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Intervening in litigated contact: ideas from other jurisdictions

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September 2005

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This PDF version of Family Policy Briefing 4 contains a full list of references, some of which were omitted from the printed edition for reasons of space.

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Introduction

In recent years child contact after parental separation or divorce has risen rapidly up the political and media agenda. This reflects both the increasing level of divorce among families with young children and also changing gender roles within the family. Fathers are now more likely to want involvement in their children's lives both before and after parental separation. It is frequently asserted, in the public debate, that the issue of child contact is managed much better in other jurisdictions. Sometimes these statements are based on a misunderstanding of other legal systems or go beyond the evidence available. However since policy-makers, opinion-formers and practitioners are usually not in a position critically to evaluate such claims, they mistakenly acquire the status of proven fact.

This paper aims to facilitate a more informed and evidence-based approach to this desire to learn from other jurisdictions. It is based on a study funded by the Nuffield Foundation, which examined processes in other Western European countries, Australia, Canada, New Zealand and the United States. The focus is on the minority of cases which come within the ambit of the courts, particularly the most conflicted,

which generate greatest concern and disproportionately absorb public resources, rather than community-based preventive interventions or initiatives aimed at avoiding court action (such as collaborative law).

The paper is not a comprehensive descriptive comparison; rather it selects types of intervention which are not common here and examines the evidence for their effectiveness, using research and other documentation. In many instances this reveals the limitations of the data and thus acts as a corrective to claims that X intervention has been shown to work, or any assumption that other jurisdictions have solved these difficult problems. The reality is that they too are struggling. At the same time, because some of them have been more inventive than the UK, it serves to indicate a range of approaches which might be worth looking at with a view to adapting and testing them here and as a stimulus to home-grown ideas.

The following sections look at: education in post-separation parenting; mandatory mediation; contact guidelines; a range of services for higher conflict families; strategies to tackle non-compliance with court orders and services involving children.

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Background

- 2002: Publication of *Making Contact Work*, (ABFL, 2002) a report of a consultation exercise carried out by the Children Act Sub-Committee of the Advisory Board on Family Law. Wide-ranging recommendations made about the better facilitation and enforcement of contact. The government accepted virtually all the recommendations and the lead department, (the then Lord Chancellor's Department) announced a Public Service Agreement target to increase safe and beneficial contact, set up a series of 'stakeholder' groups to assist with implementation, and commissioned research on the incidence of contact.
- July 2004: the government set out its proposals in the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*, followed, after a period of public consultation, by *Next Steps*. The focus was on helping parents agree arrangements without involving the courts through the provision of information/advice and encouraging mediation. Legislation to be introduced, as per the recommendations of *Making Contact Work*, to give courts greater powers to deal with problematic contact cases.
- February 2005: *Draft Children (Contact) and Adoption Bill* published for pre-legislative scrutiny.
- April 2005: Report of the Parliamentary Scrutiny Committee on the draft bill.
- June 2005: Children and Adoption Bill introduced in the House of Lords.

The proposed legislation enhances the courts' powers to promote contact and enforce contact orders. There are new penalties for non-complying resident parties – financial compensation and community service – though the most draconian measures, curfews and electronic tagging, were dropped following criticism by the Scrutiny Committee. Courts will be able to order 'contact activities', defined as attending an information session, or taking part in a programme, class, counselling or guidance session or other activity devised for the purpose of 'assisting a person to establish, maintain or improve contact'. Cafcass (the Children and Family Court Advisory and Support Service) is to be given duties to monitor compliance with both contact orders and contact activities. There are changes to Family Assistance Orders, removing the requirement for 'exceptional circumstances' and extending the duration to 12 months.

Education in post-separation parenting

'Parent feedback and empirical research strongly suggest that well-designed divorce education programs should be a first, early and mandatory intervention for all parents separating or divorcing. Well-designed programs bring children's voices and needs into sharp focus for parents in a completely non-adversarial manner. They help parents to understand that children's needs are distinct from those of adults, that marital and divorce anger need to be separated from decisions about children and that their children's future social and emotional well-being will, in part, be determined by their behaviours' (Kelly, 2003)

The idea that effective parenting skills can be taught through group-based education is now accepted in a variety of contexts in the UK. This form of intervention has not been part of the formal system for dealing with separation and divorce, although classes are offered by some voluntary agencies. Groups for parents litigating contact issues, however, are now being piloted by the government as part of the Family Resolutions Project, with the aim of helping parents focus on the needs of their children and learn skills for dealing with conflict. Evaluation results are expected early in 2006. In the US and Canada such classes are already a common and often mandatory stage in the legal process, either for all divorcing parents or for those litigating children's issues (Bacon and McKenzie 2001; Erickson and Ver Steegh, 2001). They are under active consideration in New Zealand and the Netherlands. Australia has a number of community-based programmes although currently only parents in breach of contact orders can be required to attend.

These programmes are not about teaching parenting *per se*. Rather, recognising that separation presents unique challenges for parents and enhanced risks for children's well-being they aim to help parents, and through them their children, cope with the transition. Their rationale stems from research showing that separating parents are often unaware of how poorly their children are coping and underestimate the effects on children of their conflicts (Arbuthnot *et al*, 1997). Typical aims are to increase participants' knowledge of the effects of divorce on children; improve parental communication; reduce children's exposure to conflict and facilitate the child's post-separation adjustment. Programmes vary enormously (in target group, duration, content and teaching strategies) but most court-related classes are short (1-2 sessions of up to 3 hours) with limited participant involvement, relying on lectures,

videos and handouts to increase knowledge and understanding (Geasler and Blaisure, 1999). Some programmes use more interactive approaches to help parents develop practical skills in conflict management and communication and there is some evidence that these are more effective (Kramer *et al*, 1998; Krolczyk, 2001).

Educational programmes, whether mandatory or voluntary, clearly meet a need. They typically report high levels of parental satisfaction (90% and above), even among those ordered to attend. Parents usually say they would recommend them to others and the majority consider they should be mandatory. Programmes are also highly regarded by professionals (Bacon and Mckenzie, 2001; Fischer, 1997; Geasler and Blaisure, 1999; Hughes and Kirby, 2000) many of whom report parents being more conciliatory, child-focused, easier to work with and likely to reach agreement (Bacon and Mckenzie, 2001). In a national US survey of judges referring to one particular programme (Fischer, 1997) 98% considered it was of benefit to families and 80% that it led to quicker resolution of disputes. Mediators are very positive (Lehner 1994; Arbuthnot and Kramer 1998); lawyers somewhat less so (Hughes and Kirby, 2000).

Are programmes effective?

Limitations of the evidence. Despite the proliferation and popularity of educational programmes in North America the effectiveness of most has not been established in robust research (Cookston *et al*, 2002; Whitworth *et al*, 2004). Only a minority have been evaluated, typically by participant exit surveys. There are some studies measuring impact by means of before and after measures but few using control groups, necessary to demonstrate unequivocally that any changes are attributable to the programme, rather than the passage of time or differences in group composition. Where robust research has been carried out the findings are mixed, suggesting that programmes are not of equal efficacy (Goodman *et al*, 2004). Positive impacts are also not dramatic and researchers caution against unrealistic expectations: such a short-term, limited intervention does not, and cannot be expected to, revolutionise post-separation parenting (Hans and Fine, 2001; Bacon and McKenzie, 2001; Thoennes and Pearson, 1999) though on the whole commentators seem to consider that it can make a useful contribution as part of a spectrum of services.

Acquisition of knowledge and skills. Programmes generally achieve their objectives in terms of enabling parents to acquire and retain useful knowledge,

understanding and (where this is the objective) skills (Arbuthnot *et al*, 1996; Pedro-Carroll *et al*, 2001; Thoennes and Pearson, 1999) and giving them more confidence in dealing with the children and even their ex-partner (McKenzie and Guberman 1997; Thoennes and Pearson, 1999). These may translate into improvements in *parental* well-being although findings using comparison groups are mixed (Arbuthnot *et al*, 1996; Buehler *et al*, 1992; Kramer and Washo, 1993).

Attitudinal change. There is some evidence of (self-reported) attitudinal change and expressed intentions to make more effort to work with the other parent (Loveridge, 1995; Mayes *et al*, 2000; Pedro-Carroll *et al*, 2001). Not all parents act on these – in one study six months on only two-thirds had used suggestions relating to contact (Thoennes and Pearson, 1999). But many say they try (Mackenzie and Guberman (1997) and some report improved relationships with better communication and reduced conflict (Bacon and Mckenzie, 2001; Criddle *et al*, 2003; Gray *et al*, 1997; Stone, McKenry and Clark, 1999), including conflict specifically about contact. These are probably not just the result of time passing: two of three studies using comparison groups show greater changes among attendees (Arbuthnot *et al*; Buehler *et al*, 1992; Thoennes and Pearson, 1999). It should be noted, however, that a review of short, universal programmes on which robust research had been carried out (four) found only a little evidence of conflict reduction (Goodman *et al*, 2004).

Protecting children from conflict is one of the key messages educational programmes try to get across. They are not always successful – focus groups with children in one project reported parents engaging in behaviour specifically discouraged by the programme, such as ‘bad-mouthing’ the other parent in front of the child (Hans and Fine, 2001). However positive findings are reported in several studies, (Arbuthnot *et al*, 1996; Bacon and McKenzie, 2001; Bradford, 2000; Gray *et al*, 1997; Mackenzie and Guberman, 1997) including one of the more robust (Kramer *et al*, 1998). (See box on the Children in the Middle programme). Another rigorous study, although finding no overall differences, reported significant differences in the behaviour of higher conflict parents (Kramer and Washo, 1993). Moreover this study reported parents’ perceptions of the behaviour of their ex-partner, which provides somewhat stronger evidence of impact than reports of their own behaviour, which might be somewhat idealised.

The on-going involvement of the non-resident parent may be facilitated. Parents in the Children in the Middle programme were said to be more willing

than a comparison group to share children's time almost equally (Arbuthnot and Kramer, 1998). A study of several Canadian programmes (Bacon and Mckenzie, 2001) reported a slight increase post-attendance in encouraging the child's relationship with the other parent, willingness to accommodate changes in arrangements, and discussion of parenting issues. Some research reports higher levels of contact among participants than comparison groups (DeLuse, 1999; Thoennes and Pearson, 1999).

Dispute resolution. Despite a professional perception that parenting education promotes dispute resolution the research evidence is insubstantial. While many parents report greater willingness to use mediation on completing the programme (Pedro-Carroll *et al*, 2001) few appear to do so, (Sieppert *et al*, 1999; Bacon and Mackenzie, 2001) though some are reported to have reached agreement informally or at least made more efforts to do so. There is some evidence that attendance is correlated with fewer court hearings and shorter proceedings (Ellis and Anderson, 2003) and higher settlement rates in mediation (Dyer, 1989). However most evaluations do not measure settlement patterns.

Repeat litigation. The evidence is sparse and inconsistent. While a few studies (Arbuthnot *et al*, 1997; Leitz-Spitz, 2002; Criddle *et al*, 2003) report reduced rates (half that of a comparison group over a two year period being the most dramatic); others find no difference (Free, 1998; McKenry *et al*, 1999; De Luse, 1999; Thoennes and Pearson, 1999) and one even reports higher rates (McClure, 2002). One programme produced significant results in one evaluation but not in two others. One encouraging finding comes from a study which, while recording no overall reduction in litigation, did find a difference for the most conflicted parents (Kramer and Kowal, 1998). There is also a little evidence to suggest that participation early in the court process may reduce litigation rates (Arbuthnot *et al*, 1997; Vanhoy and Pitts, 1995, unpublished, cited in Bussey, 1996).

Child well-being. Programmes have not yet been able to demonstrate a positive effect on child well-being. The children may become better adjusted, but so do those whose parents have not attended (Arbuthnot *et al*, 1996; Kramer and Washo, 1993). The passage of time, not attendance, would appear to be the crucial factor. A notable exception is the *New Beginnings* programme in Arizona, which has demonstrated consistently positive results. However this is an 8 week, university run, voluntary programme for resident parents and their children which focuses on improving the parenting

capacity of the resident parent (rather than contact with the non-resident parent). Work has now begun on trying to adapt this for use by the courts (Wolchik *et al*, 2005).

Should parent education classes be compulsory?

While the effectiveness of parent education programmes has not been conclusively demonstrated, they do appear to have some benefits, and their striking popularity with parents and with professionals should not be lightly dismissed. There are therefore good reasons for making similar classes widely available in this country, taking account of the features of the more promising programmes which may contribute to effectiveness (eg skilled presenters, interactive format, focus on skills development rather than merely information acquisition and sensitisation to children's needs [Geasler and Blaisure, 1999; Kramer *et al*, 1998]). Whether the evidence warrants making attendance compulsory (as it is in most American states and some parts of Canada) may be another matter and some resistance from parents might be anticipated.

Without compulsion, however, most parents, and perhaps particularly those most in need, are unlikely to attend (O'Connor, 2001) – as was demonstrated in a recent pilot study in Scotland (Mayes *et al*, 2000) and appears to be the experience of the Family Resolutions Pilot. Research indicates that being required to attend does not reduce the effect of the programmes (Gray *et al*, 1997). Initial resentment tends to dissipate (McKenry *et al*, 1998) and most parents express satisfaction with the experience (Loveridge, 1995), would recommend the classes to others (Petersen, 1994) and agree that attendance should be required (Bacon and McKenzie, 2001). (These findings are very similar to the UK experience of parents of young offenders required to attend parenting classes).

The most cautious approach at this point would be to start with parents in dispute, and, as proposed in the Children and Adoption Bill, empower the judiciary to order attendance in individual cases. A more radical (though initially more costly) option would be to make attendance mandatory for *all litigating* parents, or, even more radically, for *all separating* parents, in the hope that this will help to prevent disputes reaching the point of court action and thus (potentially) save costs in the long run. It should be noted that the nature of the class will need to be tailored to the target group: classes aimed at the broad spectrum of separating parents (as most US programmes are) are unlikely to meet the needs of the 10% of parents here who take their disputes to court (Blackwell and Dawe, 2003) and typically present high levels of conflict (Trinder *et al*, 2005).

The Children in the Middle programme

‘I wish I had had a program like this a year ago. Maybe I wouldn’t be so full of anger.’

‘Made me understand how important it is to try to get along with my child’s father.’

‘We were ‘persuaded’ to put aside everything we are going through right now to take time out to think about our children – how they feel, how this affects them and what we can do to help them through this with as little conflict or problems/anxiety as possible.’

(Parents attending the Children in the Middle programme, cited in Arbuthnot and Gordon, 1996)

This is a two-hour class aimed at all divorcing parents which was originally developed by the Centre for Divorce Education, Ohio. It used interactive rather than didactic teaching strategies, and focuses on reducing children’s exposure to conflict through developing parental conflict resolution skills, using videos of common scenarios which present functional/dysfunctional versions.

It is one of the most extensively evaluated of the court-related programmes. In the most rigorous study parents were randomly allocated to the (skills-orientated) CIM or to another (information-orientated) class and the findings compared to parents divorcing in a state without parent education. Children’s exposure to conflict reduced in both education groups compared to the control. CIM additionally improved communication skills. No overall impact on parental conflict, child behavioural problems or domestic violence, which diminished in all groups over time. Some further vindication for education programmes in that the acquisition of knowledge and skills was

(modestly) correlated with reductions in parental conflict; children’s exposure to conflict; domestic violence and child problems.

Other evaluations have also produced some positive findings. Compared with comparison groups:

- Parents were prepared to allow twice the amount of contact (though no more willing to encourage the child to have contact) (Arbuthnot and Kramer, 1998).
- Parents reported feeling better able to work through how they would handle difficult situations (though no significant difference in the proportion of conversations ending in arguments) (Arbuthnot *et al*, 1996).
- Six months on children had significantly fewer school absences and fewer visits to the doctor (though parental ratings of adjustment did not change) (Arbuthnot *et al*, 1996).
- Over a two year period parents in two studies were less likely to relitigate over any issue (Arbuthnot *et al*, 1997; Arbuthnot and Gordon, 1995); the likelihood was related to skill mastery (Arbuthnot and Gordon, 1995). Another study, however, found no difference over six months with another programme more effective (Leitz-Spitz, 2002).

The programme is highly regarded by the judiciary: a survey of 26 courts reported judges thought it extremely helpful for parents, producing more positive attitudes and increased sensitivity to children’s needs. Half thought it noticeably reduced re-litigation (Arbuthnot *et al*, 1994).

The distinctive features of this programme which it is suggested contribute to its effectiveness are: a sharp focus on reducing children’s exposure to conflict rather than diluting the message by covering a range of issues; the use of interactive rather than didactic teaching strategies; focus on developing skills rather than just imparting information.

Any move to introduce compulsory classes would have to address domestic violence, which is explicitly stated as a reason for restricting contact in 22% of all disputed cases (Smart *et al*, 2003) and is likely to be part of the background in many more, particularly the most highly conflicted cases, where proportions of 75% and above are reported (Buchanan *et al*, 2001; NAPO, 2002). Domestic violence, of course, is not a single phenomenon (Johnston and Campbell, 1993), but a spectrum of behaviour whose significance for child contact will vary. However, for some families classes may neither be physically safe (even though parents do not usually attend the same class) nor appropriate, since the message of parental cooperation they typically promote may put parent and child at risk (Fuhrmann *et al*, 1999). Exemptions and specialised classes are two ‘solutions’

which have been adopted in the US and Canada for parents who are prepared to identify domestic violence as an issue. This requires measures to screen and route parents appropriately. Since many victims of domestic violence are reluctant to disclose it, programmes would also have to be sensitive to the likelihood that the audience will include victims and perpetrators and design the content accordingly (Fuhrmann *et al*, 1999).

Mandatory mediation

Mediation, a process by which an impartial professional helps the parties reach agreement, is one of the most widely available alternatives to litigation, long established in the US and Canada; more recently in Australia and New Zealand and gaining ground in much of Europe. There is, however, a wide spectrum of approaches and while it is not feasible to cover this within the constraints of this paper it should be noted that some processes which are called mediation in one jurisdiction may be very different from those which might be recognised as such here.

The research on mediation is of variable quality. Indeed, according to one recent review of US studies '*most research is flawed or incomplete in many respects*' (Beck *et al*, 2004). Early hopes for the extensive impact of mediation were over-optimistic (Beck *et al*, 2004; Saposnek, 2004; Walker, 2003), particularly in terms of affecting child or parent well-being and improving parental relationships or long-term negotiating capacity. UK studies are also less positive than US research about the benefits of mediation (Walker, 2003).

Despite these caveats, there is now quite a lot of international evidence, albeit often based on voluntary, private services, that mediation can help some families (Kelly, 2004; Beck *et al*, 2004). Yet take-up still tends to be quite low. Consequently some jurisdictions (eg much of the US, some Canadian provinces, and Norway) have introduced mandatory mediation, including, in some US states, a requirement not merely to attend, but to mediate 'in good faith'. Others, for example, the Netherlands, are under pressure to do so. In Australia, where (as in New Zealand) litigating parents have long been required to attend conciliation counselling, (which has affinities with mediation) new Court Rules require a 'bona fide' attempt at alternative dispute resolution, including, but not limited to mediation, before an application can be filed (Parkinson, 2004).

In England and Wales currently the only element of compulsion is that *applicants* in *divorce* proceedings *seeking state aid with legal costs* (with some exemptions and provided the other party has indicated their willingness) must attend a meeting to consider the appropriateness of mediation. Evaluation of these provisions (introduced by the Family Law Act 1996 and still in force despite abandonment of other sections of the Act) concluded that they were unlikely to generate significant numbers of mediation clients, in part because they only 'bite' on one party (Davis, 2000). More recently the Parliamentary Scrutiny Committee on the Draft Bill (House of Commons 2005) recommended that the courts should have discretionary power to require any party to attend such a meeting in *all* private law

disputes but carefully distinguished this from making mediation itself compulsory.

The concerns

Mandating mediation is controversial, even in the US. Opponents argue that it is a contradiction in terms, (since the defining principle is empowering participants to reach their own decisions); will be less effective; more likely to disadvantage weaker parties, particularly women, and put victims of domestic violence and their children, at risk.

Research, much of it in California, where court-based mediation (somewhat similar to in-court conciliation here) has been mandatory since 1981, suggests that some of these concerns may have been over-stated. Satisfaction levels are equal to, or higher than, those of voluntary clients (US Commission, 1996) and similar proportions are glad they tried it and would recommend it to a friend (Pearson and Thoennes, 1988). Settlement rates are similar (Pearson and Thoennes, 1988; US Commission, 1996). Although there is limited data on the durability of arrangements one study reports that, two years on only 18% had re-litigated and 64% had made their own changes (California Family Court Services, 1994). Early research did show that parties were more likely to feel under pressure to settle (23% in California compared to 12-20% in other court-related voluntary programmes; Pearson and Thoennes, 1988) but in more recent research only 12% reported feeling pressurised to go along with things they did not want (Centre for Families, Children and the Courts, 2004).

The greatest concerns are about mandatory mediation in cases involving domestic violence, which are likely to form a substantial proportion of referrals (Pearson, 1997). (A representative sample of cases in California found that domestic violence was reported by at least one parent in 76%, 44% had had restraining orders and 41% of children had witnessed violence. [Center for Families, Children and the Courts, 2002]). While most mandating US states/courts provide some form of exemption (Wheeler, 2002), their effectiveness has been challenged (Maxwell, 1995).

Some argue that mediation is never appropriate in domestic violence cases; others that, given the wide spectrum of behaviours the terms covers, in some circumstances it could be viable and safe. Hence while victims should never be forced into mediation they should at least be given the choice (for summary of arguments see Maxwell, 1999; Wheeler, 2002; Ver Steegh, 2003). There is some research evidence from both the US and Australia that mediation can be a worthwhile and empowering option for some victims, who are able to negotiate effectively (Davies *et al*,

1995, Gerenscer, 1995; King, 1999; Newmark, 1995; Pearson, 1997; Thoennes *et al*, 1995; Wissler, 1999), do not feel pressurised (King, 1999), and reach satisfactory outcomes (King, 1999). Given the choice, many are willing to try (Gerenscer, 1995; King, 1999). There is also evidence, however, including from the UK, that for some even 'voluntary' mediation is an unsatisfactory and dangerous process (THANS, 2000; Hester and Radford, 1996) and that domestic violence can be marginalised by mediators (Dingwall and Greatbatch, 2001).

If there was confidence that adequate screening processes were in place and all mediators skilled at identifying and responding appropriately to domestic violence, then one of the most potent arguments against mandatory mediation would be weakened. There are, however, also practical considerations: since not everyone can make use of mediation universal requirements to attend even one session could be unproductive and add to costs and delay. It would also be difficult to enforce without, as does happen in some parts of the US, punitive sanctions. Mandating mediation may increase but in itself does not guarantee attendance (Schepard and Bozzomo, 2004). This suggests that, for the moment at least, the most sensible approach would be to extend the use of suitability assessments to all parents in contested proceedings, but not to require participation in mediation itself.

Contact guidelines

'An information booklet that sets out a range of different timeshare schedules, along with children's various developmental and emotional needs, is likely to be a valuable tool to help parents develop or adjust their parenting arrangements' (Smyth, 2004).

The current position in England and Wales.

There are no guidelines about contact. Parenting plans were tried out as part of the information meeting pilots under the Family Law Act 1996 (Stark *et al*, 2001). Although not formally part of the divorce process they are widely available to parents and anecdotal evidence suggests that mediators and lawyers find them very useful in helping clients think about post-separation parenting arrangements. (There has been no subsequent research here and only limited international research on their value). The current plans provide some information and advice about children's needs but they do not give any indication of the amount or type of contact which might be appropriate. The government has come under pressure to be more prescriptive and the Green Paper indicated that:

'Our revised parenting plan will provide guidance for families about a range of cooperative parenting arrangements appropriate for families in differing circumstances....They will provide examples of contact arrangements which are known to work well for parents in a range of situations....The parenting plans will provide templates which parents can use to enable them to reach the best possible arrangements for their child. They will also illustrate to parents how the courts are likely to approach their case if considering an application' (HM Government, 2004, p21, 22).

The 'templates' in the revised plans issued for consultation (DfES, 2004) were in the form of case examples. These covered a range of arrangements (eg from supervised contact to 50:50 time-sharing) and wove in a number of factors relevant to contact decisions (eg age of child; previous parental relationship; proximity of the two homes; domestic violence). They did not, however, provide definitive guidance and were intended only to act as a 'starting point', giving parents 'indications and ideas for what may work best for (their) children' (DfES, 2004, p8). Even these 'templates' may not survive into the final version since it is understood that many respondents to the consultation considered the plans too technical for use by parents.

Divergent purposes

Contact (usually called parenting-time) guidelines are in use in at least a dozen US states and being developed in others (Pearson and Price 2002). They have been recommended by research in Australia (Smyth, 2004). The desire to develop guidelines appears to emanate from two very different motivations. The first is to increase creativity and individualisation in deciding arrangements by providing information on the options and the factors to take into account. In Australia, for instance, research suggested that many parents 'opt' for a formula of alternate weekends because they, and professionals, lack information about alternatives and what to consider in crafting them (Smyth, 2004). The second is to reduce variability in apparently similar situations. Families Need Fathers, for instance, report that the Children and Families Advisory Group set up to advise the embryonic Cafcass concluded that guidelines were necessary because:

'There may be radically different views on what is appropriate in various situations....Guidelines need to suggest ideas on how answers to the question – how much contact should there be and how should it be organised – should be arrived at and what factors need to play a part in recommendations' (FNF web-site).

The range of approaches within the United States

Even within the US a sample of 'official' guidelines reflect a spectrum of approaches, ranging from encouragement of tailor-made solutions, through giving indications of normative time-sharing and what courts are likely to order; to default norms which courts will adopt if parents cannot agree or below which they will not be allowed to drop without good reasons.

- **Texas** exemplifies the most prescriptive approach. Unless there is the equivalent of a sole custody order in force, where parents live within 100 miles of each other and the child is over three, there is a rebuttable presumption of 48 hours contact every other weekend, starting Friday evening, plus Wednesday 6-8 and extended visitation in holidays. A pilot research study (Hirczy de Mino, 1997) reported the new regime was widely accepted by the judges and lawyers; had established norms which permeated decisions while not preventing individualised solutions; saved time and promoted compliance. However the limitations of the published data makes it impossible to assess the strength of the evidence supporting these conclusions and notably, there is no data on the effect on children.
- **Pinellas County, Florida** takes the middle way, adopting the same preferred amount of contact as Texas and stating that *'all things being equal, the court feels (this) to be reasonable visitation'* but going on to point out that the court does not adopt an official contact schedule and this is not necessarily appropriate for every case, but *'simply a guide to assist you in establishing a schedule that takes into consideration the needs of your family'*.
- **Ohio**, in contrast, while embracing the idea of providing guidance and examples, rejects the idea of a single prescriptive standard:

'The best schedule is one that is tailor-made to each family by the family and adjusted as the child grows and family circumstances change. Children differ not only by age and developmental variances, but also by temperament, personality and special needs. These sample schedules are offered here to encourage creativity. They are not intended to be guidelines to be imposed by a court. The parenting access plans provided are examples of what may work well...but should not be viewed as prescriptive. One size does not fit all.'

The Ohio guidelines attempt to help parents focus on the needs of the child by outlining the developmental needs of each of six age groups. They further

differentiate by providing between 3-5 options for each group according to the degree of involvement in care-giving the non-resident parent wants, or is able to offer. One leading US expert factors in the relationship between the parents and provides options according to whether their separation is 'angry', 'distant' or 'cooperative' (Emery, undated). Other experts add in the severity of conflict (Garrity and Baris, 1994). Ohio specifically states that their guidelines are not appropriate where there are continuous levels of very intense conflict; domestic violence; serious mental or emotional disorder; drug/alcohol abuse or criminal activity.

Should we adopt guidelines?

Should we go further in the direction of formulating clearer and more explicit guidance? Shawnee County in Kansas, for example, has a chart setting out, for each of four age groups, the developmental tasks which have to be accomplished, what children need from contact; common mistakes and arrangements which might work. Would parents find such a framework helpful as Australian research suggests (Smyth, 2004)?

It is important to note that there is little empirical evidence on the impact of different schedules on children. There are also significant differences between child welfare experts on the advisability of overnight stays for very young children (Luther-Starbird 2002). It might be feasible to establish some areas of agreement and use these to develop materials which could help parents and professionals and create a shared framework for decision-making. At the moment, while the UK does not have an explicit concept of 'standard' contact, most family justice practitioners would probably concede that there are implicit norms. Since these may only become apparent to families when they take their disputes to law, they generate complaints of 'formulaic' approaches (Buchanan *et al*, 2001) without acting as community norms which might help to discourage litigation. Guidelines might help by introducing greater transparency and consistency into the system while still encouraging individualised arrangements. The risk is, however, that a 'framework' could become a straitjacket, obscuring the needs of individual children, and might also lead to more, rather than less, litigation. At this point there is simply not the evidence to show how such a move might work out.

Services for higher conflict families

While standard parent education and mediation may help many parents to resolve their disputes over contact, jurisdictions where these are well established

Impasse Mediation: the Alameda model

Individual model. 12 weeks, around 27 hours. First phase assessment and individual counselling with each parent and child. Knowledge from children's sessions used to sensitise and counsel parents. Followed by dispute resolution phase. Any agreement reviewed by lawyers. Counsellor remains available to family for emergencies and continuing mediation.

An evaluation of this model found that 83% of court-referred parents who had failed in mediation were able to reach agreement and two years on 60% had adhered to, or been able to re-negotiate the arrangements. Parents reported a marked decline in hostility and conflict and both physical and verbal aggression had declined to the level of the whole divorcing population. However 36% had returned to court, 23% two or more times and 15% of the whole sample were doing worse (Pruett and Johnston, 2004).

An even more intensive model involves counselling for 3-5 hours per week for 2 months, plus frequent phone calls, diminishing to 1-2 hours per week for the next 2-6 months plus a follow-up period of 1-2 hours per month and telephone counselling.

Follow-up evaluation found significant shifts in levels of hostility, distrust of the other's parenting and dissatisfaction with custody/contact. Repeat litigation reduced to 1/6th of previous levels (though 34% returned to court over contact). Children were coping better in some respects. Nonetheless the researchers considered many remained at risk because of parental hostility, albeit muted by the intervention. (Pruett and Johnston, 2004)

Group model. 8 weeks, 16 hours. Parents meet separately in gender mixed groups for 4 weeks; parallel group sessions for children. Parent groups combine and receive feedback from the children's group leaders, including information about how each child is coping. Final sessions used by some parents to mediate a parenting plan.

Two evaluations have been carried out on this model.

- The first, which compared it to the individual model, found it as effective, with about 2/3 of parents able to keep or renegotiate agreements and stay out of court for a 2-3 year period.
- The second, which involved a comparison with the Los Angeles Educational Programme (see box) found that though it was less popular with parents outcomes were similar and in some respects better. Parents reported more substantial gains: women reported less violence and more communication; men reported greater cooperation. Moreover, unlike the Los Angeles programme, there was a reduction in repeat litigation compared to parents not offered the intervention (of the order of 1/3). The number of hearings reduced as did the number of hours of mediation required. Mediators rated families significantly better than before, while the comparison group remained the same or worse.

increasingly recognise that some high conflict families need more specialised and intensive interventions (American Bar Association Family Law Section, 2001; Doolittle and Deutsch, 1999; Elrod, 2001; Shepard, 2004). Some of these services are already available in England and Wales, (eg supervised contact and handover; neutral assessment; child representation; individual and family counselling and therapy; substance abuse and domestic violence programmes) even if perhaps not in sufficient quantity or as part of a repertoire of court orders. Others, such as the ones examined here, are more innovative. Typically, however, they are still in the early stages of development and evaluations are rare and usually limited.

Multi-method interventions

One of the most ambitious attempts to meet the needs of high conflict/enforcement cases is Australia's Contact Orders Pilot. The three agencies funded by the Federal Government use a range of interventions,

tailored to individual need (eg: group work; education; counselling; modified mediation; children's programmes; supervised contact; overall case management and telephone support). Initial research indicates high consumer satisfaction despite the fact that many parents are court-ordered to attend, and on this basis the programme is to be expanded and made available to families outside the court system (Attorney-General's Department, 2003; Australian Government, 2004). However there is as yet no evidence that it actually works, in the sense of reducing conflict or repeat litigation or producing better outcomes for children.

Educational programmes

Standard education classes usually aim to help separated parents work together to bring up their children. The emphasis is often on improving communication. Such 'cooperative' parenting may be impossible for many high conflict families and, by requiring parental interaction, may even exacerbate their

problems. A recent development in the US is education teaching 'parallel' parenting approaches, which emphasise disengagement between the ex-partners who each parent independently (Elrod, 2001).

Parents Apart, in San Diego, California, is a five hour programme which aims to reduce opportunities for conflict by advising parents to eliminate all direct contact with each other for two years, communicate even indirectly as little as possible, operate on the basis of an unchanged parenting plan and create separate worlds within which to parent the children (Stacer and Stemen 2000).

As yet little evaluation data is available on these programmes. The only one to have been substantially evaluated is an older, more traditional, class – 'Parenting Without Conflict' (see box).

Therapeutic mediation

This aims to help couples who cannot mediate because they are blocked by the emotional baggage from their relationship. It combines mediation techniques with therapeutic counselling, the mediator taking a directive role, assisting the parties to identify and tackle the obstacles impeding negotiation and adopting an active educative and advocacy role in relation to the needs of the child (Pruett and Johnston, 2004; Smyth and Moloney, 2003). There are a number of emerging variants, including one using a mediator/therapist team (Smyth and Moloney, 2003) and one actively involving lawyers (Pruett and Johnston, 2004). Central to the development of this form of intervention has been the work of Janet Johnston in Alameda County, California, where both individual and group models have been developed (see box). Projects based on her ideas have been set up in other parts of the US (Neff and Cooper, 2004), Australia (ALRC, 1995) and Canada (Elrod, 2001).

Post order support

In England and Wales there is already a formal mechanism – the Family Assistance Order – for helping litigating families manage post order parenting. Changes made by the Children and Adoption Bill, if properly implemented and resourced, may address the problems which have limited its effectiveness and use. In this (theoretically) Britain is in advance of most other jurisdictions, few of which seem to provide specific post-order support, although families can presumably make use of any services, such as counselling, available to the broader separated community. In Germany, for instance, under

recent legislation all separating parents are entitled to help with contact from the equivalent of our Social Services (Maclean and Mueller-Johnson, 2003).

In the US, however, post-proceedings intervention for high conflict/repeatedly litigating families is a fast developing area, with the introduction by many states of what are generically called 'parenting coordinators', though names differ. These are mental health or legal professionals appointed by the court, usually with the consent of both parents, and almost always at their expense, for a period of up to two years. What is particularly novel is that not only do coordinators seek to help parents implement their parenting plan, educate them about the needs of their children and mediate disputes, they are also typically authorised to arbitrate certain issues and may be able to order parents to obtain services. Parents can seek a court hearing if they are not satisfied, and the coordinator can also return the case to court. According to a recent overview:

The parents ideally learn more functional dispute resolution strategies and conflict management that cannot occur through repeated exposure to the legal/adversarial process. At a minimum the parents have a stable, knowledgeable and readily accessible professional to resolve day to day disputes (Coates, 2004).

Positive clinical and anecdotal evidence has been reported, with parents, lawyers and judges said to be satisfied and conflict reduced, although it is also noted that parent coordinators see many families who do not respond (Coates *et al*, 2003). However research on effectiveness appears to be confined to three localised studies, all unpublished.

- A survey of parents and coordinators in Colorado reported most clients were satisfied and conflict diminished (Vick and Backerman, 1996, cited Sullivan, 2004).
- In California court review of the coordinator's decisions is said to be rarely requested (Kelly, 2002, citing own unpublished work).
- Another Californian study reported that a group of parents with an average of six court appearances in the year preceding the appointment of the coordinator had reduced this to .22 the following year (Johnston, 1994, cited Sullivan, 2004).

Amplified contact supervision

Supervised contact facilities now exist in many countries, including the UK. One model being explored internationally is the addition of complementary services within or closely linked to the centres (eg

Parenting Without Conflict.

An educational intervention for high conflict families, Los Angeles, California.

Who attends?

Mainly court-ordered parents in breach of court orders or intense conflict/chronic litigation.

Aims: influence sense of accountability to the law; create awareness of the effects of parental behaviour on children and their developmental needs; develop conflict resolution and communication skills. Strong message given about the responsibility of the resident parent to encourage contact and about the importance of resolving disputes by mediation and negotiation rather than litigation.

What is involved? Both parents attend (separately) six two hour sessions. Groups of 25-75 people. Lectures; small group discussion using vignettes; videos; role play and skill practice sessions. Written material provided in advance on: the factors courts consider; how to help children through divorce; how to manage the adult transition; the importance of parental co-operation and a secure harmonious environment for children; child development stages; contact needs at different ages/typical problems; an outline parenting plan; techniques for successful communication, negotiation and problem-solving.

Does it Work?

Findings are mixed.

- In the only published study 62% of non-resident fathers reported improvement and 27% increased contact. But half reported continuing problems and 53% of mothers had safety concerns. No comparison group.
- A more substantial study reported positive client evaluations, and found that nine months on parents were significantly more co-operative and communicative, had a greater understanding of children's needs and their own role in disputes and were better able to protect children from conflict. Domestic violence had diminished. However results were not quite as good as the comparator programme (the Alameda therapeutic mediation model) and moreover one year on, compared with parents not included in the programme, there was no difference in the number of new applications, actions for contempt of court, rates of agreement in mediation or the number of hours of mediation required, results which were described as 'disappointing'.

Sources: Court leaflets; Elrod, 2001; Johnston, 1999; Pearson and Thoennes, 1998

counselling, education and facilitative/therapeutic supervision aimed at improving parental relationships or parent/child interaction) which appear to be fairly unusual here. According to a survey in the US, for instance, 35% of centres offer psychotherapeutic intervention (Thoennes and Pearson, 1999). Of particular interest are developments in Germany where since 1998 public welfare services have been responsible for ensuring the provision of supervised contact as part of their general responsibilities for children, (though typically accomplished through contracts with private agencies). Each family has its own facilitator, who works out individual plans (which have to be agreed with the welfare authority), and supervision, including off-site, is provided by highly qualified professionals. Counselling is mandatory since facilitating contact without addressing the parental relationship is considered pointless (Maclean and Mueller-Johnson, 2003). Early research is limited and shows mixed results, with quite high levels of parental satisfaction with the process, but little evidence of changed relationships (Mueller-Johnston, 2005).

Tackling non-compliance with court orders

It is a striking feature of the debates about contact that the 'problem' of non-compliance with court orders is almost always construed in terms of the resident parent denying contact. The interventions covered in this section all reflect this bias. Non-resident parents who do not comply with the terms of the order rarely feature, although this may be as great a problem.

Few jurisdictions have developed a response to non-compliance which goes beyond punitive/deterrent sanctions against the resident parent: typically fines and imprisonment, occasionally bonds, community service; compensatory or even supplementary contact, reimbursement of expenses or legal costs and fines payable to the other parent. In the Netherlands it is possible to suspend child support temporarily and to terminate adult maintenance, while some US states can additionally suspend occupational, driving or sports licences. Powers to invoke assistance with collecting

the child where contact is denied are common, as is the facility to change custody/residence/parental rights.

There appears to be no research on the effectiveness of these sanctions and indeed little information on the extent to which they are actually used. However, as in the UK, there appears to be a fairly widespread perception that punitive sanctions are not commonly used and/or that they are ineffective, inappropriate and even counterproductive, and are likely to harm the child. While this has prompted demands for judges to be less 'soft' it has also stimulated a search for more creative responses (eg in Australia, Canada, Finland, New Zealand and the United States). Australia, notably, has tried to be simultaneously more draconian and more creative (see box).

Alternative approaches

Although interventions aimed specifically at non-compliance cases are even thinner on the ground than those for the broader group of high conflict cases there are some interesting, if unproven, approaches.

Clarification of orders. A key theme in the very limited research on non-compliance is that in many instances it flows from vague or poorly framed/understood orders, often originally made by consent (Australian Attorney-General's Department, 2003; Pearson and Price, 2002). Accordingly in Sioux Falls, South Dakota, the first response to a complaint is for a court-contracted lawyer to restate the terms of the original order in simple terms, warning that failure to comply may lead to contempt action. As a preventative measure all consent orders are being reviewed to clarify ambiguities (Pearson and Price, 2002).

Rapid response. Several US states have established special processes to ensure a rapid response to a complaint, bringing the case before a specially designated court officer within a couple of weeks (eg Expedited Visitation Services, Maricopa County, Arizona [see box] Michigan Friend of the Court Scheme, Utah Expedited Parent-time Enforcement Program). After initial evaluation, and – perhaps – screening for domestic violence, the officer will attempt to resolve the dispute or refer to mediation/other services. Where a court hearing is needed, in Michigan the Friend of the Court brings the proceedings; elsewhere unrepresented litigants will usually be assisted with the application. Court officers may be expected to provide recommendations to the court, including referrals to services.

Mediation. The UK government has made it clear that the 'contact activities' envisaged in the Children

and Adoption Bill to deal with enforcement cases do not include mediation. However, as will be evident from the previous section, in some other jurisdictions compulsory non-confidential 'mediation' is the first step in dealing with cases where a breach of a contact order is alleged. It has been used in Finland since 1996 and will also be the first response under legislation currently before the Australian Parliament. Since non-compliance can result from poor or inappropriate initial orders, changed circumstances, or a crisis reaction, rather than necessarily entrenched opposition to contact, this is less odd than it might at first appear. Research is sparse and the mediation element in evaluated enforcement programmes (such as Maricopa County) is not usually differentiated. However in Finland a substantial proportion of cases have been reported to settle (52% compared with 39% without mediation [Kurki-Suono, 2004]). A pilot programme in Utah reports 51% settling in full and 26% in part; 60% of parents rating the service as good to excellent, and strong support reported from family justice professionals (personal communication with the programme director). While the absence of follow-up data limits the conclusions which can be drawn it might be fruitful to consider whether mediation might have a role in enforcement proceedings here.

Educational interventions targeted at non-compliance cases have been developed in a few US states. Maricopa County, Arizona, has recently introduced one while in Los Angeles, California, the Pre-Contemnors/Contemnors programme (now Parenting Without Conflict), has been running since 1989. In Australia, where referral to parenting programmes was the most significant innovation in the new compliance regime, classes form an important element in service provision. These are covered in more detail elsewhere in this paper.

Monitoring compliance with court orders was a key feature of Maricopa County's enforcement programme for many years, now abandoned because of cost. However there are interesting examples elsewhere in the US, which also offer more than simple checking up. In Greenlee County, Arizona, a third party handles all the mechanics of contact, to ensure that parents do not have to interact over changes or cancellations. S/he also gets reports from each parent after every visit, records complaints and can be called on in any litigation. In Utah monitoring is part of a bundle of services (including education and supervised contact) designed to help parents address the problems impeding implementation of the court order. As yet neither of these programmes has been evaluated.

The compliance regime in Australia

In 2000, responding to concerns about the failure of the family courts to enforce contact orders, Australia introduced a highly structured 3-stage regime which moved progressively from preventative measures, through remedial action to punitive sanctions.

- Stage 1: (when initial order made): parents informed of their obligations and consequences of failing to comply; information given about services
- Stage 2: (first breach without reasonable excuse): court may change the order; require parents to attend a parenting programme, or order compensatory contact
- Stage 3: (repeat breach or first time but showing serious disregard): if parenting programme not appropriate, court *must* order either community service, require a bond; impose fine or commit parent to prison for up to six months.

Draft legislation before the Australian Parliament (Australian Government, 2005) additionally requires courts to consider awarding compensation for expenses, imposing a bond at Stage 2, and awarding costs. These proposed measures are aimed at 'strengthening' the enforcement regime, although a requirement for courts to consider changing residence has been dropped (Australian Government, 2004).

At the same time, acknowledging that *'the current process of seeking enforcement orders from the courts escalates the conflict and often does not resolve the problem'* the federal government is proposing to try a 'new approach'. Before filing a breach application (with some exceptions) parents must contact a new service (a Family Relationship Centre) which will attempt dispute resolution or refer the family, on a voluntary basis, to a specialist

program such as the Contact Orders Program (Australian Government, 2004). The Family Law Council has also been asked to work on developing better processes in the family law system for dealing with breach or variation issues.

These measures reflect recognition that the compliance regime has not been as effective as hoped, (Australian Government 2004) although data is very limited. There appears to be no published information on Stage 3, though anecdotal reports indicate it is rarely used. At Stage 2 referrals to parenting programmes were made in only 5% of cases, partly because of limited availability of suitable programmes but also because many of the orders for which enforcement was sought were found to be inappropriate (Attorney-General's Department, 2003; Family Court of Australia, 2003). Early research reported discrepant expectations of the regime and criticisms from: programme suppliers (some of whom questioned the coherence of providing parenting support within a disciplinary framework); judges (some of whom preferred the more immediately punitive approach); and both resident and non-resident parents, the former resenting the implication that their parenting was inadequate, the latter seeing parenting classes as an inadequate response (Rhoades, 2003).

It remains unclear whether the new regime was ill-conceived or merely poorly implemented. One message, however, is unequivocal: there is no point in giving courts powers to refer to parenting programmes without ensuring a sufficient supply of appropriate services. Enforcement cases cannot simply be slotted into existing programmes for parents who seek help with post-separation parenting; they require specialised approaches which are time and resource intensive (Rhoades, 2003; Attorney-General's Department, 2004).

Monitoring is also part of the role of some parenting coordinators (see earlier) while in Germany a non-complying parent can now lose their right to manage contact arrangements, which passes to a court-appointed 'contact guardian'. Early indications are that this scheme is not living up to expectations though it may have some effect as a deterrent (Mueller-Johnston, 2005).

The difficulties of tackling non-compliance

Very little research has been conducted on any of these interventions. The only study to look at a range of (US) enforcement programmes (Pearson and Thoennes, 1998) highlights the difficulties of bringing about change. The research found substantial levels of user satisfaction,

even among parents with more protracted disputes. However parents did not consistently report significant increases in contact, reduced anger or alleviation of their problems. Moreover 'success' depended largely on the quality of the parental relationship and the severity of dispute. The researchers concluded that while education, mediation and monitoring interventions could work for families with fresher disputes and lower levels of conflict, high conflict parents with entrenched disputes were much more difficult to help and likely to need a variety of remedies, including therapeutic interventions.

The same conclusion is reflected in the design of programmes in Australia's Contact Orders Pilot and in an earlier experiment in Canada, the Manitoba Access Assistance Project. Aimed at cases where mediation had failed to resolve contact denial, this offered a

Enforcement in Maricopa County, Arizona

Arizona is noted for its efforts to ensure compliance with contact orders, particularly Maricopa County, whose *Expedited Visitation Services* deals with cases where a non-resident parent, typically not legally represented, seeks enforcement or the court refers a dispute. Within seven days of referral both parents are required to attend a non-confidential conference before a mediation-trained 'special master' who seeks to resolve the dispute. If agreement is not reached the officer assesses the case and makes recommendations to the court, including referral to a range of services. Parents used to be monitored for six months via telephone or e-mail, with the monitor being able to bring the case back to court, but this has been discontinued because of the cost.

Several evaluations have been carried out with varying degrees of rigour. Reported findings are that many (exact figures not given) orders are upheld, and parties directed to comply, though 44% of orders are made more specific. About 25% of disputes are resolved. Punitive remedies and court-ordered custody changes are rare. Compliance rates are described as 'high' (again unspecified). Around 60% of parents are satisfied with the process. 69% of non-resident fathers reported their situation had improved. There are fewer returns to court and children report less parental conflict. There is no evidence that enforcement adversely affected child adjustment. More negatively, one third of parents reported no resolution of their difficulties and one year on 81% reported they were experiencing problems with 42% of mothers citing concerns about safety. Moreover any improvements are not necessarily attributable to the programme: the only study to use a control group found very little difference

between the groups a year on, indeed on one measure, perceived improvement, the group that did not receive the intervention were more satisfied. The only statistically significant difference was that resident mothers were less apt to complain children were upset at handover, that the father was unsupportive of their role and there were still disagreements about custody.

Recently educational interventions have been added, namely videos for parents and a four hour *Parent Conflict Resolution Class* – focusing on how children become estranged from one parent. The programme explains the complex dynamics; and the contribution each parent may make in both the problem and its solution. It addresses the long-term consequences, not just for the children but for the parents. The programme '*appeals heavily to each parent's self-interest*' on the basis that '*a high proportion of parents in high conflict are personality disordered and that the most effective intervention is to point out, clearly, simply and repeatedly, the consequences of continuing their present course of action*' (Neff and Cooper, 2004). While only limited research has been conducted participants are reported to engage with and learn from the programme, and to express high levels of satisfaction both immediately and at follow-up, with 80% reporting that their children were doing better and 61% that there was less inter-parental hostility. Given the nature of the client group these findings are encouraging, but without a control group there is no evidence that these effects are not merely a function of time.

Sources: Lee and Shaugnessy, 1995; Neff and Cooper, 2004; Pearson and Anhalt, 1994; Pearson and Thoennes 1998.

combination of detailed assessment, case management, therapy, monitoring and, where necessary, legal action. Improvement was reported in one-third of cases, though there was no data on repeat litigation. Unfortunately the project proved too costly and was abandoned (O'Connor, 2002). Even in this programme one third of cases reported no improvement whatsoever. It is clear that, where non-compliance is a major problem, expectations about the proportion of families who can be helped even by intensive interventions need to be modest.

The development of enforcement programmes is not underpinned by substantial evidence on the reasons for non-compliance. It may well be the case that some resident parents obstruct contact for reasons which are objectively unjustifiable. The limited research

which is available, however, (Pearson and Anhalt, 1994; Pearson and Thoennes, 1998; Perry *et al*, 1992, Rhoades, 2002, Trinder *et al*, 2001; Strategic Partners, 1998), suggests that non-compliance is a more complex and varied phenomenon which requires a range of carefully thought out responses, often including addressing the behaviour of the non-resident as well as that of the resident parent. Non-payment of child support or unreliable contact in the past, for instance, may be contributory factors (Pearson and Anhalt, 1994). Moreover a substantial proportion of cases (between a half and two-thirds [Pearson and Anhalt, 1994; Rhoades, 2002]) involve serious concerns about the behaviour of the non-resident parent, including domestic violence, child maltreatment and substance abuse. It seems clear that before any action is taken to enforce an order

there should be an assessment of risk, as recommended by the DCA Stakeholder Group on the facilitation and enforcement of contact (DCA, 2003). In two of the enforcement programmes detailed here substantial proportions of resident mothers were still concerned about safety issues a year on. It would be interesting to know whether in New Zealand, where unsupervised contact is prohibited unless it can be shown to be safe, and risk assessments are mandatory, the proportion of enforcement cases is substantially lower than elsewhere.

Arrangements for representation of the child in contact cases have not been explored in this paper since provisions for this are already in place here, albeit not used in the generality of cases. None of the international literature on enforcement programmes seems to cover child representation and it is therefore not possible to ascertain whether it is an effective form of intervention. *Prima facie*, however, it would seem that where enforcement of contact is an issue, children's wishes and needs need to be thoroughly explored and taken into account. Again, the DCA stakeholder group on Facilitation and Enforcement of contact recommended that representation should be a rebuttable presumption in such cases (DCA, 2003).

Programmes involving children

The UK, in common with several other jurisdictions (eg Australia, Canada, Germany, US) has begun to develop community/school-based support programmes for children experiencing parental separation or divorce (Fthenakis, undated; Hawthorne, 2002; O'Connor, 2004). Aims include providing peer support, enabling children to understand their experiences, and helping them develop coping skills. While research reports mixed results, a few versions, eg the CODIP skill-based programme in the US, have been consistently proven to have beneficial, if modest, effects on children's adjustment (Center for Families, Children and the Courts, 2004; Grych, 2005).

In the US (Geelhoed, 2001) and Canada (O'Connor, 2004) there are also some court-related, occasionally court-provided programmes, some using commercially available materials, and in a few places (including the whole of Florida) attendance is compulsory. While there appears to be no direct evidence of parental/child opinion about this, court personnel report parents do not object (Geelhood *et al*, 2001). Research on court-related programmes is in its infancy, though there are some positive findings: eg one study of a (voluntary) programme in Montreal (cited O'Connor, 2004) reports that 68% of children were very happy to attend with

Florida: a note

References to 'The Florida Model' frequently occur in current UK debates on contact – though strangely not in the international literature. Interest was stimulated by presentations by a Florida judge at two London conferences, attended by an invited audience including family justice professionals and policy makers. This led to a proposal for an *Early Interventions Project*, which subsequently became the controversial DfES *Family Resolutions Pilot*. This involves parents litigating contact attending two educational classes, then meeting with a CAFCASS officer to try to work out a parenting plan, the whole process being overseen by the court. Unlike Florida, however, which has mandatory parent education and mediation, UK parents can only be 'encouraged' to attend. (Another difference is that, according to the visiting judge, there are established community and court expectations about minimum levels of contact. However it should be noted that Florida, unlike some US states, does not publish contact guidelines and there is no official state rule about this).

Both the Early Interventions project and the Family Resolutions Pilot were based on what was essentially an interesting idea, not a proven system. The perception that the 'Florida model' has substantially reduced the proportion of cases coming to trial or coming back to court may be correct, but unfortunately there appears to be no research or monitoring data to substantiate this.

Florida is of interest, not because it can provide us with 'off-the-peg' solutions, but because (in company with a number of other states) it is actively and comprehensively attempting to address the problems through a process of systematic and on-going reform. This includes the creation, in 2001, of a unified Family Court with broad civil jurisdiction over domestic violence and juvenile offending as well as what we would define as 'family cases'. Key elements are the underpinning concept of 'therapeutic justice' (ie processes that seek to enhance family functioning); differential case management; alternative dispute resolution and access to a range of court-based and/or community services. As these reforms bed down and, hopefully, evaluative research is conducted, substantial evidence of the effectiveness of this system may begin to emerge.

only 5% negative; 80% found it helpful. Children in a mandatory programme in Kentucky (Oliphant *et al*, 2002) reported that the programme helped them cope with divorce related problems; understand the effects of divorce on their parents' behaviour; and resulted in improved relationships with parents and others. Further

research is needed, however, to ascertain effectiveness.

A feature of some children's programmes, which sometimes run in parallel with parents' groups, is feeding back to parents what the children have said. For instance in *Kid's Turn*, in California, children produce a 'newsletter' conveying their views. Group leaders report this has a powerful impact on parents, motivating them to examine their own behaviour (Kelly, 2002). Feedback, whether from group sessions or individual child consultations, is also used as a lever for change in the Alameda model of therapeutic mediation (see box) and in the Australian Contact Orders programmes; again, it is said, to good effect: *'the most powerful activity of all in creating an impetus for change in the parents, is feeding information back to parents about what their children have said their worries and feelings are, and the effect conflict is having on them'* (Attorney-General's Department, 2003).

More broadly, there is increasing interest in involving children more in processes such as mediation and counselling. This is particularly so in Australia, where a nationwide professional development programme 'Children in Focus' is said to have been a catalyst for change towards what is known as 'child-inclusive practice' (Smyth, 2004). One clear message from research on children's experiences of parental separation is that many children do not feel their views were canvassed or taken into account by either their parents or professionals (O'Quigley, 1999) and while professional views differ there is evidence that many children are willing to participate and find it helpful (McIntosh, 2000).

Meeting the needs of individual families

A common theme in the international literature is the need for a spectrum of services to meet the varying needs of separating families (Dandridge, 2002; Freeman and Freeman, 2003; Schepard, 2004). There is also growing interest in devising gatekeeping processes to assess need and direct families to appropriate services and in identifying factors which might help to predict, at an early stage, cases which will present particular difficulties and require intensive intervention. In Canada, for example, following the recommendation of a Parliamentary Committee (Parliament of Canada, 1998) that high conflict divorces should be streamed into a specialist and expedited process, the government funded research into predictive factors (Stewart, 2001). Similar government-funded research has also been undertaken in New Zealand (Barwick, 2003). However, there are as yet only isolated examples of the use

of predictive factors in determining services and no research has been found on the effectiveness of in-court triage mechanisms.

A novel approach in Australia will take the concept of triage further. The proposed community-based Family Relationship Centres are intended to act as the first port of call for separating families. They will be able to have their needs assessed and be provided with in-house assistance, including help in developing a parenting plan, or directed to other services, including the courts, as appropriate (Australian Government, 2004). These centres are controversial, not least because they marginalise the role of legal advice and assistance. However as an attempt to address the varying needs of separating families in the community, preserving the courts for cases which cannot be dealt with in any other way, the experiment will be of great interest here, although there will be no evidence of the effectiveness for some time.

Conclusion

This paper has examined how a number of other jurisdictions tackle the difficult issue of litigated child contact. It has looked at whether some innovative approaches might be of value in a UK context and asked what evidence exists that any of these 'worked'. The process revealed some interesting ideas, spanning the spectrum from interventions for all separating parents to specialised programmes for high conflict couples and those to address non-compliance with court orders. However, with few exceptions, rigorous research to evaluate their effectiveness was surprisingly thin on the ground. Parental satisfaction levels are usually high, indicating a real need for help in dealing with post separation relationships. However, this is not the same as evidence that programmes have much impact on parental behaviour or child outcomes which is not simply explained by the passage of time.

There are also differences between jurisdictions in culture, legal systems and the profile of the population using the family courts. This makes it not feasible simply to lift any of these interventions "off the shelf" and introduce them here. In the US, for example, contact orders are a routine part of the divorce process. There is no equivalent of the "no order principle" whereby in England and Wales orders are only made where positively required. Thus here only about 10% of the population seek court orders and they tend to be highly conflicted.

If any of the interventions covered in this paper are considered to be worth pursuing here it is important that they are carefully designed and evaluated so that

a body of knowledge can build up as to what works, for whom and why, enabling the most effective forms of intervention to be developed and targeted appropriately. They also need to be adequately resourced: couples in entrenched conflict in particular are likely to require intensive, and therefore expensive, interventions. Finally, expectations need to be modest, there does

not appear to be any magic bullet which will solve the problem of disputed contact. However, by extending the range of services available it may be possible to reduce the number of families for whom conflict becomes intractable and the number of children whose lives are lived in that shadow.

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The Nuffield Foundation's charitable object is 'the advancement of social well-being'. It has supported this project, but the views expressed are those of the authors and not necessarily those of the Foundation.

The views expressed in this policy briefing are those of the authors and not necessarily those of OXPLAP or the Department of Social Policy and Social Work.

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