

Enforcing child contact orders: are the family courts getting it right?

There are long-standing concerns that the family courts fail to enforce their own court orders in child contact cases following parental separation. Part of the problem has been that the available sanctions – fines, imprisonment or change of the child’s residence – may be impractical or harm the child. The Children and Adoption Act 2006 sought to address this by introducing a new sanction of unpaid work (community service) for a defaulting parent. This new sanction has been rarely used. The Coalition government is now considering other policy options. To date, however, there has been no research on enforcement to inform policy-makers about the nature of the cases or the approach of the family courts. This briefing presents findings from the first ever empirical study of enforcement. The research is based on case file analysis of a national sample of 215 enforcement cases.

Key Points

1. Relatively few contact cases return to court seeking enforcement – about 1,400 each year - but they are difficult cases for both policy-makers and courts to address.
2. The public perception of enforcement cases is of implacably hostile mothers deliberately flouting contact orders and the courts failing to get tough and ensure compliance. The reality in practice is rather more complex.
3. Implacably hostile mothers do exist, but they are a small minority of enforcement cases. The most common type of case involved parents whose conflicts with each other prevented them from making a contact order work reliably in practice. The second largest group was cases with significant safety concerns, followed by cases where older children themselves wanted to reduce or stop contact.
4. The approach of the court appeared broadly determined by the case type. A ‘coparenting support’ approach was mostly used with conflict cases as a means to set a clearer framework and help parents communicate. A ‘protective approach’ was used mainly with risk cases. A punitive approach was used primarily with the few cases we classified as implacably hostile.
5. Cases were generally processed quickly over a shorter period and with fewer hearings than the original proceedings, especially for the ‘parental conflict’ cases. That brevity can mean absence of delay in getting contact restarted but it also signaled that some cases were dealt with rather cursorily, with limited attention to the underlying causes and effects of the ongoing dispute.
6. There were a small number of cases where the court could have been more robust in dealing with a non-compliant parent but equally there a few cases where a punitive approach turned out to be inappropriate. There were rather more cases where the court appeared to minimize safety concerns.
7. Adequate punitive sanctions are in place, are mostly used when needed and can secure compliance. Policy attention should now focus on developing more effective measures to support safe contact across the full range of enforcement cases, particularly high conflict cases where both parents need more help to work together to implement an order



What is the problem?

Only about 10% of separated parents have contact arrangements reached through the family courts. A tiny fraction of those 10% return to court to seek enforcement of their court order. In 2011/12 there were about 1,400 applications for enforcement in England, according to Cafcass data. To put that in context, Ministry of Justice statistics indicate that 38,405 children were involved in contact applications in England and Wales in 2011. We know little about the adequacy of arrangements for cases that do not return to court.

Although the number of enforcement applications is small, any non-implementation of a court order is serious and risks damaging public confidence in the family justice system. The challenge for legislators and judges, however, has been to find appropriate interventions for non-compliance. Courts can impose fines, imprisonment or transfer a child's residence but such sanctions may be impractical, counter-productive or harmful to a child. The Children and Adoption Act 2006 made new sanctions - community

service and financial compensation - available, but these have also been little used.

Following a consultation, the government has decided against introducing curfew orders or the withholding of passports and driving licences as further sanctions (Ministry of Justice *Co-operative parenting following family separation: proposals on enforcing court-ordered child arrangements: Summary of consultation responses and the Government's response*. February 2013). Policy will focus instead on returning cases swiftly to court. Consideration is being given to extend powers of committal to Magistrates and District Judges. A new enforcement-specific Contact Activity (or parent education programme) is also mooted.

To date, however, there has been no research to assist policy-makers. This research was designed to address this gap by addressing some key policy questions: why cases return to court for enforcement, whether the courts deal with these cases effectively, or not, and what additional powers or sanctions might be helpful.

Methods The study is based on case file analysis of a national sample of enforcement applications. The sample consists of all 205 enforcement applications made in England in March and April 2012, excluding 11 applications by grandparents. As this sample of 205 included very few cases where the court imposed enforcement sanctions, we sampled all other cases from November 2011 to October 2012 where the case outcome was recorded as unpaid work. This added a further 10 cases, giving greater insight into the use of punitive measures. For most analyses the application and outcome samples are combined into a sample of 215 cases where enforcement was sought and/or the court imposed enforcement sanctions.

The cases were accessed through the electronic case records held by the Children and Family Courts Advisory and Support Service (Cafcass). The records for each case typically included the application form (the *C79 Application to Enforce a Contact Order*), reports to the court and any court orders made. The data therefore includes the perspectives of both parents, the children (if seen), safeguarding information (including police and local authority checks), numbers and types of hearings, the outcome of the case and any further applications. Full details of the methodology will be available in the project report, due for publication in September 2013.

FINDINGS

The triggers for applications

As might be expected, most (86%) applicants were non-resident fathers. Applications for enforcement could be triggered by lack of punctuality or some missed sessions, but were mostly due to contact breaking down completely (70% of cases). Over half (59%) of enforcement applications were brought within 52 weeks of the original ('index') court order. Most (66%) families had been involved in only the index contact and current enforcement proceedings. At the other extreme, only 5% of the enforcement cases had been involved in four or more previous applications.

'Implacably hostile' mothers were few

There is a strong public perception that the primary reason for the non-implementation of court orders is the implacable hostility and unreasonable behavior of resident parents, typically mothers. The reality is more complex. Drawing upon all the available sources, the research team identified four main types of case: (i) conflicted, (ii) risk, (iii) child refusing and (iv) implacably hostile/alienating (Boxes 1 & 2). The implacably hostile group was the smallest in our sample of 215 cases. Much more common were cases where parental conflict meant the parents were unable to make the order work in practice and cases where there were significant safety concerns regarding contact alleged by one or both parents.

Box 1: The four main types of enforcement case (researcher ratings)

Conflicted (116 cases, 55% of the total) intense competition or chronic levels of mistrust between the parents mean that they are unable to work together to implement the court order. Both parents have greater or less responsibility for the conflict. Minor incidents become flashpoints. Parents are unable to negotiate relatively insignificant changes to contact arrangements to accommodate illness etc. Everyday challenges become insurmountable problems that cannot be resolved without external intervention.

Risk (66 cases, 31% of the total) one or both parents raise significant adult and/or child safeguarding issues, most commonly domestic violence, child physical abuse and neglect, alcohol and drug abuse or mental health issues. These issues may have been raised previously at the index order stage.

Refusing (21 cases, 10% of the total) an apparently appropriate and reasoned rejection of all or some contact by an older child (10+). Appears to reflect problematic behaviours/lack of sensitivity by the non-resident parent. The resident parent may be neutral or negative about contact but the child's decision appears genuinely to be their own opinion rather than a simple reflection of the resident parent's position.

Implacably hostile/alienating (9 cases, 4% of the total) sustained resistance to contact by the resident parent. The resistance appears unreasonable and is not a response to significant safety concerns or the problematic behaviour of the other parent. In some cases the resident may influence the child so that the child refuses all contact but without well-founded reasons.

Three cases were not categorised due to insufficient information.

Box 2: Case examples

Conflict 1: Three children aged between 5-9 years with shared residence order (SRO) setting out an approximate 60/40% shared time arrangement. Father applies to enforce stating mother is not complying with the full order. Mother says younger children want more flexibility and to be able to phone each parent from the other's home. Cafcass report children wanting to please both parents and hating the conflict. SRO to continue with additional order specifying arrangements for one evening for the oldest child. Case #031, settlement approach.

Conflict 2: Five year old living with the mother. Multiple previous applications. Staying contact continues but the father makes repeated allegations to social services about the mother's care of the child. The mother stops contact. The father applies to enforce. The mother alleges that the father is over-medicating the child. Cafcass express concern about emotional abuse of the child due to ongoing conflict. Contact is restarted with handovers via grandparents, undertakings re medication and the parents referred to counseling. Case #126 problem-solving approach.

Conflict 3: The parents are in "intense competition" for the pre-school child who is developing a stammer, linked by Cafcass to an acute awareness of the conflict. Contact continues but with handover problems prompting father's enforcement application. The case concludes with a two page consent order specifying in minute detail how handovers will occur. Case # 106, problem-solving approach.

Risk 1: Pre-schooler living with mother. Father has convictions for theft, drugs and assault, including against the mother. Protracted index proceedings result in fortnightly supervised contact. The mother fails to comply and father seeks enforcement. Enhanced police checks reveal incidents of ongoing intimidation by the father resulting in a harassment order. The court makes no order re enforcement and contact resumes at a contact centre. Case #155, protective approach.

Risk 2: Pre-schooler living with mother. Extensive litigation. Father has a psychiatric condition. The mother says the father was controlling and she left for a refuge. Father has battery conviction against an earlier partner. The index order specifies unsupervised contact progressing to overnight. Contact breaks down when the father makes

allegations of sexual abuse against the mother (no further action taken by social services). The court deals with the enforcement application by making a shared residence order. The parents are to attend mediation. The father is not to smack the child. Parents are to try to harmonise their approach to parenting. Case #068, problem-solving approach.

Refusing 1: 11 year old twins. Lengthy index proceedings against background of father's domestic violence and drinking. Index order provides for fortnightly staying contact. Children increasingly reluctant to attend. Father seeks enforcement which the Court initially considers ordering. The children subsequently refuse all further direct contact when they witness a physical assault by the father on his new partner. Cafcass supports their position, noting the father's minimization of violence. Indirect contact is ordered. Case #170, participatory approach.

Refusing 2: Father seeks enforcement after no direct contact with son, now 12, for several years. Father has history of mental health issues. Son has clear memories of father's domestic violence. Son is happy with indirect contact but not direct contact at present. Mother willing to support son's choice whatever. Parents to attend PIP. Son to initiate direct contact when and if he feels appropriate. Case #192, participatory approach.

Implacably hostile/alienating 1: Pre-school child with mother. Index order for staying contact. Father seeks enforcement immediately as no contact takes place. The mother makes repeated allegations about assaults by father and his family. Police investigate all allegations but take no further action. Mother's behavior is erratic, including taking the child to hospital repeatedly claiming harm by father. The court makes an order for unpaid work for repeated breaches. Change of residence under consideration. Case #142, punitive approach.

Implacably hostile/alienating 2: The index order specifies staying contact with a 6 year old. The unrepresented mother does not cooperate fully with the court process. Contact breaks down immediately triggering an enforcement application. The same judge threatens a transfer of residence if the mother does not comply. Further contact is agreed. The father later contacts Cafcass to say that contact is being undermined. Case#109, punitive approach.

Courts adapted their approach to case type

We identified five distinct approaches to enforcement cases adopted by the courts: (i) focusing on a (new) contact timetable, (ii) parental cooperation, (iii) protective measures, (iv) responding to children's wishes or (v) seeking compliance through punitive measures. A punitive approach was the least used, co-parenting support the most (see Box 3).

On the whole the court's approach largely matched or suited the case type (see Table 1). Cases that we have classified as 'conflict' were mostly dealt with by a settlement or co-parenting approach where the court sought to address the parental conflict with a more detailed order and often referral to parent education. Similarly, the punitive approach was largely restricted to what we classified as implacably hostile cases.

Table 1: Case type and court approach

	Risk (64 cases)	Conflict (114 cases)	Refuse (20 cases)	Hostile (9 cases)
Settlement	14%	25%	5%	-
Coparent	27%	63%	20%	22%
Protect	52%	1%	5%	-
Particip'n	-	5%	70%	-
Punitive	8%	5%	-	78%
Total	100%	100%	100%	100%

The relationship between case type and court approach was weakest for risk/safety cases. Half of these cases were approached within a protective frame, but courts sometimes treated these as about mutual conflict rather than safety issues, as typified in the Risk 2 case summarized in Box 2 above.

Box 3: The five approaches

Settlement (39 cases, 19%) a new/ revised court order setting out when and where contact is to occur (the contact timetable). The focus is on clarity rather than an attempt to address any underlying issues.

Coparenting support (95 cases, 46%) a timetable for contact plus measures to encourage parents to work together, including handovers through third parties, trial periods and review, referral to mediation or parent education (sPIP). Orders often include 'recitals', e.g. that parents will respect each other or communicate better.

Protective (35 cases, 17%) assessing risk, e.g. by a drugs testing regime, and managing risk by restricting contact (supervised or indirect contact) or seeking to change behaviour of perpetrators (e.g. referral to domestic violence programmes).

Participatory/child-led (20 cases, 10%) the court elicits and then largely follows the views of older children, often for less or contact.

Punitive (18 cases, 9%) – the court seeks to ensure one party complies with (a) the index order and/or (b) the court process. The court may order an assessment for unpaid work requirement, make an order that one party undertakes unpaid work requirement (community service), or threaten or order imprisonment for contempt of court.

Substantive outcomes varied by type

In 204 cases the team were able to compare directly the index and final enforcement orders. Comparing the two, courts ordered the *same* amount of contact at enforcement in 56% of all cases and 71% of all the conflict cases. In the latter, at least, the court was underlining that the basic order had been correct but that the parents either needed to try again to make it work or that some additional help was needed in the form of more detail about implementation (e.g. handovers) or additional support such as parent education.

The court ordered *more* contact than the index order in 15% of cases, and *less* contact in 29%. This could reflect an implicit recognition that the index order was flawed in some way or that circumstances had changed. The reduced contact cases were primarily risk and refusing cases. These were also more likely to have an increase in levels of supervision of contact compared to the index order. The increased contact cases were spread across all case types with no clear pattern.

Cases were processed fairly rapidly

Most enforcement cases got into court quickly, on average four weeks from application to the first hearing. As of 1st June 2013, 85% of the 205 enforcement proceedings initiated in March/April 2012 had concluded, taking an average of two hearings over 17 weeks. By comparison, index proceedings took considerably longer, at an average of 31 weeks. 'Conflict' cases were dealt with more quickly and in fewer hearings, than other case types.

Are the courts doing enough?

Whilst avoiding delay is important, a key aim of the research was to explore whether or not courts were handling cases effectively, including whether the courts

Box 4: Unpaid Work Requirement (UWR) Cases

- Courts may order a parent to undertake 40-200 hours of unpaid work for wilful non-compliance with a contact order. The court must assess the likely effect on the person, including religious beliefs and work or educational commitments and also take into account the welfare of the child
- A UWR assessment of suitability was ordered in 12 cases, five of which did not result in an order. Seven of the UWR orders were not preceded by a suitability assessment.
- UWR was ordered in 13 of the 215 cases.
- Eight of the 13 UWR orders were suspended, two of which were quickly activated for non-compliance.
- Three out of six parents are known to have completed their unpaid work. One mother refused to attend. Information is not available for two cases.
- The unpaid work undertaken was painting and decorating and charity shop work. The hours ordered ranged from 24 hours (less than the statutory minimum of 40) to 80 hours.
- The outcomes of the order were mixed. Four UWR orders (three suspended) resulted in compliance with the contact order. In two 'U-turn' cases the 'non-compliant' parent completed UWR but the court then did a risk assessment and decided that the applicant parent posed a safety risk to the child and placed restrictions on contact. In one case the non-compliant parent refused to attend UWR, requiring a further enforcement application. The case remains unresolved. Outcomes are unknown in seven cases.
- Only one case resulted in committal – a resident father who twice ignored a penal notice and refused to apologise to the court.

were being tough enough in handling non-compliant parents. The research team independently rated each case on two criteria: robustness and safety. On robustness we rated the court's approach as 'about right' in the great majority (96%) of cases. In four cases (2%) the

court could have been much more robust, either failing to order sanctions or allowing the case to drift. However, in 5 cases (2%) the punitive approach adopted was judged to be too harsh (including the two 'U-turn' UWRs, see box 4).

In 95% of cases the court had a Cafcass Schedule 2 letter summarizing safeguarding issues although these were not always complete. In 51% of cases the court also had a welfare report from Cafcass or another agency. The team rated most (81%) cases as having no safety concerns or concerns were addressed adequately. In 16% we rated the response as marginal and in 4% as not addressing safety issues adequately. In most cases the court had some safeguarding information. A pro-contact culture, some skepticism about the resident parent's motives and a lack of resource for long-term risk management appear to contribute inadequate protection in some cases.

The bigger casualty of rapid case processing, however, was the limited attention to addressing the cause and effects of parental conflict. Few of the 'conflict' cases got much additional assistance beyond a more detailed order and perhaps a referral to parent education. A handful of children were provided with counseling or support. Involving children in proceedings appropriately is challenging. It is noteworthy that only 55% of the 113 children aged eight and over were consulted directly.

The short-term relitigation rate was low

There were no cases where the court had exercised its power to order monitoring by Cafcass. The research design did not include interviews with parents. Thus we have only limited file data on whether and how orders are being implemented.

Box 5: Compensation for financial loss

- The 2006 Children and Adoption Act enabled parents to gain financial compensation where they could prove (on the balance of probabilities) a financial loss suffered as a result of a failure to comply with a contact order. The losses envisaged travel and accommodation expenses such as holiday bookings.
- A fifth of enforcement applicants in the study sought compensation for financial loss following alleged breach of an order.
- The average amount claimed was £200, but ranged from £50 to £19,000. Some costings were for modest and well-justified travel costs. The most common claim was for the court application fee of £200, although it is not clear that parliament intended these should be counted as legitimate costs. A number of applications appeared to be for inflated sums.
- The Cafcass system records that only four claims were awarded. Two of these were full awards – the cost of two train tickets in one case and a £200 court fee in another. In two cases the court ordered the respondent to pay £100, resulting in both parents paying equal amounts towards the case. We suspect that many claims were dismissed or withdrawn but cannot say how many as the Cafcass system is not designed to capture this type of information.

This will clearly be an underestimate of the extent of ongoing contact problems.

There were further allegations of non-compliance in 17 cases. With one exception, most of these cases appeared to reflect ongoing conflicts rather than straightforward and unreasonable refusal to comply with an order.

There were new applications in 20 cases (9%). This appears relatively low. Six of the twenty new applications were from long-running chronic litigation cases. Seven were from resident parents to vary contact. Only six were further applications for enforcement.

Implications

The lack of use of punitive measures in enforcement cases has often been a puzzle, and, to some, a source of disappointment. The research has found, however, that most enforcement cases are about mutual conflict, risk and child refusal rather than implacable hostility. The courts are therefore acting appropriately in those cases by focusing on facilitating co-parenting, protective measures or the nuanced views of older children. It would be helpful therefore for policy to refocus to deal with the full range of enforcement cases rather than just the few implacably hostile cases requiring punitive sanctions.

The other message from the research is that whilst courts appear broadly to adopt the right approach with the right cases, in some instances the focus is too much on rapid case processing at the expense of addressing the underlying issues driving the dispute, or managing any risk safely.

The implications of the study are:

- There is no evidence that further sanctions would be more widely used or more effective. The existing

- sanctions are adequate if used effectively.
- Courts should undertake thorough assessments before ordering punitive sanctions. If appropriate, sanctions should then be pursued robustly rather than allowing cases to drift.
- The government's proposed triage system could be an effective mechanism for handling enforcement cases but needs some adaptation to address the full range of enforcement cases.
- An enforcement-specific intervention programme could be very useful although logistically challenging given that cases are thinly spread geographically.
- Courts could make more use of the existing parent education programmes or family counseling.
- Some of the most difficult cases, including some of the 'implacably hostile' involved parents with mental health difficulties and personality disorders. More guidance on dealing with these cases is required.
- The Cafcass Schedule 2 safeguarding report was a critical source of information for the court but is not strictly required within the private law pathway. We recommend that its use is mandatory.
- There was a serious mismatch between the number of children described as at risk of emotional abuse and the number of children who were offered any form of support or counseling. This omission must be addressed.

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