

Are Fathers Treated More Harshly in Private Children Proceedings?

Risk, Caution and the Unintended Consequences of “Safety First”

[Kate Yeomans](#), 3PB Barristers

In recent years, many practitioners in private children law will recognise a growing unease: a sense that, in cases involving allegations of domestic abuse or substance misuse, the system increasingly errs so far on the side of caution that it risks abandoning balance, fairness, and – crucially – the child’s welfare. This unease is particularly acute in cases involving fathers.

The question is not whether allegations of abuse or substance misuse should be taken seriously. Of course they should. The courts are rightly vigilant to the risk of harm to children and primary carers. Nor is this about minimising domestic abuse, which remains a grave and prevalent social problem. The issue is whether, in practice, allegation alone has come to carry disproportionate weight at the earliest stages of proceedings – long before findings are made – and whether that weight falls more heavily on fathers than mothers.

The Early Stages: Where the Damage Is Often Done

The most striking feature of many private law cases is how determinative the interim phase can become. At the first hearing, allegations are raised, safeguarding letters are filed, and Cafcass recommendations are often framed in understandably cautious terms. Yet what is increasingly observed is that interim arrangements – frequently supervised contact, severely limited contact, or even no contact – become entrenched for many months, sometimes over a year, while fact-finding hearings drift further into the future.

In theory, interim arrangements are temporary and protective. In reality, they often create a new status quo, one which is then relied upon to resist change: the child has “settled”, routines have been established, or contact has “always” been supervised. For the non-resident parent – overwhelmingly fathers – this can mean months of marginalisation based not on findings, but on untested assertions.

The risk here is obvious: if allegations are later found to be exaggerated or false, the damage has already been done. The parent-child relationship may have been profoundly weakened, the child may have absorbed a narrative of fear or distrust, and the court is left trying to repair harm that the process itself has helped to create.

Allegations, Assumptions and Asymmetry

A recurring theme in practice is the apparent asymmetry in how allegations are approached. Where mothers allege domestic abuse or substance misuse by fathers, the system often defaults to acceptance at face value, at least provisionally. Fathers, by contrast, frequently face a higher evidential burden to demonstrate safety, insight, and change – even where objective evidence supports their case.

This is particularly stark in substance misuse cases. Hair strand and blood testing may demonstrate sustained abstinence by a father, while evidence of ongoing or inconsistent substance use by a mother does not necessarily trigger equivalent restrictions on her care of the child. The explanation, if articulated, is usually framed around “risk management” or the perceived destabilising effect of change. Yet such reasoning risks drifting into unconscious bias, where mothers are presumed to be the safer parent and fathers the riskier one.

Cafcass and the Problem of Risk Aversion

None of this is to criticise Cafcass officers individually, who operate under immense pressure and in a climate shaped by tragic historical failures. However, there is an observable tendency towards institutional risk aversion. Recommendations can appear insufficiently contingent on factual outcomes, with limited engagement both with the implications of findings that may ultimately be made and with the scope for creative, child-focused interim contact arrangements.

In **A v B [2025] EWFC 329 (B)**, a reported case in which I was involved at an early stage, the trial judge expressly criticised the social worker for failing to grapple with the consequences of her recommendations if the mother’s allegations were found to be false, noting that this failure significantly reduced the utility of her evidence. That observation will resonate with many practitioners. Welfare analysis that does not meaningfully engage with alternative factual scenarios risks becoming advocacy for caution rather than an objective assessment of the child’s best interests.

Article 6, Article 8 and the Reality on the Ground

Fathers subject to prolonged restrictions often feel – with some justification – that their Article 6 and Article 8 rights are theoretical rather than practical. The right to a fair hearing loses substance when interim decisions effectively determine the outcome long before findings are, or are not, made. Likewise, the right to family life is hollow if contact is minimal, supervised, or repeatedly disrupted by unilateral actions of the resident parent that the court struggles to control.

The financial and emotional cost of this process cannot be ignored. It is not uncommon for fathers to spend tens of thousands of pounds, relocate homes and employment, and endure long periods of separation from their children before achieving something approaching parity – sometimes only after allegations have collapsed or been significantly diluted.

None of This Is About “Fathers’ Rights”

It is important to be clear: this is not an argument about fathers’ rights versus mothers’ rights. The welfare of the child remains paramount. But welfare is not served by processes that inadvertently reward false or exaggerated allegations, nor by systems that are so fearful of risk that they fail to distinguish between potential harm and proven harm.

Children benefit from meaningful relationships with both parents unless there is a sound, evidence-based reason why that should not be the case. A system that routinely side-lines one parent on the basis of untested allegations risks harming the very children it seeks to protect.

A Call for Re-Balancing, Not Retreat

What is needed is not a retreat from safeguarding, but a recalibration. Earlier and more focused fact-finding where allegations are central. Greater judicial scrutiny of prolonged interim arrangements. Cafcass recommendations that explicitly engage with competing factual possibilities and that actively explore practical, creative solutions for maintaining safe and meaningful contact, rather than defaulting to a rigid or formulaic “computer says no” approach. Above all, there must be a renewed emphasis on proportionality, evidence, and the long-term welfare impact of exclusion.

Across the family justice profession – judges, lawyers, and Cafcass officers alike – are deeply committed to fairness and welfare. Acknowledging these concerns is not an attack on the system, but an opportunity to improve it. If private children proceedings are to command confidence, they must be seen not only to protect children from harm, but also to protect families from injustice. Many practitioners feel this tension and challenge it. Whether the system is prepared to respond remains an open question.

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Kate Yeomans

Tel: 0121 289 4333

Kate.yeomans@3pb.co.uk