

Domestic Violence and Contact with Children – The Archers and the Ongoing Story

Introduction

A radio programme about ordinary country folk, *The Archers*, has recently received widespread media coverage and has attracted a large audience.¹ The storyline that has gripped the public focuses on Rob Titchener's long-term abuse of his wife, Helen. Events came to a head when she stabbed him in order to protect her child. She stood trial for attempted murder and was acquitted. However, there are indications that the story is not over, Rob confronted her after the trial with a threat: 'You haven't got rid of me. As long as we have a child together, you never will.'

For many women this threat is a reality. For many women, violence escalates or even begins for the first time after they separate from the abuser.² It is often the case that abusers use contact with children in order to abuse mothers. Contact is treated as an opportunity to track down women seeking to keep their location secret and it is used by the abuser as a way of seeking to regain control over the victim. For example, the majority of mothers in one research study were assaulted by their husbands or partners after separation and all the post-separation violence was linked to child contact.³ In addition, there are risks to children; men who are violent to their partners are also likely to harm their children⁴ and it is clear that children who witness domestic violence are damaged as a result.⁵

Who are the Perpetrators?

While there is evidence that, in a small number of cases, women abuse men, and that there is abuse involving transgender and same sex relationships, there is strong evidence that it is overwhelmingly men who are the abusers and that it is women who are abused.⁶ Also, the nature of the abuse differs; women suffer far more severe abuse, more chronic, repeated abuse and far more sexual abuse.⁷ While men's groups argue that women are just as violent as men and that fathers present no greater risks to their children than mothers, they do not produce evidence. They use the equivalence argument mainly as a weapon in their campaigns to embed a presumption of shared parenting into the law.⁸ And they have had some success in those campaigns.

¹ See eg <https://www.theguardian.com/tv-and-radio/2016/sep/11/the-archers-verdict-on-helen-titchener-aired>

² Trinder, Connolly, Kellett and Notley (2005) *A Profile of Applicants and Respondents in Contact Cases in Essex*, DCA Research Series 1/05.

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.732.7149&rep=rep1&type=pdf>

³ Hester and Radford (1996) *Domestic Violence and Child Contact Arrangements in England and Denmark*.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184053/DFE-RR226_Report.pdf

⁵ Section 31(9) Children Act 1989.

⁶ CPS (2016) *Violence Against Women and Girls Crime Report 2015-16*

http://www.cps.gov.uk/publications/docs/cps_vawg_report_2016.pdf

⁷ M Hester (2009) 'Who does what to Whom' <http://www.nr-foundation.org.uk/downloads/Who-Does-What-to-Whom.pdf>

⁸ F Kaganas (2006) *Domestic Violence, Men's Groups and the Equivalence Argument* in Diduck and O'Donovan (eds) *Feminist Perspectives on Family Law*, Glasshouse, Cavendish

<https://brad.brunel.ac.uk/repository/files/?rep=1&pub=28872&file-url=http%3A%2F%2Fbura.brunel.ac.uk%2Frt4ds%2Ffile%2F60009%2Ffem%2Bperspectives%2Bof%2Bdv%2B5.doc>

Contact-The Law and the Professionals

Since the 1980s, the courts have applied what they have called a 'strong presumption' or an 'assumption' that a continuing relationship with both parents after parental separation or divorce is best for children. The courts have said that it is 'almost always' in children's best interests to have contact with the non-resident parent, usually the father. Mothers who oppose contact, often because of concerns about violence,⁹ have been branded as being 'implacably hostile' and they are urged to reach 'sensible' agreements with their former partners. Mothers who do not co-operate are punished, sometimes by imprisonment, or instructed to undergo therapy.¹⁰ Moreover it is not only courts but also solicitors, mediators and CAFCASS officers as well as child welfare professionals who bend over backwards to ensure that contact happens.¹¹

This push for contact is not necessarily abandoned in cases where mothers make allegations of domestic violence. In *RE L, V, M and H*,¹² the court declined to follow a recommendation that there be a presumption of no contact in cases of violence.¹³ Instead it took the view that in such cases the 'assumption' in favour of contact should be displaced but that the court retain a discretion to order contact.

Despite this strong preference for contact, fathers' rights groups complained that the courts were biased and that they allowed mothers to flout contact orders. Courts have hardened their attitudes to mothers and now sometimes transfer the child to live with the father. The legislature introduced new punishments into the Children Act 1989.¹⁴ And a presumption that contact is in children's best interests came into force in October 2014. Section 1 of the Children Act 1989 now provides that the court should presume, unless the contrary is shown, that involvement in the life of the child by the non-resident parent will 'further the child's welfare'. This will be the case unless it can be shown that involvement will put the child at risk of harm.

In addition, legal aid is no longer available for contact disputes. There is an exception where there are allegations of domestic violence but there are prescriptive rules concerning what evidence of abuse is acceptable. Many women are not in a position to provide that evidence and the rules are currently under review.¹⁵ The effect of all this is that victims of domestic violence may have to represent themselves and be questioned in court by an abuser who is also representing himself.

Another change is that parties are expected to attend a Mediation Information and Assessment Meeting¹⁶ before entering the court system. Mediation is not appropriate in cases of domestic violence but vulnerable women may feel obliged to attend mediation.

⁹ <http://dera.ioe.ac.uk/9145/1/outcomes-applications-contact-orders.pdf>

¹⁰ F Kaganas (2010) 'When it Comes to Contact Disputes, What are Family Courts For?' *Current Legal Problems* 235 <http://bura.brunel.ac.uk/bitstream/2438/5170/2/Fulltext.pdf>

¹¹ <http://dera.ioe.ac.uk/9145/1/outcomes-applications-contact-orders.pdf>

¹² [2002] 2 FLR 334

¹³ <https://law.ucdavis.edu/faculty/bruch/files/AppendixD.pdf>

¹⁴ Sections 11A-O Children Act 1989.

¹⁵ <http://rightsofwomen.org.uk/get-information/family-law/family-law-legal-aid/>

¹⁶ https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a

The effects of the change to a statutory presumption are not yet clear. The reported cases suggest that the courts seldom refer explicitly to it and are continuing as before. This is probably because they were already making and continue to make decisions on the basis of a strong presumption. However, while ‘involvement’ does not mean equal time for both parents, the provision has the potential to increase the expectations and to strengthen the bargaining position of fathers outside the courtroom. Many women will find themselves in mediation or in informal negotiations about contact with their more powerful abusers and may feel unable to resist the demand for ‘involvement’.¹⁷

Possible Change

This year, Women’s Aid produced a report¹⁸ documenting reviews of serious cases. They found that, between 2005 and 2015, 19 children in 12 families were killed by their fathers who had contact with them. Two mothers were also killed. For 12 of the children, contact had been arranged in court. The report identifies serious failings on the part of the courts and statutory agencies; they showed little understanding of domestic violence and of post-separation violence in particular.

In response to this report, there will be a House of Commons Chamber debate on domestic abuse victims in the family courts.¹⁹ This may lead to change, although given the new presumption, this may be problematic. However unless there is change, no matter what the outcome of the Archers’ scenario, women and children will continue to be put at risk.

¹⁷ <https://brad.brunel.ac.uk/repository/files/?rep=1&pub=87684&file-url=http%3A%2F%2Fbura.brunel.ac.uk%2Frt4ds%2Ffile%2F27700%2FFulltext.doc>

¹⁸ <https://1q7dqy2unor827bjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf>

¹⁹ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/backbench-business-committee/news-parliament-2015/mps-debate-domestic-abuse-victims-in-family-law-courts/>