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AN EVALUATION OF THE LONG-TERM EFFECTIVENESS OF MEDIATION IN CASES OF INTERNATIONAL PARENTAL CHILD ABDUCTION

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SUMMARY

1 Introduction

This section outlines briefly the wider context of this project, i.e. an increased awareness and recognition of the value of mediation in the context of international parental child abduction.

2 International parental child abduction: Hague proceedings and the legal process

This section outlines the return order mechanism under the Hague Convention on International Child Abduction of 1980 and refers briefly to the criminal offences of child abduction under UK law. It also notes the Brussels II Regulation relevant to intra-European Union cases of wrongful removal or retention of a child. It explains, via the statistical analyses provided by Lowe (2011, 2011a) that the UK context is much influenced by the UK's positive international record for expedition and for being a 'good returner'.

3 The Mediation Pilot Scheme 2006

This outlines the background and operation of a mediation pilot scheme run by *reunite* in 2006. It also summarises the main findings of the report on this scheme (Reunite 2006); a report which has been highly influential internationally in the development of mediation solutions in this field. This influence is evidenced by the extensive reference to the *reunite* model of mediation in the Hague Conference's recently issued *Draft Guide to Good Practice on Mediation* (Hcch 2011).

4 Reunite's Mediation Model

This identifies the *reunite* model of mediation as one of three currently available internationally, i.e. a process operating within a state of refuge (Vigers 2011). Some detail is described here about *reunite's* specialist mediation service; in particular, an account of the role of preliminary screening interviews and the details of arrangements made in the mediation sessions.

5 Rationale for research

The aim of this evaluation is to find out whether mediation and the mediated agreements (MoUs) have worked over time. This brief section argues that the evaluation of the *long-term* effects of mediation is justified in that it will counter what is described as the 'closure' and 'outcome' effects of research undertaken shortly after the mediation sessions have taken place.

6 Methodology

This describes and discusses the largely qualitative methodology used. The outcomes of each mediated case were evaluated against a number of criteria which were grouped into

three sets of criteria, summarised for convenience as ‘legal/administrative consequences’, ‘family relationships’ and ‘parental perceptions’; the results of this evaluation are found in sections 8, 9 and 10 of this report. The main research tool was a series of telephone interviews of 52 parents who had been involved as either *taking* or *left-behind* parents (see para. 2.4) in an abduction/retention event followed by a *reunite* mediation in the context of Hague Convention proceedings between January 2003 and December 2009. There was also an overall aim to separate out the consideration of cases where an MoU had been agreed and quickly followed by a consent order in the courts, and where an MoU had not been agreed in mediation and the case had to be further referred back to the courts for an authoritative decision. We refer to these different sets of interviewees in this report as respectively ‘resolved’ and ‘unresolved’ cases. We also supplemented the evidence obtained from the interview material by a system of ‘case reading’ undertaken by members of the research team. The problem of non-response is also addressed in this section.

7 The profiles of the interviewees

This sets out in some detail the profiles of our 52 interviewees. This data is supported by a series of Tables and Figures setting out key profile characteristics; e.g. dates of the *reunite* mediation intervention, gender, paired/singleton, taking/left-behind, residence/contact outcomes, nationality of interviewees, identity of the relevant requesting states and age profiles of the 46 children involved in these events. Most of this data is then disaggregated for resolved and unresolved cases respectively.

8 Legal and administrative consequences of mediation

This contains the results from applying the first set of our evaluative criteria to the interview material and provides a detailed account of the issues relating to: (i) compliance with provisions of, and difficulties arising from, the MoU; (ii) whether or not the MoU was made into a consent order in the UK and subsequently registered in the overseas jurisdiction; and (iii) the occurrence of further litigation, and the extent, outcome and impact of the litigation. The analysis is carried out in relation to resolved and unresolved cases.

9 Family relationships

This contains the results from applying the second set of our evaluative criteria to the interview material and provides a detailed account of the issues relating to: (i) the ability of the child to maintain a positive relationship with both parents; (ii) the nature of the relationship between the parents; and (iii) the degree of settlement of the family as a whole. The analysis is carried out in relation to resolved and unresolved cases.

10 Parental perception of overall abduction experience and subsequent outcomes

This contains the results from applying the third set of our evaluative criteria to the interview material and provides a detailed account of the issues relating to: (i) the taking parent's view of the abduction experience and the subsequent outcome; (ii) the left-behind parent's view of the abduction experience and the subsequent outcome; and (iii) the effects

on the child from the parents' perspectives. The analysis is carried out in relation to resolved and unresolved cases.

11 The findings

This section provides further analysis and summarises the general points arising from the interview material in sections 8, 9 and 10.

The following paragraphs below (paras i to xxxii) provide a more concise summary and analysis of the findings of the evaluation of long-term effects of mediation in cases of international parental child abduction.

a) *The impact of mediation agreements and further litigation (see paras 6, 8 and 11.1):*

- i. **In resolved cases**, a nearly all female group of taking parents negotiated a residence clause in their favour in the Memoranda of Understanding (MoUs) and the subsequent consent orders specified the withdrawal of Hague proceedings by a nearly all male group of left-behind parents. At the time of our interview work these residence clauses were still being respected.
- ii. There was some evidence that the 'concession' by left-behind parents on the residence point had enabled them to secure a satisfactory contact regime in the MoU. This was to an extent assisted by the fact that taking parents were often considerably shocked by the instigation of Hague proceedings which frequently brought with it visits by police, and an association with criminal behaviour.
- iii. In a majority of the resolved cases, while the contact regimes specified in the MoUs had by no means been free of difficulties, they nevertheless had provided an enduring framework to meet the expectations of the parties in relation to their family arrangements in the years following mediation. The contact regimes survived, though with differing degrees of success regarding the details of their arrangements. One feature that stood out from the interview data was the increasing use that parents were making of a range of indirect contact methods.
- iv. Compliance with the MoUs in resolved cases was sound in terms of residence, contact and other conditions, e.g. relating to travel, school, medical, financial issues. The MoU operated as a significant template or framework to adhere to. Our interview work revealed that patterns of contact and other conditions are generally maintained by parents in the years following an abduction/retention event. The MoU was helpful in facilitating these outcomes, and was regarded by many of the interviewees as similar to a business arrangement.
- v. Two types of development within the family often gave rise to further challenges following mediation which prompted reviews of contact arrangements: the increasing autonomy of the children as time passed; and the re-partnership of either or both parents.

- vi. There was some confusion about the process of registering or ‘mirroring’ the consent orders in resolved cases. The interview material indicated that problems with mirroring orders had provided difficulties and obstacles to the maintenance of contact regimes following mediation.
- vii. There was no pattern of continued further litigation occurring in resolved cases.
- viii. In **unresolved cases**, by contrast, we found that either or both of the parties had often brought an uncompromising attitude to mediation and there was also some evidence that the interviewees had felt under pressure to mediate.
- ix. The interview work revealed that, following the Hague proceedings and further domestic proceedings, there was a trail of dissatisfaction and difficulty with maintaining satisfactory contact arrangements. The evidence indicated further litigation following mediation and the incidence of further legal expenses following the attempted mediation.
- x. There was a much more mixed outcome for the endurance and maintenance of contact arrangements in relation to unresolved compared to resolved cases.

b) The impact of mediation on family relationships (see paras. 6, 9 and 11.2):

- xi. **In resolved cases**, the general pattern that emerged was that both parents managed to maintain positive relationships with their children following successful mediation. There were many parents who identified a process whereby their children tended to compartmentalise their separate time with each parent. We found only one resolved case where the residential parent asserted that the child’s relationship with the contact parent was almost non-existent. The remainder were positive about their children’s family relationships.
- xii. There was a range of anxieties that one might expect to find generally where parents have parted. The additional complication of parents living in different countries added a further challenge to the maintenance of contact regimes and good family relations, but we found plenty of cases where both residential and contact parents were striving with differing degrees of success to manage their arrangements as best as they could.
- xiii. None of the parents attributed any features of their developing relationships with the children *directly* to the mediation intervention itself, though it was clear that the negotiated MoU, converted into a consent order, had laid a useful foundation.
- xiv. As regards parents’ relationships with each other, the predominant response was that these had in effect been shaped to perform the necessary action to manage existing contact regimes. Their relationships had become less emotionally charged and more business-like, contributing to the establishment of a greater functional quality to their communication. That is not to say that the interviewees reported a complete absence of further conflict.

- xv. In general, although mediation fell short of being the most significant and causative driver of improved relationships between parents and their children, it often acted as a turning point and as a point of stability which guided future conduct.
- xvi. **In unresolved cases**, a rather worse report of children's developing relationships with their parents was given. There were many residential and contact parents who described relationships with their children as damaged, and the underlying lack of trust between many of these parents frequently played out via their children. Fundamental differences in parenting styles and differing levels of risk aversion often made the potential conflict between parents much worse.
- xvii. In these unresolved cases, communication between the parents was minimal or even non-existent. The levels of trust appeared to be in general much lower than those found in the resolved cases, and consequently, the levels of conflict and joint problem-solving between them had worsened.
- xviii. There was much less satisfaction too in unresolved cases with the general settlement of the family unit than with resolved cases. Furthermore, dissatisfaction with the way in which the family arrangements had developed was shared by both residential and contact parents.
- xix. In the unresolved cases there was evidence that contact regimes only settled down following the final resolution of lengthy court proceedings. The settlement of the family unit was generally delayed by the intervention of prolonged legal process after the opportunity to resolve matters via mediation had been lost.
- xx. Some of the unresolved cases, with the benefit of hindsight, were unsuitable for a mediation intervention and should arguably have been filtered out at the earlier stage of the mediation interview screening process.

c) The parental perceptions of the overall abduction process (see paras 6, 10 and 11.3):

- xxi. **In resolved cases**, there were some positive and compelling views that emerged from the interview material about the overall mediation experience following the abduction/retention event. Even the sole (male) taking parent, who did not eventually secure residence of his children, felt that mediation had given him a significant voice in sorting out the family arrangements.
- xxii. Most of the taking and left-behind parents were quite ignorant about the return order mechanism of the Hague Convention. Taking parents expressed surprise at their actions being labelled as 'unlawful' and left-behind parents reported the shock they experienced when their ex-partners removed or retained their children in another jurisdiction; the classic scenario of the taking parent retaining the child following an extended 'holiday' abroad was not uncommon. Both taking and left-behind parents dwelt on the details of the original abduction/retention event as an enduring context to their interpretation of the development of their family arrangements and a continuing source of mistrust.

- xxiii. There was ample evidence given about the damaging effects on taking and left-behind parents' physical and psychological health following the abduction and court processes.
- xxiv. Both taking and left-behind parents felt that it would be fairer to have mediation alongside court proceedings as in the *reunite* mediation model rather than relying solely on court proceedings.
- xxv. Although the general pattern emerging from the left-behind parents in resolved cases was a mixture of recognition of a difficult and troubled episode in their lives, along with a process of accommodation to the re-arrangement of their family affairs, there were some residual concerns about the impact of mediation. Some of the left-behind/contact parents commented that they may have given away too much at the mediation session; and once the MoU had been signed and a consent order made they felt their bargaining power was much reduced and vulnerable to the residential parent's unilateral action.
- xxvi. Overall, both taking and left-behind parents were positive about the mediation process operated by *reunite* and were complimentary about the skills of the mediators themselves. The predominant view was to support having two female mediators rather than a mixed gender mediation team, though a minority had some concerns about the possible bias or perception of bias, in having two female mediators.
- xxvii. It was difficult to separate out taking and left-behind parents' views about the effect of events on their children from their own justificatory agendas. Taking/residential parents frequently responded that their children were too young to be affected, and some referred to the possible damage that would have occurred had they not been removed/retained. Left-behind/contact parents found it difficult to separate their own anxieties from the impact on their children and some took the view that the damage might well show itself more as the children got older.
- xxviii. **In unresolved cases**, the taking parents who eventually obtained residence of their children experienced a more troubled route to that outcome than in resolved cases. Many of them reflected on repeated court appearances, increasing bitterness and further disputes for many years' duration. The left-behind parents too had negative views about the value of mediation and also bemoaned the frequency of court hearings they had experienced.
- xxix. In unresolved cases, many taking and left-behind parents took the view that they had felt under pressure to mediate; the source of pressure was variably attributed to their ex-partner, legal advisers and judges.
- xxx. In unresolved cases most parents had positive comments to make about the mediation process and the skills of mediators as offered by *reunite*, though there were some concerns about the court's powers to enforce any resulting agreements.
- xxxi. Parents' views about the effect of events on their children were, similar to the resolved cases, difficult to interpret. Some left-behind/contact parents reported that their children had shown signs of being withdrawn and other emotional difficulties, and some of the taking parents found it difficult to be objective in their responses to these questions. Most parents

recognised, at the least, that their children had been aware of their parents' difficulties and had been anxious about the unfolding events. In some of the cases, parents reported that the child's school had flagged up concerns connected to imminent contact visits.

- xxxii. The perception from several parents was that their children did not really want to discuss with them matters relating to the abduction/retention event and subsequent court proceedings.

(d) The Voice of the Child (para. 11.4).

- xxxiii. A substantial majority of all interviewees said that, in principle, they would give consent for their children to participate directly in any future research. A much smaller number did not think this was appropriate on the basis that it would be upsetting to the child and/or would serve no beneficial purpose from the child's point of view. The interviewees who said they would give their consent also mentioned that this would be subject to the child's own wishes and would depend on the age and maturity of the child concerned.

1. INTRODUCTION

- 1.1. In the past decade, there has been an increased awareness and use, both in the UK and internationally, of alternative dispute resolution (ADR) methods – in particular *mediation* – to assist the resolution of cases of international parental child abduction. The growing international recognition of the utility of mediation in this context was reflected in May 2011 by the Permanent Bureau of the Hague Conference on Private International Law which issued a *Draft Guide to Good Practice: Part V Mediation* (hereafter the '*Draft Guide*') (HccH 2011).
- 1.2. *Reunite* was one of the first non-governmental organisations (NGOs) to pioneer the use of a mediation model in international parental child abduction. The orthodox view held by family law practitioners, mediators and academics used to be that mediation interventions were inappropriate for international parental child abduction scenarios as the parties would necessarily be at arm's length.
- 1.3. The development of *reunite's* mediation model (see below) has clearly influenced practice in the UK and beyond. Although the earlier pilot work focussed on cases where the Hague Convention was engaged, *reunite* has further developed its mediation practice in cases involving non-Hague Convention states. For example, since 2008 it has pursued links with NGOs in Egypt, Pakistan and elsewhere, with a view to assisting in the further development of mediation services in these countries. A number of other countries have started their own mediation services, often based on the structure and processes of the *reunite* model. Germany, for example, has conducted mediation projects involving France and the United States. The success of the *reunite* mediation model and service, is reflected by the international reputation in this field that has been achieved as evidenced by the regular requests for consultation it receives from overseas government departments and organisations.
- 1.4. This research project attempts to fill an important gap in the critical research in this field, by evaluating the long-term effectiveness of mediation in cases of international parental child abduction and the effectiveness of the agreements reached within mediation.

2. INTERNATIONAL PARENTAL CHILD ABDUCTION: HAGUE PROCEEDINGS AND THE LEGAL PROCESS

- 2.1. The Hague Convention on the Civil Aspects of International Child Abduction of 1980 (hereafter 'the Hague Convention') established an international *civil* justice mechanism whereby a child (up to the age of 16 years) who has been wrongly removed to, or retained in, another states party to the Convention, will be returned back to the child's country of habitual residence. There are currently 87 states that have ratified the Hague Convention.
- 2.2. The United Kingdom signed the Hague Convention on 19 November 1984. In order that the UK was enabled to ratify the Hague Convention and incorporate it into UK law, the Child Abduction and Custody Act 1985 was passed. Ratification of the Hague Convention followed on 20 May 1986 and the 1985 Act came into force in the UK on 1 August 1986. The following paragraphs provide a brief overview of the main elements of the Convention machinery; see Buck *et al* (2011: 212-242) for further details.
- 2.3. The applicant, who is usually a 'left-behind parent', will apply to the court for a peremptory return order where such a wrongful removal or retention can be established. This is defined as occurring where the abducting parent has removed/retained the child(ren) from their country of habitual residence in breach of the left-behind parent's rights of custody.
- 2.4. It should be noted that throughout this report the less pejorative phrase 'taking parent' will be used in place of the language of 'abduction' used in the text of the Hague Convention. For convenience also, the phrase 'left-behind parent' is used though this also does not appear in the text of the Hague Convention. It should also be noted that abduction is a *criminal* offence in the domestic legal systems of many of the states that have ratified the Hague Convention. In the United Kingdom, the offence of child abduction (of a child under 16 years) by parents or strangers is punishable on summary conviction by up to six months imprisonment and/or a fine, and on indictment to a term of imprisonment of up to seven years: see Child Abduction Act 1984, ss.1, 2 and 4(1). However, parental child abduction convictions are not numerous, in part because, unlike the offence of child abduction by strangers, no prosecution for this offence can be instituted except by or with the consent of the Director of Public Prosecutions: see Child Abduction Act 1984, s.4(2). The common law offence of 'kidnapping' a child under 14 years of age has also survived the statutory offences – see *R v D* [1984] AC 778 – though its deployment in relation to child abduction has been curtailed significantly in practice.
- 2.5. There have been only a very small number of prosecutions and convictions for statutory child abduction offences (including *both* parental and non-parental abductions) in England & Wales over the last ten years.¹ Against this background, it is interesting to note that many taking parents we interviewed reflected a strong association with criminality connected with their experience of the civil justice mechanisms of the Hague Convention (see paras 10.1.1 and 10.2.1 below).

¹ Source: Freedom of Information request, Ref: FOI 74149 IOS 770-11 (January 2012).

- 2.6. Once the facts of a wrongful removal or retention as defined in the Hague Convention have been made out, the court may make a return order unless one of the exceptions or 'defences' have been established. It should be noted that the defences are generally interpreted quite restrictively in order not to undermine the underlying purpose of the Convention, which is to deter the unlawful removal of children across national borders and to encourage international co-operation amongst Member States. The onus then shifts to the defendant (the taking parent) to demonstrate that one or more of these exceptions are made out to resist a return order. One assumption behind the Convention is that the substantive family dispute issues, for example, residence and contact, can then be resolved in the country of the child's habitual residence following a return order.
- 2.7. There are five exceptions/defences available at the discretion of the court. Firstly, an exception to a return order outcome from Hague proceedings is possible where more than one year has passed since the removal or retention and the child is settled in its new environment. Secondly, where the left-behind parent consented or acquiesced to the removal/retention. Thirdly, where there is a grave risk that the child's return would expose the child to physical or psychological harm. Fourthly, where a child who has attained sufficient age and maturity and it is appropriate to take account of their views, objects to the return. Finally, a return order may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights.
- 2.8. A left-behind parent must act quickly and contact the 'Central Authority' in their country. (The Central Authority for England & Wales is; 'The International Child Abduction and Contact Unit (ICACU)', Official Solicitor and Public Trustee, London. For Northern Ireland; the Northern Ireland Courts & Tribunals Service, Belfast. For Scotland; the EU & International Law Branch, Scottish Government, Edinburgh). 'Incoming cases' are those where a child has been abducted from another contracting State (referred to as the 'requesting State') *into* the United Kingdom; and 'outgoing cases' are those in which a child is abducted *from* the United Kingdom to another contracting State (the 'requested State').
- 2.9. The matter should come before a court expeditiously. In England & Wales such 'Hague proceedings' will be dealt with by the Family Division of the High Court. At present, legal aid is available to left-behind parents. ICACU either directly allocates a solicitor (with a legal aid franchise) to the parent or will assist the solicitor already engaged by the parent to obtain legal aid. A taking parent, by contrast, will not automatically obtain legal aid; it is means- and merit-tested. In some other countries these cases are sometimes dealt with by a public prosecutor and/or at the lowest court level where there may be little experience in dealing with such cases. In England & Wales, the solicitor will commence proceedings and instruct a barrister who may see a duty judge to obtain a number of emergency orders; for example, for the child not to be taken to a third country, for the surrender of the child's passport. The court may then list a brief hearing where the taking parent could be represented and the court will consider making appropriate directions. Both parents are usually asked to provide written witness statements. The final hearing then follows within a few weeks.
- 2.10. There are additionally special rules now applying for cases concerning two EU contracting States (except Denmark) under the Revised Brussels II Regulation (2201/2003) (hereafter 'Brussels II'). Where the court is considering the defences the child(ren) should be heard

where appropriate in the proceedings; a process usually undertaken by means of a Children and Family Court Advisory and Support Services (CAFCASS) report to the court in England & Wales. The court may not refuse to order a return even if a defence of grave risk to the child has been made out under article 13(b) of Convention provided that it is established that adequate arrangements have been made to ensure the protection of the child after their return (Brussels II, article 11 para. 4).

- 2.11. The court is encouraged to issue its judgment within six weeks of the application (Convention, art 11). If the court exercises its discretion and refuses to order a return on the basis of one of the defences (other than the one year 'settlement' proviso), it must then transmit its judgment via the central authorities and then to the parties within one month. The party then has three months to apply to the court in the country where the child used to live and that court may order a return (Brussels II, article 11, paras 6-8); that return order in effect cancels out the non-return order by the other court. If no such application is made within the three month period then the country to which the child has been abducted has jurisdiction to resolve any family dispute issue outstanding.
- 2.12. It should be noted that different contracting States have varying records for expedition and resolution of cases. Lowe's (2011: 44) statistical analysis of Hague applications made in 2008 found that, of 49 countries examined, Denmark had the best record for resolving cases with an average of 44 days while the worst was Bulgaria which took 347 days. The performance of England & Wales however, was at the top end (sixth) of this league table (an average of 88 days), though Northern Ireland (120 days) and Scotland (208) had less impressive league positions.

'Compared with the global results, applications to England and Wales were resolved far quicker for every outcome. Globally, judicial return orders took an average of 166 days compared with 67 days in England and Wales. Judicial refusals took 286 days to conclude globally, compared with 193 days and voluntary returns took more than twice as long with an average of 121 days compared with 44 days within England and Wales.' (Lowe 2011a: 188)

- 2.13. Furthermore, there was a much stronger trend of judicial return orders in England & Wales (47 per cent) compared to the global figure (27 per cent) (2011a: 184). The record then of countries like England & Wales for being relatively expeditious in Hague proceedings and 'good returners' sets the context for any mediation intervention. *Reunite's* mediation model was conceived as integral to the Hague proceedings process and consequently has had to fit around short time deadlines. In principle the 'good returner' feature of the England & Wales jurisdiction provides a fairly strong incentive for the taking parent to mediate in order to negotiate residency of the child in the UK. It also provides an opportunity for the left-behind parent to negotiate and establish an appropriate contact regime. However, these contextual incentives to mediate may also imply that although the *reunite* mediation scheme may be appropriate for 'good returner' countries, it may not be so for countries with a different profile.
- 2.14. The pattern of international parental child abduction has radically changed since 1980. The paradigm case at the time of the preparation of the Convention was the aggrieved father, usually not the primary carer, perhaps dissatisfied with his contact with the child, and who took a child abroad and may have concealed their whereabouts from the left-behind

mother. However, the global pattern from at least the 1990s has been that taking parents are predominantly mothers, while left-behind parents are predominantly fathers. In 2008, Lowe (2011: 6) calculated that, globally, 69 per cent of taking persons were the mothers of the children involved and only 28 per cent of taking persons were fathers; the remaining 3 per cent was made up of grandparents, institutions or other relatives. Furthermore, the majority (72 per cent) of taking persons were the child(ren)'s *primary carer*. In the same year, the pattern in England & Wales was even more marked; 81 per cent of taking persons were mothers and only 16 per cent fathers.

- 2.15. As will be seen, our aggregate sample of 52 interviewees breaks down similarly to the national figure. It includes a total of 22 taking parents and 30 left-behind parents. Of the 22 taking parents, 19 (84 per cent) are mothers and 3 (16 per cent) fathers. These taking parents therefore generally arrive at mediation having been advised that there are likely prospects of a judicial return order being made within a challenging time-frame. Many of the taking parents therefore have a powerful incentive to mediate. Equally, many of the left-behind parents will know that if they concede on the residence point, they may well be able to gain considerable concessions in a mediated agreement regarding the contact regime. One consequence of the context of expedition and a good returner profile is that the *reunite* model may not be exportable to other jurisdictions where there are not the similar pressures of time and a robust record of judicial return. This is a point that is picked up again in the concluding paragraphs (see para. 11.00).
- 2.16. The availability of a mediation process is implied by provisions within both the Hague Convention and Brussels II. In the former, Central Authorities are under a duty to take all appropriate measures 'to secure the voluntary return of the child or to bring about an amicable resolution of the issues' (art. 7(c)). In the latter, Central Authorities are required to take all appropriate steps to 'facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end' (art. 55(e)).

3. THE MEDIATION PILOT SCHEME 2006

- 3.1. *Reunite* secured funding from the Nuffield Foundation in 2000 to develop and trial a Mediation Pilot scheme for use in cases of international parental child abduction, and mediated their first case in 2003. A report appeared in October 2006 (*Reunite 2006*). A focus of the pilot scheme was to ensure conformity with the Hague Convention and therefore the criteria set for inclusion of cases reflected this. The aim was to mediate cases where children had been removed to, or retained in the United Kingdom, and where the left-behind parent was pursuing a Hague application for the return of the child. There were 80 cases initially referred to *reunite* as potentially suitable for mediation. 41 of these proceeded to a preparatory screening interview that was conducted to assess suitability for mediation, the remainder fell outside the criteria set for the pilot scheme; for example, because they fell outside of the Hague proceedings structure. Five of the 41 cases that were screened were assessed as not suitable for mediation; for example, because the parents' views were too polarised and/or there were concerns about an alleged degree of

violence. Of the remaining 36 cases eight did not proceed to mediation; they were cancelled shortly before the mediation appointment for a variety of reasons including a decision by applicant parents to withdraw the Hague application. Consequently, a total of 28 cases proceeded to a concluded mediation; a Memorandum of Understanding (MoU) was agreed in 21 (75 per cent) of these cases.

- 3.2. The findings from the pilot scheme study (Reunite 2006: 49-50) were largely based on: 'feedback' questionnaires from parents (39 of 56 responded); solicitors (15 of 28 applicant parents, and 10 of 28 defendant parents); mediators (six of eight responded). The key findings were that 95 per cent (37) of parents would recommend mediation to others and 86 per cent (32) were 'satisfied' or 'highly satisfied' with the outcome of mediation. The report also noted that 'in the majority of cases' the mediation did not delay Hague proceedings.
- 3.3. On the controversial issue of whether allegations of domestic violence should preclude mediation, the report concluded that they should not but that 'it is important that a risk assessment is undertaken on each case and appropriate measures introduced to ensure that parents feel safe during the mediation process.' The report also asserted that an agency, such as CAFCASS, that undertakes an interview with children, should provide the mediators with a copy of the CAFCASS report; at least in circumstances 'where it is appropriate' for the voice of the child to be heard (Reunite 2006: 50).
- 3.4. The report also came to conclusions about a number of process issues. It noted that the screening interview was 'crucial' not only to ensure suitability for mediation, but also to assuage any concerns and enhance parental understanding of the process. It noted that international parental child abduction cases should always be co-mediated, by two same- or mixed-gender pairs of mediators. The report also proposed that offering three 3-hour sessions would usually be sufficient. (Reunite 2006: 49). Finally, the report concluded that the cost to *reunite* of mediating a case, including venue charges and the use of an interpreter (which it concludes did not hinder the mediation process), was £2,640 (Reunite 2006: 48, 50).
- 3.5. The pilot scheme therefore produced some evidence that there was a role for mediation in resolving these often highly contentious and emotional disputes, and also that those parents were willing to embrace the use of mediation. On its completion, *reunite* made the decision to continue to offer a mediation service in cases of cross-border family disputes involving children and this is now one of its core activities.
- 3.6. The report on the pilot mediation scheme has had a high impact on the international community. Work on the Hague Conference's *Draft Guide* was commenced in 2009 by a group of independent experts. The *Draft Guide* confidently proclaims that in some states, including the *reunite* scheme in the UK (and referencing the pilot mediation report of 2006), 'mediation schemes specifically developed for international child abduction cases are already successfully providing such services' (HccH 2011, para. 57, nn. 85, 86). The *Draft Guide* includes numerous references to the pilot mediation study concerning: the need to exercise care in introducing parents to the scheme; the successful use of initial screening; offering a cost-free service; the need for full parental consent and the lack of any effect on the outcome of a Hague application; the advantageous use of co-mediation; the option for mediators to request CAFCASS reports; and, the view that allegations of domestic violence

will not necessarily preclude mediation (HccH 2011, respectively nn. 135, 163, 164, 195, 220-222, 244 and 263).

4. REUNITE'S MEDIATION MODEL

Three broad models of specialist schemes for mediating Convention cases have been identified: a mediation can operate as a process within the state of refuge; a bi-national co-mediation scheme model where the scheme operates across two states with one mediator trained in each state; and a mediation-based approach where 'the relevant professionals are expected to view the application against the backdrop of mediation' (Vigers 2011:35). *Reunite's* version of Convention mediation clearly comes within the first category.

Reunite's specialist mediation service is offered currently in the following four categories:

- *'international parental child abduction/wrongful retention* – involving both member States of the 1980 Hague convention and Non-Hague Convention States;
- *prevention of abduction* – where a family is separating and there are links with another country;
- *contact across international borders*;
- *relocation* – where one parent wishes to reside with their child in a different country.' (Reunite 2011).

4.1. Screening interview

Both parents will each have an initial telephone interview prior to mediation with one of the mediators. The mediator provides information about the mediation process and helps to identify the issues for mediation. If both parents wish to proceed and the mediator assesses the case as suitable then the mediation will proceed. A timetable is drawn up taking into account the availability of the parents, the two mediators, and the need to fit mediation around the timing of any relevant court proceedings. Subject to some variation the usual arrangement is three mediation sessions scheduled over two consecutive days, each session lasts up to three hours.

4.2. Mediation sessions

The usual arrangement, subject to availability, is for *two* mediators to be present at these sessions over the two-day period. Mediators are impartial and independent. Their role, in accordance with standard practice, is to *facilitate* agreement between the parents not to direct or prescribe solutions. The mediation sessions are conducted under conditions of confidentiality in order to support a frank and open exchange of views by the parties. Where agreement can be reached about residency, contact and related issues, the mediation is concluded by a written Memorandum of Understanding (MoU) which will be signed by the parents and the mediators (see Appendix 2 below which contains a 'typical', and hypothetical, MoU). The MoU will then be sent to the parents' lawyers and submitted as a draft consent order in court proceedings. Reunite (2011) makes clear in the text of their own MoUs that these agreements are not legally binding 'unless, and until, it is submitted as a draft consent order' (see Appendix 2, penultimate para).

For parents eligible for legal aid, the cost of mediation will be covered by the Legal Services Commission. For those parents not eligible for legal aid, a fee of £1,500 is charged for up to three 3-hour mediation sessions; £750 to be paid by each parent.

The mediation sessions of course have to be carefully managed by the mediators and customised to each couple's individual circumstances and family history. Unsurprisingly, the sessions are particularly challenging and frequently contain a high emotional charge.

5. RATIONALE FOR RESEARCH

- 5.1. Although the feedback questionnaires that *reunite* receives from parents shortly after participating in mediation continue in the main to be very positive, there are concerns that such evidence is limited in two respects. Firstly, their responses simply may reflect a certain amount of relief by the participants that the often highly emotionally charged mediation sessions have finished (the 'closure effect'). Secondly, it will always be difficult to disengage the positive responses to the use of mediation generally with the participant's immediate personal outcome achieved (the 'outcome effect'). In effect, the snapshot of feelings captured at this stage is important but not conclusive evidence on the success of mediation in this field; but it is limited to the short-term impact of mediation, and prior to the MoU taking effect.
- 5.2. This research project, by contrast, was aimed at capturing the long-term effectiveness of mediation in order to provide more robust research evidence to support the continuance (or not) of such mediation services, and to inform the on-going work of the Permanent Bureau in their deliberations about possible amendments to international instruments and/or issuing guidance in this area. The overall aim was to determine whether the agreements reached in mediation had proved, over time, to be 'successful' according to a number of criteria.
- 5.3. In evaluating long-term effectiveness it was also thought that it would be helpful to make some comparisons between two categories of mediation case: those which could be said to have been 'resolved' through the *reunite* mediation sessions and cases which were not resolved by way of *reunite* mediation. See further, para. 6.1.5 below for our definition of 'resolved' and 'unresolved' cases.

6. METHODOLOGY

The study population consisted of those parents who had already participated in mediation with *reunite*, either under the auspices of the Mediation Pilot Scheme or the *reunite* mediation service between December 2003 and December 2009. This cut-off date was necessary to ensure that the dataset contained respondents who would be reflecting retrospectively across a sufficient period of time to counter or at least lessen the 'closure' and 'outcome' effects referred to above (para. 5.1). Consequently, the parents interviewed would be responding to a removal/retention event at least one year ago, and in some cases several years ago (see para. 7.1 and Figure 7.1 below). The long-

term outcome of each mediated case was evaluated against a set of criteria which can be characterised as falling within three categories.

Firstly, attention was given to a range of *legal/administrative consequences* that followed the mediation events including the following:-

- a. compliance with provisions of, and difficulties arising from, the Memorandum of Understanding;
- b. whether or not the MoU was made into a consent order in the UK and subsequently registered in the overseas jurisdiction; and
- c. the occurrence of further litigation, and the extent, outcome and impact of the litigation.

Secondly, attention was given to a number of aspects relating to the development of *relationships* between parents and children and the settlement of family units, including the following:-

- a. the ability of the child to maintain a positive relationship with both parents;
- b. the nature of the relationship between the parents; and
- c. the degree of settlement of the family as a whole.

Finally, there was a focus on the *parental perceptions* of the overall abduction experience and its outcomes, including the following:-

- a. the taking parent's view of the abduction experience and the subsequent outcome;
- b. the left-behind parent's view of the abduction experience and the subsequent outcome; and
- c. the effects on the child from the parents' perspectives.

6.1. Interviews

6.1.1. The main research tool used for this study was the use of in-depth telephone interviews with parents who had participated in *reunite's* mediation process from January 2003 to December 2009. There were 120 individuals on the *reunite* database who had experienced a mediation intervention from when the mediation activity by *reunite* commenced in 2003 to the cut-off date of December 2009. The project worker attempted to contact all these individuals and 52 respondents (43 per cent of the total population) were interviewed.

6.1.2. We considered the need for, and suitability of, including the abducted/retained *child(ren)* in the scope of those to be interviewed. *Reunite* supports the growing awareness of a child's right to be heard as part of the recognition of the child's human rights, and appreciates the considerable importance of child research interviews. However, it was thought that telephone interviews would not be an appropriate research tool to capture the voice of the child in this context. The possible use of focus groups was considered a more likely method, but this was rejected mainly on the basis that the project would have to attract considerably more resources in order to deliver

the organisation, necessary consents and other qualified assistance that we believed would be necessary to undertake this method to a good quality standard. As will be seen in the conclusion of this report, we believe that there remains scope for further research to be conducted which may focus on capturing the voice of the child.

- 6.1.3. The administrative arrangements to secure the interviews and the interviews themselves were conducted by the project worker(s) between September 2010 and August 2011. Respondents were contacted by various means – email, telephone, letter – and the overall aims of the research and the confidential, voluntary and other conditions of participation were explained to them. The project worker used a semi-structured questionnaire (Appendix 1) designed to meet the aims and objectives of the study and to guide the discussion in a flexible manner. Two further questions were later added to the questionnaire (see note to Appendix 1). The average duration for the telephone interviews was 71 minutes with a median of 65 minutes.
- 6.1.4. At the outset the research team was aware of the need to ensure that there was a reasonable balance between the views expressed by ‘left-behind’ and ‘taking’ parents respectively. At the end of the research project, 52 parents had been interviewed. From this total of 52, there were 18 ‘pairs’ (i.e. a left-behind and taking parent previously involved in the same abduction/retention event). In addition to these 36 ‘paired’ individuals there were a further 16 individuals interviewed. We characterise this latter group, for convenience in this report, as ‘singletons’, though of course this only reflects the fact that the other member of their ‘pair’ was not interviewed rather than a description of any family/marital status. Of the 16 singletons (11 men and five women), 12 were left-behind and four were taking parents. The interview material was then transcribed.
- 6.1.5. There was also an overall aim to separate out the consideration of cases where the mediation was completed and cases where it had not been completed. We refer to these different sets of interviewees in this report as respectively ‘resolved’ and ‘unresolved’ cases. We took as the definition of a ‘resolved’ case the situation where the MoU had been reached and quickly followed by a consent order in the courts. A case was counted as ‘unresolved’ where it was not agreed in mediation and had to be further referred back to the courts for an authoritative decision.
- 6.1.6. There were a few cases which were on the borderline of our resolved/unresolved split. In two paired cases an MoU was reached in mediation but when the consent order was made the contact arrangements within the MoU were removed and the case was transferred to the county court in one case, and the Principal Registry of the Family Division of the High Court in the other, for a re-determination of contact. Other aspects of the MoU were incorporated into the consent order. In two other paired cases an MoU was reached in mediation but key conditions were not incorporated into a consent order by the court. These were all counted as ‘unresolved’ cases.
- 6.1.7. Of our overall set of 52 interviewees there were 29 whose cases had been resolved and 23 whose cases were unresolved.

6.2. Case reading

6.2.1. The second key research tool deployed was a system of case reading. In order to fully contextualise the interview transcript material the research team met regularly in two-hour sessions to discuss and consider the transcripts of interviews as they were produced. Supplementary documentation – for example, MoUs, consent orders, CAFCASS reports and completed feedback questionnaires taken at the time of mediation – was reviewed to support this process. A brief executive note was drafted after each meeting to capture the key insights and conclusions of the case reading sessions. These meetings enabled the participants to obtain a detailed understanding of the overall context of the mediation appointments by the interviewees. Where appropriate, *reunite's* case file was further scrutinised to enable a comprehensive understanding of the chronology and process of each case considered.

6.3. Analysis

6.3.1. The analysis of the interview transcripts was supported by the use of a computer-assisted qualitative data programme, Nvivo 8. All the interview transcripts were 'auto-coded' with a tree node categorisation enabling easier access across the dataset to key issues and outcomes. Further segments of text were manually coded up as the analysis process progressed.

The aggregate text collected in these nodes was then considered against the three categorisations of criteria type set out above: i.e. the legal/administrative consequences; the nature of family relationships; and the parental perceptions of the overall abduction experience. The analysis was further informed by consideration of the case reading notes.

6.4. Writing up

Initial drafts of the report were prepared by Professor Trevor Buck and circulated to the research team for their comments between September 2011 and February 2012.

6.5. Research strengths & limitations: accounting for non-responses

6.5.1. The collaboration between *reunite* and De Montfort University has been beneficial in that it has enabled a combination of experienced practical application and academic rigour in this field. The evaluation has benefitted greatly from the relatively easy access to the key players who are most likely to provide illuminating answers about the success of mediation – the parents themselves who were at the centre of a prior dispute which called for a mediation intervention. The interview material is a rich and probably unique source of data in this area.

6.5.2. One methodological issue that needs addressing is the extent to which the in-depth interview material from our dataset of 52 respondents is a reliable guide to the views and attitudes of the total population of individuals who had gone through mediation under the auspices of the *reunite* mediation service between its inception in January 2003 and December 2009. As pointed out earlier (para. 6.1.1) attempts were made initially to contact 120 individuals; but 68 of these (57 per cent) did not respond. The

question arises as to whether there might be significantly different features to this set of 'non-responders' compared to the 52 respondents (43 per cent) whose evidence forms the major part of this report. An analysis of the non-responders is set out in Table 6.1 below.

Table 6.1 Non-responders: reasons for non-response

Reason	No.	Per cent
Contact details 'dead'	24	35.3%
Contacted but no response	34	50.0%
Definite refusal	5	7.4%
Refusal (reconciled)	2	2.9%
Conditional agreement	3	4.4%
Total	68	100%

This Table shows a breakdown of 'reasons for non-response' in so far as we were able to identify them from a mixture of telephone messages, emails and other correspondence that the project worker collated during the process of contacting the respondents. As can be seen, in the majority (50 per cent) of cases there was simply no reply at all given (34) following several attempts to contact them via telephone and email. It is difficult to make any speculations about the (24) non-responders whose contact details were dead in terms of whether their responses would have been significantly distinctive from our live dataset of 52 interviewees. Many of them were older cases from mediations undertaken in 2003 and 2004 and changes of address have not been forwarded to reunite and recorded. The five individuals who definitively refused did so because they claimed they did not have sufficient time (2) or did not want to revisit what was for them a painful experience (2), or both (1). We identified only one 'pair' who refused to participate on the basis that they had become reconciled and did not want to revisit such unhappy memories. The three non-responders who would have made their agreement conditional had very specific concerns linked to their non-response; two individuals stated that they would only agree to an interview if an interpreter could be provided and one individual would only be interviewed if an assurance could be given that his/her ex-partner would *not* be interviewed. The research team could not comply with either of these conditions. These reasons, by themselves, do not appear to reflect any key divergence from the generality of responses obtained in relation to our live dataset of interviewees. Similar anxieties and questions were frequently asked by our set of 52 individuals before agreement was secured to be interviewed. It is necessarily the case that we cannot be

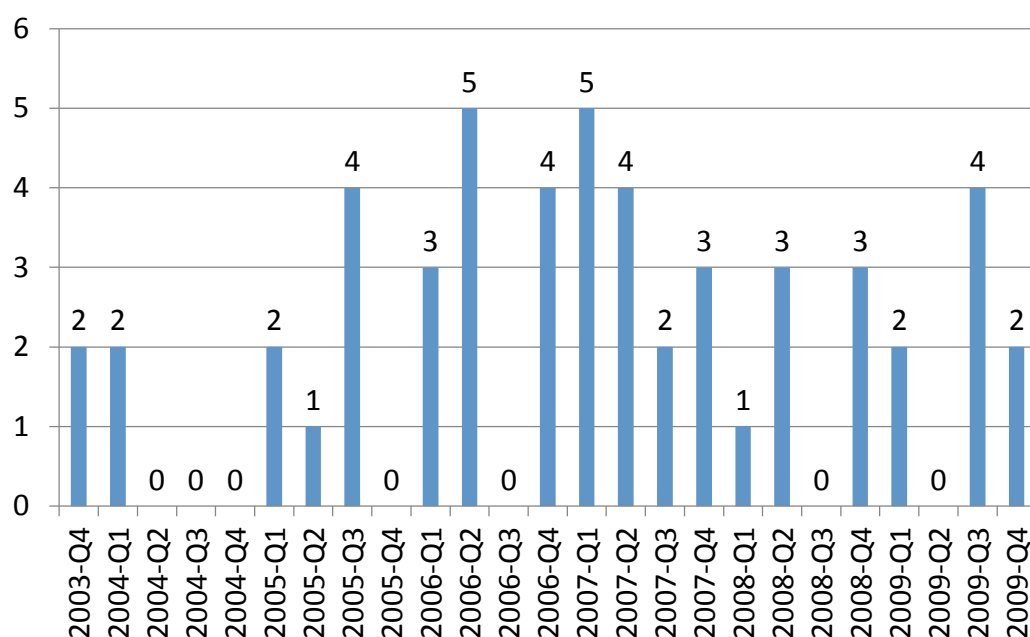
certain of their reasons for non-response. The conclusion of the research team was that the reasons for non-response remain, as far as we can tell, logistical ones rather than substantial differences in the characteristics of the responders and non-responders respectively.

7. THE PROFILES OF THE INTERVIEWEES

7.1 The interview dataset

The Figures and Tables below set out some of the key features of our dataset of 52 interviewees. Each individual was interviewed by telephone by the project worker using a questionnaire (see Appendix 1). They were asked to contribute their thoughts and reflections about their mediation sessions occurring any time between December 2003 and December 2009. Figure 7.1 below sets out dates of the year (in year quarters) in which the interviewees experienced a *reunite* mediation intervention within the census period.

Figure 7.1: The year quarter in which interviewees (52) experienced a *reunite* mediation intervention



The median date of the mediation sessions for the whole dataset was March 2007. Overall, interviewees were reflecting on events, on average, that had occurred three to four years prior to the dates of their interviews.

As Table 7.1 below shows, the dataset includes a slightly larger number of men (29) compared with women (23) due to the gender imbalance in the singleton profile (see Table 7.3). There was a deliberate attempt by the research team to secure as many 'paired' individuals (36) as possible in

order to capture the perspectives of both parents in relation to the mediation sessions in which both parties participated.

Table 7.1: Overall dataset of Interviewees (52)

Male	Female	Paired	Singletons	Taking parent	Left-behind parent	Residence parent	Contact parent
29	23	36	16	22	30	21	31
52		52		52		52	

The overall dataset included a somewhat smaller number of taking parents (22) compared with left-behind parents (30), again due to the imbalance in the singletons profile: see Table 7.3 below. Similarly, there was an imbalance in the number of residential (21) and contact (31) parents at the time of our interview work: see Table 7.3.

Table 7.2 below, sets out the profile of the paired individuals (36) in our dataset of respondents. Necessarily, there are equal numbers of men and women and equal numbers of taking and left-behind parents.

Table 7.2. Overall paired profile (36)

	Male	female	Left-behind parents		Taking parents		Residential parent		Contact parent	
	18	18	18		18		18		18	
			16 Male	2 Female	2 Male	16 Female	1 Male	17 Female	17 Male	1 Female
Total	36		36				36			

However, a striking feature is the predominance of *male left-behind parents* (16) and *female taking parents* (16); a pattern that resonates with both national and global profiles (see paras 2.1.4 & 2.1.5). It is also important to note that the eventual outcomes at the time of our interview work, in terms of which parent has residence and contact in relation to the child, privilege women (17) with residence compared to the men (1).

Table 7.3 below sets out a breakdown of the singleton group (16). It comprises more men (11) than women (5) and more left-behind parents (12) than taking parents (4). Of the left-behind parents there were again, more men (10) than women (2); and of the taking parents there were three women and only one man. In terms of eventual outcomes at the time of our interview work there

were only three (all women) who had negotiated residence in relation to their children, with the remaining parents (13) having contact (11 men and 2 women).

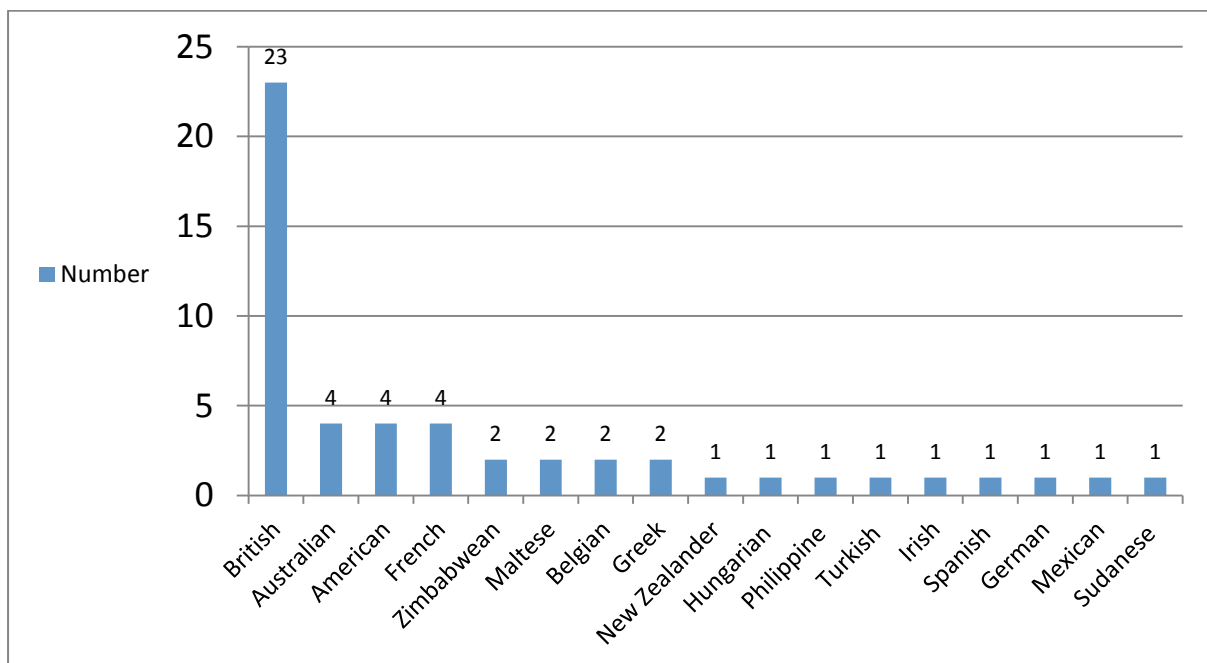
Table 7.3. Overall singleton profile (16)

	Male	female	Left-behind parents		Taking parents		Residential parent		Contact parent	
	11	5	12		4		3		13	
			10 Male	2 Female	1 Male	3 Female	0 Male	3 Female	11 Male	2 Female
Total	16		16				16			

Of the total (16) singletons, only three (all women) had residence of their children and 13 had contact.

The nationality of the interviewees is set out in Figure 7.2 below. This comprised some (former) couples of the same nationality and some of mixed nationalities.

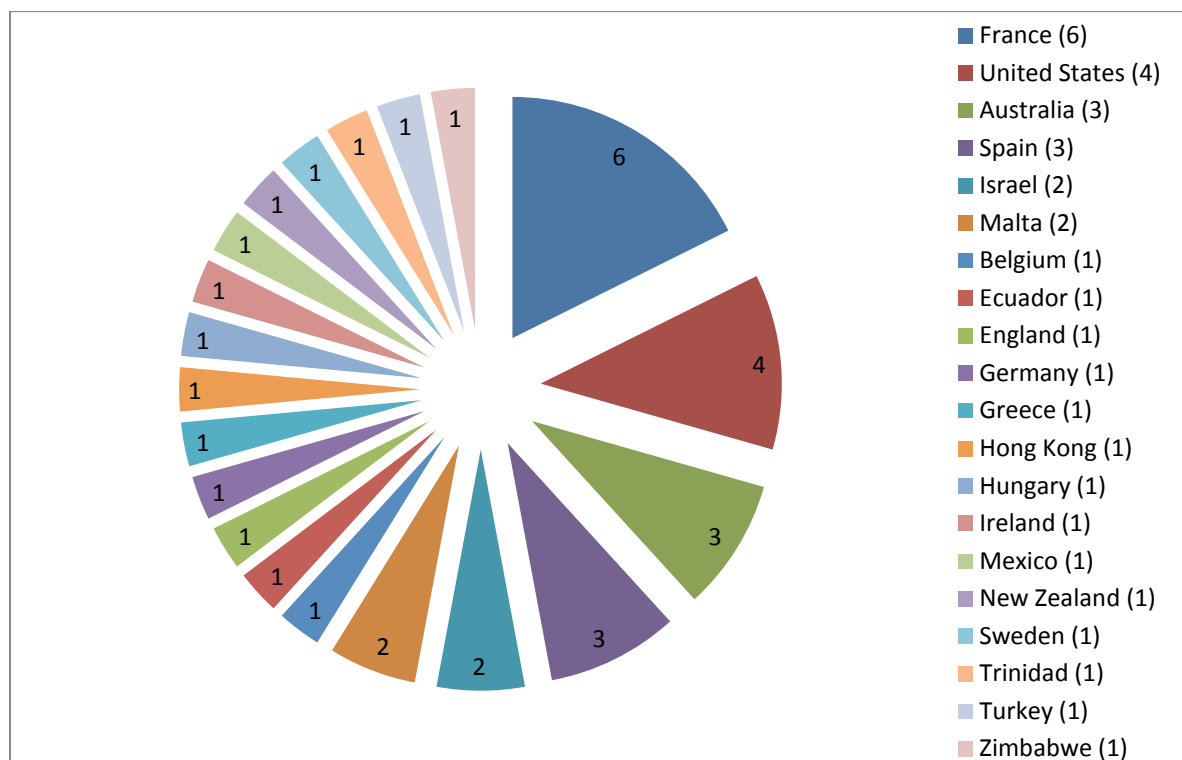
Figure 7.2. Nationality of all interviewees (52)



In the terms of the Hague Convention, these were all ‘incoming cases’ to the ‘requested state’ of England & Wales, except one ‘outgoing case’ (where England & Wales is the requesting state): see para. 2.8 above.

The ‘requesting states’ involved in initiating Hague proceedings in relation to each individual in the whole dataset are set out below in Figure 7.3.

Figure 7.3. Requesting States (34) initiating Hague application²



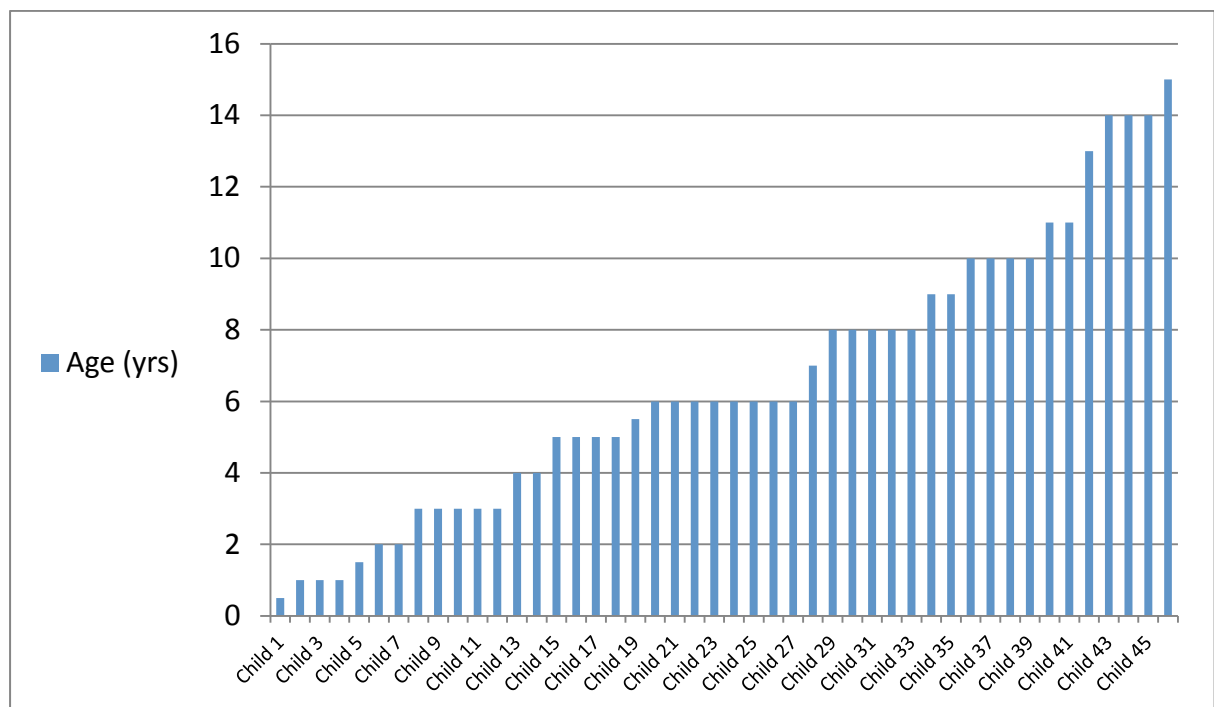
In previous years the trend has been that the USA made the most applications to England and Wales, but such applications have decreased and those from European Union (EU) states have increased. Lowe (2011a: 181) reports that in 2008, 66 per cent of applications to England and Wales came from EU states. In our sample, 18 of the 33 incoming applications (55 per cent) came from EU states.

One might expect the nationality of the (30) left-behind parents to overlap with the identity of the relevant requesting state in each case. However, this only occurred in relation to 19 of the total number of left-behind parents. There were, for example, a number of British (paired) individuals (9) who had lived abroad and then one partner had returned to the UK in breach of the left-behind parent’s rights of custody in the (foreign) country of habitual residence. This mixed pattern reflects the trend of increasing mobility of couples across continental Europe and further afield.

² The Hague Convention has entered into force between the UK and all the states appearing in this Figure, other than Trinidad & Tobago which is included for the sake of completeness.

Figure 7.4 below sets out a breakdown of the age profile of the total of 46 children (22 boys and 24 girls) involved in the abduction/retention events relating to the overall dataset. Of the total 34 Hague applications involved – i.e. 18 in relation to the 36 paired individuals and 16 in relation to singletons – there were 23 applications where there was only one child; ten where there were two siblings and one where there were three siblings. Put another way, there was an average of 1.35 children per application. The global average in 2008 was 1.38 children and for England & Wales it was 1.46 children (Lowe 2011a: 183).

Figure 7.4. Age profile of (46) children at date of mediation



The median age of the children at the time of the mediation was six years and at the date of our interviews the median age was ten years. This compares to the figures of an average of seven years for a child involved in a return application to England & Wales and a global average of 6.6 years (Lowe 2011a: 183).

As explained earlier (paras 5.3, 6.1.5), the analysis required a further breakdown of the overall dataset of 52 interviewees into two sub-sets: ‘resolved’ and ‘unresolved’ cases. The reason for this is that one of the aims of this research was to determine whether there were any common characteristics in relation to resolved and unresolved cases that distinguished these two pathways following mediation. The basic features of resolved and unresolved cases are set out in sections 7.2 and 7.3 below.

7.2 Resolved Cases

Table 7.4 below sets out the general profile of resolved cases. This comprises a total of 29 interviewees, slightly more men (17) than women (12), and predominantly paired individuals (22) rather than singletons (7). There are a total of 12 taking parents and 17 left-behind parents. It is interesting to note that in this set of cases the taking and left-behind parents are almost exclusively female and male respectively; there is only one male taking parent and one female left-behind parent; i.e. a profile that reflects and emphasises the predominant gender of taking (female) and left-behind (male) parents in the national and global figures (see paras 2.1.4 & 2.1.5 above).

Table 7.4. Resolved cases (29): by gender, paired/singletons, taking/left-behind and residence/contact.

Male	Female	Paired		Singletons		Taking parent		Left-behind parent		Residential parent		Contact parent	
♂	♀			♂	♀	♂	♀	♂	♀	♂	♀	♂	♀
17	12	22		7		12		17		12		17	
		♂	♀	♂	♀	♂	♀	♂	♀	♂	♀	♂	♀
		11	11	6	1	1	11	16	1	0	12	17	0
29		29				29				29			

A further striking feature of this group of cases is that the outcomes eventually negotiated by the parents were exclusively, residence in favour of the mothers (12), and contact for fathers (17).

Table 7.5 below provides a more detailed breakdown of the singleton group within resolved cases.

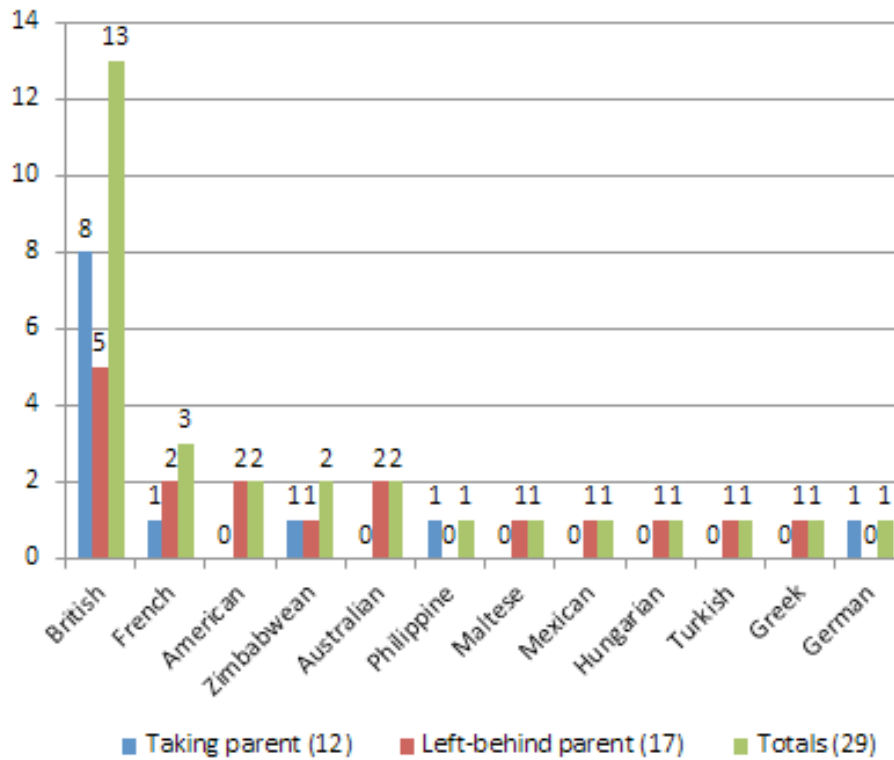
Table 7.5. Resolved cases (7): singleton profile

	Male	female	Left-behind parents		Taking parents		Residential parent		Contact parent	
	6	1	6		1		1		6	
			6	0	0	1	0	1	6	0
			Male	Female	Male	Female	Male	Female	Male	Female
Total	7		7				7			

This group comprised only one mother who was the taking parent and who negotiated residence of her child. The six men were the left-behind parents who had contact with their children.

The nationality of the resolved cases is set out in Figure 7.5 below. It can be seen, for example that of the 29 resolved cases, there were a total of 13 British parents comprised of eight taking parents and five left-behind parents.

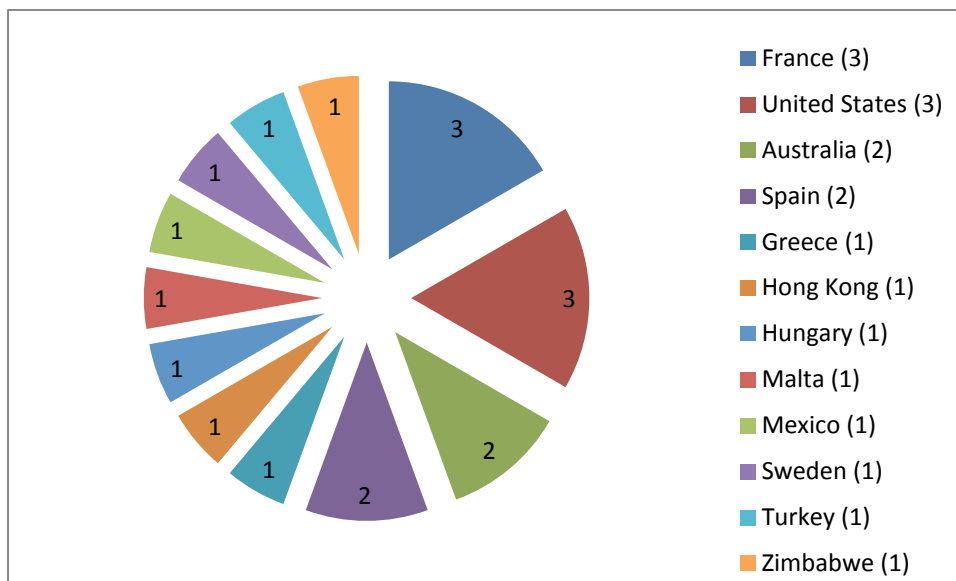
Figure 7.5. Resolved cases (29): nationality and breakdown by taking/left-behind parent



While in most cases (12) the nationality of the (17) left-behind parent corresponded with the identity of the ‘requesting state’, this was not the case with regards to the five remaining left-behind parents, who were all British and had been with British partners and living in Spain (2), France (1), Hong Kong (1) and Sweden (1) respectively.

The overall picture of (18) requesting states involved in resolved cases is set out in Figure 7.6 below. Nine of them are from EU states.

Figure 7.6. Resolved Cases: requesting states (18) initiating Hague application



There were a total of 25 children (13 boys and 12 girls) involved in the abduction/retention event relating to resolved cases. The average age of the children at the date of the MoU was 7.14 years and at the date of the interview 10.78 years. (See Figure 7.4 above to compare with the overall profile).

It should be noted that in two of the resolved cases (both were boys aged 14 years) the child was also involved in some of the mediation sessions with the parents. Where this occurred there were additional clauses inserted into the MoU reflecting the child's agreed points (see para. 8.1.1(c) below).

Finally, there were a total of nine mediators involved in resolved cases. Of the total of 18 mediated agreements (i.e. 11 cases of paired individuals plus seven singletons), only two cases were mediated by a male and female mediator in combination, the remaining 16 were mediated by two female mediators.

7.3. Unresolved Cases

Table 7.6 below sets out the general profile of unresolved cases. This comprises a total of 23 interviewees, made up of 12 men and 11 women. There were 14 paired individuals and nine singletons. There are a total of 10 taking parents and 13 left-behind parents. Of the taking parents only two were male; and there were only three females in the left-behind parent group. The preponderance of taking mothers and left-behind fathers is similar to the resolved cases group (see Table 7.4 above).

Table 7.6. Unresolved cases (23): by gender, paired/singletons, taking/left-behind and residence/contact

Male	Female	Paired	Singletons	Taking parent		Left-behind parent		Residential parent		Contact parent			
♂	♀			♂	♀	♂	♀	♂	♀	♂	♀		
12	11	14	9	10		13		9		14			
		♂	♀	♂	♀	♂	♀	♂	♀	♂	♀		
		7	7	5	4	2	8	10	3	1	8	11	3
23		23		23				23					

There is also a similar preponderance of residence to the mothers and contact to the fathers in terms of eventual outcomes. Only one man secured residence in relation to his child and only three women had contact in relation to their children as outcomes at the time of our interview work.

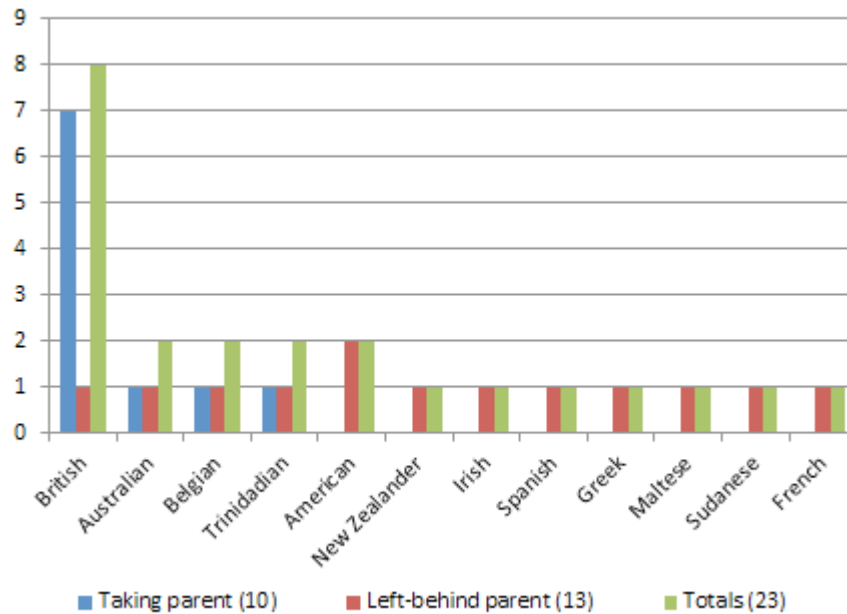
Table 7.7 below sets out a more detailed breakdown of the singleton group within the unresolved cases group. Of the nine singletons: five were male and four female; six were left-behind parents and three taking parents; two (women) eventually secured residence of their child(ren) and seven (five men and two women) contact.

Table 7.7. Unresolved cases (9): singleton profile

	Male	female	Left-behind parents		Taking parents		Residential parent		Contact parent	
	5	4	6		3		2		7	
			4	2	1	2	0	2	5	2
			Male	Female	Male	Female	Male	Female	Male	Female
Total	9		9				9			

The nationality of the unresolved cases is set out in Figure 7.7 below. While in some cases (9) the nationality of the left-behind parent corresponded with the identity of the ‘requesting state’ facilitating the left-behind parent’s Hague proceedings, as with the resolved cases, this was by no means always so.

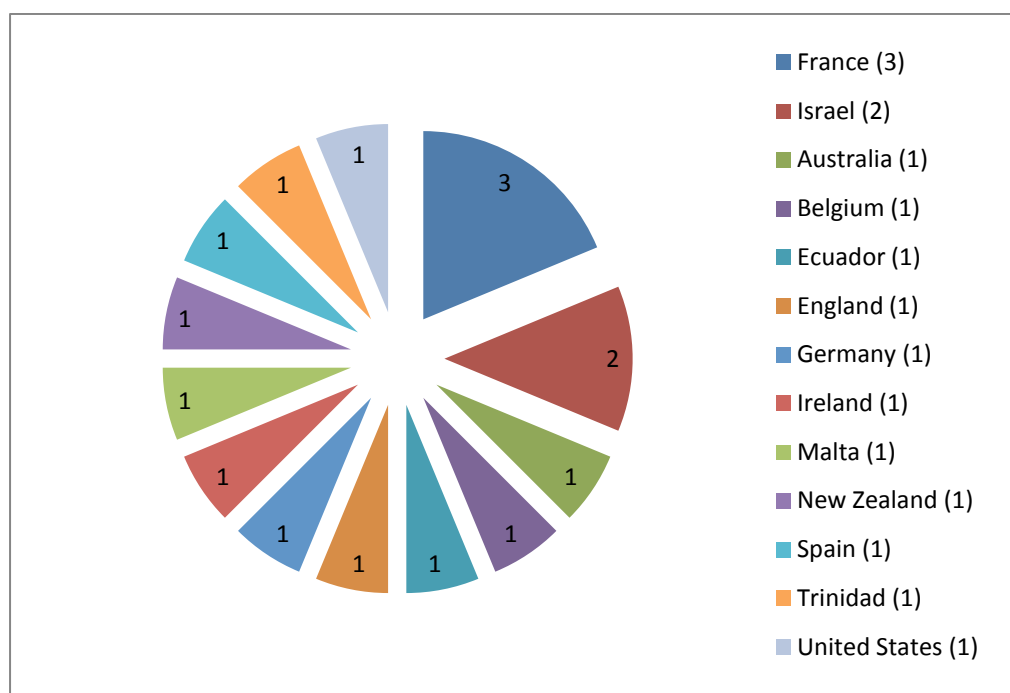
Figure 7.7. Unresolved cases (23): nationality and breakdown by taking/left-behind parent



There were, for example, a number of British paired individuals (4) who had lived abroad and then one partner had returned to the UK in breach of the left-behind parent’s rights of custody in the (overseas) country of habitual residence.

The overall picture of (16) requesting states involved in unresolved cases is set out in Figure 7.8 below. Nine of them are from EU states.

Figure 7.8. Unresolved Cases: requesting states (16) initiating Hague application³



It should also be noted that the unresolved group of cases also included our only examination of an interviewee belonging to an ‘outgoing case’, i.e. cases where a child is abducted from the United Kingdom to another state (see para. 2.8 above).

There were a total of 21 children (9 boys and 12 girls) involved in the abduction/retention events relating to unresolved cases. The average age of the children at the date of the case when it came to the attention of *reunite* for a possible mediation intervention was 5.9 years and at the date of the interview 10.7 years. (See Figure 7.4 above to compare with the overall profile).

These involved a total of five mediators. In seven cases this involved a team of two female mediators, in two a male and female team and in one case a single female mediator.

7.4. Residence and Contact Outcomes

Tables 7.1 to 7.7 above give the residence and contact outcomes for the whole dataset of interviewees and for resolved and unresolved cases. Tables 7.8 and 7.9 below provide further information and show the residence/contact outcomes broken down by the taking/left-behind and gender categories for resolved and unresolved cases respectively.

Table 7.8 below shows the breakdown in resolved cases. As regards taking parents, all of the 11 taking mothers negotiated residence in relation to their children while the one taking father negotiated contact with his child. As regards the left-behind parents, all the 16 left-behind fathers negotiated contact with their children while the one left-behind mother negotiated residence in

³ The Hague Convention has entered into force between the UK and all the states appearing in this Figure, other than Trinidad & Tobago which is included for the sake of completeness.

respect of her child. Put another way, the predominant pattern that emerges from the resolved cases is that the taking parents (mainly female) achieve a residence outcome while the left-behind parents (mainly male) achieve a contact outcome. There were only two exceptions to this general pattern from the total set of 29 resolved cases, one taking father who negotiated contact and one left-behind mother who negotiated residence.

Table 7.8. Resolved cases (29): residence and contact outcomes for taking and left-behind parents by gender

Taking parent		Left-behind parent		total
12		17		29
Male	Female	Male	Female	
1	11	16	1	29
Contact parent	Residential parent	Contact parent	Residential parent	
♂	♀	♂	♀	
1	11	16	1	29

At the time of our interview work, from the total of 12 residential parents in Table 7.8 above, 11 were resident in the UK and one was resident in France. Of the total of 17 contact parents, three were living in the UK, two in Australia, two in Spain and one in each of the following countries: Mexico, Hong-Kong, South Africa, Malta, France, Greece, Sweden, United States, Hungary and Turkey.

By comparison, Table 7.9 below shows the breakdown in unresolved cases. As regards taking parents, seven of the eight taking mothers and one of the two taking fathers eventually secured residence in relation to their children. There was one taking mother and one taking father who had contact. As regards the left-behind parents, all 10 left-behind fathers and two left-behind mother secured contact with their children. One left-behind mother secured residence. In short, the predominant pattern that emerges from the resolved cases also appears in relation to unresolved cases, i.e. a mainly female cohort of taking parents secure residency while a mainly male cohort of left-behind parents secure a contact outcome. However, there is a little more variation to this general pattern than appears in the resolved cases. There is one taking father and one taking mother who secured contact, and there is one left-behind mother who secured residence.

Table 7.9: Unresolved cases (23): residence and contact outcomes for taking and left-behind parents by gender

Taking parent				Left-behind parent				total
10				13				23
Male		Female		Male		Female		23
2		8		10		3		
Contact parent	Residential parent	Contact parent	Residential parent	Contact parent	Residential parent	Residential parent	Contact parent	23
♂	♂	♀	♀	♂	♂	♀	♀	
1	1	1	7	10	0	1	2	

At the time of our interview work, from the total of nine residential parents in Table 7.9 above, six were resident in the UK and one in each of the following countries, Trinidad, France and Ireland. Of the total of 14 contact parents, three were living in the UK, two in Israel, and one each in the following countries; Spain, France, Ireland, Malta, Australia, New Zealand, United States, Belgium and Trinidad.

8. LEGAL AND ADMINISTRATIVE CONSEQUENCES OF MEDIATION

This section examines the first set of our criteria for evaluating the long-term effects of mediation referred to in para. 6 above. The evaluation is carried out in relation to resolved cases (para. 8.1) and unresolved cases (para. 8.2). The distinction between resolved and unresolved cases can be found at para. 6.1.5 above, and a detailed breakdown of the profile of resolved and unresolved cases can be found at paras 7.2 and 7.3 respectively.

8.1. Resolved Cases

Memoranda of Understanding (MoUs) had been agreed in all of the 29 resolved cases, followed by a consent order. A hypothetical example of a typical MoU can be found at Appendix 2. The MoUs were of course customised around the circumstances of each family situation, but nevertheless they shared a common core of provisions. The interview transcripts and other documentation have been used to provide an account of compliance with provisions of, and difficulties arising from, the MoUs (para. 8.1.1); whether or not the MOU was made into a consent order in the UK and subsequently registered in the overseas jurisdiction (para. 8.1.2); and the occurrence of further litigation, and its extent, outcome and impact (para. 8.1.3).

8.1.1. *Compliance with provisions of, and difficulties arising from, the MoU*

The provisions of the MoU are considered under three further sub-headings: residence, contact and other clauses.

a. Residence

As the mediation intervention has been established within the context of Hague proceedings, most of the MoUs of resolved cases dealt with this definitively by including a clause to indicate which parent the child was to permanently reside with (e.g. Appendix 2, para. 1).

However, there were two (paired) cases where this could not be agreed in mediation in which case the MoU specified that 'the matter should revert to the High Court of England and Wales for a decision to be made', and the MoUs contained two alternative proposals which could then be actioned. In one case, the High Court ordered the return of two children to the left-behind mother in the requesting state. The eldest sibling was 17 years at the time and opted to stay in the UK with the father. In another case the taking mother was pregnant and it was not clear whether she would be able to return to the requesting state in the event of the court making a return order. Consequently, the MoU provided for two scenarios: (i) if she did return with her child in order to apply for custody and leave to remove, the parents agreed that custody would be shared between them while awaiting the hearing; and (ii) if she did not return because of her confinement the child would be in the father's care but subject to a named week where he was obliged to bring the child back to her care in the UK.

It is interesting to note that the predominant pattern that emerged in the resolved cases was that of the 12 taking parents in this group, 11 (all female) negotiated a residence clause in their favour in the MoU and this matched the eventual outcome of the child's residence at the time of our

interviews (see Table 7.8 above). In all of these cases the taking mothers were the primary carers of the children. The one male taking parent's eventual outcome was contact with his child as agreed in the MoU.

Given the 'good returner' record of the courts under the Hague Convention in England and Wales (see para. 2.13 above) it is not surprising that the taking parents felt under some pressure to attempt mediation in order to achieve this outcome. As one taking parent put it, 'the main worry was that [child's name] could be returned to [the requesting state].' The left-behind parents, perhaps because they were predominantly secondary carers of the child(ren), were willing to concede residence, and, some possibly used that 'concession' to negotiate more substantial contact. However, some of the left-behind parents clearly expressed their regrets about no longer living with their child(ren). It was particularly stressful for left-behind parents who had not really accepted that their relationship with the other parent had finished. In one case, for example, the left-behind father complained that 'it wasn't actually made clear at any point that the mediation was solely for contact', despite the guidance given at the screening interview stage that mediation is not about reconciliation of the parties. Another left-behind father bitterly regretted the concession on residence:

'To be honest that was the worst decision I've ever made in my life actually. It felt like I'd erm sold my children. ... I just felt that we came to the end of that session and I felt like I had to agree that my children were going to stay in the UK, like, like I'd sold my children basically.'

Of course, it is difficult to determine the extent to which such comments relate to the mediation process itself or whether the interviewee is simply expressing their grief generally over a failed relationship and the necessarily disruptive changes occurring in their family arrangements.

b. Contact

Of the 17 left-behind parents, 16 (all male) negotiated a contact clause in the MoU and this matched the outcomes of the child(ren)'s contact existing at the time of our interviews (see Table 7.4 above). The one female left-behind parent did secure a Hague return order in relation to her two daughters but the 17 year old boy, not subject to Hague proceedings, opted to stay with the father in the UK.

Given the decisions about residence were predominantly resolved within the mediation sessions, an important part of our overall evaluation of mediation was to determine the endurance and quality of the contact regimes established under the framework established by the MoUs. As one would expect, there were a range of different contact arrangements negotiated in mediation, and most MoUs devoted most space to the identification of direct and indirect contact; some typical contact clauses are given in Appendix 2, paras 2,3,4, and 6.

In general, the contact regimes that were established in the MoUs did survive, albeit with varying degrees of success and difficulty as to the details. One aspect that stands out in the data collected was the increasing use that contact parents made of a range of indirect (i.e. not face-to-face) contact such as emailing, Facebook, Skype calls, in addition to landline and mobile telephone connection. Indeed, in some of the MoUs these forms of indirect contact were expressly set out. In one case, for example, the parties agreed in the MoU that the father would have Skype contact with his daughter in the UK on a weekly basis at a set time. He reported that this was still being complied with, subject

to flexibility around the particular time but there was 'never any problem changing times or anything'. Although most of the contact parents made efforts to sustain telephone/Skype contact, it was not without its frustrations, particularly with younger children with shorter attention spans. One contact parent commented in relation to his ten year old boy:

'It's been hard sometimes but we, I call him on Saturdays. It's like 12 o'clock here, 6 o'clock your time. ... I mean I try to ask him about his day at school. I try to ask him about his week at school. I try to ask him about what he's been doing today...any activities he's in. Some days he'll talk a little bit and some days he just doesn't have much to say so....'

A few of the interviewees thought that different cultural expectations were sometimes at work to disrupt contact arrangements. For example, one residential parent stated:

'If he wants her for Christmas, it is purely not because he cares and wants to spend it with her that is for sure. It is so I can't have her at Christmas. It is a very American attitude that your children are your possessions and not individuals with thoughts feelings and needs. I feel it is a very national thing, a cultural difference as well.'

Although 'open contact' was quite commonly specified in the MoUs, there were variable outcomes according to the family circumstances. In one case, for example, a residential parent reported that there had been no telephone contact for at least seven weeks and the contact parent was not familiar with Skype. In another case, the provision of a computer to the children by the contact parent had been specified in the MoU and the residential parent had agreed to provide the contact parent with a landline telephone number; both these provisions in the MoU had been complied with by the parties concerned. In some of the cases the residential parent appeared to be actively obstructing contact. In one case the contact father stated:

'Well I can't get him on the mobile number I can only get him on her house number and [child's name] basically told me that he doesn't hear a phone call because his mum turns the volume down, so he can't hear it ringing. I will phone she will pick the phone up, she will be abusive down the line and then slams the phone down. She just doesn't answer the phone. [He] will even hear it ringing and she just won't let him answer it and the last time that I spoke to him, erm because she leaves him by himself an awful lot, he is not allowed to pick the phone up if she is not there. So communication is at an absolute minimum.'

Substantial visitation for days, weekends and sometimes several weeks is also characteristically provided for in the MoUs (e.g. Appendix 2, paras 4 and 5). Indeed, some of the MoUs specified in great detail quite complex visitation arrangements; these involved contact parents flying to the UK to see their children, sometimes taking them back to their own countries for an extended stay. Sometimes arrangements would involve the residential parent travelling with the child to the contact parent's country to hand over the child into his care for a specific period of time. Most of the MoUs identified school and public holiday periods as the visitation times. For example, one MoU prescribed visitation with the contact parent for a week at Christmas, a week at Easter, October half-term and two weeks in the summer. These arrangements were obviously variable according to the ease of travel between the UK and the contact parent's country of habitual residence.

While in the main, these contact arrangements worked well, they were not without some practical difficulties. The way that these arrangements were managed depended on the parents' underlying

willingness to facilitate and support the contact regime that had been established. Both contact and residential parents clearly recognised the need to be sufficiently flexible to respond to new circumstances while retaining an awareness of the importance of adhering to the MoU framework. In one case, the residential mother was to travel with her young infant to the requesting state in April, May or June, but in fact a later visit was being arranged as the mother had just had another baby.

In another case, where our interviewees confirmed that open and regular telephone/email contact had been sustained, the MoU clause also specified that the child would visit his father in the requesting state in the summer and over the Christmas period. This had not occurred and there had been no face to face contact for two years as there had been delays in obtaining a passport for the child though the mother was arranging to go with him to the requesting state at the time of our interview with her.

In a further case, there was obviously a very strong contact regime established between father and son even in the face of persistent mistrust and bitterness between the parents. In a further case, where the parents' relationship was practically non-existent, visitation had occurred in the first couple of years but had ceased since 2007 on the residential mother's insistence based on her belief that:

'He was going to make [my daughter] go out to work and live off her and that's what his intentions were. I've no proof, I've no proof of it but he's doing this to hurt me'.

In some of the cases we detected difficulties arising in handling the contact regime established in the MoU when the children (average age 7.14 years at the date of mediation) had matured and were expanding their autonomy. Further emotional challenges often lay ahead for all the parties concerned where, for example, one or both of the parents had re-partnered – sometimes bringing additional children into the wider family networks. It was difficult to ascertain from the interview material how far the interviewee was genuinely expressing their child's authentic views about the other parent's new partner and how far this was in fact a manifestation of their own anxieties.

In many of the cases there were often a number of logistical problems around the travel arrangements that had to be made to undertake visitations. In one case, a clause in the MoU had specified that the residential mother would relocate with the children to a property within easy access to a main airport within the UK. This never happened. The contact parent stated:

'Well the problem is you see, because she never moved near to [the] airport I have to go over there, drive down to pick the kids up, drive back to the airport, fly back here. Fly back there again, drive down and drop them off. Drive back to London and fly back again. I'll only be able to do it once a year. ... It makes a huge difference that they're not within easy distance of the airport.'

There were also issues arising in particular in relation to cases involving long-haul flights to Australasia and elsewhere, and the respective views of parents about the age at which they would feel content to allow their child to undertake an unaccompanied flight. Where the underlying relationship between the parents was fragile, these were exactly the sort of points that would often cause real conflict between the parties.

The narrative provided by the interviewees about contact also included reference to grandparents and other close family members. In some of the MoUs there were also specific clauses addressed to facilitating contact with the wider family of the left-behind parent (e.g. Appendix 2, para. 4). In one case the residential parent reported that she specifically requested a clause to ensure that the contact father took responsibility for facilitating this rather than it being left to her to respond to his mother's repeated requests

In general, however, the contact clauses in the MoU did establish an important benchmark which steered subsequent behaviour. It provided a strong parameter for parents to develop further and accommodate new circumstances if they had the desire and resources to do so.

c. Other clauses

The MoUs varied as to the prescriptions for financing the travel necessary to maintain the contact regime. However, a frequent formula was that the contact parent agreed to finance the flights for visitations coupled with a clause stating this would be taken into account in calculating child support, e.g. Appendix 2, para. 5, or totally relieving that parent from paying any child support. Only one of the MoUs specified that each parent would finance their own travel and accommodation, and in this case the residential parent noted that this has caused her difficulties in finding the funds. In two cases it was specified that when the residential parent found a job she would be responsible for her own travel costs.

Sometimes setting off travel costs against financial support only related to spousal maintenance and in one of the MoUs there was a detailed clause setting out the child maintenance payable monthly based on the official English child support formula. There was little evidence that these provisions about the respective responsibilities for financing the flights had of themselves been particularly contentious. The interview material did however, reveal parents simply struggling to resource often increasing travel costs and clearly their respective income levels often placed a barrier on the options for contact visits.

'It would be all fine and dandy if there was a lot more money available and a lot more annual leave available but it is just...everything is magnified because of the distance, everything becomes more expensive, phone calls and travelling costs...it is just horrendous. It hasn't worked in that respect.'

As time passed the financial arrangements to fund travel costs generally tended to settle into a groove which neither parent wished to disturb unless there were exceptional changes of circumstances.

The MoUs also generally contained a clause providing that the contact parent was kept in touch with the child's schooling; e.g. Appendix 2, para. 9. Sometimes fuller details were given spelling out that both parents should participate fully in the child's educational development and future school selection. The interviews revealed variable results on compliance with this clause. In some cases it was reported that the contact parent was kept in touch at least with the identity of schools attended and the supply of school reports either from the school directly or via the residential parent. A few of the contact parents noted the difficulties in obtaining information from the schools even where they had shown the school the consent order setting out a similar condition.

'I mean I could go through the school to get information....but these days schools are very reluctant to give out information but even if I show an order they don't care.'

However, experience varied. In one case the contact parent reported good relationships with the school of one of his daughters but much more reluctance to release information from the school attended by his other daughter.

'They say confidentiality, data protection, things like that. It is not easy to get out of them school reports...or information from teachers things like that. Invariably they send an email saying turn to the schools website for trip and such like. But I want to know what is going on with my daughter not the entire school.'

Where the schools were reluctant to release information, a few of the residential parents had attempted to remedy this by taken responsibility themselves for sending on the relevant material to the contact parent. The contact parents' ability to keep up-to-date with their child's education clearly depended on the state of the general contact regime and communication with the other parent. Where this was poor, the information about schooling tended to evaporate quickly.

In one case where the parents remained at arm's length, the handover of the child was still being managed using the child's school as the intermediary. The contact father picked up the child from the school who also held the child's passport in a deposit box; the child, passport and school reports and other material were then handed over to the father, precluding the need for any meeting between the parents themselves. A few of the residential parents complained that the contact parent did not really take much interest in their child's schooling and as no information was requested they soon stopped sending any information.

'He wasn't even interested when it was her first day at school. Sorry, but I probably won't forward her school reports to him. If he asks, absolutely! ... I will include him in everything if he is expressing an interest. I gave him the option last year when he was in the country with regards to schools, but he wasn't interested, didn't want to know.'

On the other hand several contact parents complained that they never, or rarely received school reports and the receipt of the school holiday schedule seemed to be a particular bone of contention as it affected visitations. One parent reported:

'One year she lied to me and actually didn't give me the correct return to school date so he would only be here for four weeks, So I chased all that up and found out myself and ... I have never ever received a school report.'

Most of the MoUs also contained a clause providing that the contact parent received information about medical concerns and emergencies in relation to their child; e.g. Appendix 2, clause 10. Again, some residential parents reported that the contact parent had lost interest in these issues.

'If I am a 100 per cent honest I haven't completely fulfilled that. Certainly if there is anything hugely medically wrong I tell him. At the beginning when she had colds and little things and I went to the doctor I did tell him. Not because of the court order but just parent to parent, your daughter is sick, maybe you would like to call her? But he never reacted to that or checked up on her or anything so I stopped bothering.'

On the other hand, many of the contact parents did not see this as an important part of the MoU as their children were in good health so such issues had never really arisen or been problematic. One contact parent complained that he only got to hear of medical issues some months after the event, for example, that his daughter had had a BCG injection or other vaccination, or that she had needed braces on her teeth. Another residential parent reported that the contact parent had become 'angry when I forgot to tell him [child's name] was having an injection'. Some residential parents were clearly making efforts to maintain the flow of information under this heading. One parent, faced with their teenage boy wanting to have an earring consulted with the contact parent and they both agreed that it would be OK for their son to do this, but only after he had finished school.

It is interesting to note that only a few of our interviewees' MoUs contained a clause attempting to regulate parents taking the child out of the jurisdiction; e.g. Appendix 2, para. 8. None of our interviewees had found compliance with this type of condition problematic. The abduction/retention behaviour was generally not repeated in any of the resolved cases.

In the two cases where a child was also involved in the mediation sessions with the parents, the MoUs prescribed that the children should keep in contact with the father and his extended family and make diligent efforts in their education. In one case the child agreed additionally 'to behave responsibly and respectfully at all times.' In the other, the child undertook not to use illegal substances, drink alcohol or smoke cigarettes until of legal age, and undertook 'not to have more than two sleepovers per month.' The interview work indicated that there had been general compliance in the former case but a less successful outcome in the latter one.

The MoUs contain a number of other miscellaneous clauses that were very much customised to individual family circumstances. Several MoUs contained provisions aimed at one-off actions which were to be completed in the short-term; for example, a clause committing the contact parent to purchase or otherwise provide computer equipment and/or internet access or a mobile phone. A few clauses were clearly aimed at longer-term objectives. For example, two specified that in the event of the residential parent falling ill or dying, the contact parent would have full custody of the child. Finally, there were several versions of what can be termed 'flexibility' clauses. One of these prescribed a return to mediation at a point in the future when the child was sufficiently mature and expressed a wish to live with the contact parent; e.g. Appendix 2, para. 11. In one MoU there was also a clause stating that any changes to the MoU 'may be mutually agreed by email and both [parents] wish to be as flexible as possible with the arrangements within the Memorandum'. This group of clauses did not generally appear to have played a very important part in the post mediation working out of family arrangements.

In summary, compliance with the MoUs in resolved cases was generally sound in terms of residence, contact and some other conditions. The MoU operated as a significant template or framework to adhere to. Our interview work revealed that patterns of contact and other conditions are generally maintained by parents in the years following an abduction/retention event. The MoU was helpful in facilitating these outcomes, and was regarded by many of the interviewees as similar to a business arrangement.

8.1.2. *Whether or not the MOU was made into a consent order in the UK and subsequently registered in the overseas jurisdiction.*

All the MoUs of resolved cases were, by definition, followed with a consent order. The time lapse between the date when the MoU was signed and the date of the consent order varied from one day to 80 days; the median time lapse was 13.5 days. However, in one case the contact father's solicitor had failed to process the consent order though the MoU was later substantially replicated in the courts of the requesting state.

The general pattern was that the consent order was obtained from a High Court judge sitting in chambers in the Family Division of the High Court and it would set out the following provisions: permission for the left-behind parent to withdraw the originating summons pursuant to the Hague Convention 1980/Child Abduction and Custody Act 1985; the incorporation of the residence and contact conditions contained within the *reunite* MoU; a requirement that the consent order be registered as a mirror order with a court of competent jurisdiction in the other country concerned; and the release by the Tipstaff of the children's passports to the residential parent. In some of the consent orders, *reunite* is specifically referred to, and in one order the court 'certifies that the cost of mediation with Re-Unite [sic] ... is and was an appropriate and proper disbursement to be borne equally between the public funding certificates of the Plaintiff and Second Defendant...'. One of the consent orders also contained a penal notice addressed to both the plaintiff and defendant warning of the liability to a term of imprisonment if the terms of the orders or undertakings are disobeyed.

However, there were some variations on this general pattern. For example, two MoUs provided provisional contact regime outcomes depending on the residence decision which the MoU indicates will be left to the High Court to decide. In one such case, the decision was eventually made in the courts of the requesting state.

In one of the resolved cases, there was also some doubt about the good faith of the residential parent following the consent order. The mother had made allegations of child abuse against the father days before obtaining the consent order. The father reported that it took him two years to prove that these were false allegations.

When asked questions about court orders, the interviewees tended to be quite confused about the chronology of court proceedings and the various court orders that had appeared in their case. *Reunite* will often have the consent order on file, so the identification and questioning about the terms of the consent order and MoU was generally well informed by the office documentation.

However, there was far more confusion about the question whether the consent order had indeed been registered ('mirrored') in the overseas jurisdiction. This was not information that generally had been fed back to *reunite*, and the interviewees' responses indicated that they did not really know whether this had in fact happened.

One case where it was definitively reported as *not* having happened was in a (paired) case where the residential mother was clear that she would not travel to the requesting state with her child until a mirror order had been registered there as specified in the MoU and consent order. She detailed various correspondence between her solicitor and the other parent's lawyer and the advice that she

had received was that her daughter should not travel to the requesting state until the mirror order had been set up, otherwise she might risk her child being retained in that country.

In another (paired) case the contact parent reported that it had taken him about two months to get the consent order mirrored in the requesting state but the residential parent was not sure, though she too was in receipt of advice that if her son was to go to the requesting state she needed to check that the mirror order was in place. In another (paired) case the requirement to arrange for a mirror order in the requesting state was actioned, though the residential parent stated that her ex-partner had unreasonably delayed the process of registration:

‘He didn’t make any efforts at all, nothing. The solicitors here had a colleague in [the requesting state] a family law solicitor, who then did stuff over in [the requesting state] to have the order registered and everything. Every time [name of ex-partner] caused trouble and delay and cost me unnecessary cost... I just paid for it and got it over and done with. I think it was something like 500 ... dollars. But for me it was [child’s name]’s safety, [child’s name]’s return.’

In summary, all resolved cases were made into consent orders in the UK, but there was little reliable evidence that the subsequent court orders had been successfully *mirrored* in the overseas jurisdictions.

8.1.3. *The occurrence of further litigation, and the extent, outcome and impact of the litigation*

The general pattern was that there was no further litigation following the *reunite* mediation and consent order process described above that radically changed the residence/contact regimes established. In some of the cases there were subsequent court applications but these did not change the ground rules established by the mediation/consent order process.

There was one (paired) case where further court orders had been pursued in response to a prospective major change in the parents’ circumstances; the contact parent went back to court as the residential parent (who was originally the taking parent) wanted to emigrate to yet another country. The contact parent gave his permission in court and similar visitation rights were awarded as in the earlier consent order following mediation.

There were a few cases where either contact and/or child support was further contested. For example, in one (paired) case the contact father asserted he had been back to court ‘about five to six times’, mainly in relation to child support and contact issues.

In another (paired) case the contact father went back to court twice to enforce the contact that had been agreed in the consent order which he claimed the residential mother had reneged upon by insisting that he only should have contact with the child at a contact centre.

‘... each and every time she revoked on her court orders and prevented me from seeing [child’s name] or was going against the agreement that she had sworn on oath and agreed in *reunite* this is where it played out you know. The only way I could get those court orders in place was if I took her to court.’

In general, there was a pattern in the resolved cases of an absence of further litigation. However, in some cases, particularly where parental communication was weak, the contact arrangements remained under pressure at the time of our interview work. One residential parent, for example, stated her imminent willingness to return to court if necessary:

‘if he actually wants her at Christmas I will go back to court to fight that she doesn’t go back out there for Christmas.’

As will be seen, the occurrence and impact of further litigation figures as a much more significant element in relation to unresolved than resolved cases (see para. 8.2.3 below).

8.2. Unresolved Cases

In this set of 23 cases (see Table 7.6 above) although mediation was attempted it did not result in a MoU, although similar issues relating to residence, contact and other matters were discussed. In these cases there arose a need to refer the case back to the courts for an authoritative decision on the substance of residence and/or contact issues. Thus these cases met our definition (para. 6.1.5 above) of an ‘unresolved’ case.

This group of cases comprises, as we have seen, seven pairs and nine singletons. In this section the following questions are examined: attempted mediation and failure to resolve matters (para. 8.2.1); outcomes relating to residence, contact and other arrangements (para. 8.2.2); and the occurrence of further litigation, and the extent, outcome and impact of the litigation (para. 8.2.3).

8.2.1. Attempted mediation and failure to resolve matters

There were a couple of cases that were on the borderline of our resolved/unresolved distinction. For example, in one (paired) case an MoU was reached (though not signed) in mediation, but when the consent order was made, contact arrangements within the MoU were removed and it was ordered that the case be transferred to the county court for contact to be determined. It would appear that the contact father had had a change of mind following the mediation sessions. The parties’ lawyers were consulted and preferred to progress on the basis of newly negotiated terms. The context of this case was that contact had been proceeding reasonably until the taking parent acquired a new partner at which point the left-behind father made a Hague application three days prior to the 12 month ‘limitation’ period in ‘settlement’ cases (see para. 2.7 above). However, it was unlikely that the Hague application would have succeeded as it was thought the mother had good grounds to meet the ‘consent’ or ‘acquiescence’ defence (see para. 2.7 above). Similarly, in another case the MoU (signed by the contact father but not the residential mother) resulted in a consent order which included all the provisions in the MoU, other than the contact conditions which were referred to the Principal Registry of the Family Division for determination.

Equally, there were cases at the other extreme end of the ‘unresolved’ category. For example, one (paired) case had all the hallmarks of an intractable contact case. The interview work on this particular case revealed a sad narrative about frequent visits to the courts, high legal expenses and

likely damage to the child arising from both parents' behaviour. This case also involved an allegation of sexual abuse made by the taking parent. In fact, such cases as these raised questions whether the screening interview (see para. 4.1 above) had been sufficiently rigorous in the first place.

In another (paired) case there had also been sexual allegations though these claims came to nothing in the subsequent court hearings. A Hague return order was made and the mother and child returned to the requesting state and lived in the father's neighbourhood. Subsequently, a contact order was made in the requesting state in favour of the father and it would seem that the parties were reasonably settled with their current arrangement.

In another case a left-behind mother eventually dropped the Hague proceedings by consent as it was clear that the 15 year old child's objections to returning to the requesting state would meet the relevant defence (see para. 2.7 above). There had been one teleconferenced mediation session but as the contact mother noted 'there was just nothing to negotiate on'. The child had also participated briefly in the mediation teleconference though the contact mother reported:

'I think, I actually think he was bullied into it. I don't think the mediators were able to stop that because he was just put on the phone and it was like...he shouldn't have been.'

There were some cases where, although an MoU was not reached in mediation, the discussions in mediation were nevertheless used as a basis to obtain a consent order. In one (paired) case the residential mother asserted that the agreement had not been finalised because her ex-partner wanted to put pressure on her to give him money in exchange for dropping criminal charges in his country. She commented:

'... [T]he mediators were happy to drop this case was because it ended up having nothing to do with the kids and all it had to do with was him wanting to get money from me, and how much money and they weren't prepared to negotiate and that's how it stopped.'

In a (paired) case where the High Court had later ruled that the child had become habitually resident in the UK, a residential father reported that the (signed) MoU (which had contained residence option in both the UK and the requesting state) had never been converted into a consent order, as the contact mother had chosen to take further action to obtain residency in the courts of the requesting state. Consequently, although he had subsequently facilitated contact on family visits to the requesting state his son had never gone there on his own to see his mother.

'The reason we haven't done that is because there's no consent order in place and we're actually uncomfortable with where it stands in the legal jurisdiction and he won't be going over until there is one.'

In a further (paired) case there was substantial discussion in mediation but an MoU was not agreed. The later judicial decision was that the children should return to the requesting state. Following a series of court appearances in the requesting state, the contact father noted;

'Effectively after a year and a half in court we pretty much came down to the same agreement that we'd had in mediation, other than [she] had to give up possession of the house and before that I had agreed that within six months she could return to England. Now she has to wait two years before she can even apply to living in England and she has to meet pretty heavy criteria'.

In an unusual case the father had brought his child from the requesting state to the UK mainly to ensure that he obtained good medical treatment as the child was severely ill. In mediation the mother was adamant that the child should be returned irrespective of his medical needs. Consequently, no MoU was agreed but counsel for the parties at a subsequent High Court hearing struck an agreement that the father would provide substantial financial assistance and accommodation for the mother to stay in the UK for one year. We were told by the father that she was still in the UK and that they now shared custody of the child.

In a (paired) case no MoU was reached. The taking mother reported that the left-behind father had taken an uncompromising attitude to the mediation.

‘He wasn’t going to back down or discuss it with anybody else. Erm, he was only prepared to discuss what would happen, if we went back rather than if that wasn’t the case. He obviously didn’t want to think down those lines at the time. And in that respect, I suppose probably in essence, it was a waste of time.’

The Hague proceedings subsequently went in the mother’s favour and she acquired residence with contact to the father. In a similar case, another taking mother reported that her ex-partner’s stance had been uncompromising at mediation and no agreement was reached. The High Court subsequently ruled in her favour and this order was eventually mirrored in the requesting state.

In several of these cases either or both of the parents reflected that they had felt under some pressure to go to mediation, but they themselves, or their ex-partner, or both, were not truly engaged in coming to any agreement. This was particularly so in relation to cases where there had been a background of domestic violence and over-controlling behaviour. One interviewee reported:

‘Basically I was forced into it. ... I didn’t really want to do [mediation] but I was forced into it. ... I didn’t want to face him because he’d controlled me for so many years and I knew if I seen him, he’d do exactly the same again’.

Another stated:

‘We came to one meeting with [*reunite*] which was actually very good, it was very good except that you cannot reunite people or try to find a compromise when, I don’t know about two, but when one person does not want to play along. So we came in ... 2008 for what should have been a day of intense mediation and [my ex-partner] left the room after two hours.’

In this case the High Court ordered a return of the child to the requesting state, but after two years of further litigation and conflict between the parents, the taking mother returned to the UK with the child. The father consented to this return because he was concerned that the ongoing conflict was damaging the children.

In our only ‘outgoing’ case (see para. 2.8 and Figure 7.8 above) the High Court Hague proceedings were adjourned on the basis that the parties agreed to enter into mediation with *reunite*. However, no concluded agreement was reached in mediation and it would seem that the parties’ lawyers queried the draft MoU. The left-behind father commented:

‘I mean basically I had two sessions with the mediators and my lawyer advised me that what was written there wasn’t my understanding or it wasn’t reliable what the mediators gave me to do this.’

8.2.2. *Outcomes relating to residence, contact and other arrangements*

Inevitably, as an MoU was not reached in mediation our interview work focused, in this section, on a discussion of the outcomes in terms of residence, contact and other arrangements that were processed through the courts. The key elements of these discussions are considered under three sub-headings: residence, contact and other arrangements.

a Residence

There were a total of ten taking parents in the unresolved cases, of which eight had become, at the time of our interviews, the residential parents. Of the 13 left-behind parents, there were 12 who had become contact parents: see Table 7.9 above.

The residence of the child, as we have seen, was in most cases with the taking parent, but in a few of these cases, there was some swapping of the residential role. In one case, for example, the contact mother reported that her child had chosen to live with his father at the age of 12. She commented:

‘He’s basically turning into his Dad. I mean he was getting older and stronger and I was finding it harder to cope with it.’

b contact

Even where some contact with children by the contact parent was being maintained, these cases showed a trail of dissatisfaction and difficulty with contact arrangements. As one residential parent reported:

‘He wanted loads and loads more contact. He wanted things in it like [the residential parent] agrees to bring [child’s name] for a year’s schooling in [the requesting state] when he is seven. So there was no way I could agree to something like that. ... I mean he may want and do that when he is older. But I didn’t want anything written in stone that we would all have to up sticks and go to live in [the requesting state] for a year. Also, it went back to High Court because I found out he had opened cases against me in [the requesting state]. So I had been advised not to go to [the requesting state] as I may be arrested.’

In another (paired) case the residential parent reported that limited contact was given to her ex-partner in a contact order but there were continuing difficulties with these arrangements over past years. She stated, worryingly, that her daughter had told her recently that ‘Daddy wants to take me and we are going to hide.’

In one (paired) case the only contact that had taken place following the mediation attempt had been organised through an international agency, and the latter had eventually abandoned the task of trying to resolve this highly conflictual case.

In the two (paired) cases where the taking mother was ordered to return to the requesting state with their respective children, further orders followed to try and settle the contact issues. In both cases this resulted in effectively a joint custody arrangement where both couples remained living separately but near to each other.

In a further case the contact father asserted that there had been several disputes with his ex-partner about contact:

'[The child] lived with his mother in the week and spent weekends with me. ... It wasn't clearly defined though, that was the problem. Because it wasn't a clearly defined issue, it was left for us to arrange and that's why it deteriorated. ... His mother decided to take him out of school and home educate him and also she stopped me seeing him as often as I used to. These were some of the issues.'

In another (paired) case where the residence/contact order provided that for every period of contact the father must provide in advance and in writing full details of the child's proposed itinerary, the residential mother stated:

'So I get these written, typed itineraries, purposefully not giving me contact numbers other than his mobile. Not giving his girlfriend's address because that's none of my business, wherever it is he stays, and not really an itinerary. It's a case of 'I'll let you know at the time, don't know what we're doing'. It irritates me because I think if he's having the child at a particular time, surely he can make plans and some form of arrangement before the child gets there. ... It's just that he kind of does the bare minimum on each thing really.'

In another case the court ordered residence in the mother's favour with reasonable contact to the father. The mother reported that they still had no clear pattern of contact. She stopped letting him take the children back to the requesting state on the basis that she did not want them to go outside of the UK as she had no confidence that the father would bring them back, so currently he will only have contact with the children in the UK. Again, there had been ongoing problems in this high conflict case.

In one case, the contact father commented:

'It's not that we've agreed it amongst ourselves, we've agreed it at later court hearings. Court hearings have still been going until October of 2009. We've still had our differences you know, and her refusal to comply with court orders, such as on contact, such as on meeting places. ... She's refused contact on most, on most occasions now.'

In another case, the basic narrative was that the father landed up with very limited contact with his child following an adverse CAFCASS report; he had only been able to achieve three supervised contact visits since 2007, and also any indirect contact had fallen away. Asked whether he was able to talk by mobile etc to his child now, the father responded:

'No, nothing. That is what I always tried to ask for us to have contact, with the Internet, but my ex refuses and I have an email address I can send for my child, I did this a couple of times the letters just came back or wasn't from, by my child they were from my ex. I even have a computer waiting to be sent to England but she never gave me an address so.'

In a further case where the taking mother and children had returned to the requesting state, but later applied to their domestic courts successfully to relocate in the UK, the contact father reported that he had not been able to see his children at all for the past year and indirect contact had all but disappeared:

‘Each time I was calling, very often, a few times a week, I don't want to exaggerate, the phone would not go through, the phone wouldn't be answered, the telephone would be answered and then put down.’

In four (paired) cases there were subsequent allegations by one parent of physical and/or sexual abuse by the other parent of their respective children. Unsurprisingly, the respective paired individuals gave different accounts of the facts surrounding such allegations. However, in all of them it was clear that the presence of such allegations had had a very significant impact on reducing the level of parental communication and fuelling further litigation.

The general pattern emerging from the resolved cases was, as we have seen (para. 8.1 above) that parents were managing, though not without some difficulties, to maintain the relevant contact regimes established by the MoUs. In contrast however, the general pattern emerging in unresolved cases was a much more mixed outcome for the endurance and sustenance of contact arrangements.

c other conditions

As the unresolved cases are, by definition, cases where agreement was not completed, there was less evidence about other areas of agreement compared to the resolved cases. However, some parents did comment on issues such as communication about medical emergencies. For example, one contact father commented:

‘There's been no requirement for communication along those lines. And I think [child's name] is now of the age that if he was playing rugby and broke his arm, he'd phone his Mum and say "hey, I broke my arm".’

In a further case the contact father stated:

‘Actually my son was like in the emergency room about a year ago and I didn't know about it or anything. It was only when I came to England I saw him and I saw some marks on his face. He got burned from hot water.’

Similar complaints occurred about some of the provisions that had been included in subsequent court orders following the attempted mediation. One contact parent complained:

‘The court order states I should receive school photographs. She's never ever sent one picture... And she's like I don't have a camera and I'm like "yeh, you do. I bought you one. And you have a cell phone and [child's name] has a camera on her cell phone and I bought [child's name] a digital camera, so don't tell me you can't send it. And the school takes pictures as well so you can send that else you breach the court orders." She never has.’

8.2.3. The occurrence of further litigation, and the extent, outcome and impact of the litigation

The evidence presented by the interview material in relation to this heading revealed a consistent pattern of repeated visits to court and consequent legal expenses following the attempted mediation. Further litigation followed in relation to parental disputes concerning residence, contact

and other issues. On occasion, there did appear to have been a resolution though this often took several years. For example, one contact father reported that:

‘After going to the court four or five times more myself and paying a lot of money to private lawyers we reached an agreement two years later.’

Some parents remarked on the stress caused to them and their families by such repeated court appearances. There was plenty of evidence in this set of cases of the parents’ pervasive fear of court process wrought from their experiences. One parent remarked:

‘The other day a letter came through the letterbox in a large cream envelope and it looked like a lawyer’s letter. I was literally cold, sweating and having palpitations on the kitchen floor because I thought it was a court summons.’

Where the interviewee gave an account of allegations of child abuse the results were usually damaging and highly stressful. In one of the (paired) cases where the taking mother had been ordered to return to the requesting state, the father subsequently started proceedings in the domestic courts alleging child abuse by the mother. The elder child was taken into care for a short period during which the mother was given only supervised access to the child. The mother reported:

‘Over the space of two years, I can’t even tell you I was probably in that court room maybe once or twice a month.’

There was little praise for the effectiveness of court processes. Several reported that after much time going back to court they had got back to where they had been when mediation was attempted and often spent a lot of money to do so. Several respondents pointed out the emotional fallout from protracted court proceedings and their feelings that there were not any winners emerging from the court process. One parent distinguished between what she had experienced as a highly intimidating experience of the High Court compared with her experience of a domestic court in the requesting state where subsequent proceedings were taken. One parent complained, ‘I have been completely stuffed over by the whole English court system, it was just absolutely ridiculous.’ In one case, the contact father claimed that he had initiated proceedings in the European Court of Human Rights to challenge the residence decision of a domestic court hearing.

There was also a lot of confusion about the exact chronology of events and court processes involved in the litigation processes following the attempted mediation. What was clear was that the interviewees’ memories of these events and processes were very negative. Furthermore, the protracted litigation generally had not solved the issues. For example, a contact father complained about the lack of sanction available for breaches of a contact order:

‘[The] penal notice ... is supposed to compel her to comply with court orders. And it did not. She laughs at court orders. She says “they have no teeth”, she doesn’t care what anybody says or anybody does, because until she’s in jail she will continue to do what she does. I don’t believe that the court has teeth either.’

The general pattern emerging from the unresolved cases is a trail of repeated return visits to the courts following persistent parental dispute about residence, contact and other issues.

9. FAMILY RELATIONSHIPS

This section examines the second set of our criteria for evaluating the long-term effects of mediation referred to in para. 6 above. The evaluation is carried out in relation to resolved cases (para. 9.1) and unresolved cases (para. 9.2). The distinction between resolved and unresolved cases can be found at para. 6.1.5 above, and a detailed breakdown of the profile of resolved and unresolved cases can be found at paras 7.2 and 7.3 respectively.

9.1. Resolved cases

The interview transcripts and other documentation relating to this set of 29 cases have been used to provide an account of: children's relationships with their parents (para. 9.1.1); the parents' relationships with each other (para. 9.1.2); and the settlement of the family unit (para. 9.1.3). Of the 29 interviewees there were 12 who were the residential parents and 17 who were contact parents at the time of our interviews. All of the residential parents were women and all of the contact parents were men; see Table 7.4 above.

9.1.1. *Children's relationship with parents*

The majority of parents managed to maintain quite positive relations with their children following the MoU and consent order. There were of course variations in the quality of communication that both parents with residence of their child and parents with contact had with their respective children. As regards the contact parents, there were many examples of parents maintaining good contact with their children through a range of means in addition to the visiting contact established by the MoU and consent order (see further para. 8.1.1(b) above); e.g., by telephone calls, emails, Facebook and Skype video calls. For example, 15 interviewees mentioned that Skype calls were deployed to support the contact regime. One residential parent reported how the contact father would arrange a Skype call for a particular time and over two hours later her son and her ex-partner were still playing chess.

Unsurprisingly, most of the interviewees reported that their own relationship with their child(ren) was 'excellent' or 'good', but often gave a rather less optimistic rating of the other parent's relationship with the child(ren). Some parents with residence acknowledged that their child did indeed look forward to visiting the other parent and in one case it was reported that the attention needed to maintain a contact regime had probably improved the relationship with the contact parent overall.

Some of the interviewees were more reflective about what their child's perspective might be. Several parents reported that their children had different relationships with each parent, often defined by reference to the different activities and home environment each parent had to offer.

They also remarked that the children tended to compartmentalise their separate time with each parent. For example, one parent reported:

'I feel with [name of child] she separates what she has got with us to what she has got with her mother but there is most likely that there is a imaginary door that she walks through and closes it. You know, so when she knows that her Dad is coming along to pick her up that door is instantly open for her to enter into our lives and I know from when I drop [name] off that door is almost instantly closed off.'

Some of the residential parents reported that their relationship with their child had been affected by the trauma of suddenly losing regular contact with the other parent and in one case, for example a taking/residential mother stated that this had made her child 'extremely clingy.' Another residential parent commented that she was telling her child 'bit-by-bit what happened' and also ensuring that the child knew the other parent still loved her. One residential parent stated that developing a positive relationship with both parents would only work if both parents genuinely wanted this.

Most of the contact parents asserted that their relationship with their children was satisfactory when contact occurred and were willing to concede that their children got on well with the residential parent even in the cases where there were still remaining difficulties in the parents' communication with each other. There was only one case where the residential parent insisted that the children's relationship with the contact parent was 'almost non-existent now; to the point where they call him "he" and not like "dad" you know,' though in this case there was an earlier background of violence by the father in the family. In this case, the father attributed his lack of contact to the mother's insistence that the children were 'not ready' to visit.

In summary, the interviewees' perceptions of their relationships with their children contained a range of anxieties that one might expect to find generally where parents have parted. The additional complication of parents living in different countries added a further challenge to the maintenance of contact regimes and good family relations, but we found plenty of cases where both residential and contact parents were striving with differing degrees of success to manage their arrangements as best as they could. Two contact parents referred to the 'strong bond' that existed between themselves and their children. However, none of the parents attributed any features of their developing relationships with the children *directly* to the mediation intervention itself, though it was clear that the agreement reached in the MoU/consent order had laid a foundation from which the parties might progress.

Finally, it should be emphasised that the analysis of the responses to these questions merely provide *parental* perspectives of how their children's relationships with them had been affected. As explained earlier (para 6.1.2 above) this study did not include any direct testing of *children's* own views.

9.1.2. *Relationships between parents*

Most of the interviewees reported that their relationship with the other parent had been in effect trimmed down to doing what was necessary to manage the existing contact regime. The following statement by one of the interviewees is fairly typical:

‘We get on for the sake of [name of child], everything is civil, I have a whole different conversation going on in my head to the one I am actually speaking to, but as far as [name of child] is concerned things are civil.’

The pre-dominant adjectival language used by the interviewees in describing their relationships and communication with the other parent included, for example; the words ‘civil’, ‘cordial’, ‘perfunctory’, ‘amicable’. Some interviewees deployed negative statements to describe their limited expectations such as ‘well, we are not screaming at each other or there are no arguments as such, whereas before there was obviously a lot’. However, the data also showed the indirect impact of mediation upon maintaining the necessary communication to deliver suitable post-consent order arrangements. One parent stated:

‘I think that now everything is legally documented it gives us a framework to communicate... No I don’t think [mediation] had any direct impact but it certainly got us to the point where we could communicate. We did communicate and agree what we would do together. I really don’t know what would have happened if we hadn’t gone to mediation and how we would have progressed.’

Another said that ‘it helps there is a structure in place in terms of dealing with access to the child and it is sort of unbiased’.

The interview material reflects general support for the proposition that mediation had contributed to *some* improvement of communication. However, where relationships were reported as ‘good’ this was often qualified by remarks such as ‘it does have its ups and downs’ or, in another case, ‘we are getting on but let’s not push it’. Even in one of the (paired) cases where there remained quite a high level of conflict the residential parent reported that mediation had had a positive effect; ‘It did in the end sort of touch him’. In another case the residential parent noted that:

‘Mediation seemed to be a turning point for all of us. From there on after that, even the level of communication it was, you know, everyone kind of made the attempt to be pleasant which before, wasn’t the case, when we would just snap at each other what it was we wanted to say. After [the mediation] we would actually have conversations. ... I think it was possibly the first time when the father sat back and thought about what [name of child] actually wanted to say. Prior to that it was you know, ‘he’s a child’, ‘he doesn’t know what’s good for him’ but after the mediation it was totally different.’

In one (paired) case both parties reported that their relationship was now much more amicable. Most interviewees also reported some lessening of conflict following the mediation. One interviewee stated that ‘I don’t know whether it was just the mediation or the Hague but [the conflict] stopped in its tracks’. There were also a few interviewees who said the conflict had not been reduced or had got worse. Some were clearly still locked into conflict with their ex-partners. In one case, for example, the interviewee described her relationship with the other parent as ‘very strained’ and alleged that he used the MoU in a hostile fashion – ‘basically that piece of paper is his armour’.

Two (paired) individuals both stated that their communication was now by email only and that mediation had had no real effect in developing communication between them nor had it helped in joint problem-solving. In another there had been an allegation that the father had sexually abused the child. The allegations were eventually dropped, but communication between the parents was

only routed via lawyers. In yet another, the interviewee described her relationships with the other parent as ‘practically non-existent, pure lack of communication’.

Mediation in the context of international parental child abduction clearly fell short of being the most significant and causative driver of improved relationships between parents; a benefit often claimed for ADR solutions generally. It did however appear to act as a point of stability which guided future conduct.

9.1.3. Settlement of the family

The predominant response to the questions relating to whether the interviewees had been satisfied with the overall outcome for the family unit as a whole was positive. One residential parent reflected on their ability to move forward since the MoU and consent orders were agreed, though this only occurred after about 18 months to two years following the formal agreements:

‘I guess looking back it has meant that we have been able to move on. We have got things set in black and white with regards to access and maintenance and all that sort of stuff, we are both sort of sticking to it for the better and it is working well’.

In other cases, the interviewees though not feeling that their situations were ideal nevertheless talked about the process of their children gradually accepting the fact of parental separation and becoming accustomed and even happy with the family arrangements as they had developed.

In one case a contact father reported that the youngest child was upset by the family changes for about six months, ‘she did have a few tantrums and cried a lot’, while an elder child was able to articulate her concerns. In another a contact father talked about how following the proceedings it had been ‘a very traumatic time’ for the children and that:

‘...it was only the year later that my oldest son talked to me and he said “I’m sorry Dad, I didn’t realise what I’d done and I feel guilty” and I told him it was not his fault’.

9.2. Unresolved cases

The interview transcripts and other documentation relating to this set of 23 cases have, like the resolved cases, been used to provide an account of: children’s relationships with their parents (para. 9.2.1); the parents’ relationships with each other (para. 9.2.2); and the settlement of the family unit (para. 9.2.3). Of the 23 interviewees there were 9 who were the residential parents and 14 who were contact parents at the time of our interviews. Eight of the residential parents were women and 11 of the contact parents were men; see Table 7.6 above.

9.2.1. *Children's relationship with parents*

In this set of cases it was noticeable that a rather worse report of the children's developing relationship with their parents was given. In one case, for example, the contact parent reported that there was now 'a gulf' between him and his son. The mother described her son's relationship with his father as 'ruined', and attributed that to the court process'. Most interviewees reported various forms of emotional difficulties that the child(ren) had suffered. One residential parent noted that her child would probably be relieved to be told that there was no need to see the father any more. The contact parent asserted that the other parent 'will manipulate, erm, coach or frighten or stress [the child] completely'. The child, who was three years old at the date of abduction and eight years at the date of interview, had developed some eating disorders.

Where there was an underlying trust issue between the parents these were often played out via the children. For example, one residential parent generally took her child to the doctors prior to a contact visit:

'But then, just to belittle me, he [the contact parent] takes him to the doctors and says "he's got a cough" and "she doesn't bother" and "she doesn't take him", all of this saga and of course [child's name] is not allowed to tell me.'

Such cases were made worse where the residential and contact parents clearly differed in their general parenting styles and levels of risk aversion. In several cases, for example, there were differences about the issue of children undertaking unaccompanied flights; and of course, this had implications for the funding of contact visits. In one case, the residential mother was anxious about her son (aged one at time of abduction and seven at time of interview) going on the father's boat and slides during contact visits. On occasion such differences touched upon different national cultural standards. The contact father commented:

'He's more relaxed especially in [country x]. It's a very great country especially for kids. Over here, we never heard about kidnapping or anything, there was nothing. We never heard about these things, it's a very free country and that's why he loves it here. He's free, I can, I can let him run in square, in parks, you know. Yes, it's not like, sorry for this but in England, you can't trust kids in England, not even yourself, not even today. I'm sorry about this.'

Although the record of good communication between contact parents and their children did not appear as solid as for the resolved cases, there were examples of parents who continued to make effort to remain in touch, for example by using email and Skype video calls.

'I guess [my relationship with child] it is as good as it can be under the circumstances ... a couple of months ago I actually had a Skype session with him and it went on for two hours and it was great, but I guess I was just lucky to have caught him You know, he was on his own at home ... So I guess as good as it can be but it is very difficult with all the time difference and all of that kind of makes it difficult.'

Some of the residential and contact parents also implied, not unsurprisingly, that their children would avoid telling anything to their parents that might make any parental conflict or potential conflict worse. One parent remarked: 'I think [child's name] tried to tell us both what we wanted to hear'.

In another case, the residential parent said 'I think [the child] kind of plays both sides of the fence.' This parent mentioned that the other parent had tried to 'alienate' them from the child concerned. In another the contact father reported that his relationship with his child had become 'very bad, we have no connection anymore'. In two of the unresolved cases a specialist counsellor was engaged by one of the parents on the basis that the children were not opening up about their feelings.

9.2.2. *Relationships between parents*

In the unresolved cases, the predominant response to the questions relating to the parents' relationships with each other was that communication was really quite minimal or even 'non-existent', or the other parent 'refuses to talk to me in any way', or 'to be honest I can't speak to him anymore'. The following statement from one interviewee was not untypical of the unresolved cases:

'I'm trying to avoid any contact. I'm trying not to talk to her and I'm using a friend to send messages back and forth but I try not to contact her actually.'

Indeed in several cases, interviewees reported that the relationship with the other parent had got worse. The levels of trust appeared to be in general much lower than those found in the resolved cases. In one case, for example, the interviewee stated that, 'I never quite know what he's got up his sleeve and what he's going to do next... I can't trust him. I never know what's coming.' She did not feel that the mediation had solved any conflicts between them nor had it enhanced problem solving between them. In another, the father complained that the mother 'had a very thin veil of deceit and everyone who knows her sees through it.'

In one (paired) case, the contact parent reported that the communication, level of conflict and joint problem-solving between them had all got worse. In another case, the contact parent had experienced severe difficulties in maintaining contact with her son and had been in touch with the International Social Services (ISS) to see if they could broker a more amenable family arrangement, but ISS had eventually conceded nothing more could be done to improve family relations. The interviewee reported that the experience of the court and mediation process had 'completely severed' their relationship. In a further case a father complained, 'I could share with you any number of emails where you would be gob smacked at the language coming from this woman; she's unreal.' In another paired case there had been allegations by the mother of child abuse by the father; their relationship had clearly broken down almost completely. In yet another case, the interviewee reported starkly, 'I cannot talk to her, I cannot see her, for me she is gone'.

However, there were a few cases where efforts were being made to be 'civil' but little acknowledgment of any improvement in the parents' relationship with each other. In one case the interviewee rated her relationship with the other parent as 'static'. In another, an interviewee reported that, 'we're civil when we need to do stuff, but outgoing and friendwise, it's a bit of a non-starter'. In another the mother asserted:

'We try to have as little contact as possible. He still tries to control me when he does have contact. Erm he doesn't like the fact that I can stand up to him now. Erm apart from that, we're still in contact for the sake of [the child's name] and that, yeh.'

In one paired case the parents' relationship did not appear to have worsened though it was far from ideal. No agreement had been reached at mediation and the child was returned to the requesting state under Hague proceedings. The mother and child continued to live in the vicinity of the father's home and the courts of the country of habitual residence had awarded residency to the mother and contact to the father. However, the mother clearly felt trapped by these developments and stated 'he's got me where he wants me'.

In summary, this set of cases revealed qualitatively worse parental relationships in terms of levels of communication and joint problem solving ability than in the resolved cases.

9.2.3. *Settlement of the family*

There was much less satisfaction in this group of unresolved cases with the general settlement of the family unit than with resolved cases. In one case the interviewee noted that:

'There's been a breakdown of the family unit... it's just increased the level of conflict, increased distrusts by the siblings and the parent who wasn't awarded [residence] and affected the child.'

In another case the interviewee, though broadly satisfied with the contact arrangement, could not really reconcile himself to the new family arrangements and bluntly reported, 'this is not a family'. In a further case, the residential parent clearly had had continuing doubts about the sustainability of the contact regime and hoped that 'there will come a time when [the child] will not want to see her father.' She was clearly distressed that the conflict was still on-going after several court orders over the past six years. The other parent was equally dissatisfied with the family arrangements. This (paired) case had developed all the hallmarks of a classic intractable contact case. In one case the contact parent had not seen her child for two years before contact was re-established by a yearly visit.

Dissatisfaction with the way in which the family arrangements had developed was shared by both residential and contact parents. A residential father, for example, who had been involved in a highly conflictual custody battle, when asked whether he was satisfied overall with the outcome on his family, replied:

'There's sort of two answers to that question. "Yes" because I won but in the overall scheme of things I'm totally actually totally dissatisfied, there's no winners at all.'

In another (paired) case, where there had been multiple court orders after the parents were unable to reach an agreement in mediation, the family arrangements did not really start to settle down until the court proceedings, which went on for two years, had finished. The residential parent commented:

'Once the court proceedings stopped that was when we could really work on just being parents rather than fighting. ... I feel as if it took a little bit of her childhood away really, because I think a six year-old shouldn't really know what an attorney looks like or the inside of a court room looks like.'

Another contact parent similarly reported that the contact regime had only really settled down following the resolution of court proceedings after three years.

In short, unresolved cases demonstrated in some detail the way in which the settlement of the family unit was generally delayed by the intervention of prolonged legal process after the opportunity to resolve matters via mediation had been lost. With the benefit of hindsight some of these cases were unsuitable for a mediation intervention. In one case, the interviewee remarked, 'I don't think our case was ever going to be assisted by mediation.' In another case, our 'case reading' exercise (see para. 6.2 above) indicated that the *reunite* screening process (see para. 4.1) had probably not been sufficiently robust to identify suitability for mediation.

10. PARENTAL PERCEPTION OF OVERALL ABDUCTION EXPERIENCE AND SUBSEQUENT OUTCOMES

This section examines the third set of our criteria for evaluating the long-term effects of mediation referred to in para. 6 above. The evaluation is carried out in relation to resolved cases (para. 10.1) and unresolved cases (para. 10.2). The distinction between resolved and unresolved cases can be found at para. 6.1.5 above, and a detailed breakdown of the profile of resolved and unresolved cases can be found at paras 7.2 and 7.3 respectively.

10.1. Resolved cases

The interview transcripts and other documentation relating to this set of 29 cases have been used to provide an account of: the taking parent's perspectives (para. 10.1.1); the left-behind parents' perspectives (para. 10.1.2); and all the parents' perspectives of effects on the children (para. 10.1.3). Of the 29 interviewees there were 12 taking parents and 17 left-behind parents. 11 of the taking parents were female and 16 of the left-behind parents were male; see Tables 7.4 and 7.5 above.

10.1.1. *The Taking Parents' Perspective*

a. Ignorance, fear and shock of Hague Convention procedure

Most of the taking parents were quite ignorant about the return order mechanism of the Hague Convention, and usually only discovered they had acted in breach of the Convention after the wrongful removal or retention had actually occurred. Some of the British interviewees, for example, had simply thought that if their child's nationality was British they would have an unchallenged right to bring their children back to the UK. They expressed surprise at their actions being labelled as 'unlawful' and did not recognise the label of 'abduction', as applicable to their own actions. Consequently, their accounts of the Hague proceedings revealed much of their shock, stress and feelings of intimidation by the legal process, often combined with relief in finding the informed advice services provided by *reunite*. As one taking parent put it:

'The whole process, the Hague Convention is so frightening. Especially with the UK being so strict with their adherence to it. It is good to have people who are really knowledgeable of its workings [the Hague Convention] and what the judge will want to hear, you know.'

In a minority of cases, there was evidence of some prior legal knowledge and/or advice. One taking parent, who did claim to have some prior knowledge about Hague proceedings, commented:

'I was actually aware of the Hague Convention before I left [the requesting state] ... so I knew what I was getting myself into. I thought he would actually agree to things once I had actually gone. I returned to the UK on a supposed holiday and three weeks later I obviously had a chat with [the child's] Dad and it came to light that I wouldn't be going back and from that point on, ... I basically went to ground for a few years. Like I say because I knew the legal side of things, I knew that I

couldn't claim any benefits or work or anything so I was supported by extended family and I basically stayed a few months here a few months there and that continued for two years.'

Eventually, following the service of Hague papers on both her mother and sister, she contacted *reunite* with a view to resolving matters with her ex-partner.

In another case the taking parent, who was pregnant at the time, had sought legal advice and was advised to go back to the UK, contact the father and inform him of their whereabouts and offer him contact back in the UK, as he worked a lot in the UK. The father subsequently took Hague proceedings in relation to his own child and also the mother's older child that was not his.

One other taking parent on arrival in the UK with her child adopted a pre-emptive strategy of obtaining an order of the court requiring written consent before her partner could remove the child from the jurisdiction. However, this action in fact prompted him to submit a Hague application.

As explained below, the involvement of the police once a Hague originating summons has been taken out enhanced the sense of shock and threat experienced by the taking parents. In two of the cases the taking parents received not only a visit from the police but also from a child protection officer of the social services.

b. Association with criminality

Despite the fact that, nationally, the occurrence of prosecutions and convictions for statutory parental child abduction is relatively rare, Hague Convention proceedings were associated strongly by the taking parents with the *criminal* offences of abduction and kidnapping (see paras 2.4-2.5). Taking parents often deployed the language of criminality in describing their experiences. One taking parent remarked:

'I mean [my ex-partner] went to the Ministry of Justice in [the requesting state], complaining that I'd kidnapped my girls and then, you know, ... I had to put up with things like, you know the police took my passport away and everything. I was treated like a criminal.'

Another taking parent, in recounting the mediation experience, pointed out her own state of high stress and inability to pay sufficient attention to important provisions in the mediation agreement:

'I think overall at mediation I was probably close to a nervous breakdown. His accusation of me kidnapping [child's name] was completely wrong. And I had to fight it. And the main thing was that I was absolutely terrified to lose my son. And erm so things like money and child support I just like...my head wasn't there.'

However, none of our interviewees presented evidence of an actual prosecution let alone a conviction for an offence of child abduction or kidnapping either in the UK or in the requesting states. Several appeared to associate the Hague proceedings with criminal procedure in their own minds. This was reinforced by the involvement of police in many of these cases. One taking parent who had retained her children in the UK following a disclosure by her son that his father's new partner was abusing him and his step-sister and he did not want to return to his father commented:

'Next thing we had police at the house coming to collect our passports and things and basically giving me an order for abduction of the child.'

Several taking parents recounted the drama of getting a police visit and the police taking their passports. One parent reported her child's reaction on the police's arrival:

'[Child's name] was in absolute hysterics. "They're going to take my Mum. Please don't take my Mum!". And the police man said "no we've just come for passports" so that we couldn't leave the country.'

It was often at the first court appearance under the Hague proceedings where either the judge and/or legal advisers recommended a mediation intervention. Another taking parent remarked:

'I think it was the second [court appearance], the judge said unless you go to mediation [child's name] will be sent on the next available flight back to [the requesting state] and I said, "Well he's English, what's going on here, he's English, with his Mum, in England".'

At the time of our interview work, the sense of shock and the association with criminality was a perception by taking parents that influenced not only their account of the MoU agreed in the mediation sessions, but also provided an enduring context to their interpretation of the development of their family arrangements subsequent to these events.

c. Outcome views

Of the 12 taking parents in resolved cases, 11 (all female) were residential parents at the time of our interviews. The sole male taking parent had contact with his children when interviewed. It was not surprising therefore that the taking/residential parents largely indicated their approval of mediation on the basis of the substantive outcome it had delivered for them. As one taking mother put it:

'I am happy with it despite the financial bits I am happy with the result because ultimately I got to stay here with [child's name]. I didn't have to go to [the requesting state] to fight.'

When asked whether the outcome from the mediation and court agreements overall were fair a typical response was:

'Erm... to be brutally honest, at the time all I wanted was my son and I'd have agreed to absolutely anything because all I wanted was my son.'

It was clear that the negotiation process they undertook in mediation in the context of the tight time-frame of Hague proceedings had, from their perspective, delivered the most important element, i.e. the withdrawal of Hague proceedings by the left-behind parent and the subsequent legal recognition of their children's residence in the taking parents' desired country of habitual residence.

d. Effects on health

There was ample evidence about the damaging effects on the taking parents' own physical and/or psychological health following the abduction event and the court process. Many of the taking parents reported moderate to severe effects. One parent, for example, stated that she 'probably had a nervous breakdown'. She 'was just crying all the time', for a period of 'more than a year'. Another parent remarked:

'Oh it was terrible and for probably about six months after I was in a bit of a state, I mean everything had been sorted out but I was in a emotional state purely because it was the relief of everything coming out after so long, Yeah, I really had to have a word with myself and it was very difficult. I was restarting my life if you know what I mean.'

Another taking parent commented:

'Erm, well the whole thing was really stressful. Everything, I felt sick all the time, I couldn't eat. ... It was intense, so intense. I must say emotional it was huge, and physically, it was being sick, I lost weight, had diarrhoea, I was nauseous the whole time. Just, hugely emotional and stressful. ... Apparently I had a shell-shocked look on my face for about six months, longer than that probably. Definitely I'm now emotionally hardened and changed by the entire thing.'

e. Court process and/or mediation

The taking parents generally felt that it would be fairer to have court proceedings alongside mediation as in the *reunite* mediation model rather than relying solely on court proceedings. One parent emphasised the importance of having access to a process that combined the advantages of both the court and mediation processes:

'It did start to settle things. Without mediation we probably would have been on each others' throats. It was...yeah it started to settle things a little let's say. Solicitors...you know you can always get upset, you know, I'm not listening to solicitors of the other side whereas mediators have a much more, let's say calming caring approach. Think it is a good...I think you need the facts, the legal, the law, the tough solicitors who negotiate on your behalf but you also need the caring a bit calming, more client, not client, people orientated, you need both. You can't exclude either or, it needs to be together.'

Another taking parent (who had some legal knowledge) emphasised the advantages of a non-adversarial mediation model compared to adversarial court proceedings:

'... if you are just looking at solely court proceedings you have got a barrister that is at one end of the hall with his client, another barrister that is sat at the other end of the hall with his client and they are toing and froing and all the barristers really want is to get out of court as quickly as they can and they don't care about whether an agreement is reached they don't care if it is fair, they don't care about the child involved, you know they just want to get out as quickly as they can. So you think, ... when you go for mediation, just purely because you haven't got two sides all the mediators are not on either side, if you know what I mean, and it is purely somebody that is in the middle.'

One parent identified perceived weaknesses with both processes.

'Like I said if you have a strong party and a not so strong party that can bully the other I think you can come out of mediation being bullied and come out of mediation without a good outcome for anybody. And with the court proceedings I cannot believe in this day and age there are proceedings which do not take into consideration, at any point, the best interests of the child. How is that possible? That is not considered at any time or point or anything. If it was two people fighting in the same country, the sole focus of the entire thing is the best interests if the child which is not even considered in The Hague.'

f. Views about mediation

There were some compelling views that emerged from the interview material about the overall mediation experience. Even the sole (male) taking parent who did not eventually secure residence of his children felt that mediation had given him a significant voice in sorting out the family arrangements. He commented:

‘I’m a great believer in it. I do think it does work. I can’t fault it. It does work. It was really helpful. It helped thrash things out you know.’

Another parent when asked about the overall effect of mediation and the MoU reached replied:

‘Yes I think I’m quite happy with it. He’s doing his bit and I’m trying, you know to do my bit as well.’

Another parent praised the overall scheme and pointed out how it would be much improved in situations where parents put their children’s interest first:

‘I think the overall scheme is very, very good. I mean the idea in theory, is very, very good. But I think in practice it could only apply to certain situations to be successful, when the parents are putting their children’s interests at heart, putting them first, other than anything else. That would be, you know, where the differences would not come into play. Then they could really have a proper mediation session. And the follow up after that.’

g. Views about mediation process

Taking parents were generally very impressed with the overall process of the *reunite* mediation sessions. Their perception of the skills of the mediators themselves was also very complimentary:

‘I thought [the mediation process] was really positive and if I am honest the mediators we had knew what they were doing and yeah it is nothing but positive feedback really.’

In one of the cases where the child was a participant in part of the mediation, the taking mother reported:

‘You know, I think the whole process was carried through very well. Obviously, in terms of my son and the father, at first there was the animosity and stuff. And [child’s name] was kind of frightened in terms of how it was going to go, but that was put to rest kind of straight away. You know we thought, it is a safe environment and they were very careful in terms of keeping us separate, so I think it was really handled really well. We were made to feel comfortable and more so for [child’s name] as he was able to have that environment where he was made to feel safe.’

In another case, the parent was again very complimentary about the *reunite* mediation process, though did not like having *two* female mediators; she stated:

‘I think it was very well organised. Well structured, it was erm, professional, a good atmosphere, the only thing I would have is maybe a different choice of mediators and I would have chosen to have a male mediator in the room as well. Other than that, I thinking it was excellent, really excellent.’

As we have seen (para. 7.2), the majority of resolved cases were mediated by two female mediators; there were only two of all the resolved cases mediated by a combination of male and female mediator. The predominant view expressed in response to this question was to support having two

female mediators. One female parent indicated her suspicion that male mediators might not be so objective:

'I don't know there is a part of me that would think that as a bloke he would be wanting to come down more on the Dad's side or the father's side you know, I don't know because they were both impartial so...'

There were a few taking parents however, who indicated that they could see the value of a mixed gender mediation team and one taking mother suggested that this would be useful in the case of her ex-partner who, in her view, came from a male-dominated culture.

10.1.2. The Left-Behind Parents' Perspective

From the interview work with the 17 left-behind parents (16 of these were male) in this set of resolved cases there appeared a number of issues which are examined in the subsections below.

a. Reaction to the abduction/retention event

The way in which a 'wrongful removal or retention' under the Convention occurred was obviously variable, though the classic scenario of a child being taken on 'holiday' initially with the left-behind parent's consent was not uncommon. In one case, a left-behind father had initially agreed to his partner's two week holiday with their child and was informed by a later phone call that they would not return. In another case, the left-behind father had agreed that his child could go with the mother on a three week holiday and after eight weeks he initiated Hague proceedings. Another left-behind father agreed that his former partner could go back to the UK to visit her family for two to three months. In the one case of a left-behind mother, the taking father had initially agreed to have their children for a two-week period and the left-behind mother had later agreed to a four week holiday, in part because the father had wanted his children to attend the christening of another child he had had with a new partner.

In most of these cases, the parents reported their feelings of shock prior to seeking advice about what to do in response. In several cases, the initial abduction/retention event was organised by the taking parent with a certain amount of deviousness in order not to alert the left-behind parent to the underlying intention. For example, one left-behind father reported that his ex-partner had gone to the British consulate in the requesting state, without his knowledge, pretending that she and their son had gone on holiday and lost his passport; they immediately went to the UK when travel documents had been secured. Many of the left-behind parents dwelt on the details of these scenarios as a continuing source of bitterness and mistrust.

Despite the difficulties that had usually beset the couple's relationship prior to separation, the actual abduction/retention event often came as a shock to the left-behind parent. The sole left-behind mother referred to above reported that the taking father had phoned her up 'just totally out of the blue' to inform her that the children were going to live with him on a permanent basis. Another left-behind father remarked:

'You know when it was all happening it had a curious effect on me, I lost control completely. It took me six months to a year to realise, you know, that the whole situation has happened...'

In a few of the cases the couple were already at arm's length and mistrustful of each other prior to the removal/retention. One left-behind father, for example, had initially agreed that his ex-partner could take their child to the UK but arranged for her to sign a document drawn up by a notary agreeing to return by a specified date.

The initial abduction/retention event also initiated recourse to legal advice and the interviewees reported several examples of confusion and misleading advice they had received prior to securing a clear path to make an application for a return order under the Hague Convention. One left-behind father, for example, reported that his lawyer had insisted on initiating a custody battle in the country of habitual residence *prior* to Hague proceedings.

In most of the resolved cases the whereabouts of the child(ren) were known to the left-behind parents, though in one or two cases there were brief periods (a few weeks) where their location was unknown. One left-behind parent reported that he had hired a private detective in the UK to find out where his former partner and child were. In one case the left-behind parent reported that it was two and a half years before he managed to find his son, following assistance from Interpol and the British police. He had no knowledge whether his son was alive during this period, and clearly had found this a deeply traumatic experience. At the time of our interview the taking mother who had won residence was planning to make a further move to yet another country.

b. Outcome views

Of the 17 left-behind parents, it was only the one taking mother who eventually became the residential parent (see Table 7.8 above). The remaining 16 left-behind fathers negotiated contact in relation to their children. The general theme emerging from the left-behind parents in the resolved cases was a mixture of recognition of a difficult and troubled episode in their lives along with a process of accommodation to the re-arrangement of their family affairs. One left-behind father remarked:

'In life you just have to adjust to things. I'm getting used to looking at life in a new way and the pain of the situation diminishes over time. For example, if I was never to see my daughter again I would be very bitter about it but we are at an amicable stage, things are fine.'

Some of the left-behind parents reported their general satisfaction with the outcome of mediation. One left-behind father said it was generally 'very positive'.

However, on reflection several left-behind fathers said they had given away too much at the mediation sessions. There was some evidence from left-behind parents, who had conceded residence in favour of the other parent, that their continuing concerns had been dropped by their respective legal advisers. Interestingly, some felt that there was a need for some kind of after-care advice service in addition to the *reunite* mediation service provided. One left-behind father noted that he had thought that a further mediation session could be arranged perhaps six months or a year or two following the original sessions and was disappointed that his lack of contact with his ex-partner would preclude this happening.

c. Effects on health

The health effects following the abduction events on left-behind parents was similar to that relating to taking parents. Left-behind parents reported a range of health effects. A left-behind father remarked that he was 'always stressed', another reported that he was smoking a lot, and yet another that he had had shingles as a result. Another reported weight loss, panic attacks and his need for anti-depressant medication for six weeks. Some interviewees linked the health effects directly with the court processes rather than mediation. One left-behind father, for example, commented:

'... it would add to work stress, and personal stress, and I suffered panic attacks which I had never had before, that was horrible. So I think I would say very mild depression. I would say it is certainly the worse thing I have gone through in my life and I think that is the same for a lot of people that find themselves in this situation.'

Another left-behind father reported that he had been 'depressed for a number of years' and had 'physiological and emotional on-going problems'. Yet another left-behind father reported that he suffered 'a certain amount of depression afterwards' and felt that his stress-related anxiety had affected his on-going blood pressure problems. The left-behind mother reported that she had lost weight and developed irritable bowel syndrome and that she 'also basically became a nervous wreck'.

d. Court process and/or mediation

The majority of the left-behind parents had negative views about the impact of the court process on their lives compared to mediation. Indeed, one left-behind parent reported that on one occasion, his daughter had pleaded with him, 'please Daddy, don't go to court'.

However, a few of the left-behind parents who dropped Hague proceedings following the mediation, but who had experienced continuing difficulties with the agreed contact regime, did appear to have some regrets about their involvement with mediation.

'I mean the whole process could of worked quite well and I am sure for some people it does. But in our relationship in all honesty looking back at it now we would have been better off not going to mediation we would have been better off going to court and spending the money that I spent in court here in the UK getting back to [name of country].'

In one case the left-behind parent claimed that his ex-partner had made false allegations of child abuse against him immediately following the mediation in order to disrupt the contact arrangements and he had spent the next year-and-a-half sorting this out in the British courts before reasonable contact arrangements were reinstated.

Many of the parents recognised from their own experiences that there was a real need for accurate information and advice to be available, in particular the circumstances under which a return order under the Hague Convention is likely to be made. One left-behind father wanted more border control regulation. He commented:

'More people are having international marriages and many are moving abroad so it is going to be a growing problem. I would like to see countries....when parents go to another country I think officers or officials should ask to see papers proving the other parent has given permission and if they didn't have that the other parent should be able to get leave to remove. I think it would solve a lot of problems.'

e. Views about mediation

There were a number of positive comments made by left behind parents in relation to mediation. One parent emphasised that mediation 'gives you a voice' and another liked the fact that the 'mediation process is pretty swift really'.

There was some evidence from the left-behind parents that once the MoU had been signed and made into a consent order their bargaining power was much reduced and the residential parent could simply unilaterally ignore large parts of such agreements. Some parents complained that the mediation agreements were not sufficiently backed by any sanction. One left-behind father, reflecting on a provision of the MoU that had envisaged his child would make flights as an unaccompanied minor which the other parent later refused to action, commented:

'It's sad for me because the courts didn't give the mediation enough power because we had this agreement but then she could turn around and go against it pretty much immediately without any type of punishment, then what good is mediation?'

Clearly, parents' views varied according to their expectations about what mediation could yield for them. One left-behind parent reflected on his disappointment that mediation had not produced reconciliation with his former partner.

'... the first question I asked was can we reconcile, are you prepared to come back? ... Looking back I realise that was never going to be the case. The mediation broke down for about an hour at that point when it became clear that my wife clearly did not want to reconcile, that was the reason I got on the plane to see if I could save my marriage and to get my children back. Because we had had no contact, she didn't call me and say the marriage is over....I found out in that mediation room the first five minutes and that was a hell of a thing for me.'

Another left-behind parent thought there should be more work done on preliminary screening of individuals prior to mediation and that the mediators ought to have been better informed about the background circumstances. He remarked, 'I was so vulnerable that I would of almost agreed to anything.'

f. Views about mediation process

Most of the left-behind parents expressed their preference for mediation alongside court processes. There was also a majority who appreciated the particular facilities and arrangements offered by *reunite* in Leicester. One parent commented:

The facilities were good, the travel arrangements, the hotel arrangement, all the logistics to it were really good. We felt we were moving on and getting things done, you know, very much so yeah.

There were some parents who expressed concern about the relatively short time they had had to consider the MoU agreement.

One left-behind mother made clear her view that a certain level of genuine commitment is necessary before mediation can work in this context.

‘I think it needs to be impressed on both parents that they have actually got to want the mediation, it is no good sort of paying lip service to it or thinking it is going to win them brownie points in court.’

There were also concerns expressed about the availability and access to authoritative information about the Hague processes and mediation facilities. One left-behind parent reported that consulting solicitors did not always produce the correct information:

‘Normally mediation has to be suggested rather than requested, Actually I think something that might be worth looking into is, because I only found out about *reunite* by accident I literally only put parents child abduction into a search engine and found *reunite*. There is an awful lot of people who have totally got no knowledge whatsoever. I spent a week contacting solicitors in the UK, only to be told there is absolutely nothing you can do.’

10.1.3. *The Parents’ Perception of Effects on the Child*

a. Taking parents:

The most frequent response to questions about the impact on their children was the view that the child concerned was ‘too young’ at the time of the abduction/retention to be effected by these events. For example, one taking mother commented that her child ‘was too little and I kept everything like that away from him.’ Given the fact that taking parents generally would still feel some responsibility for initiating the removal/retention, it was possible that in some cases this response provided a convenient way to disavow a narrative that might confirm the damaging impact on children.

However, some taking parents had a keen sense of the possible damage to their children if they had not proactively removed them. For example, one taking mother remarked that there were no damaging effects, indeed she went further and identified a positive element:

‘I don’t think that it has really affected her too badly because she was so young, you know she hadn’t built up that relationship with her Dad. if anything I would say it is probably positive because taking her out of the abusive and aggressive situation she no longer has to hear her parents screaming at each other and her Dad being drunk,’

Several parents commented on the fact that their children (usually the boys) did not appear to want to talk about any troubling events in the family. One taking mother, for example, commented:

‘He was very closed and wouldn’t express himself and would go along with what adults said. He’s come through it. He’s a lot more confident in himself, more outspoken about what he feels etc. And we’ve talked about this, we’ve tried to see the positive and we’ve said, ‘it’s made you a stronger person’, ‘it’s made you more determined’.’

Unsurprisingly, the effects on children were more damaging in circumstances where any or all of the adults continued to attempt to align their children in adversarial opposition to the other parent (aka ‘parental alienation’). One taking mother reported the following incident:

'For example, one day [father's name] was on Skype with [child's name] and I could hear because I was in the bathroom which is next door to [the child's] bedroom and he said "remember this, keep this in your mind, remember it and repeat it back to me, your mum and [mother's new partner] are nothing. Use and abuse them as much as you can, get what you can out of them and when you're 16 come and live with me son".'

Several taking mothers reported some initial difficulties and resentments followed by their happy settlement to living in the UK now. For example, one taking parent commented:

'I mean, obviously they hated me because I left their home. It was nothing to do with them, and then I brought them to a foreign country...Remember I was the only person who used to speak English, you know, you know and it was very difficult for them as it was for me.'

The disruption of children's lives was also picked up by teachers and playgroup leaders. For example, one taking mother commented:

'His teacher noticed at school that he was very emotional and upset. He wouldn't want to go out at playtime. He'd rather stay in and chat to teachers.'

Another taking mother remarked:

'Well she didn't grow. And in terms of her emotional health she was very clingy. I got reports from the toddler group leader about how they could tell where we were in terms of a [forthcoming visitation] trip by looking at how [child's name] was. She wouldn't leave my side and then as there was more distance between a trip she would eventually go and play with her friends.'

b. Left-behind parents:

There was some evidence from left-behind parents of the damaging effect that the abduction/retention and related parental disputes had had on the children concerned. However, it was difficult to separate out parental perceptions that were merely a projection of parents' own continuing anxieties and those that were genuinely objective accounts of the impact on their children.

The (only) left-behind mother reported that her eldest child had coped well with it, but the younger one suffered 'from a lot of separation anxiety at the time'. She claimed that this was still ongoing:

'... every year from sort of mid June [just before a scheduled contact visit] she starts to get a broken night's sleep, she gets nightmares, she can't get to sleep, she becomes very agitated, she becomes very needy even if I don't leave the house if I don't tell her where in the house I am going to be she becomes very distraught, she panics she gets really worried.'

Some of the left-behind parents worried that the traumatic events would eventually show themselves as the children matured. Others appeared to think that there were no significant long-term effects on their children other than the usual anxieties associated with separating parents. One left-behind father commented:

'... Basically at the end of the day I would say 'you're lucky, you've got two houses to come to, you've got me and your Mum's house'. You know, things like that. I just sort of lighten it up. It seems to work

with him, put it that way. ... I don't think he suffered at all to be honest. He may have had his moments but generally I don't think he did.'

Another left-behind father did not seem to think there had been much impact on his child, other than losing some friends consequent on the move to another country.

10.2. Unresolved cases

The interview transcripts and other documentation relating to this set of 23 cases have been used to provide an account of: the taking parent's perspectives (para. 10.2.1); the left-behind parents' perspectives (para. 10.2.2); and all the parents' perspectives of effects on the children (para. 10.2.3). Of the 23 interviewees there were 10 taking parents and 13 left-behind parents. Eight of the taking parents were female and ten of the left-behind parents were male; see Tables 7.6 and 7.7 above.

10.2.1. The Taking Parents' Perspective

The interview work with the ten taking parents in this set of unresolved cases revealed the following pattern of responses.

a. Ignorance, fear and shock of Hague Convention procedure

Several of the taking parents commented on their shock when learning that Hague proceedings had been initiated. For many of them this was because they had no idea that their actions could be construed as unlawful in any way. One taking mother commented:

'I didn't realise I was breaking the law by bringing them back. Neither did my husband. And I immediately filed for divorce here and he had it set aside because of the jurisdiction. And after about nine months, maybe six months, he was informed of the Hague Convention. And he then proceeded to take me through the High Court.'

Another taking mother insisted that she had made it clear to her ex-partner that she would never stop him seeing their daughter and was surprised when the police arrived using the language of abduction. A further taking mother claimed that her partner had agreed to their temporary stay in the UK:

'And then the next thing I know about a week later, there are two police men knocking on my door serving me with papers for kidnapping and abduction. ... I didn't really know what was happening I thought they were going to take my children away from me that's what I thought, I thought they were gone. ... I mean I never even imagined in my wildest dreams that my British children with their British passports would not be able to come straight home.'

b. Association with criminality

Often the first that the taking parent knows of these proceedings is a call by the police and a request to surrender passports and to see the child(ren) concerned. One taking mother complained:

'They banged on the front door and then they went round the back. You know it was like someone had murdered somebody or something.'

Some of the taking parents were genuinely shocked by the suggestion of criminal responsibility implied by the language of 'abduction'. For example, one taking father remarked:

'... my case was just so far off the general kind of abduction case (laughs) I find it, you know, kind of implausible that I was even considered in the same kind of context as that (laughs).'

In another case, the taking father said he had agreed with the mother to bring their son to the UK following a medical emergency where the son nearly died and the father was not content with the medical care being given to his son in the other jurisdiction. The mother had claimed this was only for a limited period. The taking father was therefore surprised to receive a police visit:

'I had a visit from the police saying erm "you've been accused of kidnapping your son, you need to appear at the High Court in London".'

c. Outcome views

One male and seven female taking parents in these unresolved cases eventually obtained residence in relation to their children. However, their various routes to this position were significantly more troubled than in the resolved cases. Most of the interviewees reflected on repeated court appearances, increasing bitterness and further disputes for many years duration. In some of the cases one partner made allegations of child abuse against the other further exacerbating the underlying trust and ability to settle their family arrangements. One such taking mother, accused of hurting her child, reported:

'Over the space of two years, I can't even tell you I was probably in that court room maybe once or twice a month....and my cross examination was just utterly unbelievable, I was put under cross examination for about five three-hour sessions....'

In one case it would appear that the father had no real desire to have his children returned but simply used the threat of a Hague return order to negotiate a cash transfer from his ex-partner to settle matters.

d. Effects on health

The interviewees experienced a range of health effects from heightened anxiety, to 'horrible, very stressful'. The evidence here was very similar to that relating to resolved cases (see para. 10.1.2(c) above).

e. Court process and/or mediation

Many of the parents, who had had to involve themselves sometimes in repeated court appearances precisely because the mediation sessions had not resolved their affairs, had disparaging comments to make about formal legal process. One taking mother reported:

'The court proceedings were awful. Incredibly old fashioned and out dated. Stupid. going in and talking about a situation with someone who is much higher than you is not how to do things.'

Another taking mother reflected on her own frustration with dealing with repeated court papers:

‘ It’s exhausting and draining. It’s very draining. Constantly having to record notes and write things down. Papers coming and filing it in such-and-such a file. I just find it all very laborious and tiring and draining and time consuming and unnecessary. I’ve never said ‘I don’t want my child to see you again’. He could always have contact from the start. So to be honest, I find all of this, wasting people’s time, money and efforts really unnecessary. ‘

A taking mother, who had been through protracted legal proceedings and allegations of child abuse, commented:

‘Yes once the court proceedings stopped that was when we could really work on just being parents rather than fighting.’

The only taking father who eventually won residence thought that a court-only process was more appropriate than running court proceedings alongside mediation.

f. Views about mediation

There were a number of negative views arising about the desirability of mediation in this context. For example, in one case the taking mother reported that the other parent entered the mediation only on the basis that the child would be returned:

‘... there was no sort of compromise as far as he was concerned. He knew what he wanted and that was it. Right...He wasn’t going to back down or discuss it with anybody else. Erm, he was only prepared to discuss what would happen if we went back rather than if that wasn’t the case, he obviously didn’t want to think down those lines at the time. And in that respect, I suppose probably in essence, it was a waste of time.’

In fact, the Hague application went in favour of the mother and no return order was made.

In another case the taking father eventually obtained joint custody of his child. He commented:

‘It was blatantly obvious at the start that [mediation] was never going to solve anything because his mother was of the idea that he must go back to [the country of habitual residence] at all costs and my view was the best place for him health-wise is here in the UK and she chose to disagree, chose to disagree with all the medical evidence that was presented to her, you know, from the experts.’

Several parents in this set of unresolved cases felt that there had been some pressure on them to mediate in circumstances where they were not willing and/or ready to enter into mediation. The source of the pressure was variously identified by the interviewees as derived from their ex-partners, legal advisers and the judges, or some such combination of these. As one taking mother aptly put it:

‘... I think a good deal depends upon the wishes of the parties to actually mediate rather than an entrenched stance.’

Another taking mother, who alleged a background of domestic violence by the other parent, commented:

‘Basically I was forced into it... I didn’t really want to do it but I was forced into it... I didn’t want to face him because he/d controlled me for so many years.’

A further taking mother remarked:

'I knew really before we went to mediation that he wouldn't budge. But because the judge had wanted it, I went through with it.'

Nevertheless, where the taking parent eventually won residence (in eight out of the ten cases here), there were a few positive views about its value. For example, one taking mother commented:

'I don't think [my ex-partner] enjoyed it as much as I did as I found it really empowering. I felt totally respected. I felt like erm, not that the mediators were on either of our sides, but I did find like I was completely listened to. I didn't feel like that through the court system at all or through CAFCASS but the mediation was the best thing that happened.'

g. Views about mediation process

Reflections on the mediation process were usually highly coloured by the interviewees' views about their ex-partner's behaviour. One taking mother claimed her ex-partner was a 'pathological liar', another taking mother viewed her ex-partner as a 'compulsive liar'. There was also some support for having a male and female mediator. This point was pressed by the women as well as some of the men. One taking mother commented:

'I think [my ex-partner] thinks, 'I'm a man and no woman in Leicester is going to tell me what to do with my son'. ... There's a lot of that element in these Mediterranean countries. The men are in charge. They do rule the roost and they do govern and control you. ... if there were men on the panel that might be a good thing in the future.'

10.2.2. The Left-Behind Parents' Perspective

From the interview work with the 13 left-behind parents in this set of unresolved cases there appeared a number of issues which are examined in the subsections below.

a. Reaction to the abduction/retention event

In most of the unresolved cases the abduction or retention event produced a shocked response by the left-behind parent, even though these individuals had generally already experienced quite serious difficulties in their relationships. One left-behind mother commented:

'You know and it's pretty big stuff, taking Hague proceedings in a way because you know, it sort of shocked me, hearing back in [the requesting state] you know, hearing them say, you know, 'we've seized passports' and all the rest of it. I mean it's ...phew!'

A majority of these parents experienced these events as some kind of betrayal of their trust. One of the left-behind mothers felt that she had been manipulated by her ex-partner into agreeing that her son could stay with the father on an 'extended holiday.'

'... Of course I trusted [father's name] and didn't have any legally binding documents drawn up before I left, so he manipulated me into a situation basically.'

In another case, the left-behind mother described the following scenario:

'Well [child's name] went, [child's name] had been living with his father for three months and I'd agreed to them going over to the UK on holiday...with a little bit of trepidation about it because I knew that his father was probably looking at relocating over there at some stage, yeh, possibly relocating.'

As with the resolved cases, the initial 'extended holiday' scenario was a common occurrence. One left-behind father's overview of events was typical:

'She went on holiday she was to bring them back the last two weeks of the summer holiday. A couple of weeks into it she called me up and she told me that she wasn't going to return them. I pressed her on it and she said she wasn't going to return.'

He claimed that she had been under advice from 'an unscrupulous lawyer' in the requesting state to go on the pre-planned holiday and then break the news to him. Another left-behind father identified his leaving a traditional religious community as the origin of his difficulties with his ex wife. She left the requesting state each year to holiday with her parents and it was during one of these holidays that she did not return.

Sometimes, the surrounding circumstances of the abduction/retention, was quite dramatic. One left-behind father recounted how his partner announced at a big family gathering that she was being held by him against her will. She then drove off to a British consulate, claimed she had been abducted and needed an emergency passport (which she was granted) to get out of the country with her daughter.

These initial events continued to have an enduring impact in shaping the interviewees' interpretation of subsequent developments.

b. Outcome views

Of the 13 left-behind parents, there was only one parent (female) who eventually secured residence. The remaining 12 (ten males and two females) had contact. In general, there was some sense of resolution by these interviewees though this was usually tinged with regret that the process had taken so long and an acknowledgment that the extended court process had proved damaging. There was also evidence from the interview work that further court process might well be reactivated. One left-behind father commented:

'I think it is, we are happy with agreement because for the disagreement we wore each other down, but she knows there is a minimum of contact. She knows that I have my rights. [Child's name] has his rights. And also she knows very clear that if something strange happen I am going to go to the courts again.'

In one case where the mother and child did return to the father's country and the domestic courts there determined residence in her favour with reasonable contact to the father, the left-behind father reported his satisfaction with the outcome:

'Well I'm very happy about the outcome of the case because I have my child back. My child in the community that she started off in. Returned to it now and she's doing very well at school. I couldn't be more happier for her.'

His only regret appeared to be that the mother had not really acknowledged that she had done any wrong by going away in the first place. However, a left-behind mother who eventually lost residence of her son thought that the overall outcome in her case had been 'ridiculous, laughable, stressing and useless'. Another left-behind father considered the overall outcome in his case 'dismal'. Finally, a left-behind parent recounted the wider impact and desperation experienced:

'All I know is I started with err good savings, a nice house, err you know and productive work and a wonderful kind of life and now I have phew... \$135 to \$140,000 in debt and no full time work and still no resolution to be honest.'

c. Effects on health

The left-behind parents reported a number of severe health effects which they attributed, at least in part, to the stress caused by the abduction/retention event and its aftermath. One left-behind parent, for example, said that he had had two heart attacks. Another left-behind father reported that he 'became quite ill erm, er the whole trauma of that, that past year'. He suffered serious depression and had to see a specialist psychiatric counsellor. He lost his pilot's licence as a result and had to change careers. One of the three left-behind mothers who had lost residence, had only minimal contact with her son. She reflected on the health effects of the court process on her:

'Well massive...you know I have gone through all sorts of things where I have been severely depressed. I went through a stage where I was drinking too much alcohol, arguing with my husband I was starting to create problems with him as well.'

Another left-behind mother reflected that she had been 'terribly depressed'. A left-behind father reported that he had suffered 'almost two years of depression'. Several referred to sleep problems and a reduction in their attention spans. In one case the left-behind father worried this might have an impact on his work which involved climbing under dangerous conditions. In another case, the left-behind father claimed that a pre-existing kidney condition had been exacerbated along with depression.

d. Court process and/or mediation

The unresolved cases were distinctive in terms of the frequency of court hearings which the parents underwent. One left-behind father, for example, commented:

'I've been so many times in court. I've been about six or seven times and it was all on my cost.'

There were several left-behind fathers who perceived a gender bias in the English family court system: 'the family court system has failed, it has failed fathers'. Another left-behind father stated:

'[Fathers] have only one right. They have the right to pay maintenance and they have no other right. Now all that's changing now, it's changing in the last legislation. Every father now, his name goes down on the birth certificate so he's an automatic guardian.'

Given the general failure of mediation in unresolved cases it was unsurprising that most left-behind parents regarded mediation as a weaker form of resolution compared with the court process. One left-behind father commented:

'Well, I mean, ultimately, to be honest, mediation was subordinate to the court and I don't suspect that mediation had any more than maybe five per cent effect on the court.'

e. Views about mediation

Many of the parents could see the advantages of mediation if it worked, but then pointed out that it had not operated satisfactorily in their case for a variety of reasons. The majority were thankful for the efforts of the mediators and did not attribute the eventual failure of mediation to the individual mediators. One left-behind parent remarked:

'It's through no fault of theirs that we didn't come out with a different result.'

Several parents thought that if the mediation was conducted on the basis of greater knowledge about the individual characters then it would have been better. Several interviewees simply did not believe that mediation was appropriate in their case. One left-behind mother, who had had one mediated session conducted by telephone, commented:

'... the conclusion we came to was that there wasn't anything to mediate. ... When the mediator came on the phone she immediately said well, they'd had a discussion about it and there was just nothing. ... There was just nothing to negotiate on. ... I think it was a tick box exercise for my ex, to be quite honest.'

f. Views about the mediation process

Some parents felt that the mediation process had involved a certain amount of pressure. For example, one left-behind father commented:

'Another complaint I had about the mediation is that they made a lot of pressure with me, around me. Telling... so some of the people in the mediation told me you have to take into account if you don't agree something here you have to go to the English court and the [requesting state] court and you don't have money to do this.'

This interviewee also complained that the mediation, in his view, was 'very, very mother-orientated.' Some of the left-behind parents also were of the view that their ex-partners had felt pressurised to enter mediation. One left-behind father reported:

'She wasn't, she wasn't happy for mediation. ... She was against it because she said 'no way'. She said 'no way' in front of her barrister. ... And the barrister he said err 'this is from the judge and you have to do it.'

Another left-behind parent complained that the mediation process was not satisfactory:

'Well I wasn't very happy with it because it was further expense for me and I did agree because I thought it was going to be made into an agreement but we didn't. OK.'

Only two of the resolved cases were mediated by a man/woman mediator team; the remainder were mediated by two women. One left-behind father commented:

'Both female. That was something I was fairly uncomfortable with as well. ... maybe half and half you know because maybe the female wouldn't exactly see the point of the male. ... I think it should definitely be a representative of each gender.'

Another left-behind father felt that the two female mediators were more on his ex-partner's side 'because girls are always together and I think they help each other.'

Finally, there were also some concerns about the court's powers to enforcing any resulting mediation agreements.

'I guess there wasn't really a problem with the mediation there was just a problem with the court not enforcing anything.'

10.2.3. The Parents' Perception of Effects on the Child

a. Left-behind parents

As with the resolved cases, several parents reported that their children had shown signs of being withdrawn, though it was difficult to know whether this attribution was a consequence of the abduction narrative itself or the fact of parental separation generally. One left-behind father said that his daughter was 'very quiet and a little bit shy' during contact visits. Another father reported that his daughter had developed 'stress rashes' on her legs.

A left-behind mother acknowledged the emotional difficulties that events had caused for her son:

'I think he has been through quite a lot of emotional distress about it and he was in tears with me a couple of times and he gets upset because he feels that his Dad is manipulating me and all of that kind of thing. Not in his physical health, but it has upset him but I guess I expect that as well, not that I want it to happen, but a kid cannot be ripped out away from his mother at that age and for it not to have any impact on him.'

One left-behind father who had limited contact with his daughter said that he did not spend sufficient time with her to be able to observe whether there had been any long-term effects but described how she was made a fuss of when she was staying with him, 'she's just treated like a Princess'. Another left-behind father simply responded that he did not know whether there were any effects.

One left-behind mother who eventually had only limited contact with her daughters and had lived with a new partner who the girls wanted nothing to do with, commented:

'Well obviously at the time they felt abandoned by their mother and I think they thought I hadn't tried to fight for them.'

b. Taking parents

Some of the taking parents, when asked about the possible long-term effects of the abduction experience on their children, could only articulate effects in terms of how it reflected on their own character and relationships. One taking mother, for example, commented:

'I guess the long term effect is that [my son] will have a bit more respect for me than before as I don't think he realised I was feisty.'

In a similar vein, another taking mother, when asked about the emotional outcome for her daughter replied:

‘Because of me, I think she’s fine, but if I wasn’t so strong I think it would be terrible for her.’

There was only one parent who stated clearly that there had been no real long-term effects on her children and insisted that they were ‘unaware’ of the parental conflict.

There were a number of taking parents who managed to be more objective in their responses and several referred to various emotional concerns, though it was difficult to separate these out from the general difficulties for children that characteristically arise when parents separate. One taking mother commented about her son:

‘Health wise he’s fine but I think mentally at the moment he’s quite unsettled. Emotionally, he’s quite unsettled regarding the separation and the contact. I think that’s reflected on his general attitude at school. As we speak at the moment I think he’s going through quite a lot.’

Most parents recognised, at the least, that their children had been aware of their parents’ difficulties and had been anxious about the unfolding events. One mother reported:

‘They’ve kind of accepted it. They’re aware there’s a lot of antagonism. [Child’s name] in particular, when she goes with her Dad, she always comes and gives me lots of hugs as if to say ‘are you sure you’re all right Mummy’...when she goes. Yes it has affected them. It has upset them.’

There was some evidence given about the health effects experienced by children prior to a flight to see the contact parent. One taking mother who now had residence in her favour commented:

‘... she was due to fly on the Friday, but on the Thursday the school phoned me up erm “I think you need to come and get [child’s name] she is not feeling very well she has got a severe headache and her tummy is hurting her”, erm and so I brought her home she was quite pale and then she said that her neck was starting to get stiff so the alarm bells went.’

There were other cases too where the child’s school flagged up concerns about the child prior to sometimes a lengthy flight to visit the other parent. One taking mother who had residence of her son said:

‘His behaviour does alter around the point of contact periods in various ways. They notice at school just before and just after contact that he’s, well, unsettled, to be honest.’

The perception from several parents was that their children did not really want to discuss matters. The sole taking father who eventually secured residence of his son, said that he had become withdrawn and attributed this to the fact that his son had been told that the views he expressed to the CAFCASS officer would be confidential and his parents would not have access to the report, which in fact they later received from their respective lawyers. One taking mother had become sufficiently concerned about her son who she reported tended ‘to bottle up his feelings’ to contact social services to obtain help.

‘I don’t know what they’re called but they’re kind of like social workers and they’d come and take [child’s name] out for maybe an hour to basically go through different exercises with him, like to find

out his feelings but without asking him about his feelings. ... They'd do different exercises to find out things. ... It got to the point where he said he didn't want to go anymore.'

Another taking mother also went to see a child psychologist to obtain better advice to deal with her daughter but was conscious that she did not want to upset her daughter by revisiting these events. She commented:

'But it is difficult to know how far to push because I don't want to open wounds that are upsetting to her because throughout the whole thing she told me what I wanted to hear and told [father's name] what he wanted to hear to please both parents.'

Some of the parents reported that although the effects on their children had been troublesome life had tended to settle down following the final resolution of their family arrangements (where this occurred). One father, in response to being asked about the effects on his child, reported:

'Very stressful but I would say they're a lot better now following the final court order laying everything out. Because now it's very clear-cut. And children, children benefit from knowing what they're doing and where they're going. And not to not know where they're going and where they're going to be...especially on a young child is, is usually detrimental.'

11. THE FINDINGS

11.1. The impact of mediation agreements and further litigation

11.1.1. Resolved cases (paras 8.1.1 to 8.1.3)

In resolved cases the parties' need to find resolution of their difficulties was primarily served by a definitive statement in the MoU concerning the proposed residence of the child(ren) concerned. There was only a minority of cases where this could not be agreed in which case the MoU specified that the matter should return to the High Court for determination.

The predominant pattern that emerged was that the nearly all female group of taking parents – all primary carers of the children – secured a residence clause in their MoUs. The subsequent consent orders specified the withdrawal by the left-behind parent of the Hague application. The eventual outcomes in terms of residence at the time of our interview work also matched this pattern. The 11 taking mothers all had residence of their children at the time of our interviews: see Table 7.4.

There was also some evidence that the 'concession' by left-behind parents on the residence point enabled them to secure a satisfactory contact regime in the MoU. This was to an extent assisted by the fact that taking parents were often considerably shocked by the instigation of Hague proceedings which frequently brought with it visits by police, association with criminal behaviour, confiscation of passports and so on. The taking parents' negotiating position therefore was usually relief at the left-behind parent's concession on residence and a willingness to agree to contact and other conditions. In some cases, arguably the taking parent did not sufficiently think through the implications of the contact and other conditions specified in the MoU.

In a majority of the resolved cases, although the contact regimes specified in the MoUs had by no means been free of difficulties, they nevertheless had generally provided an enduring framework to meet the expectations of the parties in relation to their family arrangements in the years following mediation. The contact regimes generally survived though with differing degrees of success regarding the details of their arrangements. One feature that stood out from the interview data was the increasing use that parents were making of a range of indirect contact, using email, Skype video calls, social media in addition to landline/mobile telephone communication.

The interviewees reflected on a range of matters with differing degrees of challenge that had occurred in the years since the mediation occurred. Inevitably, family circumstances are not static and two elements were frequently referred to as prompting reviews and difficulties with contact arrangements. Firstly, as the children concerned matured and became more autonomous their wishes could increasingly be influential in shaping the contact regime. Secondly, where one or both adult parties re-partnered, this also had its influence. Where the underlying relationship between the two parents had been badly damaged and failed to rebuild much trust, these kinds of changes could prompt further difficulties and resentment.

There were variable and sometimes quite imaginative clauses in some of the MoUs concerning a range of issues other than residence and contact; for example, prescriptions for financing the travel arrangements, schooling, medical issues, taking the child out of the jurisdiction and a range of miscellaneous clauses customised to the families' circumstances.

In summary, compliance with the MoUs in resolved cases was generally sound in terms of residence, contact and some other conditions. That is not to say that the maintenance of contact regimes and other conditions were undertaken without difficulties arising. The MoU operated as a significant template or framework to adhere to. Our interview work revealed that patterns of contact and other conditions are generally maintained by parents in the years following an abduction/retention event. The MoU was helpful in facilitating these outcomes, and was regarded by many of the interviewees as similar to a business arrangement.

Resolved cases by definition were all converted into consent orders; the median time lapse between the date of the MoU and the date of the consent order was 13.5 days. We came across the odd case where some details of the MoU got lost in translation when transferred to a consent order, but generally speaking this process did not appear to cause any major difficulties.

However, there was far more confusion about the process of registering, or 'mirroring' the UK consent order by a similar order in the requesting state. The interview material revealed some evidence that problems with mirroring orders had provided difficulties and obstacles to the maintenance of contact regimes following mediation.

In general, the evidence did not show any emerging pattern of further litigation occurring after mediation in resolved cases. However, where parental communication was particularly weak or damaged there was some evidence of contact arrangements that remained under some pressure.

11.1.2. Unresolved cases (paras 8.2.1 to 8.2.3)

In the unresolved cases there was, necessarily, a failure to finalise any agreement arising from mediation and/or subsequently convert such an agreement into a consent order. The cases ranged from a few that were on the borderline of our resolved/unresolved distinction, e.g. the case where a draft MoU was converted into a consent order but without the agreed contact conditions, to more obviously problematic and enduring disputes some of which had all the hallmarks of classic intractable contact cases. Indeed, with the benefit of hindsight it is surprising that some of these cases were not filtered out by way of the screening interview process.

Most of these cases involved scenarios where either or both parties had brought an uncompromising attitude to mediation, there were a few cases where allegations of sexual abuse had prevented any progress towards resolution, and there was also some evidence that some of the interviewees had felt under pressure to mediate.

The interview work revealed a trail of dissatisfaction and difficulty with maintaining satisfactory contact arrangements, continuing disputes about contact sometimes landing up repeatedly in the courts. In cases where allegations of sexual and other abuse had occurred there followed often lengthy periods, while such allegations were investigated, during which contact and family relationships were further damaged.

The general pattern emerging from the resolved cases was, as we have seen (para. 11.1 above), that parents were managing, though not without some difficulties, to maintain the relevant contact regimes established by the MoUs. In contrast however, the general pattern emerging in unresolved cases was a much more mixed outcome for the endurance and sustenance of contact arrangements.

The evidence presented by the interview material in relation to further litigation following mediation and its impact revealed a consistent pattern of repeated visits to court and consequent legal expenses following the failed mediation. Further litigation followed in relation to parental disputes concerning residence, contact and other issues.

There was quite a lot of confusion by the interviewees about the exact chronology of events and court processes involved in the litigation processes following the attempted mediation. What was clear was that their memories of these events and processes were very negative. Furthermore, the protracted litigation generally had not solved the issues at the time of our interview work. In a minority of cases there did appear to have been a resolution though this often took several years.

11.2. The impact of mediation on family relationships

11.2.1. Resolved cases (paras 9.1.1 to 9.1.3)

The general pattern emerging from the resolved cases is that both parents managed to maintain positive relationships with their children following successful mediation leading to a consent order. The interview material revealed a number of ways in which contact parents maintained not only direct contact through visits in both the requesting and requested states, but also through a range of indirect contact. There were many parents who identified a process whereby their children tended to compartmentalise their separate time with each parent. We found only one resolved case where the residential parent asserted that the child's relationship with the contact parent was almost non-existent.

The interviewees' perceptions of their relationships with their children did however contain a range of anxieties that one might expect to find generally where parents have parted. The additional complication of parents living in different countries added a further challenge to the maintenance of contact regimes and good family relations, but we found plenty of cases where both residential and contact parents were striving with differing degrees of success to manage their arrangements as best as they could.

Several parents referred to the 'strong bond' that existed between parent and child. However, none of the parents attributed any features of their developing relationships with the children *directly* to the mediation intervention itself, though it was clear that the agreement reached in the MoU/consent order had laid a useful foundation.

As regards parents' relationships with each other, the predominant response was that these relationships had in effect been shaped to performing the necessary action to manage existing contact regimes. They had become less emotionally charged and more business-like. The pre-

dominant adjectival language used by the interviewees in describing their relationships and communication with each other included, for example; the words 'civil', 'cordial', 'perfunctory', 'amicable'. The message emerging from the interview material was that mediation, though having no direct impact, had been important to establish a more functional quality of communication. That is not to say that the interviewees reported an absence of further conflict. There were a number of difficulties and a few of the interviewees were still locked in various disputes with their ex-partners. However, most interviewees reported a lessening of conflict around their more structured family arrangements following mediation, and the overall outcome for the family unit as a whole was positive.

In general, although mediation clearly fell short of being the most significant and causative driver of improved relationships between parents and their children, it often acted as a turning point and as a point of stability which guided future conduct.

11.2.2. Unresolved cases (paras 9.2.1 to 9.2.3)

It was noticeable that in our set of unresolved cases, a rather worse report of children's developing relationships with their parents was given. There were many residential and contact parents who described relationships with their children as damaged, and the underlying lack of trust between many of these parents frequently played out via their children. Fundamental differences in parenting styles and differing levels of risk aversion often made the potential conflict between parents much worse.

The predominant response to the questions relating to the parents' relationships with each other in unresolved cases was that communication was really quite minimal or even non-existent. Indeed in several cases, interviewees reported that the relationship with the other parent had worsened. The levels of trust appeared to be in general much lower than those found in the resolved cases, and consequently, the levels of conflict and joint problem-solving between them had all worsened. In a minority of cases there was some evidence that efforts were being made to be 'civil' but little acknowledgment of any improvement in the parents' relationship with each other. In summary, the unresolved cases revealed qualitatively worse parental relationships in terms of levels of communication and joint problem solving ability than in the resolved cases.

There was much less satisfaction too in unresolved cases with the general settlement of the family unit than with resolved cases. Furthermore, dissatisfaction with the way in which the family arrangements had developed was shared by both residential and contact parents. There was further evidence here that contact regimes had only really settled down following the resolution of lengthy court proceedings. In short, these cases demonstrated in some detail the way in which the settlement of the family unit was generally delayed by the intervention of prolonged legal process after the opportunity to resolve matters via mediation had been lost.

With the benefit of hindsight, some of the unresolved cases were unsuitable for a mediation intervention and should probably have been filtered out at the stage of the mediation interview screening process.

11.3. Parental perceptions of overall abduction experience and subsequent outcomes

11.3.1. Resolved cases (paras 10.1.1 to 10.1.3)

a. Taking parents

Most of the taking parents were quite ignorant about the return order mechanism of the Hague Convention, and usually only discovered they had acted in breach of the Convention after the wrongful removal or retention had actually occurred. Some of the British interviewees, for example, had simply thought that if their child's nationality was British they would have an unchallenged right to bring their children back to the UK. They expressed surprise at their actions being labelled as 'unlawful' and did not recognise the label of 'abduction', as applicable to their own actions. Consequently, their accounts of the Hague proceedings revealed much of their shock, stress and feelings of intimidation by the legal process, often combined with relief in finding the informed advice services provided by *reunite*. In a minority of cases, there was evidence of some prior legal knowledge and/or advice.

The involvement of the police, once a Hague originating summons had been taken out, enhanced the sense of shock and threat experienced by the taking parents. In a few of the cases the taking parents received not only a visit from the police but also from a child protection officer of the social services.

Despite the fact that, nationally, the occurrence of prosecutions and convictions for statutory parental child abduction is relatively rare, Hague Convention proceedings, were associated strongly by the taking parents with the *criminal* offences of abduction and kidnapping (see paras 2.4-2.5). Taking parents often deployed the language of criminality in describing their experiences. However, none of our interviewees presented evidence of an actual prosecution let alone a conviction for an offence of child abduction or kidnapping either in the UK or in the requesting states.

It was often at the first court appearance under the Hague proceedings where either the judge and/or legal advisers recommended a mediation intervention. At the time of our interview work, the sense of shock and the association with criminality was a perception by taking parents that influenced their account of the negotiation reached in the mediation sessions. It also provided an enduring context to their interpretation of the development of their family arrangements subsequent to these events.

Of the 12 taking parents in resolved cases, 11 (all female) were residential parents at the time of our interviews. The only male taking parent was a contact parent at the time of our interviews: see Table 7.8 above. It was not surprising therefore that the taking/residential parents largely indicated their approval of mediation on the basis of the substantive outcome it had delivered for them.

It was clear that the negotiation process they undertook in mediation in the context of the tight time-frame of Hague proceedings had, from their perspective, delivered the most important element, i.e. the withdrawal of Hague proceedings by the left-behind parent and the subsequent legal recognition of their children's residence in the taking parents' desired country of habitual residence.

There was ample evidence about the damaging effects on the taking parents' own physical and/or psychological health following the abduction event and the court process. Many of the taking parents reported moderate to severe effects.

The taking parents generally felt that it would be fairer to have mediation as in the *reunite* mediation model alongside court proceedings, rather than relying solely on court proceedings.

There were some positive and compelling views that emerged from the interview material about the overall mediation experience in resolved cases. Even the sole (male) taking parent who did not eventually negotiate residence of his children felt that mediation had given him a significant voice in sorting out the family arrangements. Some parents praised the overall scheme and pointed out how it would be much improved in situations where parents put their children's interest first. Taking parents were generally very impressed with the overall process of the *reunite* mediation sessions. Their perception of the skills of the mediators themselves was also very complimentary

The predominant view was to support having two female mediators rather than a mixed gender mediation team though a minority had some concerns about the possible bias or perception of bias, in having two female mediators.

b. Left-behind parents

The way in which a 'wrongful removal or retention' under the Convention occurred was obviously variable, though the classic scenario of a child being taken on 'holiday' initially with the left-behind parent's consent was not uncommon. In most of the resolved cases, the parents reported their feelings of shock prior to seeking advice about what to do in response to the abduction/retention event. In several cases, the initial abduction/retention event was organised by the taking parent with a certain amount of deviousness in order not to alert the left-behind parent to the underlying intention. Many of the left-behind parents dwelt on the details of these scenarios as a continuing source of bitterness and mistrust.

Despite the difficulties that had usually beset the couple's relationship prior to separation, the actual abduction/retention event often came as a shock to the left-behind parent. The initial abduction/retention event also initiated recourse to legal advice and the interviewees reported several examples of confusion and misleading advice they had received prior to securing a clear path to make an application for a return order under the Hague Convention.

In most of the resolved cases the whereabouts of the children were known to the left-behind parents, though in one or two cases there were brief periods (a few weeks) where their location was unknown.

Of the 17 left-behind parents, it was only the one left-behind mother who eventually became the residential parent. The remaining 16 left-behind fathers negotiated contact in relation to their

children: see Table 7.8. The general theme emerging from the left-behind parents in the resolved cases was a mixture of recognition of a difficult and troubled episode in their lives along with a process of accommodation to the re-arrangement of their family affairs.

The majority of the left-behind parents reported their general satisfaction with the outcome of mediation. However, there were some residual concerns by several left-behind fathers that they had given away too much at the mediation sessions. Some of them also felt that their continuing concerns had been dropped by their respective advisers. Some felt that there was a need for some kind of after-care advice service in addition to the *reunite* mediation service provided.

The left-behind parents reported similar levels of health effects to the taking parents.

Most of the left-behind parents had fairly negative views about the impact of court process on their lives compared to mediation. However, some of the left-behind parents who dropped Hague proceedings following the mediation, but who had experienced continuing difficulties with the agreed contact regime, did appear to have some regrets about their involvement with mediation.

Many of the parents recognised from their own experiences that there was a real need for accurate information and advice to be available, in particular the circumstances under which a return order under the Hague Convention is likely to be made.

There was some evidence from the left-behind parents that once the MoU had been signed and made into a consent order their bargaining power was much reduced and the residential parent could simply unilaterally ignore large parts of such agreements. Some parents complained that the mediation agreements were not sufficiently backed by any sanction. There were also suggestions that more work be done on the preliminary screening (see para. 4.1 above) of individuals prior to mediation.

Most of the left-behind parents expressed their preference for mediation alongside court processes, and some expressed concerns about the relatively short time they had had to consider the MoU agreement. There were also concerns expressed about the availability and access to authoritative information about the Hague processes and mediation facilities.

c. Parents' perceptions of effect on children

As regards taking parents, the most frequent response to questions about the impact on their children was the view that the child concerned was 'too young' at the time of the abduction/retention to be effected by these events. However, some taking parents had a keen sense of the possible damage to their children if they had not proactively removed them. Several parents commented on the fact that their children (usually the boys) did not appear to want to talk about any troubling events in the family.

Unsurprisingly, the effects on children were more damaging in circumstances where any or all of the adults continued to attempt to align their children in adversarial opposition to the other parent (aka 'parental alienation'). The disruption of children's lives was also picked up by teachers and playgroup leaders. However, several taking mothers, although they reported some initial difficulties and resentments, were also of the view that their children had now happily settled.

As regards the left-behind parents, there was some evidence of the damaging effect that the abduction/retention and related parental disputes had had on the children concerned. However, it was difficult to separate out parental perceptions that were merely a projection of parents' own continuing anxieties and those that were genuinely objective accounts of the impact on their children.

Some of the left-behind parents worried that the traumatic events would eventually show themselves as the children matured. Others appeared to think that there were no significant long-term effects on their children other than the usual anxieties associated with separating parents.

11.3.2. Unresolved cases (paras 10.2.1 to 10.2.3)

a. Taking parents

Several of the taking parents commented on their shock when learning that Hague proceedings had been initiated. For many of them this was because they had no idea that their actions could be construed as unlawful in any way. Often the first that the taking parent knows of these proceedings is a police visit and a request to surrender passports and to see the children concerned. Some of the taking parents were shocked by the suggestion of criminal responsibility implied by the language of 'abduction'.

One male and seven female taking parents in these unresolved cases eventually obtained residence in relation to their children: see Table 7.9. However, their various routes to this position were significantly more troubled than in the resolved cases. Most of the interviewees reflected on repeated court appearances, increasing bitterness and further disputes for many years duration. In some of the cases one partner made allegations of child abuse against the other further exacerbating the underlying trust and ability to settle their family arrangements.

The interviewees experienced a range of health effects. The evidence here was very similar to that relating to resolved cases.

Many of the parents, who had had to involve themselves sometimes in repeated court appearances precisely because the mediation sessions had not resolved their affairs, had disparaging comments to make about formal legal process. The only taking father who eventually won residence thought that a court-only process was more appropriate than running court proceedings alongside mediation.

There were a number of negative views arising about the desirability of mediation. Several parents in this set of unresolved cases felt that there had been some pressure on them to mediate in circumstances where they were not willing and/or ready to enter into mediation. The source of the pressure was variously identified by the interviewees as derived from their ex-partners, legal advisers and the judges, or a combination of these.

Nevertheless, where the taking parent eventually won residence (in eight out of the ten cases here), there were a few positive views about its value.

Reflections on the mediation process were frequently shaped by the interviewees' views about their ex-partner's behaviour. There was also some support for having a combined male and female mediator team. This point was pressed by the women as well as some of the men.

b. Left-behind parents

In most of the unresolved cases the abduction or retention event produced a shocked response by the left-behind parent, even though these individuals had generally already experienced quite serious difficulties in their relationships. A majority of these parents experienced these events as some kind of betrayal of their trust. These initial events continued to have an enduring impact in shaping the interviewees' interpretation of subsequent developments. As with the resolved cases, the initial 'extended holiday' scenario was a common occurrence.

Of the 13 left-behind parents, there was only one parent (female) who eventually secured residence. The remaining 12 (ten males and two females) had contact: see Table 7.9. In general, there was some sense of resolution by these interviewees though this was usually tinged with regret that the process had taken so long and an acknowledgment that the extended court process had proved damaging. There was also evidence from the interview work that further court process might well be reactivated.

The left-behind parents reported a number of severe health effects which they attributed, at least in part, to the stress caused by the abduction/retention event and its aftermath.

The unresolved cases were distinctive in terms of the frequency of court hearings which the parents underwent. Given the inability to reach an agreement in mediation in unresolved cases, it was unsurprising that most left-behind parents regarded mediation as a weaker form of resolution compared with court process.

Many of the parents could see the advantages of mediation if it worked, but then pointed out that it had not operated satisfactorily in their case for a variety of reasons. The majority were thankful for the efforts of the mediators and did not attribute the eventual failure of mediation to the individual mediators. Some parents felt that the mediation process had involved a certain amount of pressure to enter into mediation.

Only two of the unresolved cases were mediated by a man/woman mediator team; the remainder were mediated by two women. There were also some concerns about the court's powers to enforcing any resulting mediation agreements.

c. Parents' perceptions of effect on children

As regards left-behind parents, they reported that their children had shown signs of being withdrawn and other emotional difficulties, though it was difficult to know whether this attribution was a consequence of the abduction narrative itself or the fact of parental separation generally.

As regards taking parents, some of them, when asked about the possible long-term effects of the abduction experience on their children, could only articulate effects in terms of how it reflected on their own character and relationships. There were a number of taking parents who managed to be more objective in their responses and several referred to various emotional concerns, though it was

difficult to separate these out from the general difficulties for children that characteristically arise when parents separate. There was only one parent who stated clearly that there had been no real long-term effects on her children and insisted that they were 'unaware' of the parental conflict.

Most parents recognised, at the least, that their children had been aware of their parents' difficulties and had been anxious about the unfolding events. There was some evidence given about the health effects experienced by children prior to a flight to see the contact parent.

There were some cases where the child's school flagged up concerns about the child prior to sometimes a lengthy flight to visit the other parent.

The perception from several parents was that their children did not really want to discuss matters relating to the mediation and subsequent court proceedings.

Some of the parents reported that although the effects on their children had been troublesome, life had tended to settle down following the final resolution of their family arrangements (where this occurred).

11.4. Voice of the Child: child participation and future research

The Hague Convention is concerned as much as anything else with achieving outcomes that are in the best interests of the child. The Preamble to the Convention states that 'the interests of children are of paramount importance in matters relating to their custody.' One of the innovative elements of Brussels II (see para. 2.10 above), is the additional support it gives to the child's right to be heard in proceedings relating to his/her residence and contact issues. Furthermore, the international community is slowly but surely tuning in to the recognition of children's participation rights, as evidenced, for example, by the Committee on the Rights of the Child's *General Comment* on the child's right to be heard under Article 12 of the CRC (General Comment 2009). As noted earlier in this report (see para. 6.1.2 above), there were logistical and other reasons for not interviewing children directly in the context of this research project.

However, the answers that we received to the question whether parents would consent to their child's voice being included in any further research (see Appendix 1, Qu.39) lend much support to the feasibility of conducting future research in this field. A substantial majority of the whole dataset of interviewees said that they would give consent for their children to participate directly. A smaller number did not think this was appropriate on the basis that it would be upsetting to the child and/or would serve no beneficial purpose from the child's point of view.

The interviewees who said they would give their consent also mentioned that this would be subject to the child's own wishes. Though they agreed in principle, many of them would qualify their children's participation in terms of the age/maturity of the child concerned.

There was no real consensus in the responses about what age this might be; some mentioned ages from seven years through to 15 years old. One parent thought that their child would not handle a

telephone interview but would sit and answer questions by email; another thought that it would also depend on the skills of the interviewer. Parents also wanted to be reassured that the interviews would occur within a safe environment. Some parents, perhaps reflecting their own interview experience, pointed out that it would provide an opportunity for their child to express their emotions more fully and/or achieve some closure, and to have an opportunity to reflect on the previous events. A few parents directly acknowledged that their children might 'see things differently' from the adults and this perspective needed to be heard; as one parent put it, 'too often people discount the child instead of just sitting down and listening to them'.

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APPENDIX 1: TEXT OF QUESTIONNAIRE

[Note: Two further questions were added to this questionnaire, usually incorporated after question 11. These were: 11A. 'Could you give a holistic overview of the event which led up to mediation being sought in the first place? 11B. 'What do you consider would have been the specific outcome for yourself if you had not agreed to mediate?'].

Draft Research Questions – Long-term outcomes of mediation

*N.B. Questions marked with * will only be posed to the interviewee if the information is either not contained on files or in need for further clarification*

Background information on the family

1. Name of interviewee*
2. Current address and contact details including telephone and email/fax where available*
3. Names of child(ren) removed or retained*
4. Date of births of child(ren) removed or retained*
5. Age of child(ren) at the time of proceedings*
6. Age of child(ren) now*
7. Gender of the child(ren)*
8. With whom is/are the child(ren) currently living?
9. What is your nationality?
10. What is the child(ren)'s nationality?
11. Origins of*
 - a. Residential parent
 - b. Non-residential parent
 - c. Child(ren)

Memorandum of Understanding (MoU) – Compliance with and practical difficulties arising from/with provisions contained in the MoU

12. Was an MoU drawn up during mediation?*

- Yes (*go to question 13a*)
 No –

12a. Why do you think an agreement could not be reached during mediation?

12b. What was the outcome in your case? What was the court's/Judge's decision?

- child(ren) returned to country of habitual residence
 child(ren) remained in England & Wales

If there were undertakings were they registered/mirrored in the other country?/certified under Brussels II? (*ask whichever question is relevant to each individual case*)

- Yes – Were there any difficulties registering the Order?
 Yes – what were these problems?
 No

What were the financial costs of having the Order mirrored and registered?

Who paid to have the Order mirrored and registered?

How long did it take to get the Order mirrored and registered?

No – why do you think this was the case? Was the mirroring and registering of the consent Order discussed with you by your lawyer?

12c. Were your legal advisors supportive of the referral to mediation?

12d. Can we now go through the points that were contained within the Order?

Yes –

- Individual agreements within the Order will be discussed/revisited with the interviewee to ascertain if the agreement was met?
- If the agreement was not met why does the interviewee think this was the case?
- If there were any problems has the interviewee had to take any further legal advice or apply for court enforcement? If yes, what was the outcome?
- If the Order was varied what were the changes? By which court was the Order varied? When was the Order varied?

No – Can I please ask why?

12e. What would you say were the main practical difficulties, if any, arising from the Order?

12f. Are you *satisfied* with the outcome of the Order?

Yes

No

Unsure

- Why is this the case?

(Go to question 14)

13a. Where there any amendments made to the mediated agreement after consultation with your legal advisors?

Yes –

- What was the change?
- Who wanted this change?
- Why do you think these changes were made?
- Were you happy with the changes made to the mediated agreement?

Yes

No

- Why is this the case?

No

13b. Were your legal advisors supportive of the referral to mediation?

13c. Was the MoU made into a Consent Order?*

Yes –

Was the Consent Order certified under Brussels II? / Was the Consent Order mirrored and registered in the other country? (ask whichever question is relevant to each individual case)

Yes – Were there any difficulties registering the Order?

Yes – What were these problems?

No

What were the financial costs of having the Consent Order mirrored and registered?

Who paid to have the Consent Order mirrored and registered?

How long did it take to get the Order mirrored and registered?

No - why do you think this was the case? Was the mirroring and registering of the Consent Order discussed with you by your lawyer?

No – Why do you think MoU was not made into a Consent Order?

13d. Can we now go through the points that were contained within the MoU?

Yes –

- *Individual agreements within the MoU will be discussed/revisited with the interviewee to ascertain if the agreement was met?*
- *If the agreement was not met why does the interviewee think this was the case?*
- *If there were any problems has the interviewee had to take any further legal advice or apply for court enforcement? If yes, what was the outcome?*
- *If the Order was varied what were the changes? By which court was the Order varied? When was the Order varied?*

No – Can I please ask why?

13e. What would you say were the main practical difficulties, if any, arising from the mediated agreement?

13f. Are you *satisfied* with the outcome of your mediated agreement?

Yes

No

Unsure

- Why do you think this is the case?

The nature of the relationship between the parents

14. How would you describe your relationship with the other parent now?

15. What effect, if at all, do you think going through mediation has had on the conflict between yourself and the other parent?

16. Do you think mediation helped in:

a. Reducing conflict between yourself and the other parent?

Yes

No

Unsure

- Why do you think this is the case?

17. What effect, if at all, do you think going through mediation has had on the communication between yourself and the other parent?

18. Do you think mediation helped in:

b. Improving communication between yourself and the other parent?

Yes

No

Unsure

- Why do you think this is the case?

19. What effect, if at all, do you think going through mediation has had on the overall relationship between yourself and the other parent?

20. Do you think mediation helped in:

Yes

No

Unsure

- Why do you think this is the case?

-

21. Do you think going through mediation has helped joint problem solving between yourself and the other parent?

Yes

No

Unsure

- Why do you think this is the case?

22. Did you consider further mediation?

Yes

21a. How long after the initial mediation did you think further mediation would have been beneficial?

21b. Was there further mediation?

21c. If there was further mediation, which service was used? What was the outcome of further mediation?

21d. Do you think further mediation would be beneficial? *(if answered yes, ask permission to forward contact details to Alison and inform interviewee any details discussed with myself will be kept confidential and not be passed on)*

No

Unsure

23. Do you think you would consider further mediation in the future if required?

Yes – why would you consider mediation in the future?

No – why would you not consider further mediation?

Unsure – why would you/ do you feel unsure about considering mediation in the future?

24. Would you recommend mediation to others facing similar issues?

Yes – why would you consider recommending mediation to others?

No – why would you not recommend mediation to others?

Unsure – why would you feel unsure about recommending mediation to others?

Effects and outcomes

25. What have been the effects, if any, on you from going through the court process:

- In terms of your health?
- In terms of your relationship with the other parent?
- In terms of your relationship with your child(ren)?

26. In your view what have been the long-term effects on your child, if any, from going through the court process:

- In terms of their health?
- In terms of their relationship with the other parent?
- In terms of their relationship with you?

27. In your view what have been the long term effects, if any, on the other parent from going through this experience?

28. How do you feel about the overall outcome of the case?

29. How would you rate the overall outcome of the case? *(ask in an appropriate manner)*

Excellent

Good

Satisfactory

Unsatisfactory

Poor

30. What has been the overall effects on the family unit as a whole;

- In terms of the court proceedings?
- In terms of the mediation?

31. Are you satisfied with the overall outcome for the family unit as a whole?

- in terms of the court proceedings?

Yes

No

Unsure

- Why is this the case?

- In terms of the mediation?
 - Yes
 - No
 - Unsure
 - Why is this the case?

32. In your case do you think the mediated agreement/judge's decision was fair?

- Yes
- No
- Why?

33. In general terms which process do you think gives parents a fairer outcome in cases of this nature?

- Solely court proceedings
- Mediation alongside court process

The child's relationship with both parents

34. How would you describe your relationship with your child now? Please elaborate?

- Excellent
- Good
- Satisfactory
- Unsatisfactory
- Poor

35. How would you describe the relationship your child has with their other parent? Please elaborate?

- Excellent
- Good
- Satisfactory
- Unsatisfactory
- Poor

36. Are there any issues outstanding with regards to the contact arrangements between yourself and the parents?

Considerations

37. What did you think of the overall mediation process? Are there any particular comments you would like to make or feedback you would like to give?

38. Would you consider taking part in further research conducted by reunite to help families?

- Yes
- No
- Unsure at present / can't say

39. Would you consent to including the voice of your child in further research?

- Yes
- No

40. What do you think reunite could do to help families further?

41. How do you think the mediation service could be improved?

42. Is there anything you would like to add further or anything you thought I would ask but did not?

43. If there were any brief follow up questions would it be possible for me to arrange another interview?

APPENDIX 2: DRAFT OF A TYPICAL MEMORANDUM OF UNDERSTANDING (MoU)

CONFIDENTIAL

MEMORANDUM OF UNDERSTANDING
(Privileged Summary of Proposals)

ALBERTO LÓPEZ COVAS AND JANET SMITH

Prepared by

June Doe and Susan Rayq

Mediators

THIS DOCUMENT IS LEGALLY PRIVILEGED

Memorandum of Understanding

(Privileged Summary of Proposals)

Alberto López Covas and Janet Smith

Alberto López Covas and Janet Smith have been in mediation with June Doe and Susan Ray under the reunite mediation service. They have had three mediation sessions on 22nd and 23rd September 2008 during which they discussed various issues relating to their son Jamie, aged six years.

The following are the matters discussed in the mediation, including the proposals which Alberto and Janet find mutually acceptable.

1. Alberto and Janet agree that Jamie will reside in England with Janet and that this memorandum will be made into a consent order and certificated under Brussels II Regulation, and registered in the Courts of England & Wales and Spain.
2. Alberto and Janet agree that Alberto will have contact with Jamie via Skype and/or telephone calls, on Tuesday, Thursday and Sunday at 5.00pm GMT.
3. Janet agrees to send regular photographs, videos etc of Jamie to Alberto.
4. Alberto and Janet agree the following contact schedule:

October 2008 Half Term: Alberto will travel to England on 26th October to collect Jamie and travel with him to Madrid. Alberto will return Jamie into Janet's care in England on 31st October. Alberto will provide Janet with a copy of the travel itinerary, full details of where Jamie will be staying and will arrange for Jamie to have regular contact with Janet by telephone and/or Skype.

Christmas 2008: Jamie will remain in England with Janet.

February 2009 Half Term: Alberto will travel to England on 15th February to collect Jamie and travel with him to Madrid. Alberto will return Jamie into Janet's care in England on 20th February. Alberto will provide Janet with a copy of the travel itinerary, full details of where Jamie will be staying and will arrange for Jamie to have regular contact with Janet by telephone and/or Skype.

Easter 2009: Alberto will travel to England to spend 5 days in England with Jamie during which time Alberto will have open contact with Jamie. During this contact period, Janet will facilitate a meeting with Jamie's school to enable Alberto to visit the school and meet with Jamie's teachers.

Summer 2009: Jamie will spend a minimum of 3 weeks and a maximum of 6 weeks with Alberto in Spain, less 2 days either side to allow Jamie time to settle after finishing and returning to school. The exact time period will be dependent upon Jamie's school holiday

schedule and prior commitments he may have. Alberto will provide Janet with a copy of the travel itinerary, full details of where Jamie will be staying and will arrange for Jamie to have regular contact with Janet by telephone and/or Skype.

October 2009 Half Term: Jamie will remain in England with Janet.

Christmas 2009: Alberto will collect Jamie on 23rd December and will travel with Jamie to Spain. Alberto will return Jamie to Janet's care in England on the morning of 31st December. Alberto will provide Janet with a copy of the travel itinerary, full details of where Jamie will be staying and will arrange for Jamie to have regular contact with Janet by telephone and/or Skype.

As from 2010, contact will be in line with Jamie's school holiday schedule and Jamie will spend alternate Easter and Christmas periods with Alberto in Spain, in addition to each summer holiday as set down within this schedule.

5. Alberto agrees to pay all travel costs for his and Jamie's visits to Madrid. This cost should be taken into account in any future calculation of child support.
6. Alberto will have unlimited and open contact with Jamie during any weekend that he is able to visit England, subject to him providing Janet with 2 week's notice, and also subject to him taking into account any prior commitment Jamie may have.
7. Alberto agrees that when booking travel for the above contact visits, he will consult with Janet as early as possible, and no later than 21 days prior to travel, so travel can be booked in line with Jamie's school schedule.
8. Alberto and Janet agree that if either of them wishes to travel with Jamie to a country which is not a member state of the 1980 Hague Convention, they will obtain written permission from the other parent. Janet undertakes not to remove Jamie from the jurisdiction of England & Wales on a permanent basis without prior consent from Alberto or the High Court.
9. Janet agrees that she will provide Alberto with full contact details of the school which Jamie is attending now, and in the future, so Alberto can establish contact with the school and arrange to receive copies of school reports, photographs, holiday schedules, parent evening schedules/events, to ensure he can maintain a positive input into Jamie's education and development.
10. Janet agrees to inform Alberto of any medical concerns or emergencies concerning Jamie, and also agrees that she will consult with Alberto regarding any major decisions that need to be taken regarding Jamie's health.
11. Janet agrees to continue to speak Spanish with Jamie to ensure that his Spanish language continues to develop. Janet will investigate the opportunity for Jamie to attend Spanish language classes.

12. Once Jamie reaches the age of ten years, or is deemed mature enough by the court of England & Wales, and expresses a wish to live with his father, then Alberto and Janet agree to return to mediation where Jamie's wishes will be considered in the decision making process.

Dated 23rd September 2008

Signed.....

June Doe (Mediator)

Signed.....

Susan Ray (Mediator)

Signed as proposals

.....

Alberto López Covas

.....

Janet Smith

This Memorandum of Understanding is not a completed and binding agreement in court proceedings, nor is it disclosable in child abduction proceedings, and nor does it constitute acquiescence pursuant to article 13 (a) of the 1980 Hague Convention, unless, and until, it is submitted as a draft consent order.

You have a right to independent legal advice and, if you have not already done so, we would recommend that you seek independent legal advice from a solicitor who will be able to assist you and ensure that whatever has been agreed within this Memorandum of Understanding is in the best interests of your child(ren) and is fair to you.

END