# Children: making enforceable decisions

*Janys M Scott QC*

**Introduction**

[1] It is one thing to secure an order in relation to a child. It is quite another to enforce it. Court orders should, of course, be obtempered, and the reasons why there may be problems are many and varied. Some are to do with parents. Some relate to children. Sometimes there are practical issues. The issue is sometimes intensely political, with Women's Aid and Families Need Fathers advancing weighty and sometimes competing points of view. There has however been little serious analysis of how we tackle this difficult issue.

[2] One good reason for starting to think more seriously about making enforceable decisions about children is that there is an increasing international dimension to enforcement. Casting an eye over other EU member states it is clear that we all struggle with the issue. It is however interesting that there are a wide variety of approaches. Attempts to enforce an order relating to a child is often "indirect", operating on the adults concerned, but it may also be "direct", aimed at the child.

[3] In December 2007 the Asser Instituut in the Netherlands carried out a study of enforcement procedures of family rights at the request of the European Commission.[1] The study examines the law, organisation, procedure and practice of the 25 member states and then goes on to an empirical analysis identifying the practical problems encountered in trying to enforce decisions. Some states will not use "direct" enforcement. For example in Austria decisions on contact cannot be directly enforced and direct enforcement of a

[1] T.M.C.Asser Instituut, *Comparative Study of Enforcement Procedures of Family Rights*, JLS/C4/2005/06, the Hague, 19 December 2007.

decision on residence is a last resort. Some states such as Denmark require an initial use of mediation. In Estonia social workers have a role in assisting enforcement. States such as Spain and France give parties a choice of methods for enforcement. It is only in common law jurisdictions like Scotland that disobedience to an order relating to a child invokes pseudo-criminal liability. Even then, our interpretation of our EU enforcement obligations is to send messengers at arms with a warrant to uplift children.

[4] Back in 1998 the First Division held that we need not be too concerned with "procedural and legal niceties" in cases concerning children.[2] These had to give way to "common sense and reality". It did not much matter in that case that an action for access had been raised by initial writ when it should, strictly speaking have proceeded by way of minute. There was no prejudice to parties and the welfare of the child demanded resolution of the issue. We may however have gone a little too far when innovating on law and procedure. There are respects in which the system we now have for securing and enforcing orders is a mystery domestically and even more so internationally.

**Use of interim orders at child welfare hearings to promote enforcement**

[5] In practice in Scotland we regularly hide enforcement in another process. We use child welfare hearings. Child welfare hearings were introduced on 1 November 1996 when Part I of the Children (Scotland) Act 1995 came into force. The aim was to allow the court to address difficulties in relation to children at an early stage, before they became entrenched. That is why OCR 33.22A(4) imposes a child welfare hearing early in an action relating to parental responsibilities and parental rights and requires the sheriff to "seek to secure the expeditious resolution of disputes in relation to the child". Parties must attend child welfare hearings personally, except on cause shown. The sheriff should ascertain from them the matters in dispute. The hearings may, and generally are, held in private.

[6] It did not take long to appreciate the potential of the child welfare hearing to tackle developing problems relating to enforcement. The court could make interim orders and then continue matters to another child welfare hearing to see whether they were obtempered. If orders were not obeyed, there was an early opportunity to berate a reluctant party. There were also positive opportunities to develop and extend contact orders, starting with limited contact, perhaps supervised and extending the scope of contact over time.

[2] *Girvan v Girvan* 1988 SLT 866.

Sheriffs became monitoring and enforcement agents. In reality the child welfare hearing is probably the best used method of securing enforcement.

[7] This was not their original intention and the way they have been used has resulted in some difficulties. The first is that proceedings become protracted. Child welfare hearings multiply. Months stretch into years. The litigation is seemly never-ending. We are still smarting from the criticism by the Supreme Court in *B v G*[3], but there are still such cases.[4] When litigation goes on, the interests of children may be damaged. Animosity between parents has little chance to resolve. The expense can be exorbitant. Repeated child welfare hearings are now starting to be viewed with disapprobation. That is however when we are viewing them in the normal approach to litigation, as part of the process designed to lead to a decision, not part of the solution in terms of enforcement.

**Securing an appealable decision at a child welfare hearing**

[8] The second major difficulty is that a decision at a child welfare hearing is generally an interim decision. An interim order is not generally appealable without leave. Most of the time that is not a problem, because an appeal court will rarely intervene. Describing a decision about a child as "discretionary" has gone out of fashion[5], but it is only where a sheriff or judge is "wrong" that an appellate court should interfere[6]. On the other hand, that does happen from time to time, and precluding an appeal by sticking to interim decisions over a period of years is hardly fair. The interim decision may settle matters both in principle and in practice. This was pointed out by the editor of SCLR, none other than Sheriff David Kelbie, in the commentary to an early decision on child welfare hearings, *Hartnett v Hartnett*.[7]

[9] We do actually need to address the whole issue of when there may be an appeal and whether leave is required. The founding authority, generally cited, is *Thomson v Thomson*.[8] In that case there was an interim access order, but the ordered ordained the pursuer to deliver the children to the defender at a prescribed place. The sheriff principal (Reid QC) held that the order for delivery amounted to a decree *ad factum praestandum* and as such was

[3] [2012] UKSC 21.
[4] See *eg H v H* [2015] CSIH 10, 2015 Fam LR 34.
[5] *Osborne v Matthan* 1998 SC 682.
[6] *In re B* [2013] UKSC 33, [2013] 1 WLR 1911.
[7] 1997 SCLR 525.
[88] 1979 SLT (Sh Ct) 11.

appealable without leave, thus permitting an appeal to proceed in relation to the substantive order. The logic is that failure to comply would expose the pursuer to proceedings for contempt, and possible imprisonment. If that is the test, then any interim order for contact, or residence, should be appealable without leave.

[10] We do, of course, have cases where the sheriff has made a "final" order at a child welfare hearing. That was so in *Hartnett v Hartnett.* The sheriff there decided he would hear evidence and he then made what he described as a final order. This took informality to new levels. Child welfare hearings can often be fixed a relatively short notice. It may not matter that the pleadings are not in final form. Evidence can be heard behind closed doors. The sheriff court has invented the "evidential child welfare hearing", not expressly recognised in the rules, but increasingly familiar to practitioners. The mistake in *Hartnett* was the failure to instruct a shorthand writer, thus depriving parties of the basis for appeal of the final interlocutor that emerged at the end of the hearing. The sheriff's decision was recalled and the matter remitted back to him to proceed as accords. This is where matters start to look incoherent. If the sheriff had called his decision "interim" rather than "final" could there have been an appeal?

[11] Then we have the very recent case of *H v H.*[9] The sheriff there made a decision about residence and contact that he described as "final". The interlocutor was however granted in the context of divorce proceedings and no decree of divorce had been sought, or pronounced. The Inner House held that the "final" order relating to the children was not so final that it could be appealed without leave. The party litigant father had not sought leave, so his appeal was incompetent. We may sympathise with his perplexity.

**Post proof "interim" orders**

[12] The normal course of litigation means that a disputed issue that cannot be resolved is litigated at a proof, following which the court pronounces judgment. That is what the court rules say.[10] That may not be possible in a case relating to children. This much was recognised in *Harris v Martin.*[11] In that case the sheriff heard proof, decided that access should in principle be granted, but continued the case for information to be secured on

[9] [2015] CSIH 10, 2015 Fam LR 34.
[10] OCR 29.20.
[11] 1995 SCLR 580.

practical arrangements. The mother appealed to the sheriff principal claiming this was incompetent. Her appeal was refused. The sheriff then made an award of access. The mother appealed to the Court of Session. The First Division expressly approved what the sheriff had done in continuing the case for more information, but recalled his interlocutor on the basis that he had eventually made an order without having that information. He should have satisfied himself that the father was properly instructed on how to cope with the child's asthema before making an access order. The case was remitted for this purpose. The First Division commended consideration of a referral to mediation.

[13] A similar course was taken by Lord Osborne in *Perendes v Sim*.[12] Following proof he held that access to their father would, in principle, be in the best interests of two children, but he accepted that their reintroduction to their father would be difficult to achieve. He asked for a report from an expert psychologist as to the practicability of resumption of access and advice on the conditions under which this might take place. His intention was that the case should then be heard on the by order roll.

[14] In the sheriff court the ubiquitous child welfare hearing has made its appearance here too. In *M v M* there was an attempt to challenge a sheriff who, post-proof converted a diet into a child welfare hearing and made an interim order for three sessions of supervised contact before he made any final order.[13] Lord Stewart held this was competent and refused a petition for suspension. The decision makes sense in the light of *Harris v Martin* and *Perendes v Sim* but it does carry matters further. As a result of what the sheriff had done, the child concerned would be introduced to a father who was effectively a stranger, before the mother would have a chance to appeal. Lord Stewart recognised the inherent difficulty but was persuaded that the sheriff court rules should be construed "generously" in the light of the child welfare objective, and endorsed the use of a post-proof child welfare hearing.

[15] The halt has however been called by Sheriff Principal Scott in *Ahmed v Iqbal*.[14] There the sheriff heard proof in an action for divorce, granted decree of divorce but continued consideration of contact to a child welfare hearing. He refused leave to appeal. At the child welfare hearing he made an interim contact order and assigned a further hearing to monitor

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[1212] 1998 SLT 1382.
[13] [2011] CSOH 214, 2012 Fam LR 14.
[14] 2014 Fam LR 93.

contact. In other words he took matters back into the pre-proof procedure. The sheriff principal recalled the interim contact order and refused contact. He allowed that a court that had arrived at a decision on the merits could order further procedure, perhaps in the form of a child welfare hearing to resolve the practicalities of contact. A court could not however defer a decision on the merits of the case to a child welfare hearing after proof. The decision in principle must have been taken and any further consideration must be restricted to the practicalities associated with that decision.

[16] There are some fine distinctions emerging in this area. The sheriff principal in *Ahmed v Iqbal* was referred to Lord Stewart's decision in *M v M.* He clearly considered that the sheriff in *Ahmed* had gone too far. The use of child welfare hearings after a proof should be limited. Parties have a legitimate expectation of finality. In most cases it is axiomatic that the court should issue judgment on all aspects of the case without consideration being given to further procedure. His decision effectively draws a line. It means that child welfare hearings should not be used to "monitor" contact, post-decree, unless of course matters are brought back before the court in the context of a further application.

[17] By way of postscript to this chapter, there is a further problem with post-proof child welfare hearings. It can be difficult to know when appeal rights arise. In *Donaldson v Donaldson* a sheriff decided after proof that a child could be taken by her mother to live in California, but fixed another hearing to decide on the precise terms of a contact order to operate when she left.[15] At a final child welfare hearing no further contact order was made. The Inner House held that the original order allowing relocation was a final order. The father had no basis to challenge the relocation. This contrasts oddly with *H v H* where the order described as 'final' was not as there were outstanding issues to be decided.

**"Soft options" to assist enforcement**

[18] There are clues in the case law to ways of encouraging parties to obtemper court orders. If parties can be supported and assisted then there is more likely to be a lasting compliance and a happier child. The methods are not rock science. Careful advice from a psychologist, or reassurance of supervision from a social worker may well make a difference. If parties can be persuaded to talk to one another with the assistance of mediation services, that may mark an advance.

[15] [2014] CSIH 88, 2014 Fam LR 126.

[19] Mediation may not be directly about agreeing contact arrangements. We have all seen parents who hoard up information about a child and then claim that the other does not understand the child's likes and dislikes, or is not familiar with their development. I have, as a sheriff, ordered mediation, just so that the non-resident parent can be provided with up to date information, in order to make contact time more pleasant and productive of a better relationship with the child.

[20] I find the attitude of mediation services frustrating in some cases. They will not become involved when there is an allegation of domestic abuse. No matter how minor or fatuous the allegation they steer clear. Some of these cases are exactly those where a misunderstanding could be resolved in the interests of children, but there is no attempt to distinguish between cases of real danger or serious imbalance of power and those where a person is just being awkward. I would like to see mediation services extended to grapple with mediation where there are allegations. This may well be skilled work, but it has potential for the benefit of children.

**Contempt of court**

[21] There is surprisingly little in the textbooks about enforcement "proper". Failure to comply with an order of the court, including a contact order, may be contempt of court. The law is again surprisingly incoherent about contempt.

[22] Contempt of court is conduct which challenges or affronts the authority of the court or the supremacy of the law *HMA v Airs*.[16] If there is wilful defiance of, or disrespect towards the court, that will be treated as contempt (see *Robertson and Gough v HMA*).[17] Contempt is a species of offence, and has to be proved beyond reasonable doubt (see *Johnston v Johnston*[18]). That case concerned a father who returned a child late after contact. It seems he had been late before and had given "an undertaking at the bar that he would obtemper the terms of the interlocutor". When he was late again, the sheriff proceeded on the basis of statements at the bar and found him guilty of contempt. He appealed successfully. The sheriff had not been entitled to reject his explanations simply on the basis of *ex parte* statements.

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[16] 1975 JC 64.
[17] 2007] HCJAC 63, 2008 JC 146.
[18] 1996 SLT 499.

[23] Interestingly the court criticised the practice of taking an "undertaking" to obey orders if the court. The Extra Division commented that parties are bound to do their best to obey orders of the court insofar as they affect them and should not be required to give superfluous undertakings. In other words an order such as a contact order falls to be treated as an order *ad factum praestandum* just as it stands. It is for this reason that our position on leave to appeal is not entirely coherent.[19]

[24] There have been a series of decisions on contempt. In *B v R* a curator *ad litem* lodged a minute asking the sheriff to find a father in contempt of court for failing to return a child to his mother, with whom he ordinarily resided.[20] The sheriff held that the father was acting defiantly, wilfully and intentionally. His actions were designed to undermine the boy's relationship with his mother. He found the notion that these steps were taken for the boy's best interests "contemptible". He concluded that the father knew exactly what he was doing and did it without any thought to the possible consequences for himself and the child, with a blatant disregard of orders and the processes of the court.

[25] Likewise, the mother in *M v S*[21] who failed to prove her allegations that the father was guilty of indecent conduct towards the child, and then repeatedly failed to present the child for contact, was held to be in contempt. The sheriff imposed a three month prison sentence. The mother appealed to the *nobile officium* of the Court of Session, undertook that there would be contact, but then did not comply. She was required to serve the three months. Sentence for the subsequent failure was deferred for six months to allow the mother to "reflect on the gravity of her conduct".

[26] There has been a brave attempt by Sheriff Jamieson in *F v H* to define contempt.[22] He refers to his book on *Summary Applications and Suspensions* for the proposition that the essential elements of contempt are:

1. Knowledge of the order
2. Non-compliance
3. Wilfulness

[19] See above.
[20] 2009 Fam LR 146.
[21] 2011 SLT 918.
[22] 15 July 2014, Dumfries Sheriff Court.

4. No reasonable excuse

There is no reported authority for this list, save of course from Sheriff Jamieson. The Inner House in *Petition of AB and CD*[23] did not break down their analysis in this way. They rather veered away from precise analysis. Lord Malcolm referred to *Muirhead v Douglas* which was a case of a solicitor failing to be in court when the case in which he was instructed called.[24] This case made it clear that whether failure to obey a court order amounts to a contempt of court depends on the relevant facts and circumstances. There must be a deliberate lack of respect for or defiance of the authority of the court. This means that contempt is more than knowingly failing to comply, and to that extent Sheriff Jamieson must be correct. On the other hand lack of reasonable excuse may be inherent in wilfulness.

[27] The *Petition of AB and CD* is interesting. It concerned social workers dealing with two children who were the subject of supervision requirements. The children's hearing reduced contact with mother from weekly to monthly. She appealed and the sheriff reinstated weekly contact. The social workers disagreed with the decision but implemented it for about a month, meantime progressing permanence plans, with an advice hearing due to take place on 4 July 2013. The children's carers reported a deterioration in the boys' behaviour and indicated they were having trouble coping. There was a concern that the children would have to be moved. The hearing on 4 July was continued, without considering contact. One of the social workers decided to stop the weekly contact and her immediate superior subsequently supported her. This situation continued until the hearing finally made an order confirming weekly contact. The sheriff held the workers in contempt. The Inner House disagreed. They held that a decision made by a responsible social worker out of a genuinely held concern as to a serious risk of harm to children cannot properly be categorised as contempt. They may be overzealous, overcautious or have made an error of judgment, but a professional judgment made in good faith based on a concern for children's best interests is not evidence of contempt. A sheriff should not be "overly protective" towards his or her own decision.

[28] It would be interesting to see what the Inner House made of Sheriff Jamieson's decision in *E v W* rejecting a mother's defence to contempt.[25] That defence was based on advice from

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[23] [2015] CSIH 25, 2015 Fam LR 58.
[24] 1979 SLT (Notes) 17.
[25] 18 July 2014, Dumfries Sheriff Court.

a social worker not to send her son for contact if she felt this was emotionally distressing for him. Logically, on the basis of *Petition of AB and CD* that mother should not have been found in contempt and given a prison sentence, even if the sentence was suspended on condition that she restore contact in terms of the court's orders.

[29] *Petition of AB and CD* was not the only warning shot this year about the difficulty establishing an allegation of contempt. In *H v H* the Inner House commented *obiter* on a contact order made over two years before. They noted that circumstances had changed and the issue of contact required complete re-appraisal. They went out of their way to say that the original interlocutor should not be regarded as one which, if not obeyed, might result in the serious consequences normally attached to non-compliance. In other words the father could not enforce that order by seeking to have the mother found in contempt.

[30] Turning to issues of procedure, the Second Division, and the Lord Justice Clerk in particular, in *Petition of AB and CD* encouraged a formal approach to allegations of contempt. Mention is made in that case of a summary application, albeit in a family action this could probably be dealt with by way of minute and answers in the process in which an order was granted. The point is that written pleadings allow the court to identify areas of dispute. If sufficient is admitted then proof may be unnecessary. The court was concerned that there was a four day proof in that case, covering a number of issues, not all of which were relevant to the question of contempt. We are not even clear about how to appeal. In cases such as *Johnston v Johnston* there was a straightforward appeal to the Court of Session. In *M v S* and *Petition of AB and CD* "appeal" was effected by a petition to the inherent power of the Inner House, the *nobile officium.*

[31] Given that an application for a finding of contempt is directed towards enforcement of a court order for the benefit of a child, an outcome of punishment of a parent is not the intention. The courts plainly struggle with what is to be done when there is a contempt of court. Imprisonment of a parent may be harmful to a child. A fine may reduce the available resources of the household, including the child. Article 3 of the United Nations Convention on the Rights of the Child requires the child's welfare to be a primary consideration. This makes the balancing exercise difficult. It is easy to see why devices such as deferment and suspension are used to try and make parents comply. The last resort that may be proposed for a failure to afford contact may be a change of residence, but that would

depend on the particular circumstances of the case. If the child is settled and happy then it is unlikely to be an appropriate step.[26] Small wonder that courts are wary about making decisions and we see a long chain of child welfare hearings.

**Direct enforcement**

[32] Sanctions against a parent may not be the most draconian form of enforcement. It is possible to enforce an order directly on the child, by sending sheriff officers or messengers at arms to seize the child physically and put him or her where the order of the court directs. This is almost unheard of domestically. It is naturally viewed as an extreme step, likely to distress the child.

[33] Oddly it is the only step that may be available when it comes to international enforcement of orders relating to children. If we take Council Regulation (EC) No 2201/2003 (known as Brussels II *bis*) then an application may be made in Scotland for a declaration that a judgment about a child secured in another EU state may be enforced in Scotland. What emerges from the process is a warrant for enforcement, that may be handed over to messengers at arms. In the case of access orders, or orders for return following a failed Hague Convention petition, the court of the child's habitual residence may make an order that is directly enforceable. No declaration of enforceability is necessary. A certificate setting out the judgment in the other state may be handed direct to sheriff officers. There is none of the finessing through child welfare hearings. Failure to obtemper a foreign order is not contempt of the domestic court. The only means of enforcement is direct. Courts in places like Austria, where direct enforcement of contact is not permitted, balk.[27]

[34] The European Council and the Commission are currently discussing enforcement issues. There is a proposal to extend enforcement of decisions relating to children without requiring any form of court intervention in the state of habitual residence.[28] This is not a wholly welcome prospect. If the interests of children are to be served then there should be a full range of constructive approaches available. However, given we do not have a wholly coherent domestic approach to enforcement we are currently limited in what we can say.

[26] *G v G* 1999 Fam LR 30.

[27] See *Re ML and AL (Children) (Contact Order: Brussels II Regulations) No 2* [2006] EWHC 3631 (Fam), [2007] 1 FCR 496.

[28] For discussion of the issues see *A question of trust? Recognition and enforcement of judgments* 2015 NIPR 27, also available on Westwater Advocates website.

**Conclusions**

[35] Enforcement is the poor relation of child law. It is a difficult area, but an important one. It would be well worth reviewing some of the international approaches and developing a coherent policy and practice. In the meantime courts and practitioners will no doubt continue to be creative. It is unlikely that an interminable round of child welfare hearings will be acceptable in the future, so we will have to use this option in a focused manner aimed at a reasonably rapid solution. We can ask for decisions in principle on issues such a contact, with some limited scope thereafter for addressing the practicalities. Full use should be made of professional assistance, including child psychologists and social work support. Mediation may have an important contribution to make to facilitating communication and hence orders that actually work. If all this fails then we are in difficult territory. Contempt of court and direct enforcement on children are unsatisfactory options. They may serve a purpose in deterring those tempted to avoid compliance with orders, but they can also be damaging to the children whose interests orders are designed to serve.

*8 June 2015*

*Since delivering this paper my attention has been drawn to two new tools to assist decision makers and case managers in relation to child contact when there are allegations of domestic abuse. These are a "Safe Contact Agreement" and a "Domestic Abuse Child Safety Report". A paper on these tools is appended. For more information please contact [Rosanne.Cubitt@relationships-scotland.org.uk](mailto:Rosanne.Cubitt@relationships-scotland.org.uk) .*

## Safe Contact Agreement and Domestic Abuse Child Safety Report

### What is domestic abuse?

We define domestic abuse as a pattern of violent and coercive behaviours that operate at a variety of levels – physical, psychological, emotional, financial, or sexual – that one parent uses against the other parent. The pattern of behaviours is neither impulsive nor “out of control,” but is purposeful and instrumental in order to gain compliance or control of the other partner.

It can include assault, destruction of property, isolation, and acts or threats of abuse against the non-abusive parent, children and pets. Abuse is likely to increase at the time of separation.

Perpetrators often use court proceedings or threats of court proceedings and non-compliance with court orders to continue control over the non-abusive parent and children. If courts focus exclusively on the legal definitions of domestic abuse (usually assault and violation of protection orders) the underlying pattern of abusive behaviour may not be apparent.

Understanding the underlying pattern of fear, control, intimidation, and psychological abuse is essential to understanding the impact of domestic abuse on victim parents and children. It sometimes appears that there is no violence or it happened a long time ago. It is essential to understand how memories or threats of violence from the perpetrator can impact on the non abusive parent.

Given the above it can be difficult for decision makers and for professionals working with a case to try to put in good contact arrangements between parents and children. There are two tools which can help decision makers and case managers – the Safe Contact Agreement and the Domestic Abuse Child Safety Report

## What are the reports?

There may be times when a professional such as a Sheriff, a Bar Reporter, a Safeguarder or a social worker is struggling with contact issues for children when there is a pattern of perpetrator abuse against a parent. The allegations may be of historic domestic abuse, of current abuse or there is high conflict between the two adult parents/parties. Sometimes it looks as if the couple are both using tactics or abuse and there are counter allegations made by both of them. Mediation has not helped and it is difficult to make a conclusion about what is in the best interest of the child/ren in regards to contact. Given the above circumstances a Safe Contact Agreement or a Domestic Abuse Child Safety Report (DACSR) may be helpful for professionals involved in making decisions about children and contact.

This is a short guide laying out advice and guidance for when a professional including the court may consider requesting:

1. A Safe Contact Agreement
2. A Domestic Abuse Child Safety Report

**Safe Contact Agreement**

The Safe Contact Agreement is prepared by a professional who is trained to provide such an agreement, and who has significant experience working with families affected by domestic abuse. It is not mediation and it does not bring parties together. The Agreement is made up of a report exploring possibilities for child contact and hopefully with an agreement all parties agree to. Both parents/parties will be met separately and their views will be sought. The child should give their views (if they can) to the report writer. Other parties who may be involved such as family members who might support contact will also be asked for their views. Third party information may be required if needed. Consent to seek third party information will be requested from the parties involved.

A risk assessment will be made by the report writer, which will also take into consideration safety of all the parties. If an agreement can be agreed to then a Safe Contact Agreement can be put together which all involved parties will sign. The Safe Contact Agreement may

involve recommendations about times of contact, places of change overs, where contact might happen, use of contact centres and third parties, and timescales for review.

**Cost of Safe Contact Agreement**

The Safe Contact Agreement takes five weeks to complete. Parties are expected to co-operate and the cost is £500 plus travel expenses. Court appearances are charged at £140 per day and £70 if a court date is cancelled with less than 48 hours notice.

The fee is payable even if parties do not co-operate as a report will still be produced. It may be the case that the report writer assesses that given the information the writer has that the conflict or domestic abuse is causing risk to the child/ren or to one of the parents/parties and therefore may make a suggestion of a **Domestic Abuse Child Safety Report**.

**Domestic Abuse Child Safety Report**

There are two occasions when a Domestic Abuse Child Safety Report (DACSR) may be requested.

1. There is a recommendation from the writer of the Safe Contact Agreement that risk is high and that contact may not be safe given the current information and a DACSR could explore the risk and provide an assessment regarding child safety.
2. When the court or other professional requests that a DASCR is completed due to concerns about historical or ongoing domestic abuse or other factors.

The other factors may be:

- that there are uncertainties about the extent, severity and nature of the actual and alleged domestic abuse.
- That there may be levels of hostility, conflict and fear expressed that need to be more fully understood and addressed.

- That there is a complex pattern of intersecting risk concerns (e.g. history of violence, substance misuse, non-violent criminal activity, and mental health concerns).

The DASCR should follow best practice in the field of violence risk assessment; which means they should include information from the victim, draw on multiple sources of information about the subject's background to establish the presence of risk indicators that have a demonstrated relationship to violent behaviour. Statements about risk need to be contextualised and fitted alongside assessments of victim impact and risk of harm to children. The report will consider historical, current violence and the likelihood of further violence but also the impact of coercive control, sexual, psychological, emotional and financial abuse on the victim and on the children. The report should be aware of the impact on children of exposure to domestic violence in all its forms, and the potential for future harm.

The aim of the DASCR is to help the professionals making decisions about or managing the case to identify strategies for risk management and to make decisions about child and victim safety. These strategies and decisions should be realistic, take into account local resources, and matched to the level of risk identified. This would mean not recommending a perpetrator to attend a perpetrator programme when there is not one in the local area etc.

The DASCR takes it's sources from the parents/parties involved, meeting with the child and using third party information such as social work case notes and reports, police call out information, criminal record information, medical information and other appropriate information from other third parties. The overwhelming consensus in the field is that violence risk assessment should be based on an analysis of empirically-derived risk indicators derived from multiple sources of information about the subject's background not just the meeting of the parties involved. The court will need to provide an interlocutor to allow this third party information to be accessed by the report writer. The interlocutor should give permission to access social work records held by the local authority, medical records held by medical professionals, criminal record information and information held by the police. The records should be for the

parents and the children involved.

The DACSR should provide an analysis of the extent to which the child has been exposed to domestic abuse in all its forms, and the potential for future harm. This will include consideration of factors such as impairment of parenting capacity, the child's need to recover from traumatic experiences or the abuser protracting proceedings as a means of maintaining control over or further persecuting the victim.

A recommendation should be given on how to proceed, which must be realistic and take into account local resources, and matched to the level of risk identified. Domestic violence perpetrator programmes are one of a range of possible ways of reducing risk that the court can recommend, however they are not available universally across Scotland.

The DASCR writers have specific skills, training and expertise in working with domestic abuse and have been trained by an accredited trainer in preparing these reports. The reports use the Domestic Violence Risk Assessment Framework as a guide for preparing the report. They are given supervision and consultancy by a professional who is recognised as an expert in the field of Domestic Abuse Risk Assessment.

A decision maker or professional may ask for a DASCR to be prepared to

• Gather information from a wide range of sources and for analysis by a specialist who can come to conclusions based on an accountable knowledge and theory based effective practice

• Assess the risk posed by perpetrators to lessen perpetrator-generated safety threats to children and victim parents;

• Review whether the perpetrator can be accountable in ways that promote safety and compliance with a contact, residency orders etc. ;

• Evaluate if there are treatment options to enhance perpetrators’ capacity to change;

• Strengthen decision-making about placement and visitation of children to increase the safety of children and the non abusive parent or care giver.

**Costs of the DASCR**

The DASCR takes 12 weeks to complete (if all agencies co-operate with given access to information needed), however if the Safe Contact Agreement was completed in the first instance the DASCR writer would need a further seven weeks (in addition to the original 5 weeks). If parties do not co-operate the DASCR can be prepared based on third party information given. The cost is £1300 plus travel expenses in total (however if a Safe Contact Agreement has been completed and a fee of £500 has been made, it is an additional £800). Court appearances are charged at £140 per day and £70 if a court date is cancelled with less than 48 hours notice.

**How is a report requested?**

The specialists is Scotland who can write the reports are:

| **Liz Nolan** | Assistant Director from Aberlour Child Care Trust besed in Forth Valley | liz.nolan@aberlour.org.uk |
|---|---|---|
| **Rachel Barnes** | Social Worker at Safer Families Edinburgh, City of Edinburgh Council | Contact Rory Macrae, Project Manager<br><br>rory.macrae@edinburgh.gov.uk |
| **Theresa Loughran** | Social worker at Safer Families Edinburgh, City of Edinburgh Council | Contact Rory Macrae, Project Manager<br><br>rory.macrae@edinburgh.gov.uk |
| **Jackie Robeson** | Solicitor at Child Law Network based in Glasgow and Edinburgh | jackie.robeson@clanchildlaw.org |
| **Catriona Grant** | Independent Social Worker and Specialist Assessor. | saferscotland@gmail.com |
| **Margaret Small** | Safeguarder and Independent Specialist Assessor | Margaret.small2@btinternet.com |

The above specialists have all been trained together and are aware of one another, good practice would mean if they were unable to take work they might suggest another person/agency who they know is taking work on. The DACSRs are all overlooked by Calvin Bell, Domestic Violence and Child Abuse Risk Assessment Expert at Ahimsa (Safer Families) Ltd based in Plymouth, England.