

JERSEY / JUDGMENT

A v B, In the matter of NN

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[2010]JRC193A royal court (Family Division) 21st October 2010 Before : J. M. O’Sullivan, Registrar., sitting alone. Between A Applicant And B Respondent IN THE MATTER OF NN Advocate C. M. Fogarty for the Applicant. Advocate R. E. Colley for the Respondent.

judgment

the registrar: 1. This is an application by the father, A, made on the 1st December, 2009, for contact with his children and for a parental responsibility order. The father and mother were not married. They met at university in Poland and moved to Jersey in June 2004. The history of the matter and Domestic violence proceedings 2. On the 18th November, 2009, the mother and the children left the family home and moved to the Women’s refuge. In her affidavit sworn the 19th November, 2009, in support of an application for an injunction against the father, (the father accepts the allegations made in the affidavit), the mother sets out the father was abusive to her from the outset of their relationships and that incidences of domestic abuse both physical and emotional occurred nearly every day. He was violent to a former boyfriend. She wrote that at the end of 2000 she tried to run away but was dragged by her hair in the street, back to the student house. 3. When they moved to Jersey she hoped matters would improve but they did not. In Jersey he held a knife to her throat and pushed it so hard against her throat that she was terrified he was going to kill her. His violence got worse when she became pregnant with Child 1. About two years ago he kicked her so hard on the leg she was left with a bruise half the length of her thigh. He also attacked her with the kitchen chair. Two to three years ago he threw a sharp kitchen knife at her which just missed her. 4. He punched her with such force when she was pregnant with Child 2 she was left with severe bruising. She took a photo on her mobile phone but he took her phone. She describes when she went in to labour with Child 2 - he was furious with her waking him up; lashed out at her and drove so fast to the hospital, taking no notice of how much pain she was in. 5. In 2005 he tore Child 1 from the mother’s arms and then attacked her mother smashing her glasses. Child 1 was screaming. She wrote he has “no regard for authority or for his elders.” His violence was nearly always in front of the children and Child 1 said “Daddy hit Mummy on the head”. Indeed he became more aggressive when she attempted to make him aware the children were witnessing his violent behaviour and shouted louder using extreme swearwords. He punched her on the head numerous times so hard she got dizzy and she was worried about permanent damage, and “that when he is violent towards me and I am in danger, he is always in control of the situation.” She wrote she is petrified of him. 6. On the 19th November, 2009, she was granted an interim injunction against him inter alia preventing him from harming or molesting her, communicating, threatening or abusing her, approaching or

loitering near her work, Child 1's nursery or Viberts, her lawyers. On the 18th December, 2009, Commissioner Bailhache admonished the father for breaching the injunction and added that he was also prevented from approaching within 100 metres of the women's refuge. Sir Philip said:- "We want you to understand two things. The first is that it is also an emotional experience and a very difficult experience for B who is having to live in the woman's refuge, which is not a place where a woman and two children ought to be. You are responsible for that. It is your behaviour in the last years that has led to this situation and you need to accept that. And secondly, and most importantly, we want you to understand that when a court makes an Order, it expects people to observe that Order and a breach of the court's Order is a very serious matter, which generally leads to punishment." On the 23rd December, 2009, the interim injunction was amended by agreement so that the children and mother could return home and father leave. The mother then made a further application due to breaches by the father and on the 24th February, 2010, the father was fined £2000 or to serve 3 months' imprisonment for breaches and the power of arrest was extended by six months. He paid £2,000. However he breached the injunction again and on the 21st July, 2010, he was sentenced to a term of imprisonment for seven days. The injunction was amended on the 9th September, 2010, to take into account inter alia of the mother's amended address. 7. At a hearing on the 6th January, 2010, the father accepted the matters set out by the mother in her affidavit of the 19th November, 2009. Mrs Emsley, forensic psychologist, was ordered to carry out a risk assessment on the father about his ability to have safe and appropriate contact with the children and a welfare report was ordered. The father started the ADAPT Domestic abuse prevention training on the 21st January, 2010. Children's Service carried out a parenting assessment completed on the 10th February, 2010, which is in the bundle of documents. The Children's Service officer stated:- "Following my meeting with A, the father, I am of the opinion that he minimised any violence that he was responsible for and also the impact of this on his children. A stated that he had started the ADAPT programme, a programme for men who are violent to their partners. A was made aware that on completion of the course, a 32 week course, he would then be assessed as to the success of the work completed." The Officer stated:- "...I would strongly advise that A have no contact with the children pending further assessment by the Court Welfare Officer and Ruth Emsley. I am not convinced that A has the capacity to change through attending the ADAPT programme at this time. I feel that his motivation to attend is questionable as I believe he's doing the course so as to resume his relationship with B and not because he feels his behaviour is wrong." 8. In her report of the 23rd February, 2010, which I will deal with further below, Mrs Emsley wrote:- "Given that A has demonstrated domestic violence in the presence of his children, I recommend any decision regarding contact with them is delayed until an ADAPT post-programme risk assessment report is available." I note that in her report Mrs Emsley says:- "A did, however, indicate that he could be aggressive with his mother at times." He is a man who has therefore been aggressive and violent to B, her mother and has been aggressive to his own mother. Dr Bryn Williams a consultant clinical psychologist provided a report on the 28th May, 2010. He writes:- "If it would assist the Court I would be able to provide further assessment of the children with their father once the experts who are working with A with respect to this violence are able to assure the Court that he has made sufficient psychological change and recognises the impact of the violence on his children. I

would respectfully recommend that A continues to send both children cards and presents at important times in the year and that he provide a letter for their mother to read to Child 1.” 9. Having started the ADAPT course on the 21st January, 2010 the father finished it on the 12th August, 2010. On the 21st July, 2010, he had been sentenced to a term of imprisonment for seven days for breaching the injunction. The conclusion of the ADAPT report is as follows:- “A became increasingly angry and frustrated with the “system” and for a number of reasons more recently with the Police. He appears to distrust or lack respect for authority. He stated that during the last session that if he didn’t get unsupervised access to his daughter at Millis he “will cause trouble.” What kind of trouble he was referring to it is unknown. However this would seem to confirm his sense of frustration. By the end of the programme A had not really moved forward or made any real positive changes, although to date he has not been assessed in “risk” end of programme. Overall A presented as quieter member in the group and it has therefore been difficult to assess how much he has been able to question his beliefs and attitudes around his behaviour.” Dr Williams

10. Dr Williams prepared a report dated 28th May, 2010, of 46 pages long and an updated report of the 1st October, 2010. His recommendation is that contact between Child 1 and Child 2 and their father is indirect, and continue to be until such time as A is able to demonstrate that he is capable of placing the needs of his children first. He was questioned, first by Advocate Fogarty for the father, then Advocate Colley and then again by Advocate Fogarty. In her summing up, Advocate Fogarty said he was evasive. I did not find him to be so. He did decline to answer a question addressed to him as a human being, saying he was instructed as a child psychologist, and further said he was answering questions as a child psychologist not anything else.
11. In his first report, Dr Williams pointed out that during the course of the assessment the father denied being responsible for perpetrating domestic violence and attributes any of the conflict in the family to a difficult relationship between himself and B. A was concerned that Dr Williams thought he was minimizing the impact of his behaviour on the family. “He accepted that his behaviour was unacceptable, but then said, “she hides the important facts.” He felt she was using her new boyfriend to make life difficult for him. He denied he had behaved as badly as B described. Dr Williams wrote:- “At this stage in my assessment I did find A’s approach and his narrative quite intimidating.” He was asked to explain what he meant by her being a woman and A replied:- “women, they are like cats, and they twist things, they purr and then they stand on your feet and they will scratch you”. He told Dr Williams that he “accepted” most of B’s Affidavit in support of her injunction because it meant that there would not need to be a finding of fact hearing. Dr Williams wrote “in the absence of a formal finding fact, A does not actually accept what has been agreed in a legal context”. A said that he was concerned Child 1 had heard things the child was not supposed to. He said for example he had learned Child 1 was alleged to have said “daddy hit mummy on the head”. Dr Williams had a subsequent interview and again A said he disagreed with the content of the Affidavit. He was asked about whether the evidence that exposing children to witnessing violence was something that concerned him. He was asked why he felt he needed

to go on the ADAPT course if he did not think he was aggressive. He said at one stage that going on the course would be good for him and would allow him to achieve reconciliation with B.

12. Dr Williams referred to Mrs Emsley's report in which she stated he minimizes his culpability by talking about B's lack of domestic arrangements. She wrote that A demonstrated little "victim empathy" and called the members of the ADAPT course "animals".
13. Dr Williams was concerned that he does not have insight into the impact of his behaviour or his family, and in particular, the psychological damage that he has caused to Child 1 by witnessing the violence and the potential harm to Child 2. He was particularly concerned about the inconsistency of A's acceptance of the issues relating to domestic violence, evidenced also by Mrs Emsley. He felt intimidated at times by A's narratives and the way in which he delivered it. He considers A's acceptance of the contents of the Affidavit is simply a way to expedite contact. He considered this of great concern given the descriptions of the domestic violence.
14. Dr Williams wrote that Child 1 drew a picture of her father shouting in delight "daddy, daddy" "and said daddy was "at work"". There were some concerns about Child 1's language development but the health worker had raised no concerns about Child 1's emotional well being. Dr Williams noted that Child 2 enjoyed good eye contact and enjoyed sharing attention with the mother. Dr Williams was asked about interviewing Child 1 and in particular if he had asked Child 1 if the child wanted to see the father. He said it was wholly inappropriate to use a leading question like this, particularly when the father was engaged with the ADAPT course. Dr Williams said he assessed Child 1's wants and needs – although Child 1 had said Child 1 wanted to see the father, he would be ignoring his responsibility to Child 1 if he just went along with this. One had to look at this in the context of domestic violence. He did not like being told by advocates how to interview children as he knows from his work how to interview them. He said that:- "Child 1 is becoming aware of the conflict and this has the potential to compromise the child's psychological well being." He observed that the mother met the basic needs of the children. B said she thought it important that Child 1 in particular has a relationship with the father but he did not really know Child 2. He observed:- "I was aware that B continues to live under enormous amount of stress and appears to normalise to some extent the way in which she is harassed by the situation. I am concerned that the ongoing fears of being confronted by A and the way she has been undermined by him and her family in trying to meet the needs of the children leaves her feeling fragile." Although he did not have concerns about how she met the needs of the children in the current circumstances, how she resolved the situation with A could contaminate the emotional well being within the family unit. She described how he was close to Child 1 but never had interest for Child 2. B said she was not concerned in meeting the basic needs of the children such as potty training. He had given Child 2 only a card, but sent B a huge bouquet of flowers.

15. Dr Williams wrote that all this raises the question as to whether A is capable of putting the best interest and needs of his children first. Dr Williams wrote in his summary and conclusion to his first report:- “given A’s minimisation of the impact of domestic violence on his family it would be inappropriate to initiate an assessment for understanding his parenting capacity given his level of denial. I do not believe at present it is therefore appropriate for him to have unsupervised contact. I am concerned that if he does not address his behaviour problems as a matter of urgency there is a risk that no contact order may be an issue the Court may have to consider.” He adds as follows:- “He needs to take responsibility for this behaviour and demonstrate a genuine acceptance on the impact of his behaviour.”
16. In his second report Dr Williams was concerned that A had not sent the children cards or letters as suggested by him in his first report. He said:- “This does not give the impression of taking a child – centred approach and reinforces my concern that the children’s contact with their father is chaotic and stressful.”
17. Dr Williams considers that the children have better outcomes and well-being when they have contact with the non-resident parent. However he highlighted the negative impact of domestic violence as a failure of parenting and had concluded that A should only have contact once he has addressed the issues of violence. He said that the ADAPT report and follow up report from Mrs Emsley:- “has not provided me with the reassurance I consider would be necessary in order to be able to recommend to the Court that for A is safe to have unsupervised contact.” In Dr Williams’ view:- “Domestic violence represents a significant failure in parenting”.
18. Dr Williams recommends indirect contact. He said that the court welfare officer had considered the potential for supervised contact. Both of them recommended indirect contact, but if supervised contact was ordered he shared her concern it should be done by an experienced qualified person. The person must be a Polish speaker or supported by an interpreter.
19. He wishes to encourage A to work further on the issues of domestic violence and work with the Jersey Family Court Advisory Service. Contact should only be indirect until A is able to demonstrate that he is capable of placing the needs of his children first and that the risks associated with domestic violence and intimidation of B are significantly decreased.
20. Dr Williams confirmed Child 1 had a good relationship with the father and confirmed that there was no evidence he had been physically violent to Child 1. He was asked again by Advocate Fogarty why he was not recommending direct contact. Dr William said he needed to balance the risk of father’s lack of progress against the children not seeing him. There were very serious issues of domestic violence. Children he said do better with the knowledge of their parents but the issue of domestic violence is deeply damaging. There have been insufficient changes in his behaviour and he is emotionally abusive. It would be damaging if contact did take place and had to be removed again. He has to take

responsibility for his behaviour - he perpetrated the violence and is prepared to flout the law. He is reckless and impulsive man who places his own needs first. He said that the father had made him uncomfortable and he is not prepared to compromise the children's welfare. Dr Williams was referred to the incident in June 2010 by Advocate Colley when A was hiding behind the bushes, and called out to Child 1 but the child did not respond to him. He was also referred to the breach of injunction in July 2010. He said these were examples of his reckless behaviour and not the behaviour of someone who had taken on board the lessons of the ADAPT course. He said that something is blocking this – normally an ADAPT report is positive but A is not getting the message. Dr Williams said his description of what a woman was like was disturbing. He had been disappointed that the change had not happened. Indeed he said he felt intimidated by A and based on what he had heard, read and the breaches of injunction, his concerns about A had actually increased. Whilst Dr Williams want the children to have a relationship with their father, it needs to be meaningful and safe.

21. Dr Williams was asked about A's failure to take up the indirect contact that had been recommended. He said A wants a relationship with the children, but had not taken up indirect contact. He sent Child 2 a card but no present but yet at the same time sent 60 red roses to the mother. He needed to send cards to the children so they can say this is from my daddy. Whilst he does not need a card to remind himself of them, they do need to be reminded of him. His commitment to his children should have been enough for him to do this and also change his behaviour but he has not done so. He was asked what risks if the supervised contact was in English, but Dr William said he had a great concern that he had opportunities to speak in Polish.
22. Dr Williams was asked about the attitude of B and how this affected the children. He said she had the best interests of the children at heart and felt she wanted to promote contact with the father's family. He had no concern for the mental health of the children or their mother but she is very frightened of him. He agreed she needed to control her anxiety but she had faced harassment over the summer and it would be unusual if she did not feel stressed. It was a normal consequence of the father's behaviour. He did not believe she was compromising the children and had he thought so he would have reported this as a child protection issue. He said the risks from the father had not gone away.
23. Dr Williams said his role was to protect the rights of the children and represent them in a way he was competent to do so. One had to look at the degree of any change in the father, and problems associated with stopping and starting contact. The father has not moved on and the reason for his indirect contact recommendation was not due to worries about the mother's stress, but because the father had failed to address the issues of domestic violence even now. Mrs Ferguson
24. Her report was dated the 14th October, 2010. She said that the father was seeking parental responsibility and contact and that he has a deep love for his children. She said he does not accept he poses a risk to anyone, and is upset/angry about the ADAPT report. A was aware

Mrs Emsley recommended he works on domestic violence issues but he considers he does not need to do this having done the ADAPT course. Mrs Ferguson went through the welfare checklist for both children. She wrote that Child 1 is very confused. The only times she has seen her father recently “are when he has chosen to break the injunction”. Mrs Ferguson pointed out that Children Service became involved due to their concerns for the children in living in a domestic abusive household, but the mother took steps to protect them.

25. Mrs Ferguson did discuss with the mother how her fear of A impacted on her degree of parenting. The mother said she is wary of going to certain places rather than risk seeing him. Mrs Ferguson considers that whilst A does have the capacity to meet the needs of Child 1, in her discussion with him about his need to be involved with the children, this was not child focused but to meet his needs. A told her that had he knew before hand about the effects of domestic violence on children he would have not done so. Mrs Ferguson said she was particularly concerned as he was therefore saying that the domestic violence planned – Mrs Emsley says his behaviour is impulsive, although the mother said he was always in control of the situation and Mrs Emsley did also accept that sometimes his behaviour is planned and calculating.
26. Mrs Ferguson referred to the lack of indirect contact by the father with the children, despite this having been recommended by Dr Williams in the spring. A in June wanted information about the children but no reference was made by him to him sending cards or presents to the children. He did buy Child 1 a present but not Child 2.
27. Mrs Ferguson says that neither Mr Collier-Webb, who runs the ADAPT programme, nor Mrs Emsley nor she herself consider that A understands the impact of abusive behaviour. He did not believe that his breaking of the injunction would have further eroded trust between himself and the mother nor that he has any part to play in rebuilding trust. He denies making the statement in the ADAPT report that if he does not get contact at Millis’ contact centre, he will cause trouble. Mrs Ferguson says, why was the statement in there if not true; she considers this is:- “further evidence of A’s attempt to achieve his desire by intimidation.” She agreed with Advocate Colley he had missed some of the ADAPT sessions; Dr Williams had also referred to this.
28. Mrs Ferguson referred to the issue of parental responsibility – the full welfare checklist does not need to be considered but she identified the three tests. Mrs Ferguson pointed out that the father has made the application and he has been paying child maintenance. She noted however his failure to take up indirect contact. She considers his propensity to break injunctions and Mrs Emsley’s assessment that he puts his needs before those of his children as giving credence to the mother’s suggestion that part of the reason for his application is to maintain a degree of control over the mother’s life, given in addition he did not take up indirect contact. Mrs Ferguson in her report rested on the wisdom of the Court in respect of the issue of parental responsibility. In giving evidence she did raise her concern that A would have a tool to exert some control over the children’s lives. Mrs Ferguson said there could be issues about schooling or health which could undermine the other parent and in

cases of severe domestic violence and control, this could impact on how parental responsibility is used.

29. Mrs Ferguson referred to the research by Dr Sturge who says that once violence is found there should be a rebuttable presumption against residence or contact for the violent parent. Mrs Ferguson pointed out that her role is to consider contact within the context of the best interests of the children. She agreed with Dr Williams that contact has to be meaningful as well as safe. Mrs Ferguson was referred to the proposal by Mrs Emsley that contact by the father with his children should be supervised by an appropriate professional. Mrs Ferguson pointed out that this is not possible in Jersey and that in any case a Polish speaking professional would need to supervise. There is no professional in Jersey trained to do this private children case supervised contact, and she had no idea when it will be available. As for the contact being in English, A takes no notice of Court orders, so he could say sentences in Polish. It would in any case be best for Child 1 to have contact in the child's first language, Polish. Mrs Ferguson said that even if there were a facility for supervised contact, she would not recommend this. Supervised contact should never be considered to be permanent, she stated. Mrs Ferguson was referred to another case of domestic violence but said every case is different. She said that A's attitude and behaviour, despite having gone through the ADAPT programme, had not altered, and yet A sees no need to work on issues raised by Mrs Emsley. The risks Mrs Ferguson considers therefore will remain high and even if supervised contact were available, she would not consider this is meaningful or child focused. The reason she was not recommending supervised contact was because the father had not moved on with the issue of domestic violence and research tells her that a parent like this will use the children to get at the other parent. In cases of domestic violence, the risk is exacerbated to a higher degree. Furthermore, supervised contact, she said cannot not be seen in isolation. The children have not seen their father for a length of time. He has not moved on. If supervised contact is introduced, we cannot go on from there to unsupervised contact. It is not just the issue of resources she said, but it is not right and meaningful for this to continue over a period of time. The risks remain as he is in denial as to his behaviour. There would therefore be no end in sight to supervised contact and it would not be meaningful to the children. Supervised contact is a process but A does not consider he poses a risk or needs to undergo further work. As a result, Mrs Ferguson considered that we are therefore in no different position to when she saw him in January 2010. He considers that no else is right; only he is right, that ADAPT is wrong in its conclusions, and it is Mrs Emsley who is wrong in suggesting more work needs to be done and the Court got it wrong in making the injunction orders.

30. Furthermore, she does not agree that contact should be by Skype as this will be unsupervised and there will be no control over A's behaviour which can be intimidating and controlling. She said that B thinks if she can placate the father, he will stop causing her trouble but she is not the right person to police this. She was asked about why the Skype proposal had been made and stated that victims of domestic violence will try to placate their abusers.
31. She reiterated she recommends that he only has indirect contact, as also recommended by Dr Williams.
32. She was asked what guarantee would there be if indirect contact were to be taken place that the children would see cards etc. Mrs Ferguson agreed there can never be a guarantee but she considered that the mother would comply. She is hopeful that things would be passed on – there is evidence that the card to Child 2 was passed on. Whilst there are currently no resources to monitor this, she did advise that “cards and letters are to be sent to the mother to be passed to the children if the mother considers they are appropriate to pass on, and should she have concerns, she should raise these with a member of the Jersey Family Court Advisory Service.” Mrs Ferguson said that the mother had not been criticised. She said that A continues to harass and bully directly or indirectly and he will not even stick to what the law demands of him. It is the issue of psychological damage.
33. At the end of the day, Mrs Ferguson felt therefore that he will do what he wants and that he had not accepted Mrs Emsley's view that he needed to do extra work regarding domestic violence. Mrs Ferguson said that Child 1 must be getting confused because of what the paternal grandmother is saying but she considered that he should not be given direct contact just because the grandmother may be confusing her. She said that A should stop breaching the injunction; the mother does however take positive steps to avoid him.
34. She said that she tried to talk to A as to why he had not taken up indirect contact. It could be seen that he did not think this was important to do. At the Case Review Hearing when he wanted information he was concerned with his rights, not what his children need. She agreed he needed to work on indirect contact. She considered that Child 1 needs an apology from him for his behaviour. She felt it was inappropriate the grandmother had bought Child 1's present to the nursery as this was getting the nursery involved and it should be seen as a sanctuary for Child 1. Whilst the grandmother delivered the father's present to the nursery at the same time she told the mother that she had presents for Child 1, and Child 1 had to go to the grandmother's house to collect them. Mrs Ferguson stated that A does not appear to accept that trust between him and the mother needs to be rebuilt. B needs to trust him to keep to Court orders and not to be abusive. She said A's views were those of a perpetrator of domestic violence who cannot or will not see matters from the victim's perspective.

35. She was asked about the meeting in St John's Road and said she understood that A was very abusive. Advocate Fogarty asked if B could be trusted and said the question was should B trust this man who is so violent. A victim will always hope the violence will stop. B has lived with the reality of serious domestic violence, which was possibly life threatening. It is his actions that have led him not to have contact. This is a final hearing but if he does make the changes he recommended can in due course bring an application to Court. Mrs Emsley
36. She filed a report on the 23rd February and a supplementary report on the 28th September, 2010.
37. With regard to her first report, she interviewed the respondent, read a file of papers including the injunctive proceedings, and discussed his case with Mr Springate, Senior Psychiatric Social Worker and Mr Collier-Webb, manager of the ADAPT programme. She considers the father to be an intelligent man, with a good command and understanding of written and spoken English. He presented as someone desperate to have contact and an emotional need for his ex-partner.
38. She wrote:- "When asked whether he had been violent or aggressive to any present partners, A indicated he is "pretty easy to wind up". "A did, however, indicates that he could be aggressive with his mother at times." He said he was still in love with B but when challenged about his violent and aggressive behaviour, "cited examples of her not contributing practically to the relationship".
39. He did accept the behaviour she described in her Affidavit. Mrs Emsley said he believes his violent reaction was excessive and extreme, and he appeared genuinely ashamed and embarrassed. Mrs Emsley was particularly concerned that abuse of B had often been in the presence of the children and including dragging her by her hair in the street, holding a knife to her throat, kicking her in the leg and throwing a knife at her. Mrs Emsley's opinion was that he demonstrated little victim empathy. He was asked about when she was in labour with Child 2, described above, and she considered A demonstrated little remorse.
40. Mrs Emsley noted B's comment that the majority of violence was in the presence of the children and that he "would become more aggressive when B attempted to make him aware that the children were witnessing his violent behaviour".
41. She writes:- "In my opinion this suggests that A is either so out of control of his behaviour on such occasions that he is unable to respond to moderate his conduct, or he is reckless and uncaring of the needs of his children. In my opinion, whichever is the case, such behaviour is blatantly detrimental to the well-being of his children." She describes his threat to kill B and himself. She writes:- "Overall I believe it should not be ruled out that A could carry out his threats, or his children may be at risk if he were to behave in such a way." She further reported:- "In my opinion it is a particular concern that during interview for this report, A informed me, that he believed all the other group members on the ADAPT programme to be "animals" compared to himself and his behaviour was nowhere near as bad as theirs. In my opinion this is further evidence that A minimises his abusive behaviour and fails to take

active responsibility for it.” In her report she states:- “In my opinion, given A’s recklessness and emotional state regarding his current situation, the risk to A of suicide or deliberate self harm cannot be dismissed and not can the risk that he would involve others, notably B or the children.” Mrs Emsley conducted two tests on him which showed the presence of depressive dependent and negativistic (passive-aggressive) clinical personality traits.

42. In her opinion she considers that he has serious anger management and aggressive control problems; and he may be a danger to women in intimate or domestic situations. She says:- “the chance of him being verbally or physically abusive in the presence of his children could therefore not be rules out.” She writes:- “I do not believe that currently he would be able to spend quality time with his children, either supervised or unsupervised, without the contact being influenced by his continued emotional attachment to their mother.” She recommends that as he recklessly displayed domestic violence in the presence of the children any decision regarding contact with his children should be delayed until A has completed the ADAPT programme and a post-programme report describing his progress is available. However, the recommendation should be balanced by the needs of the children.
43. She considered he has the intellectual capacity to understand the needs of his children and learn from “mainstream therapeutic programmes”.
44. She says that negativistic individuals display behaviour characterised by:- “erratic pattern of explosive anger or stubbornness intermingled with periods of guilt or shame. She considers that this is congruent with his behaviour to B.” She says that until he takes active responsibility for his behaviour, he is unlikely to change. She does not recommend unsupervised contact and ideally supervised contact should await the outcome of the ADAPT programme. She accepts this may be detrimental to the children but Child 1 has seen domestic violence which may impact on contact with him. Any supervision must be undertaken by an expert.
45. Mrs Emsley writes:- “in my opinion it cannot be ruled out that he may behave recklessly by abducting the children or carrying out the threats to harm B, himself and possibly even to the children.” She considered that if he were allowed supervised contact, an assessment of parenting skills is carried out but “ideally I recommend that any decision regarding contact is delayed until completion of the ADAPT programme and a post-programme risk assessment is available”.
46. Mrs Emsley filed a supplementary report dated the 28th September, 2010. She interviewed him further. She considers he is clearly an intelligent man desperate to have contact with his children.
47. Mrs Emsley notes that he has “not really moved forward or made any real positive changes” and writes:- “In my opinion, therefore it is unlikely that this risk of future violence will have reduced.”

48. She asked A about the ADAPT report and he disputed he had been angry and tries to be better every day. Her opinion is “this may be an indication that A lacks insight into the way he can present to the world, particularly when he is not achieving what he wishes”. She agrees that he has made progress in knowing what intimidation means. He did identify he was controlling and did not pay attention to B’s needs. Mrs Emsley said he has only made limited progress and states:- “In my opinion he has not made sufficient progress to have reduced his risk of future violence towards B or a partner in the presence of his children.”
49. Mrs Emsley considered Dr Williams’ report of 28th May, 2010, and was concerned about the denial of abuse reported by him. She was concerned that B’s preoccupation with her current situation “may contaminate the emotional wellbeing within her family unit”. She agreed with Dr Williams that it would be inappropriate to initiate an assessment of A’s parenting capacity given his level of denial and that it is therefore inappropriate for him to have unsupervised contact.
50. She noted that Dr Williams found A intimidating, and says this may be further evidence that he remains unaware of “his interactional style at times”.
51. He has a new girlfriend which may be a protective factor. Mrs Emsley referred to the breaches of injunctions which led to him being put in custody. She observes that he is an intelligent and well educated man, and:- “in my opinion this recklessness is an indication that he continues to place his own needs before those of his children, his ex-partner, and indeed, the requirement of the Law.” She writes that it is also suggestive of impulsivity and “Clearly he is also prepared to flout the law in order to meet his own desires”. Mrs Emsley advises that he should not have unsupervised contact and were he to have supervised contact, it should be undertaken by someone able to maintain the quality and appropriateness of his interactions with the children.
52. Mrs Emsley says:- “I recommend that A is offered the opportunity to continue to work on his domestic violence issues, focusing on the attitudes and core beliefs that promote such behaviour in him. She refers to Dr Williams’ comments about being intimidated by A’s ‘approach and narrative’ and suggests that he undertake work with a psychologist ‘to explore the impact of his interactional style upon his children if they were to witness it.’ She also recommends that he undertakes work to gain an insight into the impact of domestic violence on children.
53. Mrs Emsley was questioned by both advocates. She accepted that the evidence set out in B’s Affidavit was at “the high end” of aggression. She agreed she was still concerned he was out of control and reckless, and uncaring of the needs of his children given he was breaking the injunction and not focusing on the children. The threat of suicide was not the biggest risk – she felt it was a callous threat by him intended to cause distress. She felt that anyone who minimises their domestic violence makes them a greater risk. She was asked about the assertion made by A that he had a “chemical imbalance”. She said it was a strange assertion. She said that when he was not achieving what he wanted he became reckless.

54. She said that having the injunction in place was a perfect opportunity to demonstrate his compliance with it to the benefit of his ex-partner and children but he broke the injunction.
55. She accepted that he was not reckless all the time; sometimes she said “his behaviour is planned and calculating”. Because he is desperate for contact, this is a control issue so he’ll see his children, flouting their needs and that of the law. She hoped there would have been “a great shift”. Mrs Emsley said she would like to see him on “an accredited anger and aggression programme”. She said the shift would be him saying “Oh my God, this is what I’ve done and this is where I want to be”, but she doesn’t think this has happened.
56. Having heard the experts, in a usual children case one would have then have expected to hear from the applicant and any witnesses called on his behalf in support of his application, and then the respondent to the application and any witnesses called by her. However Advocate Fogarty said that A had no wish to give evidence. Advocate Colley said both parents needed to give evidence. I pointed out that there were questions I wish to ask the father. Advocate Fogarty said “he has nothing to add to the evidence already heard.” The case was adjourned until the following day when I gave a short judgment stating that although I wished to hear from him, he could not be compelled to give evidence. Advocate Colley said her client had been willing to submit herself for evidence. She had submitted an Affidavit in the injunctive proceedings. She would agree not to give evidence if Advocate Fogarty did not wish to cross-examine her. Neither parent therefore gave evidence, and it was also agreed that the statements submitted on behalf of the father from this mother and C be disregarded.
57. Included in the bundle were some e-mail communications between the parties’ lawyers and the documents relating to the injunction obtained by the mother, breaches of it and correspondence relating to the injunction, all of which I have also considered. The Law
58. In deciding matters relating to a child, the child’s welfare is the Court’s paramount concern. Article 2(1) of the Children (Jersey) Law 2002. A Court shall have regard to Article 2
- (3) of the Children (Jersey) Law 2002, the “Welfare Check List”, in making an order under Article 10, which includes an order for contact. The welfare check list is not specifically to be considered when deciding whether a parental responsibility order should be made. “(a) the ascertainable wishes and feelings of the child concerned (considered in the light of the child’s age and understanding);
- (b) the child’s physical, emotional and educational needs;
- (c) the likely effect on the child of any change in his or her circumstances;
- (d) the child’s age, sex, background and any characteristics of the child which the court considers relevant;
- (e) any harm which the child has suffered or is at risk of suffering;

- (f) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs; and
- (g) the range of powers available to the court under this Law in the proceedings in question."

59. In the bundle were a number of cases. In *Re X* [2009] JCA 083 this case is an appeal against a decision of the Royal Court to grant a judicial review of the decision of the Minister. I was not referred to *R-v-Kelly* [2000] 1 Q B 198 which is a criminal case where the defendant was appealing against sentence, nor was I referred to *Hosking-v-Michaelides*

[2006] BPIR 1192 a case on bankruptcy and personal insolvency.

60. The leading Court of Appeal case of *In Re L (A Child) Contact: (Domestic Violence)*, *Re v, Re M, Re H*

[2001] FAM 260 was referred to by Advocate Colley. In each of these cases the court had found proved the mother's allegations that the father had committed acts of domestic violence, refused the father's applications for direct contact with his child or children and made an order for indirect contact. The Court of Appeal considered the report of the Children Act Sub-Committee of the Advisory Board on Family Law and the joint expert report by two child psychiatrists for the Official Solicitor, Dr Sturge and Dr Glaser. Included in the bundle for this Court was an Article by them "Contact and Domestic Violence – the Experts 'Court Report'".

61. Dame Elizabeth Butler-Schloss, the then President of the Family Division accepted:- "There needs to be greater awareness of the effect of domestic violence on children, both short-term and long-term, as witnesses as well as victims and also the impact on the residential parent." Further in the judgment she writes that Dr Sturge and Dr Glaser considered the different purposes of direct contact and indirect contact, and considered in what circumstances should the court give consideration to a child having no direct contact with the non-resident parent. "In their view there should be no automatic assumption that contact to a previously or currently violent parent was in the child's interests, if anything the assumption should be in the opposite direction and he should prove why he can offer something of benefit to the child and to the child's situation. They said ([2000] Fam Law 615, 623–624):" "Domestic violence involves a very serious and significant failure in parenting – failure to protect the child's carer and failure to protect the child emotionally (and in some cases physically – which meets any definition of child abuse)." Without the following we would see the balance of advantage and disadvantage as tipping against contact:-

- (a) some (preferably full) acknowledgment of the violence;
- (b) some acceptance (preferably full if appropriate, ie the sole instigator of violence) of responsibility for that violence;
- (c) full acceptance of the inappropriateness of the violence particularly in respect of the domestic and parenting context and of the likely ill-effects on the child;

- (d) a genuine interest in the child's welfare and full commitment to the child, ie a wish for contact in which he is not making the conditions;
- (e) a wish to make reparation to the child and work towards the child recognising the inappropriateness of the violence and the attitude to and treatment of the mother and helping the child to develop appropriate values and attitudes;
- (f) an expression of regret and the showing of some understanding of the impact of their behaviour on their ex-partner in the past and currently;
- (g) indications that the parent seeking contact can reliably sustain contact in all senses. "They suggested that without (a)–(f) above they could not see how the non-resident parent could fully support the child and play a part in undoing the harm caused to the child and support the child's current situation and need to move on and develop healthily. There would be a significant risk to the child's general well-being and his emotional development." They added to the list (h) respecting the child's wishes ([2000] Fam Law 615, 624):- "... while this needs to be assessed within the whole context of such wishes, the older the child the more seriously they should be viewed and the more insulting and discrediting to the child to have them ignored. As a rough rule we would see these as needing to be taken account of at any age; above 10 we see these as carrying considerable weight with 6–10 as an intermediate stage and at under 6 as often indistinguishable in many ways from the wishes of the main carer (assuming normal development). In domestic violence, where the child has memories of that violence we would see their wishes as warranting much more weight than in situations where no real reason for the child's resistance appears to exist." She further wrote:- "The general principle that contact with the non-resident parent is in the interests of the child may sometimes have discouraged sufficient attention being paid to the adverse effects on children living in the household where violence has occurred. It may not necessarily be widely appreciated that violence to a partner involves a significant failure in parenting – failure to protect the child's carer and failure to protect the child emotionally." She added:- "If however there is a firm basis for finding that violence has occurred, the psychiatric advice becomes very important. There is not, however, nor should there be, any presumption that, on proof of domestic violence, the offending parent has to surmount a prima facie barrier of no contact. As a matter of principle, domestic violence of itself cannot constitute a bar to contact. It is one factor in the difficult and delicate balancing exercise of discretion. The court deals with the facts of a specific case in which the degree of violence and the seriousness of the impact on the child and on the resident parent have to be taken into account. In cases of proved domestic violence, as in cases of other proved harm or risk of harm to the child, the court has the task of weighing in the balance the seriousness of the domestic violence, the risks involved and the impact on the child against the positive factors (if any), of contact between the parent found to have been violent and the child. In this context, the ability of the offending parent to recognise his past conduct, be aware of the need to change and make genuine efforts to do so, will be likely to be an important consideration. Wall J in *Re M (Contact: Violent Parent)* [1999] 2 FLR 321 suggested at 333 that

often in cases where domestic violence had been found, too little weight had been given to the need for the father to change. He suggested that the father should demonstrate that he was a fit person to exercise contact and should show a track record of proper behaviour. Assertions, without evidence to back it up, may well not be sufficient.”

62. In considering the application for contact, the effect of violence on his children and on the mother are relevant factors, along with the past and present conduct of both parents and his motivation in seeking contact. In assessing the relevance of past domestic violence the ability of the offending party to recognise the wrong he had done and be aware of the need for change, and any steps taken to correct the deficiency in his character, are important considerations. There is no presumption against contact simply because domestic violence is alleged and proved, although it was one factor amongst many which might offset the assumption in favour of contact when carrying out the balancing exercise applying the paramount welfare principle. The Court has a duty to apply Section 1 of the Children Act 1989 (in Jersey Article 2 of the Children (Jersey) 2002,) and in considering that welfare principle, to take into account all the relevant circumstances, including the advice of medical experts as far as it is relevant and proportionate to the decision. Appeal In Re L
 63. In the Re X case the father applied for a parental responsibility order and contact. The Judge found a catalogue of violence including before and during the mother’s pregnancy. The mother he found had a genuine fear of him and direct contact would trigger anxiety. The Judge ordered indirect contact and a family assistance order. The Judge found the mother’s opposition to contact to be reasonable. The Judge’s decision to grant indirect contact was entirely in line with clear advice in the psychiatric report. Dame Elizabeth said the risks to a child were obvious and the father, in refusing to acknowledge them, was clearly unable to reduce those risks. In the case before me indirect contact is being recommended by the two children experts, and the father does not acknowledge the risks. The father was refused a parental responsibility order in the Re X Case.
 64. Advocate Colley referred to the case of Re M (Contact: Violent Parent) [1999] 2 FLR 321 referred to above in which Wall J is quoted above.
 65. Advocate Fogarty referred to the case of C-v-D
- [2000] JLR 334 in which a violent father was refused direct contact with his son. She said that the child had a right to know his father. In that case indirect access, as it then was called, was ordered. The Court considered the Re X case and considered the principles determining contact, namely that a Court should be slow to deprive a parent of contact which should be regarded as a basic right of the child. Reference was made to what the then President had said, namely:- “If there is a firm basis for finding violence has occurred, the psychiatric advice becomes very important.”
66. The Court did indicate that indirect contact was essential so that the child should grow up in the knowledge of who his father is, and the father should be kept informed. In this case the Child Care Officer was ordered to report to the Court every six months. Advocate Fogarty

submitted that in the case before me the mother had not been traumatized nor the father convicted of violence, but I do accept that the mother is suffering understandable stress from the behaviour of A and whether or not he has been convicted of violence he has admitted it and it is on the “upper end” of violence.

67. I was also referred to the case of G-v-A

[2005] JLR 93. Here contact was ordered by the then Deputy Bailiff as being in the best interest of the children, notwithstanding the reluctance of the children to see their mother. However the alleged abuse was found not to have occurred, but the Deputy Bailiff said:- “even if it had occurred it was “moderate” and the children’s reluctance over access was the result of alienation by their father.” There has been no suggestion that in this case the mother has alienated the children from their father and the abuse is certainly not “moderate.”

68. In the matter of A (Children) [2009] EWCA Civ 1141 referred to by Advocate Fogarty, she submitted that although there were findings of domestic violence, contact was immediately introduced. However this arose out of a case where “the mother had developed really quite florid allegations of domestic violence...” The order of June 2008 recorded significant concessions by the mother: firstly she was no longer relying on the asserted history of domestic violence as a bar to contact, and she was prepared to cooperate on contact. The Judge found that the apportionment of blame was 6 of one and half a dozen of the other. The mother changed her position and Mr Justice Coleridge said:- “the Recorder is to be applauded for taking a robust approach to yet another case involving a parent determined to exclude a perfectly adequate non-resident parent from having a proper relationship with the child.”

69. Clearly this is not the situation in this case before me. I was also referred to the case of Ciliz-v-The Netherlands (Application No. 29192/95) (11 July 2000) where Advocate Fogarty submitted “there was a positive obligation to ensure family life”. This was a case which involved a decision not to renew the father’s residence permit. The Court did find that there was insufficient reason to deny the applicant the right of access to his son. There was no reference to any domestic violence. In this case the Court considered that the decision making process about his residence permit and the question of access did not afford the requisite protection of his interests under Article 8.

70. In the case of Re M (Contact: Family Assistance: McKenzie Friend) [1999] 1 FLR 75 it was held by the Court of Appeal that the appeal against the indirect contact order was not plainly wrong. The mother was fearful of the father. The Judge had adopted the cautious approach of the welfare officer and the consultant child psychiatrist and did not make a direct contact order. In that case there was no suggestion that the father had behaved irresponsibly toward the children and the court welfare officer observed this was a father who has the capacity to recognise and meet his childrens’ needs. A parental responsibility order was made. My decision

71. This is an unusual case as I have not heard from the parties, but I have considered at length the expert reports and their evidence in court and the bundle before me, excluding the statement of the paternal grandmother and C. The father has admitted or broadly the domestic violence so no fact finding hearing took place. I will deal with the issue of contact first. Contact
72. I accept the submission made by Advocate Fogarty that contact is the right of the child and it does not automatically follow that because there have been breaches of the injunction the children should be deprived of contact. The two child experts, namely Dr Williams and Mrs Ferguson, both recommend indirect rather than supervised contact, whereas Mrs Emsley, the forensic psychologist, did not see supervised contact as being a problem as he posed no physical risk to the children. Both the work of Dr Williams and Mrs Ferguson is child focused and they have looked at the issues of child contact in the light of the welfare of the children and the welfare checklist. Mrs Emsley is an adult psychologist and her focus is different. I accept that all of the experts did give credible evidence, backed up by reports. In the case of domestic violence, the expert evidence is very important. Important considerations are assessing the relevance of past domestic violence, the ability of the offending party to recognise the wrong he has done and be aware of the need for change, and any steps taken to correct the deficiency in his character. Advocate Colley referred to the ADAPT report and the supplementary report of Mrs Emsley. Advocate Fogarty referred to the shortness of the ADAPT report. It is short but it is clear that he has “not moved on”. She submitted that Mrs Emsley had said her view of A had moderated and although there were times when breaches of the injunction were planned there were times when he was overwhelmed by his feelings. Advocate Fogarty submitted Mrs Emsley was a clear, fair and credible witness. However, Mrs Emsley did accept that he has not really made the changes required and she recommends he undergoes further work. She said that he had “not really moved forward or made any real positive changes”. He does not accept however he needs to do this, notwithstanding this was recommended by Mrs Emsley. It has to be remembered that he completed the ADAPT course on 12th August, 2010, but had been sent to prison on the 21st July, 2010, for breaching the injunction, this of course not being the first breach. Advocate Fogarty said there was no evidence the breaches involved physical violence; however this confirms what Mrs Emsley says of him that he is prepared to flout the law in order to meet his own desires and when referred to the breaches said:- “this recklessness is an indication he continues to place his own needs before those of his children, his ex-partner, and indeed, the requirement of the Law.” Mrs Emsley says that it is important for him to accept what he has done to the mother and his children but he has not yet done this, hence she recommends that he does additional work on domestic violence issues and to explore his interactional style and how it may impact on his children. She describes him as reckless but accepts that sometimes his behaviour is planned and calculating. This is a man who cannot abide by the Court orders, who according to Mrs Emsley and the other expert evidence is reckless, lacks insight into his behaviour and the effect of his behaviour on the mother and children. Mrs Emsley also agreed with Dr Williams that “it would be

inappropriate to initiate an assessment of A's parenting capacity given his level of denial". I accept the submission of Advocate Colley that this is an important factor in this case. This is a man who according to the mother does not accept authority. The ADAPT report states his distrust or lack of respect for authority. This is borne out by his breaches of the injunction. Advocate Fogarty referred to his new relationship which Mrs Emsley says if it endures is "likely to be a protective factor in the manner in which he interact with the mother and his children." She notes the relationship is progressing cautiously so that this is something to be considered for the future.

73. Advocate Fogarty submitted that Dr Williams accepted that there were no signs of any psychological problem for the mother, and each parent had to manage their own feelings. Advocate Fogarty had submitted that the mother continued to be stressed but there were not pathological problems. Advocate Colley said that Dr. Williams had said that because of what he had heard in Court regarding the breaches of the injunction, and the episode in June 2010 when A was hiding behind the bushes, his concern about the mother's stress had increased. Her stress was understandable caused by the father's failure to address his behaviour.
74. It was accepted that if supervised contact were ordered there would be practical difficulties, but this was not the reason for Dr Williams and Mrs Ferguson recommending indirect contact. Dr Williams said:- "the father has failed to address the domestic violence -for some reason he has not got this and does not accept he poses a risk." He acknowledged Child 1 has positive memories of the father. Dr. Williams did accept that fortunately there was no evidence of psychological damage or physical damage caused by the father but said that the unplanned contact by the father has been "stressful and chaotic". Advocate Fogarty submitted that because the father had never been interviewed in the presence of the children, none of the experts had had a chance to assess his parenting style. This is correct but Dr Williams wrote that given A's minimisation of the impact of domestic violence on his family it would be inappropriate to initiate an assessment for understanding his parenting capacity given his level of denial, a matter concurred with by Mrs Emsley. The father had failed to address this even now.
75. With regard to his motivation in pursuing contact, A has not pursued indirect contact with his children despite this being recommended by Dr Williams. I did not have the opportunity to hear from him on this point as to why he did not do so. Mrs Ferguson said that it could be seen that he did not think this was important to do. At the case review hearing when he wanted information about the children, he was concerned with his rights, not what his children needed. He did not take the advice of Dr Williams the child expert about the importance of indirect contact and this was not a child-focused approach by him. This is not the approach of a man who will avail himself of every opportunity to pursue contact. Advocate Fogarty made no submissions as to why he had not taken up indirect contact, merely submitting that had this happened there was no guarantee the mother would transmit cards and letters. I do accept that there is always such a risk but given the mother was offering that the father did have contact by Skype, I consider she has shown that despite

his behaviour, she still wants him to have a relationship with the children. Advocate Fogarty referred to Mrs Ferguson's comment about this. Her opinion was that B was willing to agree to this because in an ideal world "everyone would love each other" and this was an attempt to placate A. She said the reality was somewhere in the middle. I accept what Mrs Ferguson says, given she interviewed both parents. I agree with Mrs Ferguson that contact by Skype would not be appropriate for the reason she outlined when giving evidence.

76. With regard to supervised contact, I note that if ordered it could not take place. I accept the comments made by Mrs Ferguson and Dr Williams about supervised contact. The purpose is for it to be part of an ongoing process, not to continue indefinitely but the father does not agree he needs to undergo the work recommended by Mrs. Emsley before considering his unsupervised contact, and therefore matters could not move on. Dr Williams indicated he felt intimidated by A. Mrs Emsley recommended work be undertaken with a psychologist "to explore the impact of his interactional style upon his children if they were to witness it". It is worrying if a professional witness such as Dr Williams feels intimidated by A and this is acknowledged by Mrs Emsley.
77. A has not demonstrated insight into his behaviour and the effect of it, has not made any real positive changes, he is reckless, refuses to accept further work is needed, and he has not taken up indirect contact and has continued to put his own needs above those of the children. He has breached Court orders and has not shown a track record of proper behaviour. He needs to show a capacity for change, before further consideration of supervised contact. Having considered all the matter referred to above and in light of the welfare checklist.
78. I order that the father has indirect contact, namely presents and cards at significant times of the year and that cards and/or short letters are sent for the children regularly. These are to be sent to the mother to be passed to the children if she feels they are appropriate, and should she have concerns, she should raise these with a member of the Jersey Court Advisory service. Parental responsibility
79. With regard to parental responsibility, Advocate Fogarty submitted that if the parents had been married he would automatically have received parental responsibility and there is no reason why he should not receive it. She said no evidence was forthcoming to the effect that there was any factor militating against parental responsibility. Mrs Ferguson referred to the threefold test, namely:- (i) the degree of commitment which the father has shown towards the child; (ii) the degree of attachment which exists between father and child; (iii) the reasons for the father applying for the order.
80. This was the test referred to in *In Re L (A Child) Contact: (Domestic Violence)*, *Re v*, *Re M*, *Re H*
- [2001] FAM 260 and the father in the *Re L* case was not granted parental responsibility. In that case the court said of the father seeking a parental responsibility order:- "... seeks an order, indeed orders, to control, and because they are his right rather than because he is

committed to T and wants to do his best for her and give her the best. I am sure he regards the mother's defiance of him, and refusal to bow to his wishes, humiliating and frustrating. I do not believe it would be right or in T's interests for him to have parental responsibility at this stage. I stress those last three words. I would be prepared to look at the matter afresh, in the light of his commitment to indirect contact and, indeed his response to this judgment and acceptance perhaps that he is a violent man who has put the mother in fear. I do not believe that he has shown genuine concern. For him I believe it is a question of his rights and a right to control, rather than commitment to or concern for T."

81. With regard to A's commitment, he has brought these proceedings and he has financially supported them but he has not chosen to take up indirect contact. Mrs. Emsley says that had he been committed he would have taken on board what Dr. Williams addressed. It is accepted he loves his children. With regard to the level of attachment, it is accepted that there is an attachment between Child 1 and the father but it is not clear that this is the case with Child 2. He sent Child 1 a present but only sent him a card. With regard to his reasons for father applying for the order, I have not heard from him. However, I accept that one of the difficulties with parental responsibility is the level of control it can give. A is a controlling person. Mrs Emsley said he did identify he was controlling in the relationship with the mother and did not pay attention to her needs and his behaviour can be planned and calculating. Mrs Ferguson in her report said she relied on the wisdom of the Court in respect of parental responsibility but on being questioned by Advocate Colley did accept that in cases of severe domestic violence, this can affect how parental responsibility is used by the perpetrator. She considered his propensity to break injunctions and Mrs Emsley's assessment that he puts his needs before those of his children as giving credence to the mother's suggestion that part of the reason for his application is to maintain a degree of control over the mother's life, given in addition he did not take up indirect contact. He can therefore use it to control the day to day life of the mother. He has not explained why he wants parental responsibility and more particularly that he would not use it in a destructive way. Advocate Fogarty submitted that because the parties are both graduates and Catholics there will be a broad level of agreement. She considers it discriminatory not to award him parental responsibility. However, in view of the father's behaviour I consider that he does wish the parental responsibility because he believes it "his right" and he can exercise some control on the mother and children. I would be prepared to look at the matter afresh, in the light of his commitment to indirect contact and, indeed his response to this judgment and acceptance that he is a violent man who has put the mother in fear.

82. In the bundle were cases on Family Assistance Orders. Advocate Fogarty did not refer to these in her summing up. Advocate Colley specifically asked if she were going to ask for a Family Assistance Order given Advocate Fogarty had asked for the cases to be put in the bundle. She was asked to say whether, if a supervised contact order was not made, the father was looking at a Family Assistance Order, but Advocate Fogarty said she was not seeking a Family Assistance Order until she learnt what the order was going to be.
83. Advocate Colley did consider the issue. The essence of a Family Assistance Order is that it requires the consent of each party, excluding the children. She pointed out that the English law has changed. In Jersey the use must be in exceptional cases and according to the S-v-P (Contact application: Family Assistance Order)
- [1997] 2 FLR 277 it is not for a judge to order a local authority (Children's Service) to undertake escort duties under the guise of a family assistance order. In Re E (Family Assistance Order)
- [1999] 2 FLR 512 it was held the Court did not have the power to make orders against local authorities in private law proceedings requiring the authority to supervise contact. However the Court did have the jurisdiction in private proceedings to make a family assistance order. This does have to be by consent and this has not been canvassed in view of Advocate Fogarty's lack of submission on the point. In the bundle was Re M (Contact: Family Assistance: McKenzie Friend) [1999] 1FLR 75, referred to above; here a family assistance order was made. Authorities Children (Jersey) Law 2002. The X Children [2009] JCA 083. R-v-Kelly [2000] 1 Q B 198. Hosking-v-Michaelides [2006] BPIR 1192. In Re L (A Child) Contact: (Domestic Violence), Re v, Re M (Contact: Violent Parent) [1999] 2 FLR 321. Re H [2001] FAM 260. Children Act 1989. C-v-D [2000] JLR 334. G-v-A [2005] JLR 93. A (Children) [2009] EWCA Civ 1141. Ciliz-v-The Netherlands (Application No. 29192/95) (11 July 2000). Re M (Contact: Family Assistance: McKenzie Friend) [1999] 1 FLR 75. S-v-P (Contact application: Family Assistance Order) [1997] 2 FLR 277. Re E (Family Assistance Order) [1999] 2 FLR 512.

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Prepared on 22 October 2026 · Esheria