

HOW DO COUNTY COURTS SHARE THE CARE OF CHILDREN BETWEEN PARENTS?

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About the Project:

The research is based on document analysis of a retrospective sample of 197 case files from the County Courts. The purpose of the project was to examine the different types of child care arrangements reached within court proceedings and confirmed by court order in five selected County Courts in England and Wales within a six month period in 2011.

The research examines the types of applications that came to court, the role of the court in adjudicating such disputes and the different types of timeshare arrangements reached by parents during the court process.

Key findings:

Court plays a necessary role in adjudicating private child law disputes and should remain available as a viable option for parents.

- The vast majority of the case files examined could not be successfully diverted to mediation.
- The majority of applicants in our sample had attempted to resolve their dispute, by private negotiation. **Going to court was a necessary last resort.**
- Going to court does not amplify conflict between the parties. Most cases examined were resolved by consent order.
- **Time taken in the courts process should not always be viewed as unnecessary delay.** County courts used a series of directions hearings, interim orders and review hearings to gradually introduce contact and resolve positions that initially seemed entrenched.
- There was no evidence of an over-reliance on experts and court resources were managed well.
- Children's safety was ensured by court monitoring and the use of child welfare reports conducted by CAFCASS and local authority social workers.
- The removal of court as a viable option for parents following cuts to legal aid will mean that **parents may agree to unsafe arrangements for their children or be unable to reach any agreement about having contact with their children.**



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The County courts showed no indication of gender bias in contested cases about where a child should live.

- While mothers were usually the primary care giver in contact applications, the success rate for mothers and fathers applying for orders to have their children live with them was similar within the sample.
- The overall number of residence orders made for mothers was higher than those made for fathers as a large number of such orders were made for mothers as respondents in cases where the father sought contact.
- Transfers of residence from one parent to the other were rare, as the courts sought to preserve status quo. However, where such transfers were ordered they were disproportionately likely to be transfers from mum's care to dad's care and to feature serious child welfare concerns and children's services involvement.

The County Courts actively promoted as much contact as possible even in cases of proven domestic violence, which was often combined with welfare concerns or strong opposition from older children.

- Without any legislative presumption, the normal process of the County Courts in 2011 was to increase the level of contact with the non-resident parent until both parents were happy with the child staying overnight.
- Half of all cases involving parents ended in regular overnight contact.
- Near equal shared care arrangements were rarely sought, logistically difficult to manage for both parents and children, and often precluded by practicalities.
- 'No contact' orders were extremely rare and a last resort in difficult cases where there was a real and serious risk to children's safety.

12% of the sample of private child care disputes involved non- parents such as grandparents or other relative carers. In such cases private law orders are being used as an alternative to public law proceedings.

- These cases were very different from what is perceived to be the typical private child law dispute; they make different demands on the court in terms of time and resources. **These types of cases have been overlooked in Family Justice Review and recent legal reforms.**
- It is unclear how parent applicants and respondents in these cases will have a fair hearing without access to legal aid. In many cases parents were battling addiction and/or suffering from poor mental health.
- It is important that the consequences of a private law remedy are made clear to the non-parent applicants in these cases so that they are not left to deal with unsettled children and their hostile or troubled parents without any help from children's services.

More information on all the findings of the project can be found in the full report, available to download from www.nuffieldfoundation.org/share-care

For queries relating to the research please contact Dr Maebh Harding
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