



University
of Oxford
Department of
Social Policy and
Social Work

Child contact with non-resident parents

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This paper was
written by
Joan Hunt with
Ceridwen Roberts

Introduction

Child contact after parental separation or divorce has become a highly contentious issue. Many separating families, despite the difficulties, sort out contact arrangements themselves. For some it becomes problematic, either because regular reliable contact is not established because there is a high degree of conflict, or because there are serious concerns about the child's safety and well-being.

UK social policy encourages the maintenance of contact as a presumed social good which promotes the interests of children and the wider society. There is substantial dissatisfaction in some quarters, however, with the operation of these policies and views are polarised. Some resident parents argue that their concerns about the non-resident parent, particularly about domestic violence, child abuse and abduction, are not

Statistics

- In 2001 146,914 children in England and Wales experienced parental divorce, 68% of them aged 10 or less and 24% under 5. Current estimates suggest 28% will be affected by divorce before the age of 16. Additionally, although precise numbers are not known, an increasing proportion of children will be affected by the separation of cohabiting parents.
- Over 80% of children of separated parents live exclusively or mainly with their mother. There may be 2 million non-resident fathers in the population.
- Only a small minority of parents use the law to sort out contact arrangements. A survey by the Office for National Statistics (ONS) found that around 1 in 10 parents had court orders. Between half and 60% agreed contact between themselves and between a fifth and a third had no agreed arrangements (resident and non-resident parent reports differ).
- In 2002 the courts dealt with 65192 contact applications under Section 8 of the Children Act. Although no national data is available extrapolation from research samples suggests that:
 - Just over half the applications will concern previously married couples;
 - Between 75% and 86% of applicants will be fathers; between 9% and 16% mothers;
 - A substantial minority are likely to be repeat applications, with some families locked in litigation for many years.

Sources: ONS Population Trends 87; Hill & Tisdall, 1997; Bradshaw et al, 1999; ONS, forthcoming; Judicial Statistics, 2002; Smart et al, 2003; Buchanan et al, 2001.

BARNETT HOUSE
32 WELLINGTON SQ.
OXFORD OX1 2ER
TEL 01865 270325
FAX 01865 270324
<http://barnett.apsoc.ox.ac.uk>

sufficiently taken into account. Some non-resident parents claim they are marginalised by a biased legal system. Children's organisations say that children are not adequately protected and their voices too faintly heard. Contact has been the subject of two government-sponsored consultation exercises and there is pressure for a change in the law and its implementation and for the development of new approaches.

This paper aims to provide a dispassionate overview of this emotive topic as it concerns parent-child contact. (Contact with grandparents is covered in a forthcoming paper). It focuses on experience in England and Wales, drawing on other jurisdictions where relevant. The debates here echo those in many other countries and while no jurisdiction appears to have devised a generally acceptable solution to the dilemmas, several have developed approaches on particular issues from which useful lessons might be drawn.

The legal framework in England and Wales

The law starts from the position that contact is a private matter to be agreed between parents, without the need for a court order. It does not explicitly seek to influence the nature of those agreements -unlike Scotland there is no requirement for the resident parent to allow contact or the other parent to maintain it. Where parents are seeking a divorce or legal separation they must provide information to the court about the proposed arrangements for the children but examination of these is rudimentary and courts rarely intervene. There is no scrutiny of the plans where parents were not married.

Parents who cannot agree can apply under the Children Act, 1989 for a contact order. There is no statutory presumption of contact: the child's welfare is the court's paramount consideration. A pro-contact stance, however, is implicit in one of the key concepts of the legislation, that of on-going, shared, parental responsibility, and it is generally recognised that decisions made in leading court cases have resulted in a strong 'judge-made' assumption of contact. As the President of the Family Division has recently written:

The courts naturally start with the view that in most cases contact between the child and the non-resident parent is desirable both for the child and for the parent (Butler-Sloss, 2001).

Should the law be changed to include a statutory presumption of contact? Many countries do have this. Indeed it would already be the case here had the government implemented section 11(4) of the Family Law Act 1996, which declared:

'the general principle that, in the absence of evidence to the contrary, the welfare of the child will be best served by: (i) his having regular contact with those who have parental responsibility for him' and (ii) the maintenance of as good a continuing relationship with his parents as possible'.

A key issue for debate, therefore, is whether current law should be amended to include a similar statement of principle and if so, whether this should be expressed in terms of the welfare/rights of the child, as expressed in the UN Convention on the Rights of the Child, or should also include the rights of parents, as in the European Convention on Human Rights. Such a strengthening of the law would be welcomed by groups representing non-resident parents. There are concerns, however, that, as is reported to have happened in Australia, it could result in the safety and well-being of children and their resident parent being compromised (Rhoades, 2002).

The policy context

The government's declared aim is '*to enable children to benefit from the stability offered by a loving relationship with both their parents, even if they separate*' (LCD, 2002a). In 2002 the (then) Lord Chancellor's Department made increasing contact, where safe and in the interests of children, one of its Public Service Agreement targets. A baseline survey of contact patterns was commissioned and a Programme Board and various 'stakeholder' groups established to help deliver the objectives. This PSA ended in March 2003. It is not known whether similar targets, or the policy objective, will be set by the Department for Education and Skills, to which the former LCD's responsibilities for children's policy have now passed.

Central to the development of government policy have been two reports arising out of consultation exercises conducted by CASC (the Children Act Sub-Committee of the Family Law Advisory Board, a body set up to advise the LCD), the first looking at contact and domestic violence, the second at the facilitation of contact and the enforcement of contact orders (Advisory Board on Family Law, 1999 and 2002).

Is contact good for children?

It is often claimed that research shows that contact is good for children. In fact the evidence is contradictory. This is neatly shown by two recent UK studies, one (Dunn, 2003) reporting '*unequivocal*' findings that more contact was associated with fewer adjustment problems in children, the other (Smith et al, 2001) finding no effect. Examination of the whole body of international

research tends to show that it is the *nature and quality of parenting* by the contact parent that is crucial, not contact in itself:

The mere presence of fathers is not enough ... To the extent that men remain involved in parenting after separation, or assume parenting practices they have not done before, they have a positive influence. As in intact families, the most effective way they can parent is by providing authoritative parenting ... It is these aspects of parenting, encompassing monitoring, encouragement, love and warmth, that are consistently linked with ... well-being (Pryor and Rodgers, 2001).

Nor is even good contact likely to be the most significant factor affecting children's overall welfare: the care provided by the resident parent and the financial position of that household are the major influences (Hunt, 2003).

This does not mean that the policy of promoting contact is mistaken. Most children want to remain in touch. Contact has potential value in terms of developing the child's sense of identity, preserving links with the wider family, and providing an additional source of support for children and even protection from abuse. In ordinary circumstances a parent with an established relationship with the child should not have to prove that contact is in the child's interests. It does mean, however, that care needs to be taken not to over-estimate the presumed benefits of contact either where there is no pre-existing relationship or where there are known risks. Where there is abuse or neglect, exposure to domestic violence or severe parental conflict, contact can be extremely damaging to children.

How much contact is taking place at the moment?

A simple question to which it is hard to give a definitive answer. It depends on which study is relied on, what is being measured, and who is asked: resident mothers typically report less contact than non-resident fathers; formerly married parents have more contact than ex-cohabitants or those who have never lived together (Maclean and Eekelaar, 1997).

Some relatively recent studies suggest levels of no contact of a third or more: one (Bradshaw and Millar, 1991) found that 40% of fathers had no contact after two years, although it may be relevant that the response rate was only 25%. Others report much lower figures: 15 to 28% in the LCD baseline survey (ONS, forthcoming) and 9% in the Home Office Citizenship Survey (Attwood et al, 2003). At the other end of the spectrum some contact is relatively frequent. Research on a cohort of children in Bristol found that, where any contact was taking place (82%), for a third it was at least weekly and for 90% monthly (Dunn, 2003). The LCD survey reports that 17% of fathers had some form of contact every day, with 8% seeing their child daily; 49% at least weekly and 69% monthly. Between a half and two-thirds had overnight stays at least once a month.

Are these figures grounds for concern? More contact does seem to be taking place. However some non-resident parents are still disappearing from children's lives and others having insufficient contact to develop the type of involved parenting likely to yield

Children's views about contact: a summary of research findings

- Most children want contact and see their non-resident parent as an important figure who is still part of their family. The loss of contact is painful and even where there is contact a substantial minority of children want more.
- It is not the arrangements in themselves which matter most to children but how their relationships are managed. Children may vary in their responses to the same arrangements, even within the same family. However, flexibility, and the ability to accommodate other parts of their lives, such as social activities, may be particularly important to older children; frequency and regularity for younger ones. Children who are consulted about decisions and are able to talk to a parent about problems are more likely to feel positive about arrangements.
- Children usually enjoy contact but it can cause distress, a common problem being parents who fail to turn up as arranged. Other problems reported are torn loyalties, exposure to conflict, harassment or abuse, being used as a go-between, managing relationships with a parent's new partner, missing the resident parent, boredom, and the stress of moving between two homes.
- Some children, for a whole range of reasons, resist contact. This may be a temporary phase, or more sustained and in some instances only one child in a family is resistant.
- Children do not always feel that their views about contact are taken into account.

(For detailed references see O'Quigley, 1999; and Hunt, 2003)

demonstrable benefits. In the LCD survey nearly three-quarters of resident and 69% of non-resident parents said they were satisfied with the arrangements, even higher levels being reported by those who had reached agreement (82% and 87%) compared with those who had never had an agreement or had used the courts. However, among the dissatisfied, insufficient contact was a key theme, particularly for resident parents (31% compared with 17% of non-resident parents). This finding reinforces the findings of many studies (see Hunt, 2003) that, in general, resident parents want their ex-partners to see the children more, not less, and suggests there is scope for an increase in contact.

It is vital to remember, however, that contact in some circumstances is damaging. There are already serious concerns that contact is being inappropriately

ordered in cases where there are established risks. The challenge is to promote contact in a way which delivers benefits to children while not jeopardising their safety or well-being.

Contact and child support

Much research indicates that, for parents, financial support and contact are intertwined. Where there is contact support is more likely (Davis and Wikeley, 2002) while support can 'oil the wheels' of contact (Bradshaw et al, 1999). Conversely, paying out but not having contact is resented, and may be resisted, by non-resident parents, and contact without payment by resident parents.

In law the issues are treated as largely separate: the obligation to maintain exists irrespective of contact; the

What makes contact work? Research findings.

The following factors have been consistently found (Pryor and Rodgers, 2001) to be associated with continuing contact:

- a cooperative post-separation relationship between the parents;
- the child wanting contact.
- parents previously married rather than cohabiting or never living together;
- proximity;
- the contact parent being employed, having a higher income and education; paying child support; not having further children.

Two key themes emerge in research with fathers who have no contact. First, perceived obstruction by the resident mother:

'Words like vindictive and manipulative were common, as was the allegation that ex-wives had deliberately turned children against them or sought to poison the relationship' (Simpson et al, 1995)

The second theme, however, which suggests a more complex picture, is the difficulty of adjusting to the new and artificial role of contact parent, which can require some fathers to find ways of relating to children without the assistance of the mother:

In most marriages ... the role of the father is mediated by the mother. At divorce this dynamic is made highly explicit. Once motherhood is removed from the equation the non-custodial father may not have the resources, in terms of knowledge, information or emotional insight, to be able to relate to children on his own terms (Simpson et al, 1995).

The only UK study to look in depth at why some families manage to make contact work (not merely 'happen') and others do not, also emphasises the complexity of the issues (Trinder et al, 2001). It was found that:

- A wide range of factors influenced contact. There were *direct determinants* (commitment to contact, role clarity and relationship quality); *challenges* (nature of the separation, new adult partners, money, logistics, parenting style and quality, safety issues); *mediating factors* which influenced how challenges were handled (beliefs about contact, relationship skills, the involvement of family, friends and external agencies). All these interacted over *time*.
- No single ingredient or individual was responsible for making contact work or not work. It was the attitudes, actions and interactions of all family members that shaped contact. Making contact work required the commitment of both adults and children.
- An important feature of successful arrangements was a 'parental bargain' whereby resident parents positively facilitated, rather than simply allowed, contact while for their part non-resident parents accepted their contact status.

Parental Alienation Syndrome (PAS): does it exist?

PAS is a controversial theory which posits a process by which one parent seeks, sometimes unconsciously, to turn a child against the other, resulting in the child internalising false or distorted perceptions and rejecting the denigrated parent (Hobbs, 2002). PAS is recognised in some jurisdictions and has its supporters here, but is not widely accepted or endorsed by the courts. In the leading UK case (Re L, 2000) the court accepted an expert report dismissing PAS as not recognised as a 'syndrome', not accepted by mainstream opinion, over-simplistic and '*not a helpful concept*' (Sturge and Glaser, 2000): Although the analysis was brief and has been criticised it encompasses the points made in lengthier critiques, one of which describes PAS as *junk science (which) has neither a logical nor a scientific basis* (Bruch, 2002).

PAS may have gained credibility because it chimes with the frustrations of the family courts in attempting to deal with '*alienated*' children and '*implacably hostile*' parents. To reject PAS is not to deny their experiences, but to question the simplistic causal connection the theory assumes, recognising a more complex process in which many factors, often associated with the child's stage of development, produce alienation in the child (Kelly and Johnston, 2001). The existence of an alienating parent is neither a necessary, nor a sufficient condition.

duty to comply with a contact order does not depend on payment of child support. Should they remain so? The CASC report *Making Contact Work* noted 'a genuine sense of injustice on this question which can cut both ways' and 'invited' the government to 're-consider the desirability and practicality of legislating for an inter-relationship'. This has been unequivocally rejected on the grounds that '*contact is not a commodity to be bartered for money*' (LCD 2002a).

Recent changes in Child Support legislation go some way towards addressing one complaint of non-resident parents: now the child only needs to stay one night a week before payment is reduced (by one-seventh per night, up to a maximum of three-sevenths). This may, however, have unintended effects: children may suffer material disadvantage because of the impact on the income of the primary carer; resident parents may be reluctant to agree substantial staying contact; and there may be more litigation.

The position of the non-resident parent

I am angry with a system that allows fathers to be removed from their children's lives for no good reason (Matthew O'Connor, Fathers 4 Justice, Evening Standard, 14.4.2003).

The distress and anger felt by non-resident parents unable to play a full role in their children's lives, vividly described by Bob Geldorf (2003) is well-documented (Bradshaw et al, 1999; Simpson et al, 1995).

Organisations campaigning for their rights (particularly, but not exclusively, fathers') are growing, with some increasingly militant. There is a perception that the legal system is biased, allowing mothers to marginalise fathers or to shut them out of their children's lives for no good reason. In particular it is argued that:

- Women typically get residence and thereafter control the extent of the father's involvement;
- While legal remedies are available, fathers are discouraged by costs; deterred by legal advice about the prospects of success and disadvantaged by having to represent themselves against a legally-aided mother;
- The slow legal system allows a status quo to be established which it is hard to overturn;
- Court orders provide for insufficient meaningful contact; courts are too ready to limit contact;
- Mothers can easily flout court orders; courts do not act decisively to ensure compliance.

There is force in some of these arguments. Children do largely live with their mothers, but probably because in intact families women still carry out most day-to-day care and maintaining the status quo is a key factor in any court decision. It is doubtful that courts systematically operate a maternal preference. Although there are anecdotal reports and one high profile case which is cited as proof (The Guardian; 20.04.2002), recent research found no evidence of this (Smart et al, 2003). However the 'situational power' of the resident parent (Smart et al, 2001) is indisputable. S/he can cut off all contact; the other parent will have to seek court redress. S/he can move away from the area entirely. Certain decisions, such as moving to another country, need court authorisation, but this is rarely refused. Courts have been reluctant to use punitive sanctions to enforce contact orders.

To what extent do resident parents use their power unreasonably? Many non-resident parents report this, those working in the courts are familiar with what appears to be unwarranted hostility and there is some research evidence (summarised in Hunt, 2003). On the other hand it is now recognised that courts may have been too ready to

brand as *'implacably hostile'* parents who have sound reasons for opposing contact. In Australia, a study of applications to enforce contact orders (Rhoades, 2002) found that 65% involved major concerns about the non-resident parent's care and that the *'one-sided unreasonableness of the hostile mother stories was noticeably absent'*. Only three breaches were considered serious enough to warrant a penalty. Other research suggests that resistance to contact may be a way of coping with high levels of conflict (Strategic Partners, 1998).

There is a pressing need for UK research on the incidence of, and reasons for, contact refusal. If it is true, however, that some resident parents do resist or sabotage contact for unacceptable reasons, what might be done?

- Would it help to have a statutory presumption of contact, perhaps accompanied by guidelines as to minimum expected levels of 'normal contact' as is the case, for example, in Norway and some American states? More radically, should the concept of resident/contact parent be abandoned, in favour of a presumption of shared parenting?
- Should courts be more interventionist, requiring parents to produce a satisfactory detailed parenting plan before granting a divorce decree, as in some American states?
- Should contact orders be enforced more swiftly and rigorously or would the emphasis be better placed on preventing problems reaching this point, through the provision of services? Should use of these services be purely voluntary or, where necessary, court-mandated?

Shared parenting

Shared parenting is the concept that, following divorce or separation, mothers and fathers should retain a strong positive parenting role in their children's lives, with the children actually spending substantial amounts of time living with each. There are a wide variety of parenting arrangements to suit a range of situations and these provide for time-splits from 30/70 to 50/50. (Shared Parenting Information Group web-site)

The Children Act promotes the involvement of both parents through the concept of continuing parental responsibility, and joint residence orders can be made where children are to spend substantial amounts of time with each. Some are now pressing for the concepts of residence and contact to go, to be replaced by a presumption of shared parenting. This, it is argued, would give a stronger message that both parents are expected to remain substantially involved in their children's lives; set the tone for negotiations; discourage

one parent arbitrarily restricting contact; and reduce court disputes. Opponents counter that it would increase the potential for the use of coercive measures by the court and put pressure on resident parents to make unsafe arrangements without necessarily reducing conflict or litigation (Kaganas and Piper, 2003). *Making Contact Work* considered the issue was beyond its remit, but suggested pilot schemes might be established. The government's response was that this was unlikely to be possible - the court must make the order it considers to be right for the individual child.

The shared parenting movement is an international phenomenon and the UK government is coming under pressure to take action. The issue is being actively debated in Australia, where a Parliamentary inquiry is underway and New Zealand, where a campaign is ongoing despite the defeat of a Private Members Bill in 2000. Canada recently completed a widespread consultation although it rejected the idea, on the grounds that children are not best served by a presumption that any particular kind of parenting arrangement is best.

The debates around shared parenting, particularly when evidence from other jurisdictions is cited in support, are sometimes clouded by the elision of different concepts: shared responsibility (elsewhere often referred to as joint legal custody); shared residence (joint physical custody) and equal parenting time. A legal presumption of equal parenting time is still unusual. In the US, for instance, many states have a presumption of joint *legal* custody; fewer have a preference for joint *physical* custody and only two appear to have a presumption of equal time (Kelly and Ward, 2002). Central to the issue, however, is shared residence.

Does shared residence work? A review of American research on joint legal/physical custody (Bauserman, 2002) concluded that it can: on average children were better adjusted than those in sole custody and were not exposed to more conflict. One might conclude from this that those who wish to make such arrangements should not be discouraged; perhaps even that some encouragement is given to consider this option. However a *presumption* of shared parenting time is a different matter and several caveats need to be borne in mind:

- Most studies involve low-conflict families who have chosen this option. Research on high-conflict families with court-imposed shared arrangements indicates increased parental aggression and child disturbance (Johnston, 1995). More research would be needed to establish where the balance of advantage lies in families between these two extremes.

- Families have to overcome many challenges to make shared parenting work and those who succeed (the subject of most research studies) may be unusual and better resourced. Good outcomes may be due not to the arrangements themselves, but to the quality of the relationships which are an important factor in making them work (Smart et al, 2001).
- Children, even siblings, vary enormously in their responses, some thriving, others struggling and views may change over time (Smart et al, 2001).

Recent research in the UK on children's experiences of 50:50 arrangements also strikes a cautionary note. The initial study (Smart et al, 2001) was reasonably positive, reporting that for most children the arrangements were 'normal', providing a tangible experience of being loved and included in two families. The follow-up study, however, (Neale et al, 2003) found that from the child's perspective they had often become increasingly unsatisfactory and many children found it incredibly hard to change the arrangements once they were in place. The critical elements in children feeling positive were: the prioritisation of their needs; flexibility; and feeling settled and truly at home in both households. Even where children felt shared residence was a good thing they looked forward to a time when they could stop 'living like nomads'. The researchers concluded that:

'Shared residence is not a magic solution to a difficult problem. To some extent it merely stretches an existing problem over years and it can be the children who have to absorb the pressures.'

Contact and domestic violence

The significance of domestic violence to decisions about contact. This is recognised in the government's consultation paper *Safety and Justice* (Home Office, 2003) which sets out current strategies and invites responses as to whether more needs to be done. It is only recently, however, that the problematic nature of contact in the context of domestic violence has attracted much attention. Two myths have been exploded:

- *Violence ceases on separation.* One-third of all abuse occurs post-separation (Mirrlees-Black et al, 1996) and contact is a particular danger-point (Hester and Radford, 1996).
- *Domestic violence only affects adults.* Children suffer through the impact on the carer, frequently witness violence and suffer multiple adverse effects. There is a strong correlation with child abuse (Aris et al, 2002).

Contact arrangements, therefore, can be physically as well as emotionally hazardous for children: one study reported that 75% of children ordered to have contact

Making Contact Work: the report of the Children Act Sub-Committee

This consultation arose out of concern about the enforcement of contact orders. Very different opinions on this had been expressed by respondents to the CASC consultation on domestic violence: men's groups frustrated at the perceived passivity of the courts; women's groups protesting at the threat of imprisonment being used to coerce mothers into contact which was unsafe or resisted by children. There was concern that court orders frequently did not achieve their objective and that the process polarised parental attitudes, to the detriment of the children. CASC therefore decided to examine the much broader question of facilitation, of which enforcement was only one aspect. The result was a wide-ranging report, whose themes CASC summarised as:

- A general dissatisfaction with the legal process;
- The need to provide, at an early stage, information for parents and children about the likely effects of separation, the difficulties they are likely to encounter, and the means whereby those difficulties can be addressed;
- The need to address the problem by a wide range of different mechanisms which are not based on court proceedings; and,
- The need to ensure these mechanisms are in place and accessible to those who need them.

Enforcement, the report concluded, should be very much a last resort; the key was to develop more effective ways of preventing difficulties escalating to this point.

Virtually all the many recommendations have been accepted (LCD, 2002) and an announcement of the government's final response is imminent. Some proposals require legislation, notably giving the courts powers to direct parents to engage with services, such as parenting programmes. Some, CASC considered, could be implemented immediately: for instance those relating to the provision of information, on which the report laid particular emphasis. Many require significant additional resources. While in the long-term savings might be made if more families are diverted from costly litigation, some initial investment will be needed.

with a violent parent were abused (Radford et al, 1999); at least 19 have been killed during contact since 1999 (Women's Aid Federation of England web-site).

The approach of the courts. Domestic violence is raised as a reason for restricting contact in 22% of disputes reaching the courts (Smart et al, 2003) and is established/admitted in over a third of cases requiring welfare reports (Napo, 2002). Victims and children face multiple risks during, and as a result of, litigation (Aris et al, 2002). The courts, however, have been slow to recognise the implications of domestic violence in contact cases (ABFL, 1999): even proven violence could be treated as less important than contact and parents who did not agree to arrangements they regarded as unsafe could be seen as *'implacably hostile'* and threatened with sanctions.

A change in approach was apparent from the late 90s. Two developments, however, were critical. First, the 1999 CASC *Report on Contact with Violent Parents*, which concluded that: *'the issue is not currently being fully or appropriately addressed by the courts'* and set out recommendations for best practice guidelines (LCD, 2001). These included: the importance of establishing the facts at an early stage; whether the safety of child and carer could be assured; and, consideration of such factors as:

The conduct of the parties to each other and the children, in particular: the effect of the violence on the child and the resident parent; the motivation of the parent seeking contact; their likely behaviour during contact and its effect on the child; their attitude to past violence; appreciation of the impact on child and victim; and their capacity to change.

The second key development was a landmark judgment (Re L, 2000) in which the Court of Appeal refused direct contact, described domestic violence as *'a significant failure of parenting'* urging greater awareness of the consequences for children, and issued guidance in line with the CASC report. The court had taken the unusual step of inviting an expert report on the benefits and risks of contact which concluded that: *'there should be no automatic assumption that contact to a previously or currently violent parent is in the child's interest; if anything the assumption should be in the opposite direction'* (Sturge and Glaser, 2000). The court decided that while there should not be a presumption against contact where domestic violence was established, it was a *'highly relevant and significant factor which must be taken into account'*.

The current position. The first evaluation of the guidelines (LCD, 2002b) found heightened awareness of

the issues, but also inconsistency. The proportion of cases in which contact orders are refused, for any reason, is minute and declining (0.8% in 2002). A survey of workers in women's refuges reported worrying findings:

Only 11% of refuges thought that court practice had generally improved and 8% that it had deteriorated. The courts were still perceived to be reluctant to restrict contact; 47% reported instances of proceedings being used to track down victims; 35% said women were being threatened with sanctions to enforce compliance, including those where men had breached non-molestation orders or had convictions for violence. 6% knew of cases where contact orders were granted to men with offences against children and 12% of contact granted to men whose behaviour had resulted in the child being put on the child protection register (Saunders, 2001).

These concerns have already resulted in some legislative change - the Adoption and Children Act 2002 amends the Children Act to include, in the definition of harm to a child, impairment resulting from witnessing the ill-treatment of others. The government is working with a 'Safety Stakeholder Group' to ensure the forms used in proceedings bring domestic violence to the court's attention. The guidelines have been incorporated into judicial training and into a Law Society Protocol.

Issues. These are substantial developments. Do they go far enough? Have they gone too far? There are strongly competing views.

- **Is domestic violence unduly dominating the contact agenda,** as some father's organisations claim? Domestic violence is not an issue in the majority of divorcing families. Although there is no research on this there are concerns that litigation encourages fraudulent allegations and this is encouraged by the guidelines.
- **Should the Children Act be amended,** as Women's Aid and the NSPCC are urging, to include, as in New Zealand legislation, a mandatory risk assessment check-list and a presumption that where a parent has been found to be violent there should be no unsupervised contact unless it can be shown to be safe? A recent survey of refuges by Women's Aid (Saunders, 2003) suggests the guidelines are still not universally effective.
- **The need for resources.** There is agreement that more could be done to provide skilled risk assessment, treatment programmes for perpetrators and facilities for safe contact. Such interventions, however, are expensive. Is there the political will to provide them?

- **Are children's views and needs adequately taken into account?** Only 6% of refugees consider that children who resist contact are taken seriously in most cases (Saunders, 2003). Are children being given sufficient time and help to recover from the effects of exposure to violence? Is enough known about the long-term psychological effects of contact with an abuser to know whether, even if it can be made physically safe, this is a legitimate goal?

Involving the child

Research gives a clear message: children do not expect their views to be determinative, but many want to be consulted and listened to far more than they are (O'Quigley, 1999). Participation is supported by the UN Convention on the Rights of the Child and the European Convention on Human Rights. The government has accepted the need for a review of the way children are heard in contact and other private law proceedings (LCD, 2002a) and a wide-ranging consultation is promised for 2004.

The current position. Children have some opportunities to participate in contested court proceedings, typically via a report from a CAFCASS

Children and Family Reporter. Representation, by a children's guardian and/or solicitor, is expected to become more common once the power to order it becomes part of primary legislation with implementation of section 122 of the Adoption and Children Act, 2002, planned for the end of 2004 (Minister for Children, Hansard 23.10.2003; col 355WH).

Although there are reservations about the effectiveness of such provisions (James and McNamee, 2003), the position of the vast majority of children whose parents do not become embroiled in court disputes is much weaker. The extent to which their voice is heard depends entirely on the receptiveness of their parents and the practice of any professionals with whom the family comes into contact. In the turmoil of separation many parents find it extremely difficult to talk to their children (Walker, 2001). The government has sought to assist by endorsing the use of Parenting Plans, which contain many reminders to involve children. Mediators are expected to encourage parents to consult; solicitors undertaking publicly-funded work to note children's views and the FAInS initiative (see later) envisages them offering support to parents in talking to children. Neither mediators nor solicitors, however, typically see children.

Contact centres

Contact centres developed from the mid-80s in response to concerns about the numbers of children losing touch with their non-resident parent. Established by a range of voluntary agencies, they aimed to provide a short-term service to facilitate contact. Growth has mushroomed: there are now at least 520 centres, with over 2000 children estimated to use the 280 centres affiliated to the National Association of Child Contact Centres each week. Provision is, however, patchy across the country and funding, which comes from a range of statutory and voluntary sources, unreliable (Aris et al, 2002).

The majority of centres offer 'supported' contact, with staff keeping a general eye on a number of families, offering help when required. About 12% provide 'supervised' contact of individual families where there are safety concerns or a need for contact to be assessed. Around 8% operate other services such as counselling, mediation and play therapy. The clientele is heterogeneous, from fathers with limited child care experience to families with serious child protection concerns. Most, however, are referred through the legal system, with around a half involving high levels of parental conflict, a third domestic violence and a quarter fears of abduction (Furniss, 1999). Recent research found that a 'significant minority' of families are at risk because of a lack of clarity about levels of vigilance (Aris et al, 2002).

The government is working with a Child Contact Centre Working Group to develop a strategy for a national network of centres, and a number of initiatives have been funded, including the Coram Supervised Consultancy Service. Over the next three years just over £2.5 million is being made available for development, principally to fund at least 12 new supervised centres. CAFCASS is also to spend a larger proportion of its Partnership funding on centres, albeit, unfortunately, by diverting money from mediation.

Contact centres clearly provide an invaluable service to a small minority of families. The current policy objective to increase safe contact plus pressure to enforce court orders more effectively will increase demand and may necessitate centres providing a greater range of services. Reliable, adequate funding is essential. It will be important, however, to ensure that the increased availability of supervised contact does not result in centres being used inappropriately, for example to avoid either making orders for no/indirect contact or dealing with a parent's unwarranted resistance to contact. Contact centres are not a panacea but part of what needs to be a spectrum of services.

Issues

- **Should parents be required to take account of children's views**, as under the Children (Scotland) Act 1995? Though unenforceable such a statutory requirement would give a clear message about society's commitment to child participation.
- **Should the courts, before granting a divorce, be required to ascertain the children's views**, as under the (unimplemented) Section 11 of the Family Law Act 1996? Can this be done on paper or should children be seen?
- **Should more efforts be made to reach children directly?** Consultation with children (Lyon et al, 1999) indicates they want information, advice, consultation and advocacy services. Some elements of this are being put in place and there are hopes that the creation of CAFCASS will promote the development of the comprehensive and coordinated children's support service envisaged.
- **Should there be a presumption of representation, as in child protection proceedings?** Some jurisdictions, such as New Zealand, provide for this. If not, should there be criteria to promote consistency and how restrictive should they be? Resources will be key: a significant rise in representation will increase

demands on CAFCASS and the Legal Services Commission.

- **Are adults ready to take children seriously?** Research suggests that professionals and parents are struggling to adjust to the new concepts of children as citizens, with rights to have their views taken into account (Lowe and Murch, 2001). This may be particularly apposite in the context of contact where, some argue, children who say they want contact are taken seriously, those who refuse, are not (Smart et al, 2001), even where there are safety issues (Saunders, 2003).

Enhancing services

'Post-separation parenting is not easy; to the contrary it is fiendishly difficult' (Mr Justice Wall, Making Contact Work conference, 2003).

Bringing up children in any circumstances is not easy. Initiatives such as Sure Start and the National Family and Parenting Institute are a tangible recognition of this and reflect acceptance that the state has a role to play in supporting parents. Post-separation parenting presents special challenges (Smart et al, 2001) and although families can tap into universal services, research indicates (Buchanan et al, 2001) there is a need for a

The Children and Family Court Advisory and Support Service (CAFCASS)

CAFCASS is a Non-Departmental Public Body, set up in 2001, now answerable to the Department for Education and Science. It amalgamated three organisations providing representation for children and/or court reports in family proceedings: the Family Court Welfare Service, the Guardian ad Litem and Reporting Officer panels and the Children's Division of the Official Solicitor. The major part of CAFCASS's work in relation to contact is the provision of welfare reports in contested proceedings. It also provides representation for the child and supervises Family Assistance Orders. In many courts CAFCASS provides a service at the first appointment, when an officer sees the disputants to explore the potential for agreement. CAFCASS also inherited many 'partnership agreements' providing funding for services to work with families, principally contact centres and mediation.

Dissatisfaction with welfare reporting pre-dates CAFCASS but continued into the new service. Evidence submitted to the Select Committee on the LCD, then responsible for CAFCASS, (House of Commons, 2003) encapsulates the concerns, including: lack of expertise; inconsistency; inadequate investigations; insufficient time spent with the child; bias against non-resident parents and inadequate response to domestic violence. Some dissatisfaction is inevitable, given the nature of parental disputes and some complaints may be more justified than others, but clearly there are issues CAFCASS needs to address.

Frustrated Aspirations. When CAFCASS was created, it was expected to develop an expanded range of functions. *Making Contact Work* described these as of 'critical importance', emphasising the need for adequate funding. The service, however, has had an extremely difficult start, culminating in a critical report by a House of Commons Select Committee (House of Commons, 2003), the resignation of the Chair and the enforced departure of the Board. Although CAFCASS aspires to provide an enhanced range of services and there are some encouraging initiatives little has yet materialised. The Select Committee, moreover, recommended that for the present CAFCASS should concentrate on fulfilling its core responsibilities, taking a strategic/coordinating role in the development of new services. In these circumstances the role of the voluntary sector is likely to be even more important than it might otherwise have been.

coordinated preventative and remedial strategy which specifically addresses their particular needs, including managing contact. This needs to address the very varied circumstances of the separating population, from well-functioning families who just need help to manage the transition, to those where there are serious concerns about parenting, high levels of conflict and domestic violence.

Some services already exist: traditional ones such as solicitors and courts, those which are more recent but now well established, such as mediation and contact centres, and newer initiatives such as helplines and web-sites. There is a widespread perception, however, that, as *Making Contact Work* put it, '*much more needs to be done*'. While pointing out the need for improvements in legal processes (accreditation for lawyers, reducing delay, judicial continuity; alternatives to punitive measures of enforcement) CASC also stressed the need for non-court-based services to be available at a much earlier stage.

The report emphasised access to information on post-separation parenting, the harm caused by conflict and the services available. Had the Family Law Act been fully implemented this would have been provided through the Information Meetings, which were a key element in the new divorce process. The Legal Services Commission is piloting Family Advice and Information Networks (FAInS), which aim to provide tailored information and advice and referral to appropriate services. The success of FAInS will depend on a spectrum of services being available and the pilot schemes may well point up serious gaps in provision. At the moment, although there is anecdotal evidence of a mismatch between need and supply, no audit of services has been carried out. *Making Contact Work* simply commented, in relation to services to address contact difficulties, that '*in so far as such programmes currently exist, they will need to be funded; in so far as they do not, they will need to be developed*'.

It is clear that many separating parents need practical help in developing strategies to manage post-separation relationships and defuse conflict (Walker, 2001; Trinder et al, 2001). This might mean increasing provision for counselling, therapeutic mediation and family therapy. One promising way forward is offered by skills-based post-separation parenting classes, such as New York's ACT for the Children (Pedro-Carroll and Frazee, 2001). Support is being sought for a pilot court-based project which would combine this type of class for litigating parents with help from a CAFCASS officer to work out a parenting plan (NATC, 2003). A few community-based programmes currently operate here, run by organisations such as Relate, while NCH Action

for Children is seeking funding to develop intensive programmes for entrenched disputes. Government support and funding will be needed to support these and pump-prime other initiatives.

More services may also need to be provided directly to children, for example by including them in mediation; enabling CAFCASS officers to spend more time with the child; and increasing the availability of information, advice, counselling and therapeutic services. A recent survey of support services for children (Hawthorne et al, 2003) indicates many initiatives here which might provide the basis for a more coordinated approach. Positive results have also been reported from school-based interventions (Wilson et al, 2003).

The way forward

Developing policy on contact is fraught with difficulties. The issues are complex and the circumstances of the families involved very varied. The law can set a framework but may have only a limited effect on behaviour and is inherently difficult to enforce. Promoting the best interests of children may involve an element of injustice to parents. What then might be done?

Caution is needed about legislative change. The case for amending the Children Act may be stronger in relation to domestic violence: there are grounds for concern and the change demanded is limited to litigated cases where violence is established. Introducing a presumption of contact is more problematic. It makes a strong statement of principle but would it make resident parents more willing to facilitate contact or non-resident parents maintain it? It would almost certainly lead to increased litigation and therefore more children exposed to the damaging effects of conflict.

Contact is not a good in itself; the value comes from the quality of the relationships. This suggests that policy should focus on helping families manage separation in ways which best promote positive on-going relationships and minimise children's exposure to conflict. Post-separation parenting is a very neglected area, which barely receives a mention in the recent government Green Paper, *Every Child Matters*, despite the large, and growing, numbers of children affected. There would be widespread support for a programme aimed at improving service provision.

However policy develops it is vital to keep the focus on the needs of children and to take account of their perspectives. It is all too easy for children's interests and voices to be submerged in adult disputes.

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