

JERSEY / JUDGMENT

G v A [2005] JRC 029 (14 March 2005)

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judgment

deputy bailiff: 1. This is an application for access by the respondent (the "mother") to the two children of the marriage. It is alleged that there has been alienation by the father in respect of the attitude of the children towards their mother. The case raises some issues of general interest as to how best to proceed in such cases. We announced our decision at the conclusion of the hearing and now give our reasons. The matters of general interest are summarised at paragraphs 65-69 and 75-85. The background 2. The mother was born and brought up in the Philippines. The father met her there whilst on holiday. They married in the Philippines in November 1993 and returned to live in Jersey at the matrimonial home which was already owned by the father. There are two sons, X, born 4th April 1996 (aged 8) and Y, born 17th May 1997 (aged 7). The mother worked briefly before becoming pregnant but thereafter she stayed at home to look after the children until September 2003 when she began part-time work. 3. There had been difficulties in the marriage for a while but things appear to have deteriorated more rapidly in 2003. According to the mother, there were occasions when the father was violent towards her. There was certainly one occasion in 2000 when the father accepted a caution at a Parish Hall Enquiry in respect of his behaviour towards the mother although he said in evidence that he felt that he had no alternative but to accept the caution in order to avoid the publicity of going to Court. The mother therefore blames the father for the break up of the marriage. The father, on the other hand, denies any violence and alleges that the mother gradually became less interested in looking after the family and more interested in spending time out with friends. He further alleges that she began an affair with the co-respondent before she left the matrimonial home. 4. Matters came to a head on 18th February 2004. There was a heated row between the parties as a result of which a neighbour called the police. They took the mother to the Women's Refuge. She remained there until 5th April at which time she moved to live with the co-respondent and that remains the position. 5. The father subsequently instituted divorce proceedings and a decree nisi was granted on 14th July 2004 on the grounds of the mother's adultery with the co-respondent. Furthermore on 23rd July 2004 the father issued an Order of Justice containing a non-molestation order, an order restraining the mother from entering the matrimonial home or the father's place of work and a further order restraining her from telephoning the father other than at certain specified times for the purpose of speaking to the children. History of access 6. The children remained with the father in the matrimonial home. There have been difficulties over access. The position has not been helped by the fact that the mother does not drive and transport is therefore a problem. 7.

Access first took place by direct arrangement between the parties on 13th March 2004. The mother was originally going to pick the children up from the matrimonial home at 10.00 a.m. and she telephoned to say that she had no transport. The father therefore dropped the children into town and the mother had access until mid-afternoon. The second occasion took place on 10th April. The mother turned up at the matrimonial home seeking access. She took the children to St Andrews playground for a while. 8. Thereafter difficulties arose. As early as 11th March the mother's advocate had written saying that the father had refused to pick up the telephone when the mother called to try and arrange access. This continued to be a bone of contention in the months that followed. In effect the mother alleged that the father discouraged access. Either the telephone was not answered or, if it was, the father made comments which exerted pressure on the children not to show warmth towards the mother on the telephone. As against that the father alleged that the mother was harassing him by telephone and on many occasions did not wish to speak to the children but merely wished to speak to him. 9. Thereafter access at certain specified times was in principle agreed by correspondence between the parties' advocates but the father made it clear that he was not willing to grant any access unless the mother disclosed her address. She, on the other hand, stated that she was not willing to do so because of her fear of the father. There was therefore deadlock. 10. Eventually, on 15th July, the mother's advocate wrote to say that the mother would accept seeing the children at Milli's Child Contact Centre because that was all she had been offered unless she gave her address. The letter emphasised that the mother was not happy with these access proposals but was forced to take what access was offered pending the issuing of proceedings. However no such access appears to have taken place. The father's advocates replied to the suggestion only on 28th July and the father was then away on holiday for the first three Sundays of August. Accordingly the position remained unresolved at the time the matter came before the Registrar for the First Appointment on 27th August 2004. 11. Accordingly, by that time, the mother had only had two arranged access visits since she had left. There had been some other occasions when she had tried to see the children but these had not been a success. In May she attended Le Quennevais swimming pool when she knew that the children would be swimming there. According to her, the father clearly discouraged any enthusiasm from the children and appeared to frogmarch the children past her. According to the father she was abusive and caused a scene. On 24th May the mother attended at the church where she knew the father and children would be. Again she says that the father appeared to discourage the children from being warm towards her whereas he says that she harassed him and the children. Finally, on 4th July the mother attended at the matrimonial home and there was a scene as a result of which the police were called. According to the mother she arrived because she was desperate to see the children. She rang the doorbell for a considerable period but there was no reply. After some time the father's mother (to whom we shall refer as Mrs G) and sister (Mrs F) arrived, at which point the father opened the door with the children. He had therefore been in the house all the time but had refused to answer the door to the mother. The father, on the other hand, alleges that she threatened to force the door, was verbally abusive and kicked the door. 12. On 27th August the Greffier Substitute ordered interim access on Sundays from 10.00 a.m. to 5.00 p.m. with the father delivering the children to Milli's Contact Centre from where they would be collected and then returned by the mother. There was also to be telephone access on Monday,

Thursday and Saturday between 7.30 and 8.00 p.m. The Final hearing for custody, care and control and access was fixed for 6 th /7 th December and a report from the Children's Service was ordered. 13. On 5 th September the first access took place. In general it appears to have gone well. However, because of difficulties in connection with his car, which would not work, the co-respondent used his work van to transport the mother and the children. This provoked a letter dated 7 th September from the father's lawyers protesting at the fact that the co-respondent had been present during part of the access and at the fact that they had travelled in the van; in this respect there were insufficient seat belts. The letter said that the father would be taking the matter up directly with the co-respondent's employers. 14. Milli's was closed the following week and therefore no access took place. The next visit was on 19 th September. On that occasion the mother collected the children from Milli's and travelled by bus into town. She stated that the bus was very full and she and the children had to stand at the front. She did not regard this as very satisfactory. They went to the cinema and for a meal and the co-respondent then drove them to Coronation Park. According to the mother the visit generally went well and the children were happy to see her. However she decided that, in view of her experience on the bus that morning, the co-respondent should deliver them back to Milli's. Because his car was still not available, the van was again used. It was clear that the mother was worried about this and knew that the father would disapprove. Very unwisely, she told the children not to mention to their father how they had driven back. She says that she only asked the children not to volunteer this information; she did not tell them to lie. However it is hardly surprising if the children were unable to understand this fine distinction and regarded themselves as having been asked to lie to their father about the transport. It clearly placed them in a difficult position. 15. In his affidavit, the father said that when he picked the children up from Milli's he noticed the co-respondent was there in his van. He was therefore concerned that the children had again been transported in the van. On asking the children how they had got from town to Coronation Park and then Milli's, the children had told him that the co-respondent was waiting outside Milli's to take the mother home and that he had not transported them. The father went on to say in his affidavit that, later that evening, the children's cousin had said to the children in front of the father that they should tell the truth about what had happened that afternoon. He said that the children then admitted that they had lied to him about the transport arrangements as their mother had made them promise not to tell him what had happened. The father asked them why they had lied to him and the children were both shaking and in tears. They said that they were scared of their mother and X then reminded their father of a time when the mother had beaten him with a strip of plywood. 16. In evidence he gave a somewhat different version. He denied having asked them about the transport. He said that, on the contrary, the children had volunteered that they had travelled by bus and that he had thought nothing of this despite the fact that he had seen the co-respondent at Milli's in his van. It was only at a family supper at Mrs G's house that the cousin had come to him and said that the boys were very upset because they had been lying to him. The boys then came and told him what had happened. They broke down and said that they had been forced to lie; they admitted that they gone in the co-respondent's van. The father said that he had told them that he could not stand liars. The children were clearly very upset. He thought that they were very worried that they would have to face the mother the following week. Whichever of these versions is correct, it

is clear that the father made a big issue of the fact that the children had lied to him. We have no doubt that the children felt caught in the crossfire between the mother, who had wrongly asked them to do this, and the father, who was clearly furious about what had occurred. 17. The next day, the Monday, the mother said that she telephoned the house but was told by the father that the children did not wish to speak to her. She tried again the following Thursday at which time X said directly to her that he did not wish to speak to her again and Y simply said 'goodnight' before the phone was put down. 18. The next access visit was due to take place on Sunday 26 th September. Once at Milli's the children said that they did not wish to go with their mother. She was naturally upset but did not force the issue and no access took place. 19. On Sunday 3 rd October the children again went to Milli's in order to be collected by their mother. A short while after meeting her X said that they had 'found the sticks you used to hit us with'. The mother replied along the lines that they only remembered the bad times when she had had to discipline them, not the good times. The children said that they did not wish to go with their mother. The staff at Milli's heard this conversation and advised that access should be brought to a close. 20. Subsequently the Children's Office were informed of what had been said, as were the police. A police investigation began. Access was suspended and Milli's withdrew their facilities in the light of the allegation of abuse. On 14 th October Mr Taylor, the Children's Officer, recommended supervised access during the police investigation. The matter came before the Greffier Substitute on 20 th October who referred it to the Inferior Number. I held a Directions hearing on 26 th October at which time I adjourned the main hearing on access and care and control until 9 th /10 th February with a request for reports from Dr Glaun and the Children's Service. However I ordered that a hearing on interim access should take place on 15 th /16 th November following the production of an interim report on this topic from the Children's Service. On 15 th November a consent order was made for supervised access on Sunday mornings at Milli's pending the conclusion of the police enquiry. 21. Such access has not been successful. On the first occasion, 28 th November, the mother's lawyers had failed to communicate the Court's order to Milli's and both parties were turned away. On 5 th December the mother failed to turn up. She telephoned through to Milli's to inform them that she had a sore throat but this was too late to stop the husband arriving. In evidence the mother admitted that, if her sore throat had been the only problem, she could have attended but she was also without transport. 22. On 12 th , 19 th and 26 th December 2004 and 2 nd and 9 th January 2005, the mother attended at Milli's as did the father and the children but on each occasion the children said that they did not wish to go with their mother. Accordingly no access took place. 23. On 13 th January the children attended at Milli's in order that Dr Glaun could see the children in the company of the mother for the purposes of preparing her report. We shall refer to this in more detail later but suffice it to say that, according to Dr Glaun, the children responded positively and warmly to their mother. 24. On 16 th January there was no access. The mother did not turn up because she had no transport. Nor did she telephone to advise of the position because, she says, she had no credit in her telephone. Coming so soon after the successful visit with Dr Glaun, we have to say that this was extremely unfortunate conduct on the part of the mother. 25. On 23 rd January no access took place because the mother did not turn up. However there is a conflict of evidence as to why this was. The mother says that the father left a message on his answerphone to the effect that one of the boys

was ill and therefore there could be no access the following Sunday. That was why she did not arrive. He, on the other hand says that there was no such message, that he and the children turned up expecting there to be an attempt at access but the mother did not arrive. 26. At about this time I was informed that there had been problems in connection with the interim access which the Court had ordered and I therefore convened a hearing for 26 th January. The Court was informed that the police investigation had been completed and that no criminal proceedings would be brought. The Court took the opportunity of emphasising to the father his duty to encourage access and to the mother, her duty to ensure that she did not let the children down. 27. On 30 th January the children came to Milli's and on this occasion they entered the centre and stayed with their mother for about 10 minutes before requesting to leave. On 7 th February they again saw her inside Milli's and stayed for about 30 minutes before asking to leave. There were two other occasions upon which the children saw their mother. This was in the presence of Mr Taylor, the Children's Officer and was arranged for him for the purposes of his report. On 1 st February the children saw their mother for about 10 minutes but said that they did not wish to have access to her. The visit was not a success. On 8 th February a further meeting took place but this was also unsuccessful. 28. In summary, since the separation in February 2004, the only meaningful access by the mother to the children has taken place on two occasions in March/April, on two occasions in September and on one occasion in January in the presence of Dr Glaun. Otherwise there has either been no access or the children have expressed a wish not to see their mother, which wish has been acceded to. The evidence 29. The case lasted some 2½ days. The evidence covered a number of matters but in view of the comparatively limited issues which we have to resolve, we will refer only to certain aspects. 30. We begin with the independent evidence. Mrs Denise Carroll is the co-ordinator of the Milli's Child Contact Centre. She gave evidence concerning the access visits arranged through Milli's but we do not think that we need to go beyond what we have set out in the history of access referred to above. 31. The Court received an agreed letter dated 7 th October from the headmistress of the children's school. She stated that, not surprisingly, the children were very upset when their mother left the matrimonial home and, for a while, there was a noticeable deterioration in their general care. However this has now been resolved through the input of their grandmother Mrs G. The letter also reports a conversation which one of the teachers had with Y on 6 th October. As this has been referred to quite extensively by each side, we think it necessary to set this out verbatim:- Teacher "Good morning Y, and how are you today?" Y "My daddy said that a man is coming to see me and I've got to say that I want to live with my dad." Teacher "Why's that then?" Y "Because my daddy said." The teacher states that Y went on to say: "We looked around for all the sticks my mummy used to hit me with and we found a broken one." Having referred to this conversation the headmistress went on to confirm that, whilst the mother had lived in the family home, there were no concerns or evidence that she physically punished the boys in any way. The boys were happy, well-mannered and well cared for and gave no cause for concern. 32. Mr David Taylor is a Child Care Officer in the employment of the Children's Service with responsibility for this case. Having been alerted to the allegation, he was advised by the police and the family protection specialist at the Children's Service to establish if there was a need to investigate further. As a result he met the boys at their school on Friday 8 th October. He spoke first to X who repeated that his mother had hit them with

sticks in the past and that he did not want to see his mother. He wanted to live with his father. Mr Taylor then saw Y. Again much has been made of this conversation. Mr Taylor took notes at the time as follows:- DAT "My name's David Taylor." Y "I know. Daddy told me." DAT "What did Daddy say?" Y "What she used to smack us with and who we're going to live with." DAT "So what do you want to tell me?" Y "We found all the sticks that Mum used & one she broke on my arm. She hid one on top of the wine place". Y then went into some detail about other things being found, lots of keys but they didn't know where they fitted. DAT "Anything else?" Y "She had favourites. I was her favourite." DAT "Anything else?" Y "One question Daddy asked

- why no birthday present on May 17 th & no communion present. Auntie Caroline forgot present but gave present after all." DAT "Anything else?" Y "All the year, when we've been out with her, she tells us to lie to Daddy. We're scared of her." DAT "Anything else?" Y "Daddy is the truthful one, Mummy lies." DAT "Anything else?" Y "Every time we go, she only gives us sweets. Daddy not happy with this. We had a delicious lunch but nothing healthy." DAT "Delicious lunch?" Y "Popcorn, ice-cream & a bun." DAT "Anything else?" Y "No." DAT "What happens on Sunday?" Y "Go to Millie's. If we come back early we may go to church with Granny." DAT "Will you see Mummy?" Y "Maybe. She bought clothing & food." DAT "Do you want to see Mummy?" Y "Maybe, not quite sure." Y went on to tell me about the sticks. There was one green one, a broken ruler and a brown wooden bamboo one. He then said "She used to smack us with them very hard and threaten us with a belt so Daddy hid his belts." He said, "Daddy has looked at her accounts." DAT "Any more questions?" Y "Have you seen her in the co-op?" DAT "No." Y "She's very selfish. If she has new children, she can't have us." 33. Mr Taylor was very measured in his conclusions but, in evidence, he stated that, in his opinion, the strong likelihood was that these children were being influenced by the father and his family in their attitude towards their mother. He accepted it was just possible that it was all coming from the children themselves but he thought it unlikely. As he put it, the adult members of the family were influencing the children; the children were being primed that they should reject their mother. He could not say if this was deliberate or whether the children were simply picking up the general atmosphere and comments in the extended family. He gave a number of grounds which led him to this conclusion but we would refer only to the following:- (i) Y's conversation with him on 8 th October was, as he put it, 'extraordinary'. It was very unusual for a child to come out with such things to a stranger. What he had said suggested that he had been told what to say. Furthermore a number of the comments were the sort an adult would make, not a child e.g. comparing parents by saying "Daddy is the truthful one, Mummy lies". (ii) The impression that both he and his colleague Mrs Le Couteur formed at the meeting on 1 st February between the mother and the children was that the children were repeating almost parrot fashion why they did not want to see their mother. Y constantly looked at his brother before answering. (iii) His department was involved with children who had been abused by their parents. Even in such cases it was unusual to find children who did not wish to see their abuser in a supervised context. (iv) The father said to Mr Taylor that he (the father) would not be acting in the interests of his children if he were to insist on their seeing their mother. It should be their

choice. (v) He did not find convincing the reasons which the father gave as to why the children did not wish to see their mother. Those reasons were:- (a) They were scared of her - she had hurt them in the past. (b) They were scared of her taking them away. (c) She lied about transport - that is she had got her boyfriend to transport her and the boys and told the boys not to tell their father. (vi) As to (a), Mr Taylor made the point already referred to, namely that even abused children usually wished to see their parent in a supervised context. As to (b) it was the duty of the father to reassure them that the mother was not going to take them away. As to (c) the concern regarding lies about transport seemed to him to be more of an adult issue which would quickly be forgotten by children. (vii) There was the coincidence that a very similar problem had arisen in connection with the children of Mr and Mrs F. Mrs F was the sister of the father and there was close contact. The Children's Office had been asked to prepare a report in connection with that case. The similarities were:- (a) Both sets of children were alleging that they had been hit by the 'access' parent with sticks (or a ruler in the case of Mr F). (b) Both of sets of children produced remarkably adult accounts of these alleged events. (c) Both sets of children were unusually adamant that they did not wish to see the parents seeking access. (viii) It was clear from his meeting with the father and his extended family (Mrs G and Mrs F) that they all held very negative feelings towards the mother. 34. His professional opinion was that access to the mother would be in the best interests of these children. Although he suggested supervised access in his report, he said in evidence that he had in mind a form of 'facilitation' to begin with, given the difficulties which there had been, with a move shortly thereafter to unsupervised access. The important thing was that there should be active encouragement of access by the father and his family. At our request he interviewed the co-respondent and confirmed that there was no reason why he should not come into contact with the children on access visits. 35. Dr Glaun is a clinical psychologist who has specialised in the diagnosis and treatment of childhood psychological disorder for the past 30 years. She is currently employed as a Consultant Clinical Child Psychologist to the Child & Adolescent Mental Health Service ("CAMHS") of the States of Jersey. Before this she held a similar position in Melbourne, Australia for 20 years. She also held the position of Consultant Clinical Psychologist to the Melbourne Children's Court for many years. She prepared a detailed report for the Court in connection with this case. This involved two interviews with each parent, a play and observation session of the children in the company of each parent, a meeting with the Child Care Officer and perusal of the various documentation including school reports, reports from Milli's etc. She also gave evidence before us. 36. We would wish to pay tribute to her report. It is a model of its kind spelling out clearly the material upon which she relied, her conclusions and the reasons for those conclusions. Of critical importance was the play and observation session which she observed with the mother at Milli's on 13 th January. It is to be recalled that this took place at a time when there had been no access since September and the children had been continually refusing to get out of the father's car on arrival at Milli's for access purposes. However Dr Glaun seems to have had little difficulty in overcoming any resistance. Part of her report reads:- "I told the children that their mother was waiting for them upstairs and that I was taking them to her in the playroom. Y immediately readied

himself to come, but X at first looked towards his father, and then said that he did not want to see his mother. He was very quickly and easily persuaded by me to come and both boys hurried upstairs to the playroom. Once the playroom door was opened, Y spontaneously rushed into the arms of his mother." 37. It is clear from the report and Dr Glaun's evidence that the play session was a considerable success. We would quote simply from Dr Glaun's summary of the session on page 6 of her report:- "The conclusions from this observation/ play session are that the children relate warmly to their mother, show and receive affection from her, share their experiences with her, seek her approval and attention, and generally appear to feel safe and comfortable in her company. Their mother appeared to relate normally and naturally to them, although she was emotionally overwhelmed at the start, which is to be expected, given the very little contact she has had with them in recent months. The children's reaction to seeing their mother and spending time with her was spontaneous and I formed the impression that there was genuine joy in being reunited with their mother. Although X held back momentarily initially, once he embraced his mother, he could not disguise his pleasure and sought her attention and approval throughout the session." 38. We would mention the following particular points from Dr Glaun's evidence and report:- (i) It was put to her that, as contended by the father, the children were frightened of their mother because she had hit them with sticks and that was why they did not want to have access to her. Dr Glaun was clear that children cannot turn fear on and off. If they fear an adult they will not play happily with that adult. In her opinion the children would not have behaved as they did with their mother at the play session if they had been scared of her and genuinely did not want to see her. (ii) She referred to what she called unusual behaviour in connection with the whiteboard. During the play session with the mother, the boys were writing on the whiteboard. Y wrote "I love Mum" and called his mother over to see it. Sometime later X looked at the writing and added the words 'and Dad too'. The following week, at the play session with the father, out of the blue Y went to the whiteboard and wrote " I love Dad even more than Mum " [his emphasis]. In Dr Glaun's opinion it is unusual for a child to compare love for parents in this way. Towards the end of the session X went up to the whiteboard and wrote " Mummy used to hit us with 5 sticks and pinch us by the ear and pull ". Again Dr Glaun considered it extremely unusual for a child to bring this sort of thing up, completely out of context and to a stranger. On face value it appeared that the child had been prompted to behave in this manner. (iii) During the play session with the father, Dr Glaun mentioned how the children had appeared to have enjoyed their time with their mother the previous week and asked them if they had seen her since. The father answered for them and stated that she had not turned up to Milli's for access over the weekend. He then began to talk inappropriately about the impending access case, saying in front of the boys that their mother was going to demand their appearance as witnesses in Court. Dr Glaun had to ask him to stop talking about these matters. He did stop but added that she was 'misinformed' and that the play session with the mother had upset them. In Dr Glaun's opinion this indicated that the father was prone to talk negatively about the mother in the presence of the children. (iv) She considered it totally inappropriate for the husband to leave it to 7 and 8 year old children to pick up the telephone when the mother called. This

placed them in an invidious position. He ought to pick up the phone, speak civilly to the mother and then encourage the children to speak to her. (v) She considered it unusual for boys of this age to refuse to see their mother. 39. For the reasons set out in her report and in her evidence Dr Glaun was of the clear opinion that the father was repeatedly preventing the mother from having reasonable and regular contact with the children. Her opinion is conveniently encapsulated in the following paragraph on page 8 of her report:- "[The father] has not actively encouraged the boys to maintain contact with their mother, which is something the custodial parent is required to do in such a situation. He admits to having not picked up the telephone at her designated times of telephone access and, although he takes the children to Milli's for access, he does not actively encourage them to go to their mother, nor does he give them a clear message that it is alright to go. This behaviour is termed 'passive aggression' in psychological terms, because he goes through the motions of complying with the Court Order, but gives out signals to his children that, in reality, discourage compliance. The children's behaviour suggests that they have been put in a position in which they are made to feel that they are disloyal to their father if they should show love for their mother. When temporarily free of these constraints in the CAMHS playroom with their mother, they showed joy at her presence and demonstrated love and affection for her. When in the playroom with their father, they found it necessary to denounce their mother through writings on the whiteboard. This can only be interpreted as evidence of the children being influenced and placed under some form of duress to act in this manner, which is wholly unnatural." 40. Dr Glaun was of the opinion that access to the mother would be in the best interests of these children and that access should be reinstated with minimal delay and take place on a regular basis. It should take place in the privacy and comfort of the mother's home subject to the police investigation exonerating her and the condition of supervised access being lifted. 41. The mother gave detailed evidence. We only need to summarise certain aspects here. She asserted that, during the marriage, she was the primary carer for the children. The father was employed full time. However he was a good father and, with her full agreement, he helped the children with their homework and tucked them up in bed. She accepted that she was a strict disciplinarian. This was normal in the Philippines. She accepted that upon occasions she smacked the children on their bottoms or their hands. However she had never used sticks or anything except her hand. She accepted that she sometimes used something which she called 'reverse psychology'. She gave as an example where one brother was fighting with the other. She might therefore threaten the latter that he would be sent away to the Philippines if he did not behave whereupon the reaction of the first brother would be to implore her not to do it and the fight would be over. She also accepted that, in order to show one of the children the dangers of a hot stove, she had held his hand over the stove so that he could feel the heat and therefore be aware of the danger of getting too near in future. 42. As to her reaction when the allegation of the hitting with sticks first surfaced at Milli's on 3rd October 2004, she said that she did not specifically deny the allegation because that was not the Philippine way. There one spoke in general terms and it was not necessary to be specific in order that one be understood. Furthermore she wanted to remind the children of the good times. She certainly did not intend implicitly

to admit the truth of the allegation that she had hit them with sticks merely because she had not specifically denied it. 43. She said that there was very considerable involvement with the G family during the marriage. There were regular family meals. Mrs G in particular was a very powerful and influential figure. 44. She said that the father had been guilty of violence towards her and eventually she was forced to leave the matrimonial home in February 2004 in the circumstances described earlier. The police advised her to do so having established that the house was in the father's name. She knew the co-respondent by then and he was a good friend but no sexual intercourse took place until after she had left the matrimonial home. Apart from the two access visits in March and April, she had had great difficulty in securing access. She had wished to sort it out directly with the father without the intervention of lawyers. She agreed that she made numerous telephone calls to him, mostly on this topic but also to discuss possible reconciliation as she was missing her children. She admitted that she had proposed a reunion of convenience in that she wished to continue to see the co-respondent. She and the father would simply be together for the sake of the children. She asserted that the father was very difficult over access (apart from the two occasions mentioned). She had not wished to disclose her address to the father because she was fearful of his violence whereas he had been unwilling for her to have access without giving her address so that he might know where the children were. She was driven to attend at Quennevais swimming pool and at the church which the family attended in a desperate attempt to see the children. However, these occasions have not been successful and the father had prevented any meaningful interchange with the children. Eventually the access through Milli's was ordered and she felt that the first two access visits went well. As mentioned earlier, she admitted that, during the second access visit, she asked the children not to tell their father that they had travelled in the van. She was worried that, if this came out, the father would be difficult over access. 45. In this respect, her fears had been confirmed. No successful access had taken place since then and she was convinced that the children had been turned against her by the father. When she telephoned as provided for in the access order, the telephone was hardly ever answered. 46. As to more recent attempts at access, she accepted that she had failed to turn up on three occasions as described earlier; but on all the other occasions she had been there even though the children had said that they did not wish to go with her. She also admitted in cross-examination that, on the day after the Court had, on 26 th January, issued a warning that she must not let the children down when arrangements had been made, she failed to telephone them during the allotted half hour because she had fallen asleep. 47. In short she said that the allegations of hitting were unfounded, the children were not genuinely frightened of her and that the only reason they were saying they did not wish to see her was because of the pressure being brought to bear on them by the father and his extended family. In this connection she also alluded to the case of the F children. She had seen the G family close ranks to brainwash the F children so as to ensure that they did not wish to see their father. Indeed she had been told by the father to say bad things about Mr F when the Children's Service came to interview her in connection with the F children. 48. Mr F gave evidence on behalf of the mother. We can deal with his evidence very briefly. In summary, he said that Mrs G was extremely influential and

powerful in the family. After he had left the matrimonial home an allegation was made that he had hit the children with a ruler. He said that this was a false allegation. After very few access visits, Mrs G and Mrs F had so poisoned the children's minds that they said that they did not wish to see him. He had had no access since. He was quite clear that it was part of the plan by the G family to ensure that he did not have access to his children. 49. Finally, on behalf of the wife we heard from the co-respondent who confirmed that he was supportive of the mother's wish to have access and would be able to assist with transport, given that the mother did not drive. 50. The father has sworn a number of affidavits and also gave evidence. He asserted that the mother was not a very good mother. She was lazy. Although she was the primary carer when the children were very young, he did much more as they grew older and as the mother started part time work. She was often reluctant to attend school events and had to be prevailed upon to do so. He denied having been violent towards her and said that the marriage had broken down because of her affair with the co-respondent. 51. He said that the mother was a very strict disciplinarian. He was aware during the marriage that she smacked the children quite a lot, pulled their ears, had threatened to hit them with a belt (as a result of which he gave his only belt to his mother) and had hit one of the children on one occasion with a green stick. He had seen bruises on the children and had assumed that this was from smacking. In his opinion the smacking had made the children timid. However he did not do anything about it as he did not wish to break up the family merely because of over-chastisement. 52. When the mother first left he was not worried that she would be violent towards the children during any access visits as she would not face the pressure of having to look after the children for long periods. He therefore agreed to access in March/April 2004 and again pursuant to the Order of 27 th August. There was a scene after the second access visit in September when he discovered that, as he saw it, the children had been asked to lie by their mother and had done so. However he did not put any pressure on the children to refuse to see their mother on the next following occasion. 53. The following week he was cleaning out the kitchen and came across some wood on top of a cupboard. He put this on the floor for disposal. The children pointed out that one of these pieces of wood was the stick which the mother had hit them with. It was a green stick some 3' long. The children pointed out a further two sticks amongst the wood which the mother had hit them with and then went off to fetch two other sticks from elsewhere in the house which they said she had also hit them with. Although he had been aware of the suggestion that she had hit them with a green stick, he had always understood previously that this was a very small thin stick, not one 3' long. 54. In his opinion there were two reasons why the children did not wish to have access to their mother at Milli's. They were scared of her because she had hit them and had never apologised. It might therefore happen again. Secondly, she had lied to them and forced them to lie about the transport. When it was put to him that they were not very likely to be frightened of violence during supervised access, he said that they were concerned that the person supervising might leave them alone with their mother. 55. He said that, after the play session with the mother in the presence of Dr Glaun on 13 th January 2005, the children were very subdued when they returned to the car where he and his mother were waiting for them. When asked

how it had gone, X burst into tears. The boys got very upset. X said that he had thought that there was going to be permanent handover to his mother. 56. In cross-examination he was asked at some length about the contents of the conversation which Y had had both with his teacher on 6 th October and with Mr Taylor on 8 th October. He denied that he had told the children what to say. He said that Y often said "Daddy says....." when in fact Daddy had said nothing of the sort. He queried whether the conversation had been accurately recorded and said that, if it was, he did not know why the children had made these remarks. He denied, for example, having been critical in front of the children, of the mother having given them sweets and unhealthy food. When faced with Y's comment to Mr Taylor on 8 th October "every time we go, she only gives us sweets. Daddy not happy with this. We had a delicious lunch but nothing healthy", he said that this must be another example of Y using the phrase "Daddy says" to reflect something he (Y) was saying, not something which the father had told him. 57. His explanation for the children having said that they did not wish to see their mother from October onwards was that she had forced them to lie about the transport and that the sticks with which she had hit him had been found. In his opinion, the main reason for the children not wishing to see their mother was that she had lied to them and forced them to lie to the father but also partly from fear because she had hit them with sticks whilst the parties were all living together. 58. He strongly denied having discouraged access or having spoken negatively about the mother in the presence of the children. On the contrary, he said that he encouraged them to see her and never ran her down in their presence. If the children themselves made derogatory comments about their mother, he would always remonstrate with them and he had heard his mother, Mrs G do the same. 59. He was at a loss to explain the children's behaviour towards their mother during the play session as described by Dr Glaun. In his opinion Dr Glaun must have misunderstood the position. The children were very upset when they came away from that visit. Dr Glaun had also misunderstood what he was trying to say about the mother calling the children as witnesses. He conceded that, if he ordered the children to go on access visits with their mother, they would no doubt do so, but he thought that this would be counterproductive. When asked by Miss Fitz whether he could think of anything good to say about the mother, he said that she was good at nappy changing and had prepared a lot of meals in the early years. He strongly denied that he and his family were applying a strategy in respect of the children which mirrored their successful strategy in respect of the F children. He did not oppose unsupervised access. He thought that there ought to be a few weeks of supervised access first. However he believed that the children should not be forced to see their mother against their wishes. He thought that an apology from her might help. 60. Mrs G is the father's mother. She is clearly devoted to her grandchildren and plays an extremely important part in their upbringing. However she has a very low opinion of the mother. She explained how, even from a fairly early stage, she took the children around and did an enormous amount for them. As she put it, the mother did not really want to know. Indeed she said that most people had told her that she was a fool to do so much for the children at that time. 61. She said that she had never witnessed any violence towards the children but on one occasion the mother had asked her how to get rid of a bruise on one of the children. The mother told Mrs

G that she (the mother) had walloped the child with a stick. Mrs G said that she gave the mother some arnica and told her never to do that again. Somewhat inconsistently with this evidence Mrs G also said that she had not known about the use of sticks until after the mother had left the matrimonial home. 62. Mrs G was present with the father to pick up the children after the play and observation session with the mother in the presence of Dr Glaun. Mrs G said that the children had been very happy as they went in. She thought that they did not even know that they were going to see their mother. When they came out they were very quiet and soon burst into tears. One of them said that the lady (clearly meaning Dr Glaun) had made them hug their mother. According to Mrs G he said to the father and Mrs G " We had to; we had to ". X became so upset that he said that he did not wish to go to school as he was worried that his mother might pick him up at the end of school. Mrs G promised that she would pick him up. X had also said that he had been worried because she (meaning Dr Glaun) might have gone out of the room and the mother would then have hit him. 63. She said that the children were scared of the mother and did not want to see her in case they were left on their own with her. Mrs G said that she had reassured the children by saying that they would not be left on their own with Mummy and they would not come to any harm. We have to say that we found that a revealing comment. Mrs G did not reassure the children that they would come to no harm because there was no question of their mother wanting to harm them. On the contrary she in effect reinforced any such concerns by saying that they would not come to harm because they would not be alone with their mother, thereby implicitly confirming that they might come to harm should they be left on their own with her. 64. Mrs G denied having influenced the children against their mother. On the contrary, she said that on a couple of occasions she had stopped them saying bad things about their mother. She agreed that in ideal circumstances children should see both their parents but she would not force a child to see the other parent. In this case the children did not wish to see their mother because she had hit them and had never apologised. She also denied influencing the F children not to see their father. The Law 65. In relation to access, as with other matters concerning children, the best interests of the child are paramount. 66. It is equally clear that it is almost always in the best interests of a child to have access to both parents. In *Re S (Contact: Promoting Relationship with Absent Parent)*

(2004) 1 FLR 1279 the Court of Appeal conducted a wide ranging review of the importance of access. In the course of her judgment Butler-Sloss, P at page 1285, quoted with approval the following statements made in other cases:- "It is the general proposition, underpinned undoubtedly by the Children Act 1989 - and indeed the father has correctly reminded us of the importance of continuing relationships between children and their parents - that it is in the interests of a child to retain contact with the parent with whom the child does not reside. The courts generally set their face against depriving a child of such contact and urge reluctant caretaking parents to make contact work, however difficult it may be for that parent who very often does not understand the importance of that continuing contact." Per Butler-Sloss, P in *Re T*

- (1993) 2 FLR 450 at 459. "..... it is almost always in the interest of the child that he or she should have contact with the other parent. The reason for this scarcely needs spelling out. It is, of course, that the separation of parents involves a loss to the child, and it is desirable that that loss should so far as possible be made good by contact with the non-custodial parent, that is the parent in whose day-to-day care the child is not." Per Sir Thomas Bingham, M R in *Re O* (Contact: Imposition of Conditions)
- (1995) 2 FLR 124 at 128. 67. The Court of Appeal also emphasised (at 1288) the importance of parental co-operation by quoting with approval from the judgment of Wall, J in *Re O*
- (2004) 1 FLR 1258 at para 69:- "Contact in my experience works best when parents respect each other and are able to co-operate; where the children's loyalties are not torn, and where they can move between their parents without tension, unhappiness or fear of offending one parent or the other." As Butler-Sloss, P said in *Re S* :- "Those wise observations ought to be widely disseminated among parents before they are locked into their entrenched positions of conflict with the other parent of their child." 68. The Court of Appeal also emphasised that courts should not stand idly by when a parent seeks to obstruct access. Thus at 1286 Butler-Sloss, P again quoted with approval from a judgment of Sir Thomas Bingham, M R in *Re O* at 129:- "Neither parent should be encouraged or permitted to think that the more intransigent, the more unreasonable, the more obdurate and the more uncooperative they are, the more likely they are to get their own way." 69. In *Re T* (Contact: Alienation; Permission to Appeal)
- (2003) 1 FLR 531 the Court of Appeal emphasised that, where there is an allegation that the parent with care and control has alienated the child from the non-resident parent so that the child does not wish to have access to the non-resident parent, a court considering access must make a finding on whether there has indeed been such alienation as this will be an important factor in deciding what order for access should be made. Conclusions (1) Alienation 70. As advised in *Re T*, we therefore consider first the question of whether the father and his family have alienated these children from their mother. The Court unhesitatingly concludes that they have. We would summarise our reasons for so finding as follows:- (i) Dr Glaun was of the clear opinion that the father had alienated the children from their mother. We have had the opportunity of seeing and hearing Dr Glaun give evidence as well as reading her report. We found her to be an impressive witness and we find ourselves convinced by the reasons which she gave for her conclusions. (ii) Mr Taylor was of like opinion. Again we accept his evidence in this respect. (iii) We heard evidence from the father and Mrs G. Both were at pains to assure us that they did not speak negatively about the mother in the presence of the children and the father said that he encouraged access. Yet, despite, no doubt, their wish to make a good impression on the Court in this respect when giving evidence, they could not conceal their dislike of the mother. On the contrary it came bubbling out no matter how hard they tried to suppress it. To give but one example, the father was asked whether he had anything good to say about the mother and he could only think of the fact that she changed the children's

nappies and gave them a lot of meals in the early years. Having seen and heard them both give evidence, we are in no doubt that they both actively dislike the mother and that they are simply incapable of concealing these feelings from the children. We have no doubt that these strongly held views on their part are a very strong influence on the children. (iv) The comments made by the children to their teacher on 6 th October and to Mr Taylor on 8 th October are strongly suggestive of attempts by the father to influence the children by telling them what to say. We were not impressed by his attempts to explain away these comments. (v) As both Dr Glaun and Mr Taylor said in evidence, it is highly unusual for children as young as 7 and 8 not to wish to see their mother, however imperfect she may be. We do not accept that the true reason for their reluctance lies with any of the two explanations put forward by the father. (vi) In the first place he says that they are scared of her because she has hit them in the past. We will deal with this allegation shortly but, even if it is true that she has hit them in the past, we do not accept that they are scared of her to the extent that this is the reason they do not wish to see her. In March and April - when presumably their memory of any hitting would have been at its strongest because she had only just left - there was no reluctance on their part to go and see her. Similarly, on the first two occasions in September, there is no suggestion that they were frightened to go and see her. As Dr Glaun said, fear is not something which can be turned on and off. It is clear from her evidence that, during the play session with the mother in January 2005, the children were not afraid of her at all. They derived genuine joy from her company. This is wholly inconsistent with any real fear on their part. (vii) The second reason given by the father for their reluctance was that the mother had forced them to lie to him about the transport. We agree that this was an extremely misguided request on her part which should not be repeated. However we agree with the views of Dr Glaun and Mr Taylor that this sort of matter is highly unlikely to influence children not to wish to see a parent again. What has caused the problem is that the father became furious at what had occurred and, instead of dealing with this privately with the mother, involved the children by clearly giving them a severe telling off and saying that he could not stand liars. It was that reaction on his part which blew matters out of proportion and caused the children to be fearful of being put in a position where they might displease their father. (viii) The father's true attitude towards access appears in his approach to the mother's telephone calls. He offered no encouragement to the children in this respect. He let the telephone ring without picking it up and without telling the children to pick it up. He simply left it to them. We have no doubt that they realised that he would prefer that they not speak to their mother; accordingly they did not do so. (ix) Children of this age are usually capable of being persuaded to do things even if they are initially reluctant - see for example the ease with which Dr Glaun persuaded the children to see their mother at the play session. The father did not dispute that, if he told the children to do something, they would do it. We have no doubt that, if he chose to, the father could ensure that these children approached access to their mother in a positive rather than negative frame of mind. (x) A clear illustration of the pressure which these children are under from the father's family is to be found in the events immediately following the play session with Dr Glaun. Despite

the session having gone so well and the children having responded so warmly to their mother, both the father and Mrs G said that the children were very quiet when they came back to the car immediately afterwards and then became very upset when asked how it had gone. They said that they had been forced by Dr Glaun to hug their mother. One of them said " We had to; we had to ". It is quite clear from this that the boys felt completely unable to admit to their father and grandmother that they had enjoyed the visit to their mother. They knew that this was not what their father and grandmother wished to hear and they felt under such pressure to say that they had not enjoyed it that that they could only explain things by saying (untruthfully) that they had been forced to hug their mother. (xi) A further interesting aspect to the evidence concerning the play session was that the father stated that he had told the children that they were going to see their mother. Yet, according to Mrs G, the children went extremely happily into the play session, so much so that Mrs G thought that they did not realise that they were going to see their mother. Again, this is wholly inconsistent with children who are truly frightened or reluctant to see their mother. (xii) Dr Glaun's description of how the children related to their mother at the play session is simply inconsistent with any genuine fear or deeply held reluctance on the part of the children to see their mother. 71. We do not have to go to so far as to find that there has been a deliberate campaign of indoctrination although we do not rule it out. What we do find is that the strong feelings of hostility of the father and his family towards the mother have communicated themselves to the children because no effort has been made to conceal these feelings. The result has been that the children have been placed in an impossible position because they feel that by showing any affection towards their mother, they will be being disloyal to their father and grandmother, both of whom they love very much. The responsibility for this sorry state of affairs lies fairly and squarely on the shoulders of the father and Mrs G. In particular we have no doubt that Mrs G is a very influential figure in her family and, if she were to adopt a more responsible approach towards the question of access, this would in turn affect the father and result in a dramatic reduction of the distress currently being suffered by the children. (2) Alleged hitting by the mother 72. It is clear the mother was a strong disciplinarian. We cannot rule out the possibility that she hit the children with sticks but, on the basis of the evidence before us, we do not make a finding that that has occurred. A summary of our reasons is as follows:- (i) The school states that, during the time that the mother lived in the home, the boys were happy, well mannered and well cared for and gave no cause for concern. (ii) Neither the father nor Mrs G felt that there was anything so untoward that they ought to do something about it. (iii) No allegation was raised against the mother until October, several months after she had left. It is perhaps not entirely coincidental that the allegation was first raised shortly after access had begun to run into difficulties because of the mother asking the children to lie to their father about the question of transport. (iv) The manner in which the allegation of hitting is made is considered to be somewhat rehearsed and unnatural by those who have seen it. Thus Mr Taylor found it very strange that the boys would disclose such information to a stranger they had only just met; Dr Glaun found it extremely unusual that X wrote on the whiteboard about his mummy hitting them with five sticks. It

was completely out of context. On face value it appeared to her that the child had been prompted to behave in that manner. Mr Taylor and Mrs Le Couteur both concurred in thinking that the allegations of the children at the meeting with their mother on 1 st February (which included an allegation by X of hitting with five sticks), were repeated in a parrot fashion. (v) There is very little detail about the allegations such as dates, places or what gave rise to them etc. (vi) Following an investigation, the police have decided that there is insufficient evidence to institute any criminal proceedings. We understand of course that they have to consider matters from the point of view of the criminal standard of proof but it is nevertheless a factor which we can weigh in the balance. (vii) The children were happy to go for unsupervised access with the mother in March/April, shortly after the separation. (viii) In the play session in Dr Glaun's presence, the children showed genuine joy in being reunited with their mother. They showed no sign of any fear. Dr Glaun stated that children cannot turn fear on and off. 73. We would add that, even if we had concluded that hitting had taken place as alleged, this would not have altered any of our conclusions. The abuse, if it occurred, was at a moderate level and did not have such an effect as to cause the father (who was living with the children and the mother) or Mrs G (who was seeing the children almost daily) to have concerns for their welfare. We would conclude that, even if there was hitting, the reason for the children's reluctance over access is still the alienation by the father and his family, not any real concern on the part of the children at being left with their mother. Access would still be in the best interests of the children. (3) Access 74. We have no hesitation in concluding, in agreement with Dr Glaun and Mr Taylor, that access to the mother would be in the best interests of the children. These boys of 7 and 8 are entitled to have the opportunity of a natural and loving relationship with their mother. We have considered their wishes but in view of their ages and our finding of parental alienation, these are of limited assistance. The details of the access which we ordered are set out in the Act of the Court and we do not need to repeat them here. In short we order that access should take place immediately, that it should be facilitated by an officer from the Children's Department to begin with (because of the lack of access hitherto) but that it should become unsupervised as soon as practicable. We further order that the matter should come back to us in approximately one month for a review, so that we might make any further orders which might be necessary at that time. (4) The parties' responsibilities 75. It is the duty of the parent with care of a child to encourage access to the non resident parent because access is beneficial for the child. If a child is put in a position of having divided loyalties because of the attitude of the carer parent to access, this is likely to be damaging and distressing to the child. The carer parent must put the interests of the child ahead of his or her own feelings. 76. It follows that the father and Mrs G must put aside their own feelings about the mother. It is their duty to these two boys to persuade them that they (the father and Mrs G) are positively in favour of access; that they want the boys to have a natural and loving relationship with their mother. They are never to speak in a negative or derogatory fashion about the mother in the presence or hearing of the children; they are never to put the children in a position of having divided loyalties with the accompanying stress that

this causes. 77. If the father and Mrs G cannot bring themselves to behave with a proper sense of responsibility towards X and Y, the Court will reluctantly have to consider applying sanctions, not because it wishes to do so but because it would be left with no alternative if it is to act in the best interests of the children and encourage their relationship with their mother. There are a number of such sanctions but we would mention only fines, imprisonment and ultimately, as in the case of V -v- V (Contact: Im placable Hostility)

(2004) 2 FLR 851 , the transfer of care and control to the non resident parent, not as a sanction, but on the grounds that it may be in a child's best interests to live with a parent who will positively encourage access to the other parent rather than to live with the other parent who frustrates access. 78. We have been critical of the father and his family in this judgment. But the mother is not free of criticism. First, she should never have asked the children to keep secret from their father the fact that they had travelled in the van on that access visit in September. It is quite wrong for any parent to seek to persuade children to lie to or keep secrets from the other. That puts the children in a very difficult position. Secondly, even on her own admission, she has let the children down on two occasions by not turning up for access at Milli's. In one case she did not even telephone Milli's to explain her absence. Her excuses of having run out of credits on her telephone and not having been able to arrange transport were extremely unimpressive. One of the most important matters in her life is to be a good mother to her children and this involves preparation and organisation so as not to make them feel rejected or let down by her. A third subject of criticism is her failure to telephone the children in January, the very day after the Court had emphasised to her the importance of not letting down the children. The mother must do better in future. 79. But none of this is relevant to the question of access. Access is not a reward for some mythically perfect parent. It is in a child's interest to have a loving relationship with both parents however imperfect they may be. It is only in extremely rare cases that a court would be likely to hold that a parent's influence was so undesirable that access should be denied altogether. Matters of general application 80. The English courts have recently had occasion to recognise that, in the past, the courts have not been as proactive as they should have been in ensuring that access takes place despite the efforts of the parent having care of the child to obstruct or discourage access. It is clear that many non-resident parents who have failed to gain access have felt badly let down by the system. We think that this case has highlighted certain areas where the Court itself, the legal profession and the Children's Service could learn lessons for the future and we take this opportunity of setting those out. 81. In the first place we suggest that all those whose work involves dealing with questions of access should read and be familiar with two impressive judgments which describe many of the issues. The first is that of Munby, J in Re D (Intractable Contact Dispute:Publicity)

(2004) 1 FLR 1226 and the second is that of Bracewell, J in V -v- V (Contact:Im placable Hostility)

- (2004) 2 FLR 851 . We have drawn on those two judgments in making the comments which follow. Munby, J summarised the problem in the two following paragraphs:- "22 Seen from a father's perspective, a case such as this exhibits three particularly concerning features: (i) The appalling delays of the court system exacerbated by the absence of any meaningful judicial continuity, seemingly endless directions hearings, the lack of any overall timetable, and the failure of the court to adhere to such timetable as has been set; (ii) the court's failure to get to grips with the mother's (groundless) allegations; and (iii) the court's failure to get to grips with the mother's defiance of its orders and the court's failure to enforce its own orders. Seen from a judicial perspective there are two further particularly concerning features of such cases:
- (i) The all too frequent response to any significant problem with contact; list the matter for further directions; reduce contact in the meantime; obtain expert reports; direct the filing of further evidence - all of which produces only further delay which, in turn, exacerbates the difficulties and leads eventually to a situation which may be irretrievable. (ii) The fact that too often in such cases we only wake up to the fact that the case is intractable when it is too late for any effective intervention." 82. The judgments emphasise that the court system is inherently adversarial and it is not always particularly well suited to resolving these difficult matters. It tends to entrench parental attitudes rather than encourage them to change. There is much to be said for expert mediation at an early stage and we would wish to encourage this wherever possible. 83. However, in many cases, the Court will still need to be involved and we would emphasise the following points. (i) Time is of the essence. Delay in dealing with problems of access can mean that the problem is close to insoluble by the time the Court is in a position to deal with it. Thus:- (a) Legal advisers for the non-resident parent must act quickly. They must get the matter before the Court promptly. If necessary, they must be insistent. We do not mean to be critical and everyone concerned is on a steep learning curve; but, in hindsight, the mother's lawyers waited far too long before bringing this case before the Registrar. They attempted to negotiate without the necessary sense of urgency with the result that the parties did not come before the Registrar until the 27 th August, nearly five months since the last access. That was far too long. Where parents separate and difficulties arise over access, the problem must be nipped in the bud because five months is a long time in the life of a young child and parental alienation can become well established during such a period. In this case the matter should have been brought before the Registrar not later than May. (b) The Children's Service must play its part. At present it apparently takes some 11 to 12 weeks for a full report on access to be prepared. This seems too long and we would ask the Service to consider how it could better assist in these urgent access cases. For example could some form of 'mini-report' be made available on urgent applications for interim access? This might involve preliminary thoughts based upon short interviews with the parties. Similar comments apply in respect of psychological reports from CAMHS. (c) The Court administration must be willing to fit such cases in as a matter of urgency. A delay in getting before the Court gives an opportunity for alienation to occur or at least commence. The Court should take a robust line on interim access. Unless

there are very strong grounds for fearing that access would be bad for a child, interim access should be awarded. After all, by definition, the children will have been in the regular presence of the non-resident parent whilst the parties were living together, which will, if the matter comes before the Court sufficiently quickly, have been only a short while ago. If there is no report available from the Children's Service, the Court should simply take a view and usually order access rather than put the matter off until a report is available. (ii) Allegations of misconduct should not automatically result in matters grinding to a halt. This case provides a glaring example. The moment the children alleged that they had been hit with sticks by the mother, the Children's Service withdrew and said that it was no longer able to work towards the preparation of the required reports until completion of the police investigation. The result was that the Children's Service did not interact with the parents or the children to any material extent between the beginning of October and the latter part of January. We understand that this was in accordance with the standing instructions of the Children's Service. We urge that these be reconsidered because the actions of the Service meant that matters were potentially delayed for some time, which allowed for further alienation to take place. It should not be assumed that any allegation of misconduct should necessarily result in access grinding to a halt or taking place only on a supervised basis until any investigation is complete. Clearly there will be some allegations which are of such seriousness that it would be wrong to allow access in the interim. But these will be rare. In the vast majority of cases access should be allowed to continue and the question for decision will be whether it should be supervised or unsupervised. (iii) There must be continuity of judicial manpower. Thus, at the Registrar level, the same judicial officer must deal with the matter. At the Royal Court level, the same presiding judge and, so far as practicable, the same Jurats should sit. It is highly undesirable for new judges to have to come fresh to a matter which has acquired a long history of access difficulties. This is likely to lead to inconsistency of approach. It is the responsibility of the advocates to draw this to the attention of court officials so as to ensure the necessary arrangements for continuity can be made. (iv) Allegations of misconduct should be addressed speedily. As Munby, J put it at para 54 of his judgment:- "False allegations of misconduct are highly damaging and destructive. I agree with Wall, J when he said in *Re M* at para 12 "in an intractable contact dispute, where the residential parent is putting forward an allegedly factual basis for contact not taking place, there is no substitute for findings by the court as to whether or not there is any substance to the allegations." The court should grasp the nettle. Such allegations should be speedily investigated and resolved, not left to fester unresolved and a continuing source of friction and dispute. Court time must be found - and without delay - for fact finding hearings. Judges must resist the temptation to delay the evil day in the hope that perhaps the problem will go away. Judges must also resist the temptation to put contact 'on hold' or to direct that it is to be supervised, pending investigation of the allegations. And allegations which could have been made at an earlier stage should be viewed with appropriate scepticism. Once findings have been made, everybody must thereafter approach the case on the basis of the facts as judicially found" (v) The Court must take prompt and firm action where there is defiance of its orders for access. Again, as Munby, J put it:- "56 Too often at

present, once things start to go wrong, it takes too long - too often far too long - to get in front of a judge who is in a position to take potentially decisive action..... Other things being equal, swift, efficient, enforcement of existing court orders is surely called for at the first sign of trouble. A flabby judicial response sends a very damaging message to the defaulting parent, who is encouraged to believe that court orders can be ignored with impunity, and potentially also to the child..... There is no reason why in a case of serious recalcitrance or defiance where it is possible to establish a breach of the order the court should not, then and there, make an immediate suspended committal order, so that the mother can be told in very plain terms that if she again prevents contact taking place the following Saturday she is likely to find herself in prison the following week. It may be that committal is the remedy of last resort but, as Wall, J recognised in *Re M* at para 115, the strategy for a case may properly involve the use of imprisonment. Interestingly he seems to have accepted (see at para 117) that imprisonment, even for a day, might in some cases be an appropriate tool in the judicial armoury. I agree. A willingness to impose very short sentences - 1, 3, or 3 days - may suffice to achieve the necessary deterrent or coercive effect without significantly impairing a mother's ability to look after her children." (vi) In this connection the Court should not hesitate to spell out to the recalcitrant parent the potential consequences of his or her action. He or she should be warned that in some cases, as in *V -v- V*, the Court may ultimately conclude that it would be in the child's best interests that care and control should be transferred to the non-resident parent, who will allow the child to have a relationship with both parents, rather than to continue to live with the recalcitrant parent who obstructs the child having a relationship with both. This may be so even if, had there been no problem with access, care and control would have remained unaltered. 84. We have on the whole used the expression 'the Court' in the previous paragraph. The Court of course includes both the Registrar and the Inferior Number. In most cases questions of access will come before the Registrar in the first place and it is he who should bear in mind and apply the principles we have endeavoured to describe. In difficult cases he may feel the need to refer the matter to the Royal Court. Whilst not encouraging the Registrar to send up a case before it is necessary, he should not retain the case for too long once he concludes that matters are not satisfactory and that the additional powers of the Royal Court would be of assistance. 85. The guidance we have sought to give is merely that. Ultimately each case must turn on its own facts and the order which must be made is that which is in the best interests of the child in the particular case. The guidance is aimed primarily at cases where action can be taken in the early stages of an access dispute, perhaps shortly after separation. In other cases where the matter has a long history before coming before the Court, a modified approach may be required. However we would hope that the guidance which we have given to the legal profession, to the experts and to the Court itself, will result in fewer cases dragging on until it is too late to achieve the desired result of children not being deprived of a proper relationship with both parents. Authorities *Re S* (Contact: Promoting Relationship with Absent Parent)

(2004) 1 FLR 1279 . Re T (1993) 2 FLR 450. Re O (Contact: Imposition of Conditions) (1995) 2 FLR124. Re O

(2004) 1 FLR 1258 . Re T (Contact: Alienation; permission to appeal)

(2003) 1 FLR 531 . Re D (Intractable contact Dispute: Publicity)

(2004) 1 FLR 1226 . V - v - V (Contact: Implacable Hostility)

(2004) 2 FLR 851 . Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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