *et al.*, 2012).



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Sturge and Glaser (2000) argue that proven domestic abuse is not a bar to contact but is an important factor in the exercise of discretion. Where violence is proved, the ability and willingness of the perpetrator to recognise and change his behaviour is an important factor within the context of ensuring the child's on-going safety.

The interventions required to safeguard and promote the welfare of the child need to be tailored to the individual circumstances and needs of the child and family and will vary depending on degree and reasons for the alignment/rejection dynamic. For some families, education, parenting support and therapeutic work will enable the child to develop positive relationships with both parents, but for a minority of severe cases enforcement measures including a change of residence may be required, (Fidler & Bala, 2010). A study on enforcement of contact orders found that some of the most difficult cases, including some of the 'implacably hostile' ones involved parents with mental health difficulties and personality disorders (Trinder *et al.* 2013). This study, however, concluded that contrary to public perceptions, implacably hostile mothers were only a small minority of enforcement cases. The most common type of case involved parents whose conflicts with each other prevented them from making a contact order work reliably in practice. In other cases there were significant safety concerns (Trinder *et al.* 2013).

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