

# **‘So presumably things have moved on since then?’ The management of risk allegations in child contact dispute resolution**

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## **Abstract**

Over the last decade considerable efforts have been made to ensure that domestic violence and child protection issues are identified, assessed and managed appropriately within the family justice system. These efforts follow sustained criticism that allegations of harm have been previously overlooked or marginalized within court processes, including in private law cases concerning residence and contact disputes following parental separation. In this paper, however, we argue that allegations of harm continue to be marginalized in court-based dispute resolution. Our findings are based on a detailed study of fifteen in-court conciliation or court-based dispute resolution sessions. We use conversation analysis to examine in detail precisely how allegations are overlooked or downgraded. We find that conciliators routinely ignore, reframe or reject allegations unless there is existing external evidence to support the claim. However, the precise way in which marginalization occurs is contextual and interactional, shaped not least by the specificity or persistence of allegations presented by parents. We suggest that the conciliator’s handling of allegations reflects a particular understanding of their institutional role and tasks that centre upon settlement, contact and case processing seemingly at the expense of risk management.

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**‘So presumably things have moved on since then?’**

## **The management of risk allegations in child contact dispute resolution**

### **Introduction**

In this paper we explore how family court professionals in England deal with allegations of family violence or child abuse in child contact dispute resolution sessions<sup>3</sup>. One of the great challenges for mediators<sup>4</sup>, whether in community or court settings, has been how to strike an appropriate balance in child contact cases between promoting settlement and contact and ensuring safe outcomes for parents and children where there are concerns about risk or harm. In the past research has suggested that at times too much emphasis has been placed on securing agreement and not enough attention has been given to ensuring that any risks are effectively identified, assessed and managed (Bailey-Harris et al 1999). Researchers have found that there have been insufficient efforts to screen family violence and child protection issues in order to divert cases away from mediation or dispute resolution where necessary (e.g. Hester, Pearson and Radford 1997). Research has also identified that where child protection or family violence issues are raised in dispute resolution then these concerns have often been ignored, minimized or discounted. The marginalization of allegations has been reported for both community and court-based dispute resolution processes (e.g. Hester, Pearson and Radford 1997; Greatbatch and Dingwall 1997) and in a number of different jurisdictions, including Canada (Neilson, 2004), England (e.g. Greatbatch and Dingwall 1997, MCSI 2003, HMICA 2005) and the US (Cobb 1997; Johnson et al 2005). The issue is particularly pressing given that allegations of family violence or child abuse are common in mediation and family court samples. In Australia, for example,

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<sup>3</sup> The data upon which we rely was originally collected as part of a Lord Chancellor’s Department funded project exploring outcomes of in-court conciliation. The analysis of the data was supported by Economic and Social Research Council grant RES-000-22-2646

<sup>4</sup> Our data is drawn from dispute resolution sessions undertaken in a court setting led by family justice system professionals. These sessions are termed variously ‘dispute resolution’, ‘in court conciliation’ and ‘court-based mediation’ by their exponents. Historically, a distinction has been drawn in England between court-based dispute resolution (or ‘conciliation’) and community-based mediation. In this study our analyses are based only on court-based dispute resolution. To minimise the risk of confusion we refer to these court-based processes as ‘conciliation’ or ‘dispute resolution’ rather than ‘mediation’.

approximately half of litigated cases involve an allegation of family violence and/or child abuse (Moloney et al 2007). In England, estimates vary but between a third (Smart et al 2003) and a half (Trinder et al 2006) of family court contact cases include allegations of violence or abuse.

However, we still have little systematic research about precisely how allegations are discursively managed in court- and community-based dispute resolution. Only two studies have examining the talk-based structures through which how risk is discussed and handled. In 1997 Cobb used discourse analysis to examine how American mediators ‘domesticated’ violence in 26 out of 30 mediations. Cobb argued, that the ‘domestication of violence’, that is the deletion or evaporation of the violence, was achieved by a range of techniques including framing the violence narrative as just one possible reality amongst many and treating violence as just one item out of many possible factors.

The only other detailed study is the landmark research by Greatbatch and Dingwall (1999) drawing on British data collected between 1983 and 1993. Using conversation analysis, they uncovered how mediators in both community and court-based dispute resolution routinely marginalized allegations. They found that mediators did not challenge the veracity of allegations, instead they used a range of techniques to change the topic away from discussion about risk or to render the allegation outside of the scope of the session. A particularly important finding from the Greatbatch and Dingwall study was that the marginalization process was interactive. They noted that the process began with the parties who raised accusations in a tentative and mitigated fashion. The allegation were then subsequently sidelined by mediators. Greatbatch and Dingwall conclude that:

“The process of marginalisation we have identified is a very general phenomenon. Disputants formulate their charges in ways that provide for their marginalisation. All the mediators subsequently undertake marginalising actions, which include remaining silent, asking questions on different topics, treating the reported incidents as non-serious, and/or ruling the issue out of bounds.” (Greatbatch and Dingwall 1999: 185)

Somewhat surprisingly, there appear to have been no further systematic, discourse-focused studies of dispute resolution processes following the Greatbatch and Dingwall study in 1999. Since then, however, the dispute resolution field has moved on significantly. There is now a much greater awareness of the impact of family violence upon both children and adults (see Holt et al 2008 for a comprehensive review of the research). There is also a much greater appreciation of the prevalence of risk issues amongst contested contact and residence cases in many jurisdictions (see Moloney et al 2007). This greater awareness has contributed to more concerted efforts in many jurisdictions to ensure that allegations of domestic violence or child protection issues are identified, assessed and managed. In England in 2000 the Court of Appeal decision in *Re L*<sup>5</sup> was an important milestone in placing greater emphasis on risk assessment and management in contact cases. This message was reinforced by the report *Contact Between Children and Violent Parents* from the influential Children Act Sub-Committee of the Advisory Board on Family Law in 2000, accompanied by an article from two leading psychiatrists (Sturge and Glaser 2000). The momentum was retained with the publication in 2001 by the Lord Chancellor's Department of new guidelines for the family courts on *Child Contact Where There is Domestic Violence*. The following year the Children Act 1989 was amended by the Adoption and Children Act 2002 to extend the definition of 'significant harm' to include witnessing the ill-treatment of another person. Finally, in 2005 the forms used to apply for court orders were amended to include additional questions designed to assist in the early identification and screening of risk in court proceedings (Aris and Harrison 2007).

Our aim in this paper is to explore what differences, if any, these legal and procedural innovations have made to the way in which court-based dispute resolution professionals actually handle allegations of harm in child contact cases. We build upon the previous work of Greatbatch and Dingwall (1999) by using conversation analysis to explore precisely how allegations are handled, through the micro-processes of talk-in-interaction, in court-based dispute resolution meetings in English county courts.

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<sup>5</sup> *Re L (Re L (Contact: Domestic Violence), Re V (Contact: Domestic Violence), Re M (Contact: Domestic Violence), Re H (Contact: Domestic Violence) [2000] 2 FLR 334.*

## Methodology

Our study is based on detailed analysis of audio recordings of fifteen ‘in court conciliation meetings’ or court-based dispute resolution sessions conducted in 2004/5. Conciliation meetings are used within the family justice system in England as a means to help divorced or separated parents negotiate an agreement about contact (or access) arrangements for children. There were 32,537 such meetings in England in 2005/6 (CAFCASS 2006). The precise format of the meetings varies from court to court, however it generally consists of a meeting between a court-appointed social worker (a CAFCASS officer<sup>6</sup>) and the two parents. The meetings take place in a small side room at court with both parents attending together and facing each other across a table. Legal representatives also attend the meeting but only rarely contribute. The meeting is led by the CAFCASS officer. At the end of the meeting the outcome is reported to a District Judge. The judge will then endorse the agreement or make further directions if an agreement has not been reached. Our data consists only of the negotiation meeting and does not include the report back to the judge. In our corpus the negotiation phase lasts an average forty minutes.

The fifteen recordings were made in 2004/5 during the course of a much larger quantitative survey of the outcomes of 112 conciliation cases (Trinder et al 2006). The cases are drawn from four different English county courts. Six different conciliators are involved: two men and four women. The fifteen audio recorded cases are broadly representative of the larger quantitative sample. Each case concerns contact between a child and a non-resident parent. Contact had broken down in nine of the fifteen cases, mirroring the wider data set. Seven of the sessions ended in a full agreement, six in a partial agreement and two without an agreement - again a similar pattern to the wider sample (Trinder et al 2006).

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<sup>6</sup> CAFCASS is the Children and Family Court Advisory and Support Service, a national Non-Departmental Public Body with a remit to advise the court in family proceedings. CAFCASS officers typically have social work qualifications.

In each case informed consent for the audio recording was obtained from all parties involved; that is, the conciliator, both parents, the solicitors and the district judge. Ethical approval for the data collection was given by the Department for Constitutional Affairs/Ministry of Justice and University of East Anglia and Newcastle University.

Our analysis is designed to uncover how the actual, real-time work of family courts is undertaken in and through the communicative processes of spoken interaction, specifically in relation to the handling of allegations about risk. We use conversation analysis (CA) to uncover and explicate the complex communicative processes through which spoken interaction is organized and rendered meaningful. What CA does is rely on recordings and detailed transcripts of naturally-occurring events, such as dispute resolution sessions, to investigate how interlocutors structure and sequence their turns at talk, and how these discursive practices lend themselves to co-constructing meaning (see, for example, Atkinson and Heritage 1984; Hutchby and Wooffitt 1998). Over the last three decades, a significant body of CA research has been produced, particularly on interaction in ‘institutional’, ‘workplace’ and ‘lay-professional’ settings (see, e.g. Drew and Heritage 1992; Firth 1995; McHoul and Rapley 2001). By examining child-contact dispute resolution – a practice hitherto under-represented within the CA literature - our findings here extend existing knowledge of talk and social interaction in mediation, workplace interaction, and lay-professional environments.

## **Risk and risk assessment**

At the time the data were collected (2004/5), the screening tools used in the four courts remained limited despite national level efforts to introduce more rigorous initial risk assessments<sup>7</sup>. The CAFCASS officers had little prior information about the case before the meeting, usually amounting to not much more than brief biographical details supplied by the applicant on the application form. Instead CAFCASS officers relied heavily on a very brief conversation with each of the parties in the

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<sup>7</sup> The research was conducted just before the introduction of the new ‘gateway’ application forms that invite applicants and respondents to provide details of any concerns about harm at an early stage in the court proceedings. See Aris and Harrison (2007) for an evaluation of the effectiveness of the forms as screening tools.

court corridors before the conciliation meeting. The purpose of the conversation was to check whether the parent had any objection to meeting with their former partner. The presumption was that a joint meeting would take place. Indeed our observation was that it was exceptional for a joint meeting not to occur.

Given the limited screening, and expectation of joint meetings, it is not surprising therefore that a high proportion of the conciliation cases include an allegation of harm. In nine of the fifteen sessions an allegation of harm to a child and/or to an adult was made. The proportion is high but is broadly in line with the rates of allegations found amongst litigated contact cases (see Moloney et al 2007 for a review) and in the wider sample of 112 cases (Trinder et al 2006).

The allegations made in the nine recorded sessions concern domestic violence, sexual abuse and impaired parenting through alcohol or drug dependency. The allegations follow a typically gendered pattern, with seven of the nine allegations raised by mothers, all of whom are the resident parent. In the two remaining cases both parents raise allegations against the other of alcohol dependency and violence. It is important to make clear that the descriptions of risk have the status of allegations only. We do not know whether they would be substantiated if investigated.

Our primary interest, however, is in what actually happens to allegations or concerns raised within the dispute resolution session itself. Despite the significant recent policy and practice innovations, we found that the marginalization of allegations remained a common occurrence. In only two of the nine cases were the allegations of harm explored in any depth and action subsequently taken to manage potential risks – in both cases by ordering a welfare report<sup>8</sup>. In the other seven cases risks were not explored, assessed or managed. In the remainder of this paper we analyse the processes by which the concerns that were raised were marginalised within the conciliation session. We outline three broad

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<sup>8</sup> The two cases were distinctive from the start. Both cases involved mothers with significant drug and alcohol dependencies. Both cases were repeat applications where at least one welfare report had previously been produced. In each case, therefore, the family was ‘known’ to have child protection issues and was treated as such from the start.

patterns of interaction: non-uptake where allegations were presented in a mitigated fashion and were not elaborated or pursued, rewriting risk where allegations were downgraded or historicised and disputed risk where more specific and persistent allegations were rejected or contradicted by the CAFCASS officer.

## **Passing up opportunities to topicalise risk**

We begin our analysis by exploring how allegations were overlooked or afforded limited interactional space within the dispute resolution sessions. As with the earlier findings of Greatbatch and Dingwall (1999) we find that parents, typically resident mothers, typically presented allegations in a mitigated fashion, often providing little detail and not pursuing the allegation. However, when allegations were raised in conciliation sessions by a parent, apparently for the first time, we found that CAFCASS officers routinely passed up opportunities to focus on, specifically talk about, or *topicalise* (Maynard and Zimmerman, 1984) risk. CAFCASS officers did not ask for further information when an allegation was made or, in some cases, turned down invitations to hear about further details of an allegation. In each case the discussion moved onto other topics and the allegation was never explored.

An example of passing up an opportunity to topicalise risk is given in Extract 1. In this extract, taken from 17 minutes into a session, the mother is describing having to give up her university course because of the father's lack of support for caring for their daughter (Elizabeth) who has special needs. (In this extract, and all subsequent extracts, the CAFCASS officer is referred to as 'Caf', the father as 'Fa' and mother as 'Mo'. The extracts have been transcribed using standard CA notation, e.g. (.) to indicate a micro pause and = to mark contiguous utterances (See Appendix 1 for an abbreviated list of the transcription conventions employed).

Extract 1: Case D

17:28'

1 Mo:           that was university and I camped on



2           those grades I've not A levels no CN-  
3           no GSEs nothing (.)I woulda got a  
4           degree (0.5) to get me a better job  
5           to give Elizabeth and Paul a better  
6           life (.) {sound of paper rustling} Paul doesn't  
7           want to see you (.) don't even go there  
8           (0.5)  
9           alright↑=  
10 Caf:     =mmm  
11           (.)  
12 Fa:     that's- [(cos of me)]  
13 Mo:                 [ becos of ] the violence  
14     -> (0.5)  
15 Fa:     er (.) no=  
16 Mo:     =no do you want to [(read)]  
17 Caf:                         [er yo-]  
18           do you want me to read [that]  
19 Fa:                         [ no]  
20           [I'm sorry I wasn't]  
21 Mo:     [ you can read that]=  
22 Caf: -> =well i- I don't particularly need to  
23     -> I mean if it's a- if [it's about]=  
24 Mo:                         [ it's not ]=  
25 Caf: -> =[ dad     ]  
26 Fa:     [oh that's-] that's great you've  
27           done that that's great brilliant  
28 Mo:     no it's not brilliant because I had  
29           to give it up because of all your

In this extract the mother asserts that her elder son is refusing to have contact with the father because of ‘the violence’ (line 13). She follows up this remark by offering to show the conciliator a letter from the son that might expand upon the issue (lines 16, 21). What is interesting is that the CAFCASS officer does not seek to topicalise the mother’s reference to ‘the violence’ (line 13). Indeed the conciliator does not respond to the reference to ‘the violence’ at all even though the half second gap at line 14 following the mother’s mention of violence is a transition relevant place (Sacks et al 1974) where the CAFCASS officer has an opportunity to take the floor. Nor does the conciliator take up the two invitations to read the son’s letter, or as an alternative, to ask for a summary of the contents. In line 17 and 18 the CAFCASS officer does not explicitly decline the invitation to read the letter, but by querying ‘do you want me to read that’ appears to stall for time. This option was not available when the mother reissued the invitation with ‘you can read that’ in line 21. This time the CAFCASS officer does explicitly decline the invitation with ‘I don’t particularly need to’ (line 22), though softening the declination somewhat by the use of ‘particularly’.

However, it is also important to note the features of the allegation that might render it more easily marginalised by the conciliator. When the mother first refers to the son’s refusal to have contact she does not mention violence (line 6-7). She appears reluctant to develop the topic, telling the father not to pursue the issue (‘don’t even go there’ line 7). The issue of violence is only raised in response to a question or challenge from the father (“that’s- [(cos of me)]” in line 12), suggesting that the issue might not otherwise have come up. Indeed the mother had not referred to the issue at all in the previous seventeen minutes of the session which could be interpreted to mean that it was not the most pressing issue for her.

Even so, the non-uptake by the conciliator to the reference to violence is surprising to us as outsiders looking in on this interaction. Regardless of how the allegations were presented, we might have expected that in a legal and policy context emphasising safety that the very mention of ‘violence’

linked to child refusal of contact would trigger some questions from the CAFCASS officer.

Subsequently neither the father nor the conciliator make the allegations relevant and the mother does not pursue the issue. There was no further mention of the son's refusal to have contact or the reference to violence. Instead, beginning with the mother's response in line 28, the parents moved the topic back onto other matters. Consequently the safety implications of 'the violence' were never explored<sup>9</sup>.

## Closing down and changing topics

In the previous example we noted that the interactants collaboratively marginalised the issue of violence and the matter was dropped as the parents initiated discussion about other matters. In other cases it was the CAFCASS officer who moved the topic away from exploration of risk issues.

An example is given in Extract 2. Here the mother is outlining the reasons for the refusal of her teenage children to have contact. She has already alleged earlier in the session that the children acted 'strangely' when they returned from contact, that they were frightened of their father's temper and that the teenage daughter did not have a separate bed at her father's house.

### Extract 2 Case H

4:31'

212 Mo: a:::::nd (.) that she didn't like

213 the way that dad cuddled her and

214 touched her bum [(when he danced)]

215 Fa: [ excuse me? ]

216 Caf: -> what alright okay=

217 Fa: =excuse me=

218 Caf: -> =give me a second and then yeah (0.5)

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<sup>9</sup> In a separate interview for the outcome study the mother said that the father had been physically abusive during the relationship and that the children had witnessed the abuse and had been affected by it.

219 [ right ]  
220 Mo: [this is] from my children yeah  
221 Caf: okay .hhh so (1.0) uh- this: (1.0) w-  
222 I'm just to- (0.5) get into my head  
223 -> (.) w:::- how long the contact did  
224 -> go on for so .hh you were in court  
225 on- on the tenth of august two thousand  
226 and four .hh and then the contact went  
227 on for about (0.5) er::m (0.5) nine  
228 or ten months [ I suppose]  
229 Mo: [yes it did]

In this extract the mother makes a highly damaging and sensitive allegation against the father that the teenage daughter is refusing contact because of the way the father ‘cuddled her’ and ‘touched her bum’ (lines 213-14). The father immediately challenges the mother’s account, interrupting her at line 215 with ‘excuse me’. The steep-rising intonation, amplitude and placement of the father’s interruption make it hearable as a challenge. The father repeats his challenge, ‘excuse me’ at line 217 while the mother attempts to reinforce her position by stressing that the information is from the children, a warrant for its authenticity (line 220).

As in the previous extract, the CAFCASS officer does not comment on the allegations or ask for further details or evidence for the claims. The mother’s allegation of sexually inappropriate behaviour is receipted simply with the neutral ‘what alright ok’ (line 216). Rather than asking for more information, the CAFCASS officer asks the parents to suspend their discussion of the allegations while the CAFCASS officer considers what to do. The CAFCASS officer’s appeal for thinking time, ‘give me a second’ (line 218) and ‘I’m just to- (0.5) get into my head’ (lines 221-2) pauses the discussion of the allegations and prevents the possibility of conflict escalating between the parents (Garcia 1991). Having achieved control of the floor the CAFCASS officer topic shifts in lines 223-8

by raising a series of detailed questions about the duration of contact and when the parents were last in court. These questions do not address the specific allegation raised by the mother and take the discussion off in a new direction. The allegation of sexually inappropriate behaviour is never raised again following the topic shift initiated by the conciliator.

## Rewriting Risk

In the previous sections we explored the ways in which allegations were marginalised by CAFCASS officers passing up opportunities to topicalise allegations. This was accomplished through non-uptake, declining offers to read supporting evidence, by closing down topics and moving to new topics. In this section we identify a form of marginalisation where CAFCASS officers did topicalise allegations but in doing so reframed or downgraded those self-same allegations.

We start with an example where the mother's allegations of domestic violence are downgraded by the CAFCASS officer. This extract is drawn from later in the case (H) discussed above. In the intervening twenty minutes the mother had made further allegations that the daughter was self-harming following contact, that the children feared that their father would kidnap them and that the police had advised her to move away from the area. In this extract the mother raises a new allegation:

### Extract 3 Case H

23:04'

- 1 Mo:           there was lots of concerns I think  
2               they needed to speak to dad regardin'  
3               e- regardin' his parents how granddad  
4               beats nanny [up        ]  
5 Caf:                               [alright]  
6 Fa:           oh that's a load a rubbish my dad has  
7               never hit [my mum (in a-) ]

8 Caf: [hang on hang on]

9 Fa: [(and he's not)]

10 Caf: [ don- don't ] throw too much of

11 that stuff [up at the]=

12 Fa: [(I'm so-)]

13 Caf: =moment okay

14 Fa: hhhhhh.

15 Caf: er:m (.) a- we ca(h)n't- we ca(hh)n't

16 dea(hh)l with tha(haha)t huh heh erm

17 (0.5) the (0.5) i- y'know one thes-

18 when the children see dad the es-

19 the essence of going to see him is to

20 (.) y'know have a good

21 [time (with him)]

22 Mo: [have time with ] dad isn't it

23 (.)

24 Caf: -> yeah not- not really to (.) y'know

25 -> bring up old family feuds or

26 -> whatever it is

At the start of the extract the mother starts to outline a new concern, which is that the children had witnessed their paternal grandfather 'beating up' the paternal grandmother and needed to talk to their father about it (line 1-4). As in Extract 2 above, the father immediately and forcefully challenges this account with 'that's a load of rubbish' (line 6-7). Again, as before, the CAFCASS officer intervenes to prevent further discussion of the topic before the argument can escalate. The two utterances 'alright' (line 5) and 'hang on hang on' (line 8) both function as 'placeholders' by allowing the CAFCASS officer to occupy the conversational floor. Once he has the floor, the CAFCASS officer then closes down the topic by telling the mother 'don't throw too much of that stuff up' in line 10-11. This

utterance is particularly interesting as an explicit prohibition on raising an issue of the children witnessing domestic violence<sup>10</sup>. It is worth noting too that the CAFCASS officer does not refer directly to ‘violence’ or ‘beating up’. Instead the CAFCASS officer uses the neutral referent ‘that stuff’ to refer to the mother’s allegation, thus distancing the CAFCASS officer from any endorsement of the mother’s position (cf. Heisterkamp 2006).

Our primary interest here, however, is the CAFCASS officer’s comments that the purpose of contact is to have ‘a good time’ with dad and not to ‘bring up old family feuds’ (lines 24-6). The lexically reformulated reference to bringing up ‘old family feuds’ appears to be a direct rebuke to the mother for making the suggestion in lines 1-4 that the children might want to raise the domestic violence issue when they saw their father. As well as representing an implicit criticism of the mother for raising the issue it is also important to note that the CAFCASS officer is also reframing the mother’s allegation. The mother’s concern about the children witnessing violence has been downgraded by the CAFCASS officer into an ‘old family feud’. In the CAFCASS officer’s account the reference to physical violence, the ‘beating up’, has disappeared. Similarly, the mother’s characterisation of the problem as one of unidirectional and ongoing acts of physical violence from one person (the paternal grandfather) to another (the paternal grandmother) is also replaced by the description of a more mutualised family conflict (and see Cobb 1997). In this case the question of the grandparent violence was dropped and not raised again.

A second example of a downgraded allegation is given in extract 4 below. In this extract the mother is explaining her reasons for stopping contact several months earlier:

Extract 4: Case B

4:29’

1 Mo:           when we first broke up erm: (.)

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<sup>10</sup> When this session was recorded the definition of significant harm had been amended by the Adoption and Children Act 2002 to include the effects of witnessing domestic violence.

2 y'know mister Mitchell kept on  
3 intimidating me by bringing his  
4 father and his brother down  
5 ever[y time ]  
6 Caf: [°righ'°]  
7 (.)  
8 Mo: we had contact with Luke .hh and er  
9 he was gettin' verbally aggressive,  
10 the police got called, things like  
11 that this was in the beginning (.)  
12 .hh erm=  
13 Caf: =and that was about two years [ago]  
14 Mo: [that]  
15 was two years [ago ]  
16 Caf: [yeah]  
17 Mo: -> it's sort of (.) it's snowballed  
18 -> [(to me) since then y'know]  
19 Caf: [I mean yeah: I mean one ]  
20 of the important things is that you-  
21 with with children (.) well when (.)  
22 relationships break down often  
23 -> there's a lot of (0.5)  
24 -> [anger] around [at that] time  
25 Mo: [yeah] [°yeah° ]  
26 Caf: but (.) y'know then (.) you have to  
27 move forward an- an' try (0.5) to put  
28 that to one side



In this extract the mother starts her account by describing the situation when the parents first split up, accusing the father and his family of intimidation (lines 1-5) and verbal aggression resulting in police being called (8-12). At line 13 the CAFCASS officer steps in to confirm that the mother was referring to the initial breakup. The mother agrees (line 14-15) but adds in line 17 that things have snowballed since. The CAFCASS officer does not acknowledge the mother's comment, but instead starts to talk about post-separation relationships in general and the need to put aside anger and move forward (lines 19-2, 26-8).

In this extract there are two ways in which the CAFCASS officer actively recasts and reformulates the seriousness of the mother's allegations. The first is that, like Extract 3, the CAFCASS officer downgrades the allegations. The mother's references to 'intimidation' (line 3) and 'verbal aggression' (line 9) are downgraded by the CAFCASS officer to 'anger' (line 24). Further, the mother's description of the intimidation of one person by another is recast by the CAFCASS officer as a mutual process for which both former partners are responsible. Furthermore the allegation of fairly exceptional behaviour resulting in police call-outs is normalised by the description of anger 'often' (line 22) occurring when relationships breakdown.

The second way in which the CAFCASS officer reframes the allegations is by *historicising* them, or characterising the allegations as relating only to the past and with no ongoing or current relevance. At line 13 the CAFCASS officer seeks to establish that the events described by the mother took place two years earlier. The mother confirms that they did but then goes on to say in lines 17-18 that 'it's snowballed' since then. The mother's comment suggests that the allegations that she is raising are not just historic but are ongoing and, possibly, increasing in magnitude. There is no uptake of the reference to snowballing. Instead the CAFCASS officer continues to talk about what happens at the point when relationships breakdown, referring in lines 21-4 to the anger around 'at that time' when relationships break down, i.e. two years earlier. The CAFCASS officer ends by stating that the mother has to move forward and put 'that' - the 'anger', presumably - to one side (line 27-8). The mother does indeed take up this suggestion and makes no further reference to intimidation or aggression.

A second example of how an allegation was historicised is in Extract 5. In this case the non-resident father has made an application for staying (or overnight) contact with his daughter. The mother is opposed to staying contact and at the start of Extract 5 starts to outline her reasons:

#### Extract 5 Case K

10:19'

- 1 Caf: °okay° (.) missus Smith? °what's°=  
2 Mo: =Ella hasn't stayed with Richard  
3 since nineteen ninety seven:(.)  
4 and that was because social services  
5 (.)asked me to stop her going because  
6 of her behaviour ·hhhh because of the  
7 condition that she'd come back ↑in:  
8 (.)i've got all the documents if you  
9 need to see them  
10 (0.7) [umm]  
11 Caf: [umm] (.)  
12 so that was (.) when she was three  
13 Mo: yeah  
14 (0.8)  
15 Caf: and then she's now [nearly] ten so  
16 Mo: [mn]  
17 Caf: presumably (.) things have (0.3)  
18 moved on since then=  
19 Mo: =yeah [things] have moved on but (.)  
20 Caf: [yeah]  
21 Mo: i do:n't feel (0.3) that an overnight

22           visi:t after (0.3) over six yea:rs  
23           (0.5) is appropriate (.) at ↑all::  
24           (0.5) I feel that she needs to get to  
25           know her ↑da:d (.) ↑again (0.5) I  
26           don't think that you can do that by  
27           being sent off four times a year for  
28           a weeke:nd

In this extract the mother raises a potentially serious child protection issue. She begins by stating that there has been no staying contact for seven years (line 2-3). She says this followed a request from social services to stop contact 'because of the child's behaviour' and the child's 'condition' returning from contact (lines 6-7). The mother has 'all the documents' from social services that she offers to show the CAFCASS officer if needed (lines 8-9). After a long pause the CAFCASS officer then checks with the mother that the events that she refers to were in the past (line 12) and adds 'that presumably things had moved on since then' (lines 17-18). The mother agrees that things have moved on (line 19), again agreeing implicitly to marginalise the allegation.

Our primary interest in this sequence is the way in which the CAFCASS officer historicises the mother's concerns. It is important to note that the CAFCASS officer does not know whether the concerns raised – the reasons for social services wanting to stop contact – are only historic. The mother's offer to show the documents from social services implies that she considers that the original issue is of ongoing significance. However she does not spell out verbally how or in which way the issues raised seven years ago are relevant to the present. As in other cases the CAFCASS officer does not ask the mother to topicalise the allegations although although there are numerous opportunities for intervening – for example at lines 8, 10 and from line 11. Similarly, the mother's offer to show the documentation from social services is not topicalised (line 10, 11).

Instead of seeking clarification, the CAFCASS officer appears to work from the presumption that the concerns are historic only. The CAFCASS officer first establishes that the original events relate to a distal past ('that was when she was three', lines 12-3). The CAFCASS officer then notes that seven years have passed (she's now nearly ten' line 15) and finally comments that 'presumably' things have 'moved on' (line 17-18). What is particularly interesting about this sequence is that the CAFCASS officer actively engages, or implicates, the mother in agreeing with the reworking, or historicising, of the allegation. The CAFCASS officer's three questions in lines 12, 15 and 17-18 are each formatted as agreement-implicative, an 'isn't that so?' structure designed to elicit a positive response. The first two questions, that the child was three and is now nearly ten, are also statements of fact with which the mother can only agree. The third question – that things have 'moved on' - is less clearly a statement of fact but the prefatory 'presumably' is again agreement-implicative. Similarly the phrase 'things have moved on' is so broad and expansive that it would be difficult for the mother to argue that nothing had changed in seven years. As a consequence, the mother does end up agreeing that 'things' have moved on. The 'yeah but' format of her response in line 19 suggests, however, that the agreement is produced somewhat reluctantly. The mother strongly restates her opposition to staying contact from line 21 onwards, but introduces a new issue or obstacle to staying contact – the child's lack of familiarity with her father (lines 24-8). The issue of social services or any child protection concerns are never mentioned again in the session.

## **Disputing risk**

Thus far our analyses have focused on the action of CAFCASS officers and how they did not topicalise or downgraded allegations, and how parents collaborated in the process of marginalisation. For reasons of space we have not explored in detail the way in which mothers presented allegations. In general terms, however, we concur with the analysis of Greatbatch and Dingwall (1999) that the marginalisation process begins with the hesitant presentation of allegations. In the extracts presented above the allegations were raised tentatively, in a mitigated fashion and were not pursued when faced with a non-uptake or reformulation by the CAFCASS officer. Greatbatch and Dingwall (1999) suggest

that one explanation for this is that victims of violence regularly minimise the severity of violence when making disclosures to test the likely reaction of professionals to full disclosure. In our data a second possibility is that at least some of the parents had already been briefed by their lawyers that they should focus on the future (a settlement) and not the past (any allegations). The interviews conducted with parents as part of the wider study of conciliation outcomes (Trinder et al 2006) suggest that expectations about how parents should behave in dispute resolution may be an important influence on what is disclosed.

In some cases, however, allegations were presented in more detail and raised persistently and assertively throughout the session. In these cases we note a quite different pattern of interaction than that identified by Greatbatch and Dingwall (1999). Where allegations were raised assertively and persistently the CAFCASS officer responded by becoming involved in an argument with the party making the allegation and aligning with the position of the ‘accused’ party with the result that the allegation was ultimately marginalised.

We begin this section with an example of a case where a mother’s persistent reference to domestic violence ended in a dispute with the CAFCASS officer. In this case the non-resident father was pressing for the enforcement of a previous court order for staying contact with his two year old son. The mother had alleged earlier in the session that the father had recently hit his new partner in front of several witnesses and so wanted a new order for supervised contact. The extract begins with the CAFCASS officer asking for the mother’s response to the father’s proposal to reinstate the order for staying contact:

#### Extract 6 Case F

9:39’

1 Caf: so erm ha- how would you feel  
2 about that miss johnson (.) about  
3 stephen- re- (.)

4 Mo: not at his [home no]

5 Caf: [stating] (that)

6 .hhh (.) why not at his home hh

7 Mo: because of the domestic violence I do

8 not want [my son involved in]=

9 Caf: [ well okay alright]

10 Mo: =that's why

11 Caf: right .hh I don't s- I don't see that

12 I can (1.5) give you reass- what

13 would reassure you then about the:::

14 (.) er::m (.) alleged .hhhh

15 (0.5)

16 Mo: I know what he used to be like cos I

17 used to be there

18 [(it all happens \*\*)]

19 Caf: [ no it's not what ] 'e was like

20 when he was with you (.) what would↑

21 [ you- what would reassure you ]

22 Mo: [yeah I have four witnesses that] see

23 him hit h:er

24 Caf: what would reassure you now (1.5) if

25 you could be [ reassured ]

The extract begins with the CAFCASS officer asking for the mother's response to the father's proposal to reinstate the existing contact order. This action, of soliciting proposals from one party and putting them to the other party, is entirely consistent with the standard role of CAFCASS officers as neutral facilitators of the negotiation process (Garcia 1991). As the sequence unfolds, however, there are indications that the CAFCASS officer is not open regarding the outcome of negotiations and is

instead favouring a particular outcome, or what Greatbatch and Dingwall (1999) call 'selective facilitation'. In this case the CAFCASS officer appears to favour the father's position that the previous order should be reinstated. When the mother rejects the proposal to reinstate the previous contact order the CAFCASS officer in line 5 asks the mother to account for her position with 'why not at his home hh'. The question is very direct, with no softening features. Further the emphasis on 'not' and the outbreath after 'home' (indicated by hh in the transcript) might suggest a degree of impatience or frustration with the mother's response.

The second point to highlight is that in this extract, unlike previous examples, the mother does not back down and even upgrades her allegations. Earlier in the session the mother had already described in some detail the father's alleged assault on his new partner and had opposed the father's proposal for staying contact (data not shown). In line 4 she again firmly rejects the father's proposals for staying contact. Her utterance 'not at his home no' is a bald rejection of the proposal with no attempt to soften her position. The emphatic 'no' at the end, in particular, reinforces the rejection. Then, in response to the CAFCASS officer's request for a justification 'why not at his home' (line 6), the mother upgrades the allegation. In line 7-8 she gives a specific reason, 'because of the domestic violence'. In doing so she also gives the problem a name. She then invokes child welfare or child protection concerns by stating that her concern about the domestic violence relates to her son (line 7-8). Then, when asked by the CAFCASS officer what would reassure her (if staying contact were to take place), she ignores the question and upgrades the allegation still further by referring to the father's past behaviour towards her. The mother's comment that 'I know what he used to be like cos I used to be there it all happens' (lines 16-18) clearly implies that the father was violent to her in the past. What this new information does is to expand her allegation in line 7-8 from a single isolated incident where the father has hit his new partner to suggest an ongoing pattern and history of domestic violence involving at least two women. When the CAFCASS officer rejects this suggestion, at line 19-20, the mother repeats the earlier allegation about the father's recent violence (line 22-3).

The CAFCASS officer's response to the new allegation, of a history of violence, is interesting. The CAFCASS officer could topicalise the issue, asking for specific details or proof of the allegation. Instead, the CAFCASS officer continues with the session but we see a CAFCASS officer querying the veracity of the allegations rather than ignoring or reframing them. The CAFCASS officer does not directly accuse the mother of fabricating or exaggerating the allegations, but instead a number of features of the CAFCASS officer's speech suggest a degree of skepticism about her account. In particular, in lines 12-15 the CAFCASS officer asks the mother to identify what would reassure her about the issues she had raised, i.e. the domestic violence. However, in line 14 instead of naming her concern as the 'domestic violence' or the 'alleged domestic violence' the conciliator only produces the word 'alleged', preceded and followed by pauses. We argue that the non-production of the word 'violence' following 'alleged', has the effect of underlining the CAFCASS officer's view of the mother's concern as an allegation, rather than a statement of fact. The delays and hesitations surrounding the word 'alleged' appear to operate as 'scare quotes' underlining the delicacy and problematic status of the allegation.

In line 19 the CAFCASS officer goes further than polite skepticism. In response to the mother's expanded allegation about a history of violence, the CAFCASS officer flatly contradicts the mother's account by saying 'no it's not what 'e was like when he was with you'. It is worth noting that the CAFCASS officer has no information upon which to make a judgment about whether or not the father's behaviour was similar or different with his former or current partner. But in doing so the CAFCASS officer has departed from the role of neutral facilitator and has started disputing with the mother rather than refereeing the dispute between the parents<sup>11</sup>.

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<sup>11</sup> Despite the more assertive position adopted by the mother in this extract, ultimately she did back down. After a five minute private consultation with her lawyer she subsequently agreed to reinstate the previous contact order and resume staying contact.



We now turn to our second example of a case where the CAFCASS officer becomes involved in a dispute with the mother. This case concerned the father's application for staying contact with an eighteen-month old baby. The mother had raised a series of allegations from the start of the dispute resolution session and was seeking to have the allegations investigated by a welfare report. The allegations raised by the mother included that the father had a long-term history of intravenous drug use and had exposed the baby to potentially contaminated blood, that the father had been violent to the mother's oldest child and that the father's family had threatened her if the mother opposed contact. Extract 7 begins just after both parents had accused each other of having mental health problems.

#### Extract 7 Case J

19.57

- 1 Caf: Miss Pritchard (.) do you wa:nt to sit  
2 here and use this hou:r<sup>↑</sup> (0.5) to go  
3 backwards and forwards over (.) over  
4 [ past arguments? ]  
5 Mo: [i want to make su]re that the child  
6 [is safe]  
7 Caf: [because] if you do you ca::n. (0.7)  
8 but then i don't have to be here to  
9 do [that]  
10 Mo: [okay] alright i'm sorry i din't  
11 mean to anno::y you. i am genuinely  
12 concerned about [the baby.]  
13 Fa: [i- i feel as if  
14 she's bait[ing me::]  
15 Caf: [Mr Johnson] (.) i fee:l.  
16 that your not getting an opportunity  
17 to say [as much as]

18 Mo:                   [>oh- oh-> ok[ay]I'll shut up a  
19 Fa:   [(\*\*) thank you  
20 Mo:           moment] alright [shut up]

As in earlier extracts we can see here the CAFCASS officer marginalising the mother's concerns. The CAFCASS officer's reference to 'past arguments' (line 4) reframes the allegations as less serious, as mutual rather than uni-directional and as historic rather than ongoing. In this case, however, the CAFCASS officer does more than downgrade the allegations and begins to rebuke the mother for her behaviour in the session. In lines 2-4 the CAFCASS officer's comment that the mother is using the hour to go 'backwards and forwards' over past arguments suggests that the CAFCASS officer considers that the issues raised by the mother are irrelevant and that she is just wasting time. There is some suggestion too that the time wasting is deliberate in that the CAFCASS officer notes that the mother is choosing to focus on past arguments but could equally choose to behave differently ('do you want to sit here' line 1-2). The use of the address term 'Miss Pritchard' in line 1 makes it clear that the criticisms are addressed to the mother only. The raised volume on certain words in lines 1-4 (on pritchard, wa:nt, backwards and past) adds to the sense that the mother is being rebuked. Certainly, the mother's apology in line 10-11 suggests that the mother orients to the CAFCASS officer's comments as a rebuke.

As well as rebuking the mother, the CAFCASS officer also appears to align with the father. Earlier in the session the CAFCASS officer had pressed for the mother to accept the father's wish for staying contact (data not shown). The mother had consistently opposed this, each time citing child welfare concerns. In this particular extract the CAFCASS officer does not selectively facilitate the outcome but instead aligns with the father in relation to the process. At line 13-14 the father intervenes to say that he feels that the mother is 'baiting' him. The CAFCASS officer appears to endorse the father's position, in line 15-17, agreeing that the father is not getting an opportunity to speak. The CAFCASS officer's comments reinforce further the message that the mother had inappropriately dominated the discussion through the raising of allegations. Up to this point the mother had continued to justify her

contributions by emphasising her concern for the safety of the child (line 5-6 and line 11-12).

However, when the CAFCASS officer notes that the father is not getting a fair say the mother then backs down and says she will 'shut up'. Ultimately, the mother agreed to unsupervised contact with a view to extending to staying contact at a subsequent review.

## **Conclusion**

After a decade of intensive efforts to enhance risk assessment within the family courts and family mediation, we find that many of the criticisms of mediation practice first identified by Cobb (1997) and Greatbatch and Dingwall (1999) still pertain. We found that allegations continued to be marginalised, with few exceptions. CAFCASS officers passed up opportunities to topicalise allegations, letting the issue drop or even actively moving the topic on, even though the CAFCASS officers had little if any information to make an informed assessment of the significance or seriousness of the issue. We found, like Cobb (1997) and Greatbatch and Dingwall (1999), that CAFCASS officers commonly reframe allegations by downgrading or normalising or historicising concerns. Furthermore, we noted that the precise way in which marginalization occurs is context-specific and interactional, shaped not least by the specificity or persistence of allegations. The most mitigated allegations were marginalized by the mere non-uptake of the CAFCASS officer. In contrast, if allegations are presented in a more specific and persistent fashion they invoke or elicit more proactive or assertive marginalising strategies from CAFCASS officers, including aligning with the other party and querying the veracity of an allegation. We found a very wide range of conversational techniques were deployed by CAFCASS officers to marginalise allegation, including passing on turns, declining invitations, asking agreement-implicative questions, interrupting and using neutral referents. This list is not exhaustive. There were other cases in our dataset that we have not had space to explore where CAFCASS officers also used jokes to marginalise allegations.

Our analysis has shed further light on how court-based CAFCASS officers view their institutional role. What was clear was that despite all recent efforts to emphasise the importance of assessing risk,

with few exceptions the CAFCASS officers saw their role primarily as to facilitate an agreement and to promote or restore contact (Bailey-Harris et al 1999). It was far less clear that the CAFCASS officers saw risk assessment and risk management as an important part of their institutional role. The allegations that the CAFCASS officers were presented with were often tentative or lacking in detail or specificity. The consequence was that CAFCASS officers appeared to use the lack of specificity as a reason to discount allegations quickly rather than double-checking to see if further detail was available in order to make an informed assessment about their validity, seriousness and relevance. Weak or tentative allegations were quickly marginalised rather than tested. The paradox is that strong evidence is required to take allegations seriously within the family justice system (Moloney et al 2007) and yet in our study the opportunity to elicit more detailed accounts was foregone or prevented by the marginalising processes of the CAFCASS officers<sup>12</sup>. In this the institutional task clearly differs from other settings where allegations are presented, for example calls to the NSPCC child protection helpline (Potter and Hepburn 2003). In contrast with the CAFCASS officers in our study, the child protection officers in Potter and Hepburn's study actively collaborate with the caller to help unpack the initial 'concern' (or allegation), including by asking questions to elaborate details and to check understanding. In that study the authors suggest that this collaborative process over several turns avoids premature termination of the account or a premature judgement about the status of the concern.

Our study highlights the importance of redoubling efforts to introduce effective screening to enable risk assessment prior to dispute resolution. In other jurisdictions considerable progress is being made in developing sophisticated screening tools that seek to differentiate between different levels and patterns of violence (Jaffe et al 2008). Such initiatives are to be welcomed. Furthermore it is clear that further effort is required to ensure that CAFCASS officers do deal appropriately with those cases that will inevitably slip through screening processes (Clements and Gross 2007; Aris and Harrison 2007). Our study suggested that professionals were still marginalising allegations and, more worryingly, were

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<sup>12</sup> The exceptions were the two cases in our study that were already identified as 'risky' and where the mediators spent much of the session gathering further information about the allegations as preparation for the welfare report rather than trying to hammer out an agreement.

becoming punitive in those cases where mothers continued to press their concerns. However, whilst we have focused on the practice of family court conciliators it is important to recognise that the marginalisation of domestic violence is a systemic issue that goes beyond individual practice. As others have pointed out, the increasingly rule-based approach of the family justice system, and the emphasis on settlement and contact makes individualised risk management much more difficult (e.g Dewar and Parker 2000; Bailey-Harris et al 1999). Our contribution in this paper is to identify the detailed ways in which one set of professionals within the family justice system – CAFCASS officers - marginalise concerns about violence. Further work is required to explore the detailed ways in which lawyers and judges handle allegations. It would also be of interest to examine to what extent our findings about court-based dispute resolution apply to community-based mediation. Finally we should note that our data was collected prior to the introduction of the CAFCASS Safeguarding Framework and the new risk assessment duty under s16a of the Children Act 1989. Further research, ideally employing detailed conversation analysis, is required to assess the impact on practice of these changes in the policy and legal context.

## Appendix 1 Transcription Conventions (Atkinson and Heritage 1984)

- ///  
tape recording stops momentarily
- \*  
inaudible syllables
- [[ ]]  
Simultaneous utterances – ( beginning [[ ] ) and ( end ] ] )
- [ ]  
Overlapping utterances – ( beginning [ ] ) and ( end ] )
- =  
Contiguous utterances
- (0.4)  
Represent the tenths of a second between utterances
- (.)  
Represents a micro-pause (1 tenth of a second or less)
- :  
Sound extension of a word (more colons demonstrate longer stretches)
- .  
Fall in tone (not necessarily the end of a sentence)
- ,  
Continuing intonation (not necessarily between clauses)

- An abrupt stop in articulation
- ? Rising inflection (not necessarily a question)
- Underline words indicate emphasis
- ↑ ↓ Rising or falling intonation (after an utterance)
- ◦ Surrounds talk that is quieter
- hhh Audible aspirations
- .hhh Inhalations
- .hh. Laughter within a word
- > > Surrounds talk that is faster
- < < Surrounds talk that is slower
- (( )) Analyst's notes

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