

## **Dunn & Baker Family Team**

### **7. CHILDREN – CONTACT – FACT FINDING**

When an application is made to court under the Children Act (usually only for contact or residence) the court has to consider whether or not there are any issues of domestic abuse or domestic violence that need to be considered. The person making that allegation will normally complete their own form for the Court called a Form C1A. That gives general information of the incidents that are being alleged. The court then has to consider whether or not this is taken into consideration.

There has been cases over some years which have highlighted the fact that the court often has to take into consideration the allegations of domestic abuse and how relevant they are to the case.

The President of the Family Division then set out a practice direction (guidelines for solicitors) as to how to deal with allegations being raised. In particular the court has to consider: -

1. The factual and welfare issues
2. The nature of any allegation or admission of domestic violence and the extent to which it is relevant
3. Whether to give court directions (at the first available hearing) to enable these issues to be determined.

The matter will then be listed for an initial hearing. At that hearing it is possible for the person against whom the allegations are made to make admissions to some or all of the allegations. The court then has to decide: -

1. Whether or not they are sufficient enough; or
2. Whether there should be a separate fact finding hearing

The court will then consider: -

1. Directing the parties in the case to file written statements giving particulars of the allegations. What would normally happen is that a full statement would be required from the person making the allegations (including specific details of the events, any witnesses, the dates, any details of injuries). The person responding then has the right to prepare a full response.
2. The court also has to decide whether or not any other evidence is required – for example whether there is any medical information or information from the police.

In practice the person making the allegations will also usually prepare a Schedule (through their solicitor). This is a brief document setting out in "bullet point form" the allegations so that the other person can state whether the allegations are denied in full, denied in part or whether there are any admissions that can be made.

It is sometime then possible to agree these facts to avoid a contested hearing, where both parties may have to give some evidence to the Court.

If the court lists the matter for a fact finding hearing, then at that hearing the court will need to consider: -

1. Whether to make findings of fact (or not) with regard to the domestic abuse
2. The effect (if any) on the person making the allegations
3. The effect (if any) on the children involved

The court needs to consider whether or not there should be any CAFCASS involvement (see fact sheet on CAFCASS involvement) at an early stage or after the fact finding. Often CAFCASS would wish, in the case of serious allegations being made, for the court to make a determination on the fact finding before filing their report.

Before the court will make an order the court does need to consider: -

1. Whether or not the person who has had the findings made against them is motivated to promote the best interests of the children
2. The likely behaviour of the person who has had the findings made against them during contact and the effects on the children
3. The capacity of the person who has had the findings made against them to appreciate the effect of their past behaviour
4. The attitude of the person who has had the findings made against them to their past conduct and their capacity to
  - a. accept this,
  - b. to change and
  - c. to behave appropriately.

For those who have finding made against them, there is a local organisation called "Respect". They can offer advice and encourage attendance at a local re-education programme. Obviously we can speak to you about this more fully – it may be something of assistance, particularly if you are prepared to accept some problems.

As we have highlighted to you family law is not an exact science. Therefore it is not easy to "second guess" what a court will do. The court has to take allegations raised very seriously and decide how to progress the case at a very early stage.

***Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.***