Family Justice: the operation of the family courts

Part 1

This is a volume of memoranda received in relation to the Constitutional Affairs Committee's inquiry into *Family Justice: the operation of the family courts* and reported to the House by the Committee. It has been placed in the Library of the House of Commons and is also available for public inspection from the Public Records Office, House of Lords. An electronic copy is available on the Committee's website: www.parliament.uk/conaffcom

Copies of the Committee's Report and published evidence *Family Justice: the operation of the family courts* (HC 116-I and II) are available from TSO.

Memoranda

Due to the number and volume of submissions received during this inquiry the following memoranda have been Reported to the House and made available in the Library of the House of Commons and the Public Records Office. They are also available on the Reports and Publications page of the Committee's website: www.parliament.uk/conaffcom

Part 1

Joan Hunt, Oxford Centre for Family Law and Policy
Elizabeth Walsh, editor of journals Family Law and International Family Law
Ruth Smallacombe, Family Law In Partnership
Trevor Jones
A parent
Rose Dagoo, children's guardian
Office of the Chief Rabbi
Robert Whiston
The Newspaper Society
Dr L F Lowenstein, Educational, Clinical and Forensic Psychological Consultant
Tony Hobbs, School and Department of Law, Keele University
Dr Tim Hughes, medical practitioner
Families Need Fathers
Oliver Cryiax, New Approaches to Contact (NATC)
Refuge
Tony Coe, President, Equal Parenting Council

Evidence submitted by Joan Hunt, Senior Research Fellow, Oxford University Centre for Family Law and Policy

INTRODUCTION

This response is supplementary to my response to the Government Green paper. It principally draws attention to data from a research study on the perspectives of 30 children and 100 parents in 73 cases in which a welfare report was prepared by a family court welfare officer (Buchanan, Hunt, Bretherton and Bream (2001): Families in Conflict). Although the study pre-dates CAFCASS, the views of families on the court system remain relevant, particularly to one of the issues specifically identified by the Inquiry – whether people using family courts are getting the service they deserve. It should be noted that since welfare reports are only ordered in a proportion of cases these represent the most conflicted families and the most complex cases and are therefore not necessarily representative of all families using the courts. However it does enable the Committee to hear the voices of ordinary families as well as organisations representing particular interest groups.

In addition to this study I am the author of an overview of contact research (Researching Contact (2003) and a policy briefing paper (Hunt with Roberts (2004): Child contact with non-resident parents (attached). I was a member of one of the Stakeholder Groups set up by the then LCD to advise on implementation of the CASC report (viz: the Group on the Facilitation and Enforcement of Contact and am currently completing a study investigating how other jurisdictions deal with litigated contact and what evidence there is for effective interventions.

THE FAMILIES IN CONFLICT STUDY

Parental Views about the process

1. Only 1 in 10 parents expressed entirely positive views about the court process. Six in 10 were entirely negative. The remainder were either neutral or expressed mixed views. There were no gender differences.

2. Parents were rather less negative about the service they had received from the court: a third rating it as either excellent or good, just over a third as average and a third as poor.

3. Specific complaints included (in order of mention): delay; the approach of the judge; the inappropriateness of the process; inadequate coverage/lack of understanding of the issues; the 'system'; judicial discontinuity; the 'trauma of court hearings'; lack of control by the court and inefficiency.

4. The approach of the judge/magistrates emerged as an important factor in parents' perceptions: over a quarter identified this as one of the most (11) or least (15) helpful aspects of the process.

5. Delay was the most common complaint, reported by over half the parents interviewed. Only 23 parents thought the length of proceedings had been about right and only one said they had been too short.

6. While some parents reported that delay had had a positive outcome, most said it was damaging, increasing the stress on themselves, their partners, the children involved in proceedings and other children in the family.

7. Delay prolongs and amplifies the effects of a process that is intrinsically highly stressful. Although a few parents reported negligible effects and one father actually found it a positive, empowering experience, the vast majority described a disruptive, nerve-wracking and exhausting process which came to dominate their lives for months and adversely affected their psychological and physical health. Parents whose cases had gone to a contested final hearing found the experience particularly distressing, reporting that they felt dehumanised and excluded. Their views closely reflect those of parents involved in care proceedings, an unexpected finding.

8. The distress reported by parents was reflected in their responses to standardised tests of well-being which showed that 84% of parents were functioning outside the normal range. While other factors will have played a part parents themselves saw the proceedings as contributory and it was notable that when parents were re-interviewed 12 months after the end of the proceedings their stress levels had generally diminished. The capacity of parents suffering such high levels of stress to cope with the ordinary tasks of child-rearing, let alone to support children who (the research showed) were themselves highly distressed, is likely to have been severely compromised during the

proceedings.

9. In the first stage of the research, in which parents were interviewed shortly after proceedings, a number of parents argued that the courts were an inappropriate forum to make decisions about contact and residence. When this view was put to all parents interviewed 12 months post proceedings over half agreed. Three main reasons were given: a) decisions were made by people who did not know the child and were unlikely to be sensitive to the child's needs; b) the involvement of the court worsened relationships between parents and sometimes between parents and children; c) it was damaging for children to be the focus of court proceedings.

10. Parents were generally less clear about what should replace the court: ideas included greater informality, attempts to help parents to reach agreement and the involvement of child experts.

11. Nearly two-thirds of parents agreed with the proposition that mediation should be compulsory before court proceedings could be started, although those dissenting felt strongly that mediation could not be effective if it was compulsory and would only contribute to delay.

12. A third of parents believed that the court was the only arena to which they could bring their disputes if all other avenues had failed. Indeed some of the parents who favoured alternatives recognised that the court process, unsatisfactory as they had found it to be, had to provide arbitration as a last resort.

OUTCOMES

13. On the basis of the parental views reported it is clearly right not only to try to improve the court system and to provide alternative dispute resolution processes within the court process but to make every reasonable effort to help families to resolve their disputes without proceedings. However it important not to be overly negative. Court proceedings do deliver some positive outcomes: most of the parents interviewed seemed to think they had achieved something from the proceedings and while only 40% of parents were entirely positive only 22% were entirely negative. This rose to only a third even among those whose applications were unsuccessful.

14. There were no statistically significant differences in satisfaction with outcome according to whether the interviewee was a mother or father; applicant or respondent; resident or non-resident parent. It was also notable that in a small sample of cases (27) in which it was possible to interview both parents there were only five in which one parent was entirely satisfied and the other entirely dissatisfied. These figures do not support a picture of gross systemic bias or a winner takes all scenario.

15. However there were some trends, the least satisfied parents being (in rising order of satisfaction): parents from ethnic minority groups; never-married parents; mothers for whom domestic violence was an issue in proceedings; parents on income support; repeat applicants and non-resident fathers. At the other end of the scale the more satisfied parents were: white parents; first-timers in court; resident mother respondents; previously married parents; parents not on legal aid; mothers for whom domestic violence was not an issue in proceedings, parents who were not showing abnormal levels of stress and those whose children were functioning within normal bounds. It should be noted, however, that it was only in the last three groups that more than 50% of parents were satisfied with the overall process.

16. Accusations of institutionalised gender bias were not uncommon. What was notable, however was this position was held by both mothers and fathers, each alleging that the system was biased against them. Thus:

Fathers:

- Rejected the dominant operating concept of a resident and contact parent;
- Argued for a principle of shared care, giving equality of status to both parents, shared decision-making and a roughly equal division of time;
- Disputed the assumption made by courts and FCWO's that shared parenting can only work if there is a low level of parental conflict;
- Believed that the small number of residence orders made in favour of fathers and the ineffective enforcement of contact orders demonstrated a systematic prejudice against fathers;
- Saw the family court welfare officer, as agent of the court and anti-father;
- Believed that FCWO's took the expressed wishes of the child at face value, ignoring the possibility that they had been heavily influenced by the mother.

Mothers:

> Felt that the family justice system was male-dominated and promoted the interests of fathers against those of mothers and children;
> Saw the family court welfare officer as pro-father;
> Believed that the individual needs of their own child were sacrificed to the general principle that contact is in the interests of most children, a principle most did not dispute in itself, only in application to their own circumstances;
> Believed that no account was taken of fathers' past failures to support and nurture the child;
> Believed that fathers used the courts to continue an oppressive relationship;
> Argued that their own needs as carer were ignored.

17. Underpinning these discrepant perspectives seemed to be two fundamentally different beliefs about contact. One, typically advanced by non-resident fathers, was that biological parenthood, in itself, conveyed a right to contact, which should only be limited in cases of severe domestic violence or child abuse. A father should not have to show that he was a fit parent. Resident mothers, on the other hand, were more likely to emphasise that the status of parent had to be earned, by demonstrating parenting behaviour, and was conditional on the emotional and material commitment shown over time to the child and on support to the mother in her role.

CHILDREN

18. The most disturbing finding in relation to the children was their high level of distress: the proportion falling outside the normal range was nearly twice as high as expected in the general population and comparable with children who have been involved in care proceedings. These high levels are consistent with the well-established findings about the negative effects on children on being exposed to chronic and severe parental conflict.

19. Studies of children's views typically report that most children want more contact than they have. In this study of highly conflicted families few children reported this. Indeed a third of those interviewed said that they would rather contact ceased if it meant the conflict between their parents would stop.

20. Less than half the children interviewed thought they had been involved in the decision-making process. More than 4 in 5 would have liked to be more involved and half thought children should be allowed to go to court if they wished.

IMPROVING THE COURT SYSTEM

21. Clearly there is much that can be done that might improve the experience of court proceedings for families - improving case management, reducing delay, ensuring an adequately trained judiciary, lawyers and CAFCASS officers.

22. Consideration should also be given to developing dedicated and specialised family courts, at least in the larger urban centres, based on the prototype of Wells Street Family Proceedings Court in London, the only such court in the country. Although no comprehensive evaluation has been carried out the court is well regarded and anecdotal evidence suggests there would be support for extending the model elsewhere. From my own experience of the court (as part of a study on the role of the justices' clerk in family proceedings) it appeared to offer opportunities for increased efficiency and effectiveness as well as a more family-friendly approach.

23. CAFCASS is crucial. In addition to the changes in the work proposed in the Green Paper, officers preparing reports need to be able to spend more time on cases (a common complaint among parents in the Families in Conflict study) including more time to work directly with children. It would be helpful if officers had more powers to advocate for children. Separate tandem representation for children needs to be more readily available and used in appropriate cases.

24. The fundamental problem for the family justice system, however, is that at least as far as private family disputes are concerned, the issues are rarely primarily legal, they are about relationships, and courts are not well-equipped to deal with relationship problems. Moreover the families coming to court, particularly those which run the whole course, tend to be highly conflicted, and often have complex needs.

25. The key requirement, therefore, is to develop a spectrum of appropriate services to assist families to work out through their underlying conflict (as distinct from merely settling the dispute which brought them to court) or if they cannot do that to work out ways of preventing the children being caught in the middle. Services also need to be available for children. These services need to be available both during and after proceedings.

26. Judges will need the powers to refer but there is no point in them having these powers if the services themselves are not there or the supply is inadequate. The Stakeholder Group on the Facilitation and Enforcement of Contact recommended that the (then) LCD should undertake an audit of available services and work with both CAFCASS and the voluntary sector on a strategy for developing new services or augmenting existing ones. I am not aware that this has been done.

27. In recognition of the unique nature of family law cases the concept of therapeutic justice is gaining currency, particularly in other jurisdictions. In brief, while retaining the critical safeguards of the court system, this aims to enable families to be better off at the end of the process than they were when they entered the system. Many people in our family justice system would probably already see this as their goal. However explicitly adopting such a conceptualisation of the courts might provide a coherent philosophy to guide reform. It certainly cannot be said that we are at the moment achieving that goal.

Joan Hunt
Senior Research Fellow

November 2004

Evidence submitted by Elizabeth Walsh, Editor, Family Law

I am the editor of the journal Family Law. You may remember preparing for us a 'Comment' by Alan Beith MP on the CAFCASS select committee report.

I am also editor of the journal International Family Law, a practising family mediator in both the private and not for profit sectors; a current chairman of the family proceedings court; Chief Executive of the UK College of Family Mediators from 1997 - 1999 and author of Working in the Family Justice System (Jordans) a book on interdisciplinary co-operation commissioned by the National Council for Family Proceedings.

The current enquiry into family courts and particularly contact issues is welcome. May I suggest that the Committee asks the following questions:

1. Why has there not been a greater emphasis by the Government, the judiciary and the legal profession on out of court mediation as an early intervention

2. Why is there not a mechanism to oblige those without legal aid to attend a mediation introductory session

3. Why have the family courts - at every level - not been referring children cases to mediation as a matter of routine

4. Why are child issues treated by the courts in isolation. Financial issues are a heavy burden and cause of strife between parents at the time of separation yet very few financial cases are sent for mediation by the courts even though they have the power to do so. Finance and contact are interlinked and the effects of an enforced, unagreed financial arrangement can reverberate throughout a child's life. Exeter county court is one notable exception, referring financial cases to mediation as a matter of course.

5. Is there a resistance to family mediation, especially financial mediation, from lawyers?

I attach for your information:

1. My personal response to the Green Paper on Parental Separation
2. A Chapter I have written recently in a book 'Family Mediation: Past Present and Future' called 'The future of mediation' referred to in the response.
3. A Comment in the October issue of Family Law on the connection between financial and children issues.

Liz Walsh
Editor of Family Law and International Family Law

31 October 2004

Evidence submitted by Ruth Smallacombe, Family Law In Partnership

I am grateful to have the opportunity to make this brief submission to you. I do so from the perspectives of a member of the Early Interventions pre-planning group and as a practising couple/family counsellor, mediator, trainer of family mediators and lawyers, board member of Family Mediators Association, Governor of UK College of Family Mediation and collaborative law family consultant (or coach).

• I welcome any Government initiatives which inform, educate and support families (in all their different forms) and which seek to enable all those affected by 'family breakdown' to re-establish in the most constructive ways.

• As separation, divorce and single parenthood is now, statistically at least, a common event, we must develop more 'ordinary' and non-stigmatising ways to reduce the damage to children and adults of what is by nature an inevitable conflict between parents – and to provide assistance and clarity at an **early stage**, preferably well away from **any** court proceedings for all, other than a small minority.

• Hence, proposals to provide information/ help for parents, children, parenting plans, enhanced requirements for mediation (pre-court) and collaborative law must serve as preventative to legal proceedings for increasing numbers – but only if there is clarity of expectations/requirements by policy makers and lawyers/service providers along with availability of services, awareness of the public and/or adequate resources.

• Children and adults at this stage need additional support services in recognition of the serious adult stresses which, if not addressed, may obscure abilities to cooperate as parents.

• I am very concerned and disappointed that 'Early Interventions' was replaced **without consultation** by the Family Resolution pilots, which (unlike EI) fail to provide a clear framework of arrangements for children, **which courts would subsequently order if parents could not agree** – this clarity at all 'stages' of the pre-court system (along with other initiatives) would eliminate many couples from wishing or needing to use court process as there would be disincentive and no gain.

• CAFCASS officers should be involved only with those high conflict intransigent cases post door of the court for which they would no doubt need additional training and a possible role in enforcement arrangements. Though there are some positive elements, Family Resolution pilots will actually bring more people into the court system and takes CAFCASS into a role currently provided by able mediators. It does nothing to encourage the majority of 'ordinary' parents who separate to make early and cooperative arrangements without 'official' or legal, and certainly court, intervention. **I would ask you to consider an Early Interventions pilot also** and not lose the opportunity to create a system where there becomes a de facto obligation and norm for parents (other than a minority) to cooperate to the benefit of their children. This can only now be achieved with the back-up a clear 'legislative' framework and consistent interpretation by courts.

Ruth Smallacombe
Family Law In Partnership

31 October 2004

Evidence submitted by Trevor Jones

WORKINGS OF THE FAMILY COURTS

Through my voluntary work and support for both Parents Against Injustice (PAIN) and the False Allegations Support Organization (FASO), I have become aware of many cases where allegations of abuse are presented in court by Social Services as fact but have never been substantiated. Indeed, a number of cases show that social services fail to investigate allegations, as required under Sect.47 of the Children Act 1989, but still present them to court in reports and use them to initiate care proceedings. The opportunity to challenge these allegations by those falsely accused is often denied and because of the secrecy of the courts there are times when innocent people are unaware of exactly what has been alleged against them.

FASO, PAIN and many other organizations working for those falsely accused are also concerned over the use of adoption targets in local public service agreements (PSAs) as false or unsubstantiated allegations of abuse often initiate the care proceedings which culminate in adoption. The use of local PSAs targets in housing, planning, education etc are now increasingly used to generate central government grants and consequently are robustly monitored to prevent abuse by local authorities. However, a recent ODPM report on the workings of such targets in the planning system discovered that councils had been abusing the system to obtain an undue portion of funding. This abuse came to light when the number of planning appeals to the inspectorate soared as planning officers had found it more financially rewarding to dismiss applications. Unfortunately, because there is not an adequate and transparent appeals mechanism in the family courts any abuse of process cannot be easily identified and unlike all other PSAs, these agreements are not under the same scrutiny as Social Services pass on the ultimate decision making in the case of adoptions to the family court - and that system has no means of scrutiny from the public at large.

Children will not be less protected if the family courts are opened up, indeed, transparency will ensure that justice is seen to be done. Working with others members of FASO and PAIN in our work supporting the falsely accused, I have become aware of many elements inside the system that actively discourage scrutiny and some professional interests would very much prefer the status quo. A common response to those falsely accused parents who have had their children wrongfully removed is “they have to live with it in the sense that within any system there are going to be cases in which the outcome is not the appropriate outcome.” Both FASO and PAIN believe that the best interests of children are not served if falsely accused parents and carers are prevented from bringing up their children.

The opening up of family courts to public scrutiny would ensure that:
- all applications by local authorities would be prepared properly
- all allegations of abuse are thoroughly investigated by social services
- social workers did not abuse their position by making unfounded statements as they would no longer be able to assume that abuse had occurred simply because it had been alleged
- the number of false allegations appearing in court documents would be significantly reduced thus freeing resources to concentrate on cases where real abuse has occurred
- the number of miscarriages of justice and instances where children are wrongly removed from their birth families would be substantially reduced.

Trevor Jones

30 October 2004

Evidence submitted by a parent

I have hesitated to write this letter as my days of acting as Litigant in Person (LIP) are hopefully finished. But I felt compelled to write after hearing about Fathers for Justice appearing before your Committee. My query is – are any mothers represented at this hearing?

In my experience, mothers do not have the time to organise themselves into protest groups. After my divorce (when I was left with two very young sick children, when we lost our home and all the hardship it brings (especially as our family is 12,000 miles away) and took my first job since motherhood) I realised that I could not afford legal fees any more. I began studying law and acting as Litigant in Person (LIP) to redress the economic imbalance of the divorce. My ex-husband could afford expensive, aggressive lawyers – and I was on Legal Aid represented by a solicitor who was later judged "incompetent but not negligent" and subsequently "possibly negligent but out of time".

The injustice of these years prompted me, with the help of a friendly (criminal!) solicitor and an accountant, to help mothers prepare their divorce cases to avoid wasting their funds on the legal preliminaries. Using Form E, we have had considerable success. The mothers are free to act as LIPs once Form E is complete or hire solicitors to represent them in Court. Either way, they save £000s – money they just do not have.

But it is primarily the mothers of sick and disabled children on whom our help is focussed. They have a triple burden: lack of money, lack of time and fathers who only want to access able-bodied child/ren. None of the fathers in my experience, want to take the sick or the disabled child in exercising their "rights" of access. The mothers become extremely tired with no respite and many are caring for disabled children while working as many paid-hours as they can. For some of them, hardship just becomes a way of life. The fathers walk away and start afresh. This causes much heartbreak both for the mothers and the children – especially when the presence of a disabled child is often the cause of the marriage failure. These mothers are too tired to form lobby groups but they desperately need support from the fathers of their children. This disempowered group should be represented at your hearings – but they will be too tired to prepare documents while leading their increasingly tiring lives.

Can you please tell me if this group will be given any representation at the hearings and if not, can I speak for them please?

A parent

11 November 2004

Evidence submitted by Rose Dagoo, Children's Guardian

I am making this submission in my capacity as a Children's Guardian, formerly known as a Guardian ad litem, since September 1990. While it is my experience that the Family Courts have been providing an efficient and sensitive service to the vulnerable children whom I represent, I have been concerned about the protracted delays in getting Final Hearing dates, the lengthy wait in the corridors of the court for Direction Hearings and the lack of facilities in the High Court for children who need to be with their parents at court due to the lack of childcare at home.

I have had particular experiences where the Court Service have been unable to arrange for Signers for Final Hearings where the parents are Deaf without Speech and as a consequence very young children have had to wait for an excessively long time for a resolution to their future care. This undue delay has caused much distress and emotional damage to the very children the court is charged with protecting.

Finally unnecessary waiting around in court is a drain on the Public Purse and the money could be better spent on disadvantaged children whom we all represent.

Rose S Dagoo
Children's Guardian

Evidence submitted by the Office of the Chief Rabbi

1. Introduction

1.1. The Office of the Chief Rabbi (OCR) welcomes the opportunity to submit some brief comments to the inquiry of the Constitutional Affairs Committee.

1.2. The Office of the Chief Rabbi is the religious authority of the United Hebrew Congregation of Britain and the Commonwealth. In total, it is responsible for over 150 synagogue communities in the UK, including just under half in the United Synagogue, the largest synagogual membership body in the UK. The Chief Rabbi is also the head of his own Court of judges, whom deal with matters of Jewish law, including Jewish divorce. Jewish law insists that there needs to be a religious as well as civil divorce when a couple separate.

1.3. The OCR wishes to emphasise the importance of involving both parents in the raising of their children. Children deserve the chance to develop a relationship with both their natural parents.

1.4. Families are the building-block of society, and Jewish law and tradition highlights the centrality of the family to Jewish life. The Jewish tradition highlights the importance of family in the religious domain. The first commandment in the Bible is to have children. The survival of the Jews through thousands of years of dispersion was partly due to the strength of family life. However, the centrality of the nuclear family as an institution has been eroded. The breakdown of the family unit is an unfortunate feature of modern society, and in situations where this occurs, we must do everything possible to protect the interests of the children.

2. The role of both parents in the raising of children:

2.1. The Chief Rabbi has spoken publicly about the importance of children receiving support and attention from both parents, and since fatherhood is usually the neglected part of the equation in situations of breakdown, the uniqueness of fatherhood to the human species: "It's actually fatherhood that makes humanity different from most primate species. Usually it's the females who look after the young, while a few weeks after birth many males don't even recognise their own children. Motherhood is biological and almost always strong. Fatherhood is cultural and almost always in need of support. In fact I suspect that's why the Bible so often speaks of G-d as a father - not because G-d is male, nor in order to create a patriarchal society, but simply to moralise and dignify paternal responsibility. Like a good father G-d cares about his children. He protects them, listens to their hopes and fears, and when they turn to Him, He's there. Which is why we need to support both parents, even when they split apart. Children need time with both; and it's their needs that really count."

2.2. Each parent has something different to give to their children to contribute to their religious, educational, emotional, social and material needs, and it is important that both parents have the opportunity to give their children time.

2.3. When couples come to the Court of the Office of the Chief Rabbi for a divorce according to Jewish law, where appropriate they are encouraged to bear in mind the impact of separation on the children and the specific roles mothers and fathers have in their child's Jewish and general upbringing.

3. Jewish Tradition and Practice

3.1. In determining the rights of parental access to children, there are specific factors which stem from the beliefs and traditions of faith communities which need to be considered. The law refers to “meaningful contact”, and this is given a particular context by the traditions and practices of faith communities.

3.2. The Jewish religion places a high premium on people spending time with their families and communities on specific occasions. These include the Sabbath (Shabbat) and festivals, where a child learns some of the most cherished practices, traditions and customs of the Jewish faith. In Judaism, there are certain commandments incumbent on men and certain incumbent on women, and therefore the child will only have a full Jewish experience, if he/ she witnesses both the mother and father practising the commandments.

For example on Simchat Torah, “the Rejoicing of the Law”, which takes place at the end of Tabernacles in the autumn, children are encouraged to come to synagogue and celebrate the completion of the reading of the Torah. Another example relates to the festive meal eaten at Passover, where a child has a special role to ask questions relating to the Exodus from Egypt. Each week, the Sabbath has a very special place in the Jewish tradition and it can teach the child to appreciate the value of his/her heritage and provide the opportunity to spend time with family members and the community.

3.3. In Judaism, there are major restrictions concerning travel on Sabbaths (between sunset on Friday and nightfall on Saturday) and on major Jewish festivals, and these should be borne in mind when making access orders, particularly with regard to overnight stays.

3.4. In addition to festivals and holy days, it is important for children to be able to experience life cycle events (both their own and those of relatives), and this will be facilitated by exposure to the families and social networks of both parents. Such life cycle events include weddings and Bar/ Bat Mitvahs (when a Jewish child comes of age and takes on the responsibilities of being an adult). It is therefore crucial that both parents are able to spend time with their children and share these experiences and occasions with them.

3.5. Looking at the cases of parental separation in the Jewish community, it is usually the mother that gains primary custody to the children, yet the father may be the main source of potential Jewish experiences to the child. In these situations, there is the prospect of the child being denied exposure to Jewish learning and education, which underscores the importance of both parents being involved in the child’s upbringing.

3.6. Jewish tradition highlights the importance of family ties, and only by maintaining contact with both parents, will children be able to sustain relationships with both sets of grandparents and other relatives.

4. CLOSING REMARKS:

4.1. Of course, we are advocating the right of access to children for both parents on the basis that both parents are responsible, law-abiding citizens. Where this is not the case, the Courts will have to make a judgment on the safety of the children spending time with the relevant parent.

4.2. The Chief Rabbi's Office has received representations from the Jewish parents group, JUMP, who are seeking to maintain contact with their children following separation and divorce. We broadly support their aims and objectives.

4.3. Parenthood is a privilege but also a huge responsibility. Parents have a duty to children, as vulnerable members of society, to protect them and nurture them to adulthood. Hence it is the firm view of the OCR and the Chief Rabbi himself that both parents of the child, have a right to be involved in the child’s upbringing (unless proven otherwise) and can make a contribution to their religious, educational, emotional, social and material welfare.

Office of the Chief Rabbi
January 2005

Submission by Robert Whiston, former PSA-8 Committee Member

Judge Walker stated the following in evidence to the committee on Nov 9th, (Q.93), "If I may say so, we are all human - judges too. 19 children have been killed during contact since 1999 and no judge wants one of those 19 cases to be a case where he made a contact order. One is instinctively trying to do one's best to protect the children."

I would be very interested in knowing where Judge Walker derives this number. The figure of about 19 children is one that is promulgated by women activists and it was one such a group that raised the issue two years ago during a PSA-8 Committee Child Safety meeting.

The Lord Chancellors Dept looked into it and found evidence of only 3 deaths relating to contact matters in the last 10 years (I can forward a copy upon request).

As a PSA-8 committee member I discovered that once the committee as a whole had been informed of the error in the women's group information they did not want to discuss the false allegation further.

This year I discovered that the same falsehood remains on the same women's website. It is for this reason that I feel that unless the error in the judge's evidence is corrected it will become another of those 'urban myths' with which we are all so familiar with in our PC world.

All the judges were either unaware of this or failed to highlight the newer evidence in their testimony to the committee.
Also omitted was evidence regarding the most extreme forms of child abuse, i.e. neglect, cruelty and the number of child deaths, mostly perpetrated by mothers.
We all wrongly assume that custody with mother is best and safest, but examination of NSPCC statistics will make the point forcefully that the safest place for any child is to be with his/her father.

If the committee is to reach conclusions based on sound evidence I urge that these facts and observations be taken on board.

Yours sincerely,

Robert Whiston FRSA

Ref:-
1.Susan Creighton, NSPCC researcher (1970 -1980)
2.Warren Farrell, PhD, "Father and Child Reunion" (2001).
Both authors provide much ammunition regarding how good fathers are in matters relating to child care and raising.

Evidence submitted by The Newspaper Society

FAMILY JUSTICE: THE FAMILY COURTS

PREAMBLE

The Newspaper Society represents the regional newspaper industry. Its members publish around 1300 regional and local newspaper titles, daily (morning and evening), weekly and Sunday, both paid for and free throughout the United Kingdom.

The regional press plays a vital role in reporting the day-to-day work of the courts throughout the United Kingdom. Publishers, editors and journalists are very aware of the importance of this role in the proper operation and wider application of the Open Justice principle. The importance of the local and regional press' coverage of court proceedings was specifically emphasised by the House of Lords in its recent judgment in the case of Re S (A Child) [2004] 3 WLR 1129. The local and regional press has also been vigilant in challenging unnecessary restrictions upon the fair, accurate and contemporaneous reporting of court proceedings. Their concern about the proper application of the open justice principle, and that departures should only be made where lawful and absolutely necessary, led to the joint work at the instigation of Lord Justice Judge, then Senior Presiding Judge for England and Wales, by the Newspaper Society, Society of Editors, the Lord Chancellor's department, the Judicial Studies Board and members of the senior judiciary on the publication of the guides to reporting restrictions in the Crown Court and in the Magistrates Court which have been distributed to judiciary, magistrates, their clerks and legal advisers, newspaper editors, broadcasters and the media's legal advisers.

The Newspaper Society, both directly and through its work on behalf of the Parliamentary and Legal Committee of the Society of Editors, has been involved in discussions over many years with the Lord Chancellor's Department, the Home Office and their Ministers, the Law Officers and other members of the judiciary in relation to the operation of the Open Justice Principle. In recent years we have responded to invitations to respond to proposals by the Lord Chancellor, the Home Office and other relevant departments concerning review of civil and criminal court procedure, reporting restrictions proposals including those affecting children and young persons and domestic violence cases and public bodies involved in child protection, as well as putting forward representations during the passage of the Access to Justice Act 1999, the Youth Justice and Criminal Evidence Act l999 and other criminal and civil measures.

Most recently, in response to the provisions adopted in the Children Bill enabling the limited publication of certain material relating to legal proceedings, we have written to the Minister of State regarding the general application of the Children Act l989 to newspaper reports (see our more detailed comments below on this). The Department for Constitutional Affairs has now of course issued a consultation paper in relation to the disclosure of information in family proceedings cases – however, this specifically excludes any proposal on relaxation of the present restrictions to permit greater disclosure of information to the media. The Newspaper Society will be responding to the DCA consultation in due course but our view is that its proposals do not go in any way far enough. We have read with great interest the oral evidence put before this Committee on 9 November by the Rt Hon Dame Elizabeth Butler-Sloss, the Hon Mr Justice Munby and their distinguished colleagues in which the suggestion is made that this might be an apposite time to review the current practices in relation to the openness, or not, of proceedings in the family courts.

The Newspaper Society welcomes this initiative and would suggest that this Committee might take the opportunity:

a) to review the current statutory and judicial practice and procedure both in relation to access to the courts and to restriction of reports of family proceedings;

b) to evaluate to what extent these practices and procedures, in that they represent a departure from the open justice principle, continue to be necessary in their present form, and whether the current practice maintains an appropriate balance between the private and public interest issues at stake and the rights granted under Articles 6, 8 and 10 of the European Convention of Human Rights;

c) to consider alternative approaches which might allow for a greater degree of openness whilst continuing to protect the interests of the parties, particularly children.

PRESS ACCESS TO THE COURTS AND REPORTING RESTRICTIONS IN FAMILY CASES: THE CURRENT SITUATION

A complex, and partly overlapping, series of statutory provisions govern the admission (or not) of the media to family proceedings in the various courts, and control the content of reports of such proceedings. It is not appropriate here to attempt to provide an exhaustive analysis but the Committee may find it helpful to see the table of attendance/reporting restrictions of the various family courts set out in the DCA's consultation paper "Broadcasting Courts" at pages 32-35 (Paper CP 28/04 of November 2004). In very rough summary: representatives of newspapers and news agencies may attend at family proceedings in magistrates courts (other than proceedings under the Adoption Act l976) (s.69 Magistrates Courts Act l980) subject to discretion of the court to exclude them (see s.69 MCA and Family Proceedings (Children Act l989) Rules l99l r.6(4)). Reports of family proceedings in magistrates courts are limited to brief details of the identities of the parties, grounds of the application and a concise statement of charges, defences and countercharges in support of which evidence is given, submissions on any point of law and the court's decision thereon and the final decision of the court and any observations made by the court in giving it (Magistrates Courts Act l980, s.71). The Judicial Proceedings (Regulation of Reports) Act l926 imposes similar limits on reports of actions for divorce, nullity or judicial separation.

Applications to adopt, consent to marry applications, most family dispute cases, applications for ancillary relief and many other applications under the Family Law Act l996 are heard in chambers. Also pursuant to the Family Proceedings Rules l99l, cases involving wardship, residence or contact orders must be head in chambers unless the court directs otherwise.

The Children Act l989 (s.97(2)) covers reports of proceedings in the magistrates courts, county court and High Court and provides that nothing may be published which is likely to identify any child as being involved in proceedings in which any power under the Children Act may be exercised by the court, either in respect to that or any other child, or an address or school as being that of a child involved in any such proceedings. There is discretion for the court to lift the restriction (in part or wholly) under s.97(4) but only if the court is satisfied that the welfare of the child requires it to do so. This is the sole criterion for varying or removing the reporting restrictions. The Children Act encompasses a wide spectrum of proceedings, private and public including contact and residence orders, prohibited steps and specific issue orders, family assistance orders, care orders, educational supervision orders, and emergency protection orders.

The Administration of Justice Act l960 places strict limitations on access to proceedings, court documents and on reports of proceedings held in chambers.

Finally, it is important to bear in mind that all courts dealing with family proceedings also have a range of discretionary powers to make orders to postpone or prohibit reporting, to prevent the identification of juveniles and others involved in the proceedings under the Contempt of Court Act l98l s.4(2) and 11 and under section 39 of the Children and Young Persons Act l933. Family courts also have the power to issue injunctions in relation to proceedings before them – and indeed this has itself led to difficulties for the media on occasion.

THE ISSUES AND THE FUTURE

Family Court judges and practitioners have themselves in recent months increasing raised for discussion the possibility of greater openness in relation to family court proceedings. There is a sense that the present system may at times not be best serving the administration of justice itself, in that the lack of openness and public scrutiny can lay the courts open to criticism and conjecture which may be ill-founded, or even mischievous, but the culture of privacy makes it difficult for the courts to present the public with a true picture or to correct a wrongful one. The current DCA consultation on disclosure of information in family proceedings case is a contribution to this debate but touches only on one area of concern and does not address the full issue.

We believe that in looking at future options the courts should adopt a fresh approach to the relationship between the administration of justice and the interests of the individuals concerned in the proceedings insofar as the court's relationship with an treatment of the media is concerned. Mary Marsh, Director of the NSPCC, was quoted in the Guardian this week as pointing out the problems caused in the profession of social work by negative reporting, saying this "demoralises the profession and weakens child protection. " She went on "Yet many journalists have a deep personal commitment to ending child cruelty. By and large, they cover child protection issues…responsibly. They play a key role in raising public awareness of issues, like Internet safety or bullying, which damage children or put them at risk". Increased access to the family courts and responsible reporting by the media could play a "key role" in this area too. In announcing today Lord Justice Potter's appointment as President of the Family Division, the Lord Chancellor specifically drew attention to "the huge range of issues which the Division deals with, now going beyond child care and family breakdown to issues such as the continuation of life-sustaining treatment"

Lack of access to the family courts, coupled with automatic reporting restrictions make it difficult, if not impossible, for the media to alert the public to cases which highlight deficiencies in the law, or in the legal system, or in the procedures adopted by social services and other public or private agencies involved in determining the care and future of children subject to such proceedings. Conversely, it prevents the public from being informed of the majority of cases in which the law and the legal process, and the agencies concerned, have combined to provide necessary protection for a child, or to provide resolution and a way forward for families involved in difficulties of all kinds. The present system prevents a true, fair and balanced picture from emerging. Families and individuals involved in such proceedings are curtailed from speaking out against the way their cases have been determined and lives affected. It can be impossible to cover properly cases of breach of court orders. Moreover, where the media's help has been enlisted prior to court proceedings, perhaps to help trace children, or highlight issues which require court review, the restrictions would prevent report of the fact of the proceedings and outcome, because readers would recollect earlier information and identify the child concerned.

The wording of section 97, in particular, is such that this affects not only reports of the proceedings themselves, but any report which might identify a child as having been at any time the subject of Children Act proceedings. Reports also have to omit anything likely lead to the identification of the subject of the reporting restriction. This imposes particular constraints upon the regional press, because their local readership with their local knowledge and local connections would be more likely to piece together identifying material. This can lead to difficulties in reporting events involving, however tangentially, an individual who at some stage was the subject of Children Act proceedings. It can affect news items years later which have nothing to do with the Children Act proceedings themselves. It can have a particularly chilling effect in reporting other legal proceedings: in particular, criminal proceedings against adults where in order to produce a fair and accurate report of the proceedings it would be necessary to disclose the fact that a child or children of the accused had been, say, the subject of a care order. In these circumstances newspapers may have to resort to not naming the adult defendant. Another example where difficulties arise is relation to adults facing criminal proceedings is where a parent appears on a charge of failing to secure the child's regular attendance at school, where the child was or is made the subject of an educational supervision order.

In relation to other court proceedings, there is a further chilling effect as court staff may become wary of providing any information about the status of proceedings and those involved in the proceedings seek to maximise the indirect benefit of protection against embarrassing publicity.

CONCLUSION

We therefore suggest that consideration should be given to:

1. A general presumption of allowing access to all family proceedings for representatives of the media, including those presently heard in chambers. Discretion for the court to sit in private in cases involving wardship residence of contact orders (i.e. those which under the present Family Proceedings Rules would be automatically heard in chambers) where the court is satisfied that this is necessary in the interests or justice or the interests of a child who is the subject of the proceedings. In such cases, judgment to be given in open court.
2. In all cases, replacement of automatic reporting restrictions (e.g. along the lines of the present s.71 MCA l980) with a discretion for the court to impose such restrictions if necessary in the interests of justice or the interests of a child involved in the proceedings.
3. Replacement of automatic anonymity for children who are the subject of Children Act proceedings (i.e. present s.97) with a discretion for the court to impose such an order if it is necessary to do so in the interests of justice or the interests of the child who is the subject of the proceedings.

If this general approach was adopted, as well as repeal or amendment of these and other specific statutory provisions and rules of court mentioned earlier in this submission, there would also be a need to repeal the of provisions of Administration of Justice Act l960 (s.12) relating to proceedings held in private involving children, and for amendment to s.1(4) of the Contempt of Court Act l98l to ensure that fair and accurate reports of "private" proceedings were protected. Similarly it would be necessary to ensure that such reports were included in Sch.1 of the Defamation Act l996 for the purpose of qualified privilege in defamation proceedings.

We should like to respectfully thank the Committee for this opportunity to offer our views. We would of course be very pleased to provide any further information if this might be of assistance to your deliberations.

The Newspaper Society
13 January 2005

Evidence submitted by Dr L F Lowenstein, Educational, Clinical and Forensic Psychological Consultant

PARENTAL ALIENATION

I have been for some considerable time acting as an Expert Witness for parents who have had in many cases many years of no contact with their natural children. The Courts and Judges most particularly have been lacking in the capacity to understand how best to deal with this problem. Mr Tony Coe, Chairman of the Equal Parenting Council and Mr David Levy of the Children's Rights Council have put forward documents, with which I totally agree, concerning the current injustice, mostly towards fathers, in their having contact with their offspring.

I have written a large number of articles on the subject of parental alienation, sometimes termed Parental Alienation Syndrome (PAS). These article have been published in many cases in legal journals and I am submitting a list of these articles for your consideration. You are undoubtedly wish information concerning the matter of parental alienation in order to deal with it in a just, fair and reasonable manner.

My own experience in the Courts has been that Judges often fail to take heed of expert witnesses accounts/opinions if they present a strong and decisive case that one of the parents, usually the father, has a right to contact with their natural child, and the amount of time that should be provided. The custodial parent is often resistant to the other parent having contact and will do virtually any thing to prevent it. Judges in my experience have failed to take strong and determined action against the custodial parent which would be to the benefit of children as well as to the ostracised and non-custodial parent. It is time this matter was resolved. The evidence put forward by Mr Tony Coe, Chairman of the Equal Parenting Council, of what is being done in the United States puts the UK to shame in relation to providing equal justice for non-custodial parents, mostly fathers. It is for this reason that there have been developing somewhat 'radical bands of individuals' who have in some cases gone beyond the law to draw attention to the plight of frustrated and neglected fathers.

My treatment from the judiciary in court has been varied. Probably the worst treatment that I have personally experienced with the Judiciary as an expert witness in seeking to resolve the problem of access of parents to their children was with a particular Judge in South Wales. His attitude was dismissive and pretty dismal in that he even failed to provide me with the courtesy of meeting me, despite having travelled to the Court in Swansea from my home in Hampshire, following my having written a long report in which I have attempted to help make a decision in relation to a father who had not been allowed to see his child and whose wife had taken the liberty of moving away with their mutual child. I have seldom met such discourteousness or the lack of opportunity of at least being heard and putting my points of view forward.

A book is currently in the process of being published in the United States on Parental Alienation in which have a chapter on the damage that is done to children by their failing to have contact with one of their parents, and the long-term effects this has on the child. Needless to say, the damage caused to the non-custodial parent is equally powerful.

I do hope your committee will do as much as possible to resolve this matter and I hope that you will have the opportunity of obtaining the articles that I have delineated following this letter. Should you have difficulty in obtaining them please do make contact with me.

Dr L F Lowenstein
Educational, Clinical and Forensic Psychological Consultant
27 January 2005

Articles and Books published in the area of

PARENTAL ALIENATION SYNDROME (PAS) and MEDIATION

Dr L F Lowenstein M.A.,Dip.Psych.Yh.D.

1. Parent Alienation Syndrome: A Two step Approach Toward a Solution. Contemporary Family Therapy, December 1998, Vol 20(4), pp 505 - 520.

2. Paedophilia (Book) - Parent Alienation Syndrome, Chapter 20. Lowenstein 1998 published by Able Publishers, 13 Station Road, Nebworth, Hertfordshire, 5G3 6AP.
3. Parent Alienation Syndrome (PAS). Justice of the Peace, Vol 163 (3), January 16th 1999, pp 47 - 50.
4. Parent Alienation Syndrome: What the Legal Profession Should Know. Medico-Legal Journal, Vol 66 (4) 1999, pp 151 - 161.
5. Mediation - The Way Forward. Unpublished at present.
6. Mediation in the Legal Profession. Justice of the Peace, Vol 163, 4 Sept. 1999, p709-710.
7. Parent Alienation and the Judiciary. Medico-Legal Journal (1999), Vol 67, Part 3,p 121-123.
8. The role of Mediation in Child Custody Disputes. Justice of the Peace, Vol 164, 1 April 2000, pp 258-262.
9. Tackling Parental Alienation. Justice of the Peace, Vol 165, No 6, 10 February, 2001, p 102.
10. Joint Custody and Shared Parenting - Are the Courts Listening? Justice of the Peace, Vol 165, No 49, 2001, pp 963-966.
11. A Review of Recent Research into Risk Assessment of Children. MedicoLegal Journal (2001), Vol 69 Part 3:133-138.
12. The Value of Mediation in Child Custody Disputes (Recent Research 1996-200 1). Justice of the Peace(2002), Vol 166, pp 739-744.
13. Problems Suffered by Children Due to the Effects of Parental Alienation Syndrome (PAS) (2002). Justice of the Peace, Vol 166, No. 24: 464-466.
14. Tackling Parental Alienation : A Summary. Justice of the Peace. Jan 18 2003, Vol 167, No 3: 29-30.

Evidence submitted by Tony Hobbs, School & Department of Law, Keele University

Having read the transcripts of your Select Committee on the operation of the family courts on the internet, I phoned the Select Committee's office earlier this week and asked to be able to add my own comments for your consideration.

I have worked as a chartered clinical and counselling psychologist (British Psychological Society register no. 391) since 1980. Over the past three years I have been pursuing a career change into law and gained a Masters degree in Law in 2003. I have recently begun PhD research, looking at whether children of separated parents would benefit from England and Wales adopting a legal presumption of shared care. I also sit as a magistrate in Staffordshire.

I recognise that you have received an enormous amount of oral and written evidence, so I shall try to avoid repeating what others have already said to you and simply comment briefly on a couple of areas of concern that I feel have not been addressed adequately in the materials I have seen. I am of course happy to provide further information should you require that.

My comments are based on extensive experience of working with couples through the disintegration of their partnerships, with children of separated parents, with adults whose parents separated during their childhood, on my knowledge of family law, and on some personal experience of the family court system.

RELOCATION OF FAMILY DISPUTE RESOLUTION FROM THE COURT SYSTEM

I am in full agreement with all those who have recommended this to you as the appropriate way forward. You have heard of the various models that are proven successful in many States in America, such as Florida, Utah etc. They are very successful in enabling many parents to remove the children from their dispute arena. However, these work in America with the more difficult cases ONLY because they have the active backing they need from the court system which is not afraid to use its full range of powers against those parents who are obstructive to what their children need. I recommend the Committee look in detail at the Florida experience. Judge John Lendemann is very positive about the very considerable reduction in workload in Florida's family courts.

Removal of these cases from our family courts has the added advantage of avoiding what is still in many courts in this country an inflammatory, adversarial process. We are many years away from Lord Woolf's proposed reforms, but these simply have not been taken on board as they properly should by all lawyers practising family law.

LEGAL PRESUMPTIONS: HOW MANY OR WHICH?

In America, dispute resolution schemes would not work effectively without the State's legal presumption of shared parenting after parents separate. I assume you'll have received evidence on this from the various fathers' rights groups. It is a presumption that works well in America not least because it has a potent effect in altering society's / parents' expectations of their own and their ex-partners' enduring responsibilities to their children. Separation can no longer be misconstrued as removal of either parent from the children, and all parties know this before separation even occurs. It is this crucial aspect that, in my opinion, this country would also gain a very significant benefit from as it is therefore a most effective tool in ensuring removal of the children from the parental dispute arena.

Dame Elizabeth Butler-Sloss spoke to you against such a presumption being enacted here, saying that it would interfere with the presumption that the interests of the child are paramount. I mean no disrespect to Dame Elizabeth, but it does seem to me that every mother, father, social worker, CAFCASS reporter, lawyer and all judges strongly believe that s/he is acting in the child's best interests. Even though the Children Act 1989 provides us with the Welfare Checklist, this paramountcy principle is frequently cited and shaped into support of personal beliefs.

The empirical evidence is established and clear that children fare far better when in a genuine, enduring and quality relationship with both parents (which is not achievable in contact centres). Dame Elizabeth herself has acknowledged to you that private family law disputes have been the focus of inadequate attention in this country. In my opinion enacting a legal presumption of shared parenting should be given very serious consideration here with a view to resolving any potential conflict with the paramountcy principle. That causes no problem in other jurisdictions, why should it here? It really is time we caught up with the best of the rest of the world in this private law arena. Personally, I would like to see the results soon to be coming in from the Family Resolutions Project inform this debate further.

In the meantime, I believe it relevant that a much greater judicial use be made of shared residence orders. Dame Elizabeth and the now Baroness Hale extended the understanding of the relevance of these orders in the case of *D v D (Shared Residence Order)* [2001] 1 FLR 495.

Of course, for shared parenting to be a properly supported genuine option, both parents will need to assume full responsibility for child care and also share earning the necessary finances. Fathers as well as mothers will need to take time from work to care for sick children, place their own careers (and pensions) in some jeopardy by taking breaks to raise children. The State will maybe then at long last effectively address the gender disparity in pay!

GENDER BIAS IN THE FAMILY COURT SYSTEM

You have heard from various senior and highly experienced judges, Dame Elizabeth included, that there exists no gender bias in the family courts. I am sorry but **this is manifestly wrong**.

I agree that there is little identifiable basis for gender discrimination within statute law, and I am perfectly willing to accept in good faith that the judicial practice of these senior judges who have given evidence to you is entirely free of gender bias. Practice in their courts, and certainly in District Judge Crichton's specialist family court can indeed be expected to be exemplary. But you should be in no doubt whatsoever that considerable bias has existed within family courts across the country and still does exist. I would imagine that each of you has heard at first hand from disenchanted constituents to that effect. I have worked with many fathers, many in tears, who claimed to have been grossly discriminated against in the courts. Many of these took the very difficult, ultimate decision to walk away from their children because they could see them being damaged by the ongoing dispute, and they felt beaten into submission. I admit that I used to take such revelations with a considerable pinch of salt until I found myself in court.

I trust you will appreciate that I am therefore not being cynical in suggesting that there is still room for considerable improvement in the professional standard of our own family judiciary. Psychological evidence that fathers are just as capable as mothers in bonding with and raising children has been commonplace for decades. I trust the Judicial Studies Board has attempted to address this issue. Personally I believe magistrates have become an underused resource in this area and are competent to take on more difficult cases than so far happens; such personal gender bias is also relatively easy to overcome when such important decisions are made by a team of three working closely together, than where there is just the one person.

Dame Elizabeth Butler-Sloss, in a lecture to the British Institute of Human Rights on 3rd April 2003 (Paul Sieghart Memorial Lecture: "Are we failing the family", online at www.bihr.org/sieghart.html, quote from p. 11 section iii, 'Children whose parents part'), stated that:

> *60% of fathers have little or no continuing relationship with their children post-separation. Like children in care, I have no doubt that many children would wish to keep up this relationship. I am as worried about parents who fade from the lives of their children as that small group whose litigation makes the life of children a misery.*

This raises several issues. While a proportion of these will be irresponsible fathers who abandon their paternal responsibilities, how many of these are actually fathers who have given up any attempt to maintain a relationship with their children because of gender-bias difficulties they have encountered, or believing folklore expect they will encounter, in the family courts? We simply do not know. Furthermore, what is a father expected to do when he can see the mother causing damage to the child by flatly refusing to achieve a rational and appropriate solution for the child's benefit? Currently there is a tendency for judges to see **both** parties in a disputed contact or residence case as the cause of the problem; yet frequently it only takes one irrational and essentially selfish parent to create the problem. And if the thwarted father sticks to his guns and continues to battle for his children's right to continue their relationship with him, which is surely only right and just, judges quickly begin to perceive him as the 'troublemaker'.

THE ROLE OF CAFCASS

Although this organisation justly receives enormous criticism for the unacceptable inadequacy of some of its work, it has to be the only national organisation that is best placed to work directly with children and separated parents. However, there can be no clearer indication of the magnitude of the problems within CAFCASS than Sir Anthony Hewson's resignation from the post of Chief Executive and Minister Margaret Hodge's brave sacking of the entire Board of CAFCASS.

Some CAFCASS workers around the country are excellent but others are exacerbating damage through uninformed practice; I have worked with both mothers and fathers whose children have received grossly inadequate service from CAFCASS. But CAFCASS as a whole needs to be appropriately resourced and supported by a range of professions so that it may overcome its current patchy quality and become the beacon of excellence that our country's children need it to be.

From time to time I sit on the British Psychological Society's Conduct Committee, investigating complaints against psychologists who have allegedly breached our profession's established Code of Conduct. Although this is never a pleasant task I do it in order that the high standards of professional practice required of chartered psychologists is ensured, and that those who fail to maintain such a standard are challenged and dealt with appropriately. The BPS can do this because we have nationally recognised and accredited standards of training that we monitor constantly, and we have a Code of Conduct for professional practice that is based on these which each chartered psychologist agrees to abide by. CAFCASS needs to have a similar structure for its own staff's professional qualifications to be at appropriate and demonstrably high standards, and CAFCASS needs similarly to be able to monitor effectively that its personnel are maintaining that high standard. This organisation has to become able to reliably perform front line assessments and interventions to the highest standard. We owe our children no less than this.

An inter-professional group enabled our Social Services departments to roll out nationally an extremely high quality assessment procedure for children in need. Surely it must be possible for such an inter-professional collaboration to address and meet the needs of CAFCASS? If this were to be done, one most helpful model of effective practice to inform the debate further would be that of the National Youth Advocacy Service (NYAS), as referred to so glowingly by Lord Justice Sir Nicholas Wall in the case of *A v A* [2004] EWHC 142.

I trust your committee will read my comments, and I hope they are of some help to you.

Tony Hobbs
28 January 2005

Evidence submission by Dr Tim Hughes, Oakengates Medical Practice

I watched the video of the Constitutional Affairs Committee session on 'Family Justice: the family courts', hearing from Dame Elizabeth Butler-Sloss, Lord Justice Wall and Mr Justice Munby, and thank you for making it available to the public.

I was also sitting in the second row at the 'Contact Today' conference that Dame Elizabeth mentioned, when a F4J protester leaned through the window with a marine distress flare, whilst John Baker from Families Need Fathers was talking.

At that conference Dame Elizabeth and Sir Nicholas Wall both talked with conviction and emotion that I felt did not come over in the interview that you had with them. The government's response to Making Contact Work has been a long time in coming, and even now the proposals have not been accepted in full.

The question was asked whether politicians had anything to do. I have to say that in the conference Dame Elizabeth was quite clear that she hoped that the politicians would realise that there was a lot to be done. I hope she would not think it improper of me to say that in your interview she seemed to be holding back a bit, probably through politeness, and possibly because she did not want to be too confrontational on record.

The proposals in the Green Paper are all very well, but the question raised at the conference was whether it would be implemented in the near future, or whether there would be a year or two's delay, as there has been after 'Making Contact Work'.

The question was also raised in your interview as to whether the Family Courts are biased. The President said that they were not, and I believe that she feels that this is true, as there are no intentions to be so. Bias, however, is a statistical term, and in my training I have to assess scientific papers that seem to be valid, but have inbuilt bias that is not initially obvious. It should be assessed from a scientific basis from external audit.

The problem is that there is no audit in private family law. This is a partly a feature of the closed nature of the courts, and also of the lack of political will to investigate the outcomes. The courts assume that if no-one comes back to court after a hearing, that it has all gone well. This is often not the case, the non-resident parent gives up dispirited and impoverished, and the child loses out on a childhood of seeing half their family.

There was talk of an initiative for judicial continuity. In the best courts this may happen, but it is not the case everywhere. Also in many courts there are criminal judges hearing contact cases when that is not their field of expertise. They dislike doing it, often fifing it in around other cases without the benefit of reading up the case beforehand.

At the Contact Today conference we were asked to discuss elements of the Green Paper. Our workshop group was charged with discussing conditions attached to orders. The points were summarised, there should be judicial continuity by judges that were experienced and interested in family law, that a penal notice should be automatically attached to court orders (I don't know if you are aware that it is up to the NRP — usually the father — to apply for a

penal notice to be attached to a contact order before it is an offence to disobey it. This is ludicrous.) that the proposals for enforcement in Making Contact Work should be implemented in full, and that in general there should be the political will to provide funding for changes.

Magistrates deal with contact cases without the powers that the judges have.

Society is changing rapidly, and the court systems are not sufficient to deal with it. There was talk that there are intractable cases. This is often a self fulfilling prophesy. Without an adequately robust attitude in private family law (not public, which I believe works well) cases can be deliberately delayed by unscrupulous solicitors (believe me, it does happen). These people inflame the situation by perpetuating wild accusations that have little or no substance, and reap a large financial reward. This is what Judge Munby was referring to, and is quite a scandal when it results in emotional damage to the child involved.

In short, if it ain't broke, don't fix it. But it is broke, so please fix it.

Dr Tim Hughes

Evidence submitted by Families Need Fathers

This submission comes at the suggestion, which is of course binding on us, of Dame Elisabeth Butler-Sloss who recommended that we also ask to give verbal evidence. Particularly as, with the same deadline as for the Green Paper submission, this evidence would benefit from more detailed work on our part - adapting our experience, stance and policies to the remit of the select committee.

This recommendation was made at the Conference on parental separation which took place last Friday which Dame Elisabeth chaired. It was addressed by her, Baroness Ashton, Lord Justice Wall and others. This was disrupted by protesters from Fathers4Justice, actually during the talk being given by our Chair.

Families Need Fathers is the second largest membership charity in the family field. (largest- Gingerbread). It primary function is to help and support parents living apart from a child to maintain and develop that child's relationship with them. We are the only organisation that provides this help on a national scale. We also do the sort of lobbying that charities traditionally do. We are almost wholly voluntary, but none the less help some 100.000 families per year.

We are a gender-equality organisation that respects diversity. Through our branches and volunteer network we have contact with most sectors of society. While we seek to help families before and after any legal conflicts, most people come to us for help at the point at which conflicts, often legal ones, are acute. Help at this point is central to our work.

The current family law system seriously fails our members or more seriously still their children.

These are what is needed in summary

1) The Winner Takes All nature of the proceedings must end. There need to be safety and other precautions taken in some cases, but much less often that is commonly maintained. In the overwhelming majority of families, however, the children love and are loved by both parents. The distress and personal and social damage caused by the disruption of those bonds is appalling. Present legal proceedings usually result in one parent being given effective control. If that parent is happy to allow the children to have a relationship with their ex, all might be well. Unhappily many relationships end in acrimony and/or one parent wanting to 'move on', perhaps with a new partner. Under current arrangements such parents are allowed to exclude the other parent from the lives of the children. What is needed is finding the best balance, for the children, of the contributions of both. Suggestions for achieving this include the need for a new Parenting Act to supplement the Children Act in ways in which it has failed to achieve the ends desired. Both parents should be given residence orders. This would end the symbolic polarisation of the roles of the parents. The day to day arrangements for the children should be governed by parenting time orders. There should be a legal presumption of the right of the child to a relationship with both parents unless good cause was shown otherwise. There should be guidance on the allocation of parenting time. There would be integration of the principles of public and private law governing children – for example neither parent should be excluded from the lives of their children in private law except on grounds similar to those seen as indicating that in public law. Other areas of the law, where it is unclear or ineffective (for example to right of both parents to be involved in the children's education) should be tidied up.
2) Discrimination by gender in the family courts, and in other aspects of parenting, must end. While fathers who get control of the children can and do deploy against mothers the same tactics as are commonly used against men, children more often lose their fathers than their mothers. Gender equality however is to be achieved not by balance by sex of 'winners' but by a recognition of children's need for both parents.
3) The system must be made less adversarial. The current legal system and funding encourages parents to seek to maximise their own possession of the children by rubbishing the character, conduct and parenting of the other. This often poisons the prospects of co-operative parenting in the long term. Maximum attempts need to be made to divert parents from fighting each other into achieving what is best for the children. The attached paper on legal aid suggests some ways of achieving this.
4) The outcome to be sought is the best parenting of the children. Unless there are exceptional circumstances both the parents should be involved in all aspects of the lives of children. We do not have fixed formula for the allocation of parenting time – this will depend on a host of factors – but the attached paper outlines the goals to be attained. The Green Paper has far too great an emphasis on parental conflict as the issue that

damages children. Of course it does – but there is another issue of as great or greater importance, which is to ensure that the children get the input from both parents that they will benefit from.

5) The system in slow and wasteful. This benefits the parent who has control of the children. An issue will not be heard until a new status quo has been established for some time. Sometimes hearings can be delayed for so long that a child has been turned against its other parent or that a parent is able to argue that there is no longer a relationship to preserve. A dispute over a holiday, for example, is usually never heard until the holiday is long passed.
6) Court orders for contact or related issues can usually be defied with impunity.
7) The system needs to actively promote the needs of children rather than seek brokerage between the demands and needs of the parents. This implies reservations about mediation, conciliation and counselling as currently provided. No form of non-adversarial resolution of issues can work fairly, however, if a parent can still resort to conflictual proceeding which one can expect to win and the other to lose.
8) CAFCASS has rightly been roundly criticised on practical and well as ideological grounds. There is, however, a need for an organisation seeking to promote the best for children whose parents live apart. CAFCASS needs to be totally recast and its staff retrained for wider tasks than they presently undertake. They would provide advice and support to parents prior to proceedings, seek to divert litigants away from legalistic conflict and into preparing child-centred parenting plans. They would provide on-going support and advice to parents. Access to the courts would only be via them and only if they had failed to produce a satisfactory outcome. This organisation would be funded out of savings in legal aid.
9) There needs to be much more information and advice available and it needs to be much better promoted. Especially about the damage caused to children if both their parents are not fully and responsibly involved in their lives. There are still many non-residential parents, for example, who sincerely believe that it is best for their children if they back off.
10) There needs to be vehement promotion of parenting plans. The DCA one outlines the issues to be addressed in the majority of cases. If thoughtfully used few of the common issues that could lead to disputes will be overlooked. However there needs to be more work on what answers are likely to be helpful to children.

John Baker
Chair
1.11.4

Appendices

FNF policy on legal aid.
FNF policy of Shared Parenting
FNF submission in response to the Green Paper

Legal Aid

FNF calls on the Government to withdraw legal aid from private family proceedings, unless special circumstances are shown, and to spend the considerable savings in public expenditure on achieving child-centred and non-adversarial outcomes where families are in dispute.

Recipients of the savings should include*

CAFCASS, especially for its so far underdeveloped support work
Conciliation and mediation services locally and their development agencies
RELATE, especially for its services of support for children which have had to be cut
National Youth Advisory Service
Childline, especially if they could develop a dedicated service for children whose parents are in dispute.
Citizens Advice Bureau, especially if they could develop specialist expertise
The Children's Legal Centre
Specialist services covering family disputes in the principal ethnic and religious minorities
Specialist services, perhaps within New Start and New Deal for Communities, for dealing with these issues among people at risk of social exclusion.
Other voluntary organisations offering support and advice for parents and children involved in family proceedings. These should include dedicated and professional support services run by the relevant voluntary organisations and another new one dedicated to children.
The availability of children to have independent legal representation should also be increased.

At present Legal Aid is hugely expensive and actually counter-productive as far as the future of the children is concerned. The amount of legal knowledge required is, in all but a few cases, minimal. What the majority of lawyers bring to the case is adversarial advocacy. A common outcome is to exploit and exacerbate any dispute or ill-will between the parents. This generally has deplorable effects on their ability to continue to parent the children in the co-operative way that is best for the children.

The parents may be wound up, and funded, to fight each other. The child is treated like a possession, a non-participant whose life is to be divided according to the result of the conflict between his or her parents.

We would like to move to a situation where the discussions are led by the needs of the children. Where the only person who has an advocate, perhaps a CAFCASS officer or perhaps an independent person, is the child. The parents would not try and maximise their control of the child, but instead offer the best they could together with, or at worst in competion with – rather than in conflict with – the other parent

In private law cases most of the important issues are decided not in court at all, but as part of the preparation of the report to the court by a Children and Family Reporter from CAFCASS. (In most cases, unless there are unusual factors, the recommendations made by the CFR are endorsed by the Courts). No representation is generally allowed for the children or parents in that enquiry. At present such reports are drawn up by inadequately trained officers. They are rarely involved with the family for long. Only very exceptionally do they retain any involvement in any of the issues that arise for the family as a result of, of following, the preparation of the report or the court hearing. They do very little preventative work, or work that might divert parents from litigation. The principal reason for these things are resource constraints. Investment in improving their work is a dramatically better use of taxpayers money than fuelling conflict between the parents.

It is of course in the economic interests of lawyers to maximise the use of their services. There are of course good lawyers and good codes of practice (such as those of the Solicitors Family Law Association). We are not convinced that all of them resist the temptation to stir up, prolong and complicate proceedings to their own advantage. There may be no deliberate ill-will: but they will naturally focus on what they may see as the interest of their client to maximise their possession of the children in question and to minimise the involvement of the child's other parent.

Children who need independent representation often fail to get it. The need for children to have advocacy on their behalf is stronger than for adults, and we like to see more help available to them in a variety of ways, including via CAFCASS and voluntary organisations and in the development of specialist and trained legal panels.

There are gender equality issues involved in the withdrawal of legal aid. These need to be addressed, on both sides. It is generally agreed that male parents are disadvantaged by traditional attitudes and gender prejudices when it comes to legal proceedings concerning children. Many children lose all or part of their relationship with a loved and loving parent as a result. The private distress and public costs that result are enormous.

Legal Aid is part of this. Mothers being frequently poorer than fathers are more likely to get legal aid. Few fathers, on the other hand, have the resources to fund representation privately without very painful financial effects to themselves. A shockingly common feeling among fathers is that they are pitting their wretched economic resources against those of the state. Many find they need to withdraw their legal actions from lack of funds to continue them. Or one parent has to do the best they can representing themselves, fighting a professional who knows all the tricks. There are allegations, which we believe at least on occasion, that some parents and some lawyers set out to 'win' by exhausting the financial ability of the other to continue. There are few precautions at present to prevent that happening. Indeed legal aid may worsen them: they are few reasons for people to be economical in their use of a service which is free, or heavily subsidised, or for lawyers to minimise costs paid for by the taxpayer.

This unfair advantage should be removed. But there also need to be precautions to prevent injustice tipping the other way: fathers being able to pay for representation that mothers cannot have because of their lack of means. The object should be to discourage either parent from having help to fight the other. But if there are to have professional advocacy help, public money should ensure equality. The suggestions below should cover this. Legal Aid should continue to be available to either parent if they can make a case that their weaker financial position will disadvantage them in legal proceedings. Or another way of addressing this issue: if either parent is proposing that they be professionally represented, the other should be entitled to legal aid to put them on an equal footing.

The claim is often made that males/fathers are more confident, more articulate and so on. They may therefore be in less need of a representative. Perhaps this applies in some areas of life. We doubt its applicability in family proceedings or in matters to do with children. Our experience is that here mothers are the more confident, assertive and determined, and that it is fathers who are diffident and much more exposed to self-doubt and social pressure to back off. There are also claims that courts and CAFCASS officers are more sympathetic to, and pay more attention to, what is said to them or asked of them my mothers than fathers. Older and more traditional people feel that children are naturally a matter for women. Younger people are drilled in the need to be women-friendly. There are many and strong support organisations for women, especially if they claim they or their children have been subject to ill-treatment, but virtually nowhere where fathers can go for moral or other support.

It seems likely that in this particular area, assistance to women lest they suffer unfair outcomes may not be appropriate.

In any case any generalisation is rapidly becoming weaker with, for example, girls and young women outperforming males in education etc. And we should beware stereotyping; things should be decided on an individual basis.

There should be exceptions to the withdrawal of legal aid, to prevent people who need support getting it. While there should be a presumption of no legal aid, there should be gateways to it, if a parent showed grounds. These should include: cases where there are indeed complicated legal issues. Cases in the higher courts. Cases when one or the other parent is vulnerable in some way. Cases where there is clear financial inequality between the parents, such as one parent is able to pay for considerable professional support which puts the other at a disadvantage. They would be a strong case for saying that if either party was proposing to pay for a lawyer privately, the other should be legally aided, if they met the financial tests, to 'reply'. Such a provision could easily have a thoroughly desirable effect – deterring either party from hiring a mercenary to fight the other.

There would be other circumstances/gateways to be defined.

Knowledge of the law may be more important in financial disputes between the parents. The proposal for a withdrawal of legal aid is for matters to do with parental responsibility, residence, contact, prohibitive steps and specific issues orders and matters following and related to them

Many people will still need support and advice. We can see a considerable case for public money being available for advice, but not for advocacy, but would like to see most of this replaced by more appropriate and better trained sources of advice, such as CABx, CAFCASS, and dedicated, child-centred agencies perhaps increasingly by phone or online.

People will still need support in court. There should be an official, even statutory**, right** to a McKenzie friend. Awarding this right would help answer the self-serving point that lawyers fearing loss of business will make, that people will be denied help that they need.

In sum

Legal aid to fund parental conflict should be withdrawn
There should exceptions to this in certain cases to protect the vulnerable
The rights of children to have their interests spoken for in court should be enhanced
The money saved should be spend as follows:
Preventative and support work in CAFCASS and outside should be properly funded
There should be better training of professionals and voluntary workers concerned with family breakdown
Services to children whose parents are in dispute should be increased
Services to provide child-centred and negotiated alternatives to litigation should be developed
There should be more support and counselling work for parents in dispute
There should be guidance and information for people representing themselves.
All people representing themselves should be entitled to a 'friend in court'

On behalf of Families Need Fathers

- These are illustrative examples only, and FNF's idea of who should receive additional funding as a result of economies in legal aid. They are not parties in any way to the ideas in this paper, nor even necessarily supporters of any of them.

John Baker
Trustee.
15/4/2

Families Need Fathers

What is shared parenting?

There is much discussion of terminology for the involvement of both parents in the lives of their children. "Shared parenting", 'Equal parenting", "involved parenting", 'co-operative parenting". "parallel parenting" and others.

The term preferred by FNF is shared parenting.

Unlike some of the others, it implies that both parents must, well, share it. This is not to say, for example, that co-operation should not be earnestly sought , or that equality is not a desirable long-term objective.

What do we mean by " shared parenting" ?

It does not imply a stated proportion of parenting time being allocated to a parent.
There must, however, be a proportion of parenting time that is so low that parenting can scarcely be said to be 'shared'. One could argue about at what level this applied. What seems to be the 'standard ration' that children are offered - a fortnightly visit to their non-resident parent , plus some time around holidays - cannot be said to be shared parenting. Nor can parents with so little parenting time be effectively involved in any decisions that need to be taken.

Our definition revolves around the objectives to be achieved.

They are

1) That the children feel that they have two properly involved parents;
2) That one parent is not able to dominate the lives of the children to the detriment of the other or to control the other parent via the children;
3) That the parents have broadly equal 'moral authority' in the eyes of the children and that the children have free access to both their parents if there are issues affecting them;
4) That the children are able to share their lives of both their parents ' in the round' - for example not being with one parent all 'routine time' and the other only for 'leisure';
5) That the parents are in position of legal and moral equality, and are seen by the children as well as the authorities as this - over routine as well as major matters
6) That there is no part of the children's lives - for example their school life or their friends - that one parent is excluded from by virtue of the allocation of parenting time;
7) That there is no part of the parent's life that the children are, by virtue of the allocation of parenting time, excluded from:
8)That the children have enough time with both parents to be able to check what one parent tells them about the other against their direct experience. This prevents 'parental alienation';
9) That the children do not develop stereotyped ideas from their parents about the roles of the sexes, for example that fathers are just for money and treats, and that mothers are responsible for everything else.

How to apply these criteria to particular families will the a matter of discussion and negotiation with the individual needs and wishes of the children and parents and circumstances taken into account.

Here are some suggestions to move in this direction;

1)That week-end contact is from picking up from school/ nursery on Friday to delivering them on Monday. This will increase equality of parenting time, allow sufficient time for real shared activities and bonding, allow contact between the NRP and the school and other parents and their children (which are likely to be their own children's friends). In the event of a reluctance of the parents to meet, it will reduce the need for this.

2) That there be mid-week contact, normally picking up the child from school/nursery, and if practical the child staying overnight. This will increase the range of activities that the children share with both parents. It is important, for example, that both parents are involved in homework.

3) That both parents share, preferable equally, attending to the children in any craft or leisure activities - for example children's parties - that they go to.

4) That 'half the holidays' be interpreted as half the time school children are not at school rather than half the time the works are shut. It should include half school training days, half of other holidays and festival days - if the parents cannot both the involved. The lives of children too young to go to school are less constrained. Shared parenting will often mean a more equal allocation of parenting time than is possible for older children.

5) That special days - for example Christmas holidays, the children's and their sibling's birthdays - be equally shared if the parents cannot be together for them. The children also be allowed to be with their parents for days that are special for their parents - for example birthdays of their parents and grandparents, or for other festivals and events important in the lives of their parents, for example work's Open Days and sports fixtures (for both the children and the parents)

6) That the children not be put into daycare, after school clubs, or be babysat or be in other alternatives to parental care, if one of their parents is free to look after them

7) If the residential parent has a life (for example long hours of work) that restricts their availability for parenting, they should not be allowed to claim priority in the time they have available.

8) Time for the children so see their grandparents and wider family - on both sides of the family - must be adequate.

We acknowledge the research that shows that what benefits children is not the 'quantity' of contact, but its 'quality'. This finding is sometime abused to argue that quantity is not important. Quantity of parenting time is obviously not a sufficient condition of quality, and this applies to the 'residential' parent as well as the other. But to quote the sociologist, social reformer and theologian Amatai Etzione

> *Quality time is found within quantity time. It may be possible to be a one-minute manager, but one cannot be a one-minute parent.*

Lack of sufficient quantity time is a barrier to quality time. One is not around, for example, when something important needs doing or talking about.

We find highly problematic the research by Trinder and others that contact works best where there is a 'gender contract'. According to this, the mother supports contact and in return the father acknowledges his inferior status as parent. As a child-centred organisation we will, as individual parents, do all we can to promote the best outcomes for our children. We are bound to struggle socially against being regarded as second class parents.

10.5.4

Evidence submitted by Oliver Cyriax, New Approaches to Contact (NATC)

About the author of the submission

1. Oliver Cyriax BA (Cantab) is a former solicitor. He has been engaged in the reform of contact issues since 1995; his full-time involvement dates to 18 February 1998. In 2001 he was instrumental in founding New Approaches to Contact (NATC).

2. The NATC is unfunded, unaffiliated and independent.

3. From 2001 on, the NATC developed the 'Early Interventions' (EI) concept in concert with eminent family law professionals. The EI proposal was submitted to Government, fully developed with across-the-board legal and professional support, on 8 October 2003.

4. The EI project is detailed *inter alia* in the following documents:

   EI: Towards a Pilot Project (Conference Report - 10 April 03, 60pp)
   EI Implementation Plan (Submission to Government - 9 Feb 04, 36 pp)
   Early Interventions Proposal (Resubmission to Government - 15 July 04, 26 pp)

   Copies of these papers are available on request.

6. Over the winter of 2003/04, the NATC EI project was approved by the DCA Minister, funded, and passed to the DfES for implementation.

7. The EI project is the avowed basis of Government policy and of policies announced in the Green Paper, *Separating Parents* (Cm 6273).

*****

8. Mr Cyriax has acted in hundreds of contact disputes, the majority *pro bono*. Many of his Court of Appeal cases have met with success. Articles by him have appeared in *Family Law*, the *Solicitors Family Law Association Review* and *The Times Law*. He is a source for much of the informed media comment on contact. His work on contact has been profiled in *The Sunday Times* and the *Daily Telegraph*.

9. Mr Cyriax has produced numerous position papers on family policy 1997-2001. He has engaged with the Lord Chancellor's Dept since 1997. He has, through intermediaries, elicited written representations on family policy issues from scores of MPs.

10. Mr Cyriax is a regular speaker to lawyers, including members of the judiciary, on contact. His NATC conferences are chaired by the High Court judiciary and attended by leading professionals. The '02 NATC conference report was disseminated through the judicial website. The '03 NATC Seminar was extensively reported in *Family Law*.

11. Mr Cyriax's involvement on family law stems from his personal case, which started in December '93 and was satisfactorily resolved by around 1999. Mr Cyriax co-wrote the first set of guidelines on contact, adopted by the Association of Family Court Welfare Officers, in December 1996.

INTRODUCTION

The key to contact disputes, and hence a swathe of family policy, lies in the answer to two simple questions:

- *Should the experts who advise the Courts on what sort of contact to allow have a view on what sort of contact should be allowed?*

- The answer to the second question - *What is the implication of the experts adopting such a view?* - is more interesting than the answer to the first ("Yes")

That is, once there is a view on what sort of post-separation arrangements are in a child's best interests, there is a view on what the outcome of a case should be. So, rather than litigating to find out the result, potential litigants can be told what is likely to happen - before the case.

This simple innovation involves a reversal of family court practice and procedure.

Under this new dispensation, the role of the Court is not to find out what the result should be - by providing 'retrospective' facilities for litigation. Instead, it is to tell potential litigants in advance what outcome is likely to be ordered. This entails the creation of new 'pre-emptive' machinery to disseminate court-backed information.

These concepts were embodied in the 'Early Interventions' pilot

The Committee will note that the Early Interventions pilot:

(i) took the best part of ten years to develop and agree
(ii) was destroyed by Whitehall within weeks of receiving Ministerial approval

The chronology at page 6 sets out how these recent events (whereby defeat was snatched from the jaws of victory) form a single chapter in a larger history. This broader story is the ongoing attempt to install the concept of 'guidelines' - or principles - which would put family law on a sound footing. Their desirability was first accepted by the Association of Family Court Welfare Officers in December 1996.

CONTENTS

Section 1: SUMMARY / PRACTICAL ISSUES

A. The Past - Unchangeable Fact

Between October 2003 and October 2004, an agreed reform - Early Interventions - was replaced by its opposite *after* the EI project had received:

- approval from the legal community

- Ministerial approval

The substitution took place within Whitehall, without Ministerial knowledge. The EI project was replaced with a different project called 'Family Resolutions' (FamRes). The two projects were said by Whitehall to be one and the same, different only as to their name. In fact they were opposites.

B. The Future - To Be Decided

As a result, the wrong project has been built and launched. There is a conflict between policy announced in the Green Paper and policy delivered by the FamRes project. The active question is what to do. Two solutions are on offer:

Remedial Option 1:

The proposed DfES remedy is (or may be) to turn FamRes back into EI, viz.:

- to commence on Project Design after Project Launch

- to pilot a single project

The presumed result would be a FamRes / Early Interventions hybrid.

Remedial Option 2:

The remedy proposed by the legal community (p25) is two distinct projects:

- Family Resolutions (intact and as-is*)*

and

- Early Interventions (as originally designed)

This entails continuing with Fam Res and, of course, re-starting EI. On this basis, Fam Res can be piloted with EI as a comparative exercise.

Page 23 sets out a suggested sequencing for a decision on how to proceed.

CHRONOLOGY: THE REFORM of FAMILY LAW?

Reform	Counter-reform
	Start Position: 1995 The Family Court Welfare Service (the old CAFCASS) controls interpretation of the Children Act; the judiciary approve its reports.
18 May 1995: - first full-scale complaint - *v* - an FCWS report	**1970s-1995:** the FCWS writes say 250,000 reports on contact without contact guidelines.
10 June 1996: - admission that FCWS officers are untrained and have no guidelines	
December 1996: - first set of FCWS guidelines produced - approved by professional assoc (AFCWO)	**1996-8** Guidelines ignored by Whitehall/FCWS
18 February 1998: - disbandment of FCWS announced - ? for not having guidelines?	
1998-2001: Wider professional acknowledgement that there should be guidelines; and a presumptive framework; and parenting plans	**1 April 2001:** - untrained FCWS staff transferred to CAFCASS - CAFCASS restarted without guidelines
27 March 2002: NATC Conference Early Interventions (based on guidelines)	
10 April 2003: NATC Seminar EI design finalised	**Oct / November 2003:** CAFCASS / DfES decide to 'hijack' EI project and dispose of guidelines
- 15 July '03:EI endorsed by legal profession - 8 Oct '03: EI submitted - 3 Nov '03: 1st meeting with Minister - 4 Dec 03: 2nd meeting with Minister - 9 Feb '04: 3rd meeting with Minister	
EI approved / EI destroyed	**End Position: 2004**
29 April '04: meeting with officials 15 July '04: 4th meeting with Minister Sept '04: FamRes launched 5 Oct '04: 5th meeting with Minister	CAFCASS (the old FCWS) controls interpretation of the Children Act; the judiciary approve its reports.
End Position:	**2004 and continuing**: CAFCASS writes 30,000 reports pa on contact without contact guidelines.
Green Paper: proposes reform **Fam Res:** does not deliver reform **DfES**: will turn Fam Res back into EI?	

Section 2: OVERVIEW - Family Law in a Loop?

Dates in italics designate a document filed in the Appendix (in chronological order).

1. The Committee's Terms of Reference

The Committee's investigation focuses on four key areas:

- whether the family court system is being run effectively
- whether the family court judges have sufficient powers
- issues surrounding delays caused by the current system
- whether people are getting the service they deserve

2. Early Interventions & the Committee's Terms of Reference

In relation to private law contact disputes, the Early Interventions pilot project subsumes the four issues cited by the Committee.

3. Early Interventions: the Agreed Reforms

The Early Interventions project, which restructures the existing court system, consists of fully-formulated and agreed proposals:

- to meet the needs of children
- to meet the aspirations of parents
- to meet the requirements of lawyers

4. The Committee's Remit

To respond the Committee's questions, under EI's dispensation:

- the family court system would be run effectively
- judges would have sufficient powers
- delay would be reduced
- families would receive the service they deserve

Civic unrest would abate or cease.

5. A Timely Solution

Few, if any, initiatives devoted to contact have received the wide professional endorsement reserved for EI. The project was of prime significance.

6. A Golden Goose?

Within weeks of the EI project's approval by the Minister, the EI project was dead.

7. Pedigree: Early Interventions

To quote from *Family Law* [2004] 834:

> *"The support for EI, which was sufficient to secure its submission, acceptance, ministerial assent and funding, has not abated. Written statements of support are on the record from the President of the Family Division, the High Court judiciary, the Family Law Bar Association, Solicitors Family Law Association Chair, the Coalition for Equal Parenting and Dr Hamish Cameron."*

Full references in original text, p 25

8. Whitehall: Scorched Earth

Within about a month of securing Ministerial approval, the EI project papers had been mislaid (without being read); the project originators and their associates, replaced; the project, first forgotten, then substituted by its opposite; and the project's progression delegated for the main to state functionaries lacking comprehension of the project they proposed to usurp.

9. Dust

In the two years of its immediate genesis, before the EI project was discarded by Whitehall, it had enjoyed one major international conference, a high-profile international seminar, two heavyweight published reports, propagation via the judicial website, reportage in the family law journal of record, favourable coverage in the broadsheets, and pervasive informal consultation at the highest level; with endorsements from the cream of the professions; with this package based on an evidential and philosophical platform with a six-year published timeline.

10. Brought to Nothing

This EI scheme was replaced by FamRes, that is, by:

> *"a project to develop whatever the project is"*
>
> *25 April 2004*

11. A First Step

The Committee will appreciate, from pages 9-18 hereunder, that the EI project creates a "New Deal" in family law. The key concept introduced - that children should have two parents - is a novelty.

Once this mundane idea is safely embodied in legal structures within the project's perimeter, the family law system must undergo orderly change. EI is the first step on a benign sequence of institutional reconfiguration, which will probably

occupy some 10 or 15 years. Much good, including the provision of a sound legal basis for sound social policy, will come of it.

12. Outcomes: Predetermined by Procedure

The label of the 'best interests of the child' is a label affixed to a decision after it has been reached by the legal procedures involved.

These 'procedures' can be visible, in the form of institutional structures and flow-charts; or invisible, in the form of presumptions and assumptions. Producing better outcomes for children entails changing these procedures. This entails an examination not of children but of the way the system is built.

Section 3: DECAPITATION OF THE REFORM PROCESS

1. Chronology

After protracted deliberation within the legal profession, the EI reform package was submitted to the DCA on 8 October '03. The EI proposals speedily met with ministerial approval and secured approved for funding.

This EI submission was not a vague preliminary intuition. EI was fully-designed. The next stage in its progression was not reinventing the wheel. It was implementation:

> *"The need was not so much for an open-ended inquiry into what to do, but rather the more proactive task of ensuring that an early-interventions trial… actually occurred."*
>
> [2003] Fam Law 455

In this vein, the EI reform package was passed for implementation by the DCA to the DfES as fundholders in or around February 2004.

2. Substitution

The evidence is that by then Whitehall had taken important decisions, including:

- to stop the EI project
- to replace the EI project
- to replace the EI with an unformed project on which work had yet to start
- to tell the Minister the replacement was the same as Early Interventions

These developments were known to no more than two or three individuals.

3. The Results of the Substitution

It is misfortune that the project with which Whitehall replaced EI - *Family Resolutions* - was the opposite of EI.

It is possible that this end-result was inadvertent. There may have been a feeling within the Department that one project was much like another; or that it was the duty of officials to have-a-go themselves.

4. Core Differences: Early Interventions - v - Its Replacement (Fam Res)

Early Interventions is a court-backed initiative which reverses the burden of proof, in consequence of which EI restructures and reverses (i) procedure (ii) practice; with the objective of reversing outcomes. It realigns Family Law with the stated intention of the Children Act.

Family Resolutions, which is a re-presentation of the status quo, does not have these features. The differences are summarised in tabular form at page 24.

5. Implications for Families

The general thrust of 'Early Interventions' is:

- *to install a mechanism to re-start normal contact* **before** *the first hearing*
- *unless it can be established that normal contact should be stopped*

The general thrust of the existing system is:

- *extended litigation,* **after** *the first hearing, to establish by doubtful means if contact which has been stopped should perhaps be (gradually) re-started*

This latter approach derives from the basis that, while there is a legal presumption of contact, there is no presumption of *reasonable* contact between parents and their children. This means that, in contested cases, parents who wish to see their children more than almost-not-at-all (e.g. for more than two hours a month) must litigate in a court system which does not presume they should have more contact.

6. Fostering Contact?

FamRes does not change the status quo of the previous paragraph. FamRes is geared to the same basis. In fact, FamRes may be on a more extreme footing (at odds with case law) whereby it is incorrectly supposed that there is no presumption of contact at all. Excerpting a recent email from the FamRes Project Manager:

----- Original Message -----
From: Error! Hyperlink reference not valid.
To: Error! Hyperlink reference not valid.
Sent: Friday, October 29, 2004 1:48 PM
Subject: RE: 22nd October 2004 - Please can you answer the 5 questions below about the Family Resolution pilot project in your reply:

Dear Dave

Family Resolutions

The Pilot does not invite every applicant in the three Pilot areas to make allegations of domestic violence against their partner…

Family Resolutions is working within the parameters of the Children Act 1989, which does not have a presumption of contact in favour of parents…

Joe Farrell

Non-resident parents in this predicament, which is the pre-FamRes predicament, still have neither rights nor the presumption of significant rights in their own children. This means that their children do not have significant presumptive rights in their parents[1].

7. Implications for the Green Paper

The project launched as FamRes is the opposite of the approved EI project. A consequence is that policies announced in the Green Paper, which were based on the notion that EI was the project under construction, are at odds with the policies piloted in the FamRes project.

The Green Paper (policy as intended) and Family Resolutions (policy as delivered) march in opposite directions.

8. Two Different Visions of Family Ties: The Choice

Family law, in relation to contact, can only be founded upon one of two propositions.

This overlooked technicality is as important, in family law, as its better-known cousin in criminal law. The presumption of innocence, as opposed to the presumption of guilt, governs criminal law; were the presumption changed, case outcomes would change.

In family law, as in criminal law, presumptions govern the case's outcome. Here, as there, the appropriate presumption must be *built in* to legal procedure. It is not sufficient to enunciate a presumption. Consequential changes must be made; procedures are the embodiments of presumptions.

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[1] In token of the general confusion of FamRes's architecture, the alternative version of Line One of the email above is from the DfES Press Office speaking on behalf of Joe Farrell *('Applicants and respondents will be asked whether there are any issues of harm or domestic violence. Both parties will sign a completed form…. regarding this'*) 11 October 03.

In family law, the relevant presumption is the location of the burden of proof.

The burden of proof either is - or is not - upon the *resident parent* to show why there *not* be reasonable contact.

In the absence of the appropriate presumptive framework, it is not possible to show in Court that there should be reasonable contact. It is on this technical issue - of the 'presumptive framework' - that contested contact applications tend towards failure. It follows that the matter-in-hand is a presumptive framework (and the attendant procedural adjustments) which shift the burden of proof.

The question is how to do it. It is a question successfully addressed:

(i) in the Early Interventions project
(ii) in the Green Paper derived from the EI project

This issue is not addressed in the FamRes project. It is an important omission.

Section 4: Early Interventions

1. Safe Contact: EI

The new EI model, whereby the *resident parent* has an obligation to show why there should *not* be reasonable contact, tends towards rapid re-establishment of child-parent relations in all proper cases.

The burden placed upon the resident parent is, in these circumstances, dischargeable. If there is something so dreadful about a parent that they should not be allowed reasonable contact with their own child, it will be a defect capable of identification.

On this EI basis, parents who should be allowed reasonable contact with their children will obtain it; those who should not, will not.

EI (in concordance with European law) ushers in the proportionality. EI establishes benchmarks for what reasonable contact is. It ensures that extreme restrictions on contact can only be imposed for proportionate reason.

This vests children with presumptive rights in their parents; and parents, with presumptive rights in their children. They can and should be allowed to see each other. This recognises the child-parent bond as a thing of substance; it can only be set aside for good reason.

Early Interventions entails a move away from state-intervention in ordinary domestic affairs; and away from litigation as the inevitable concomitant of separation. This is in line with Green Paper thinking.

The EI approach is predicated upon the assumption, backed by research, that children have a common need for two parents; and that this need should be met
where possible; with the outcome adjusted according to the facts. EI proceeds by first, by generalisation, and second, by individuation.

Section 5: Family Resolutions

1. Ad Hoc

FamRes retains the key feature of the opposite premise. It proceeds by individuation in the absence of governing generalisations. An unappreciated result is that the burden of proof remains where it is. Under FamRes, it cannot be a general rule for the resident parent to show why there should not be reasonable contact - because there are no general rules.

2. Every Case is Different

The difficulty is that under FamRes, every case is said to be different. This is old thinking. Reduced to its actualities, the proposition is absurd.

It is not possible - as the current system proposes - to take a random sample of 100 infants, under the age at which they can talk, make the assumption that none of them may need two parents, and then proceed by a state-led evaluation of each non-speaking child to ascertain which of them do, and which of them do not, need both parents. This is what currently happens.

The unavoidable upshot of ‘every-case-is-different’ is that any outcome can flow from any facts. This ‘old’ concept must and does include the stoppage of almost all contact for almost no reason.

This means that the child-parent bond can be brushed aside for nothings.

In the absence of the appropriate machinery, fine words - say, about ‘helping parents to reach agreement for themselves about how to share responsibility’ - are another way of saying the child-parent bond is not a thing of substance.

Under this old system, applicants *cannot* show that they should have reasonable contact because, since every case is different, there is no definition of reasonable contact. It is not possible (no matter how low the contact) to attain the first-base of showing that contact is unreasonably low. Hence no reason need be put forward for denying reasonable contact. It has not been denied.

This is how contact cases actually work under the current pre-EI system. The resident parent can resist increases without having to put forward a reason from one year to the next.

In this context, the onus (under section 1 (5) of the Act) shifts to the applicant - to show that having more contact would make the child “better”.

The fact that a child is well-looked after, or doing well at school, can be sufficient of itself to defeat an application for more contact. The mere issue of an application for more contact (indicative of deleterious 'conflict') can likewise suffice for an application's dismissal. And so on.

3. The Consequence: state-led intrusion in ordinary cases

The premise that every-case-is-different (carried forward by FamRes) means that any detail in any case has the potential for overwhelming significance. This engenders a perceived need for open-ended "assessments" of normal children and the domestic circumstances of ordinary parents - including everything the applicant is said to have thought or done for many years past.

These inquiries into domesticity and private conversations, which by their nature must proceed almost entirely on hearsay, can continue for years. They will extend to ephemera - including injudicious phraseology and body language - including unexceptional issues of "family dynamics" arising before the birth of the child in question and, quite possibly, before the parents met.

Until these 'investigations' are concluded, the case typically remains in limbo, at whatever level of contact initially prompted the application. Within this context, a preference for chess over draughts, or a knowledge of roses, or a decision to bat rather than bowl in a family game, or the type of toys purchased, can assume fatal significance.

4. Delay and Deferral

Every-case-is-different is synonymous with delay, deferrals and near-impossibility of progress. There is always something more to be considered - at the next hearing. The natural consequence is repeat litigation and a state-led reporting process, irrespective of an issue of substance worth reporting on.

This is the existing model, which EI set out to change. In that FamRes leaves the burden of proof where it is, and still regards every child as different without a constraining general framework, Fam Res perpetuates the existing system.

5. A Contradiction at the Heart of the System

This submission has so far focussed on the shift in the burden of proof.

The constituents of this missing piece in the jigsaw do not alter if the same problem is approached by less technical routes.

For instance, it is the agreed function of CAFCASS to act as the Court's experts in contact disputes. The function of every welfare report is to make a recommendation to the court what sort of level of contact is appropriate. This is CAFCASS's supposed area of expertise.

It is a fact that CAFCASS has no guidelines on what sort of contact should be recommended in what sort of circumstances.

6. Possible Results

CAFCASS officers receive no guidance on this topic - on which their discretion is immense, ranging into thousandsfolds. A child can lose a parent because (actual case) the father gave him a pencil - perhaps indicative of an attempt to curry favour.

This type of result occurs inadvertently. But it is a result inescapably engraved in the mathematics. It flows from the case's "trajectory". If (i) it takes a year of litigation to obtain hardly-any-contact, and (ii) more contact is withheld for almost-no-reason, it will be plain to both parents that the re-establishment of proper contact is not practicable.

Awards of contact below a certain level are apt to end in child-parent severance.
Low levels of contact are accurately experienced as a wholesale removal of the child, analogous to having a child taken away - save that in public law, the requirement is for deviance or serious neglect.

CAFCASS's traditional refusal to set parameters opens a possibility that the levels of contact habitually recommended by CAFCASS could, say, be twenty times too low - and be brought in twenty times too slowly - in twenty times too many cases. [2]

7. The Simplicity of Integrated Design

The remedy here for CAFCASS - a set of guidelines on what sort of levels of contact are appropriate - is exactly the same as the remedy there, when dealing with the burden of proof.

The same 'guidelines' which would inform CAFCASS of its intended function are same guidelines which switch the burden of proof; which are the same feature which enables a structural redesign of legal procedure.

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[2] This cannot be said with certainty. In the context where the amount of contact does not matter, and where any reason can justify any degree of severance, neither CAFCASS nor its predecessor kept records:

(i) of how much contact they recommended
(ii) of why they recommended it

This approach is not an accidental oversight by CAFCASS. It is a prime CAFCASS doctrine. It derives from the premise that 'every-case-is different'.

This means that - as far as CAFCASS is concerned - there can be no training on what to do in any category of case. There are no categories of case. No case like this has happened before. No case like this will happen again. After 1,000,000 Children Act cases, CAFCASS awaits the second time when a normal parent issues an application to see a normal child. Should this happen (and it cannot) there will be no protocol on what to do, or on how much contact to award.

Just as wings help an aeroplane fly, and enable the useful incorporation engines, and breathe life into the concepts of ‘departure’ and ‘arrival’, the advent of the appropriate presumptive framework opens the door to family law reform.

Section 6: A New Model Court System

1. Thinking Ahead

It is self-evident that if the Courts are to receive guidance on what they should do, this guidance could be written down. This could take the form of generalisations - or ”guidelines”.

These guidelines would set out what sort of recommendations CAFCASS (or any other mechanism occupying the same advisory role) should make. This is Stage One - which ushers in Stage Two of the EI project.

The development of a set of court-backed guidelines on what sort of outcome is appropriate in what sort of circumstances profoundly alters the court system.

Instead of providing state-funded facilities, as at present, for parents to litigate indefinitely in order to find out what the best interests of their child are, the court system could be inverted.

Procedure can be re-geared to the creation of pre-emptive hurdles to let parents know what the outcome would be if they did litigate.

This is the essence of the EI project.

For instance, as things stand it is unlikely that less than 10,000 reports are written a year (and ten thousand quasi-identical cases fought) on the single issue of how old a child must be for overnight contact

A single guideline (e.g. “2 yrs”) would suffice.

To write down this single sentence down would probably save a hundred million pounds a year; and save many thousands of lives a year from ruin by litigation.

The ultimate function of guidelines is an ‘upwards shift’ to indicate that the ‘frequent and continuous contact’ commended by experts subsists in substantial overnight stays (introduced rapidly) rather than, say, two hours a fortnight (introduced slowly).

2. Going in Opposite Directions

To return to the burden of proof, the requisite shift cannot be achieved by sentiments, or leaflets - or pleas to parents to be really nice to each other. Legal systems are complex, constructed entities. They are machines. They function as a

whole. If the burden of proof is to be shifted, there must be a mechanism to bring that shift about.

The Green Paper, based on the EI project Ministers were informed was under construction, incorporates the key mechanism to shift the burden of proof.

FamRes does not. Without this mechanism, under FamRes, the legal system is not changed. With it, under EI, the burden of proof is shifted; reconstruction of a new legal model can commence by way of consequential change.

Without this core EI innovation - there can be change, but it will be inconsequential.

3. The Mechanism: Contact Disputes

In contact cases, which are disputes about time, the mechanism which reallocates the burden of proof is 'time-linked guidelines' - which are the exact attribute which should already be in place and which would rationalise the function of CAFCASS.

Guidelines of this type set out a court-backed view, developed by experts, on what sort of levels of contact are appropriate. Guidelines of this type would let officers know what they were meant to do.

Guidelines of this type create powerful expectations among parents contemplating litigation - via foreknowledge of what the Court is liable to order. This will diminish the impulse towards litigation.

Guidelines create a forum where significant legal dialogue can take place; and the form adopted by this dialogue embodies the desired shift in the burden of proof:

Old:

Fam Res - please explain why you think you should have reasonable contact
= *undischargeable burden on the applicant*
= *non-proportionate (trivial problem / serious restriction)*
= *a one-parent model of family justice*

New:

EI - please explain why you are withholding reasonable contact
= *dischargeable burden on the resident parent*
= *proportionate (serious problem / serious restriction)*
= *a two-parent burden of family justice*

Hence the overriding necessity for 'time-linked guidelines' backed by the court.

And hence - since these same guidelines would be the determinants of the child's best interests - the importance of developing a set of guidelines via an appropriately-constituted multi-disciplinary body of professionals.

4. The Green Paper: Undermined

These guidelines form the 'key innovation' of the EI project. They also, under the guise of 'Parenting Plans' at Paras 4 and 55 of the Green Paper, form the key innovation of the Green Paper.

This same feature - guidelines - is the exact attribute excised by Whitehall.

As fast as the arrival of policy is announced by Ministers at the front door, it has been removed at the back door by Whitehall.

The wrong project has been built.

5. The "Benefit of the Child"

A curious side-effect of the EI project is that it imports a novel concept into Children Act litigation, namely, the benefit of the child. Under EI, first, there is an endeavour to ascertain what the child's best interests are; second, an attempt construct a court system delivering those sort of results.

There is at this writing, other than within the inert EI project, no documentation within the legal system on what sort of levels of contact are likely to benefit the child in what sort of circumstances. The issue is not addressed in statute, or in case law, or by CAFCASS. It is the sole issue in dispute.

To define the existing consensus in light of the views of child development specialists, and to endow this view with the Court's authority, is and was the main burden of the EI project. This task (at completion by October 2003) presages orderly and beneficial reform - as outlined in the Green Paper, and as rejected by FamRes.

6. Consequential Change

The Committee will appreciate that to produce a set of agreed guidelines and imbue them with the authority of the Court does not complete the reconstruction of the
legal system or, of itself, constitute a pilot. It is a preliminary step which allows access to the construction of a pilot.

7. Practical Implications

The solution proposed in November 2004 *Family Law* may have merit.
The support for, and reasoning behind, EI is as strong today as when the project was originally approved in 2003. EI could be restarted; and, since FamRes has been built, FamRes could be piloted alongside EI as a comparative exercise.

A ‘decision tree’ on the relevant considerations is on page 22. Other questions, dealt with in the Appendices, are of a more academic nature. They relate to the means whereby one project was substituted for another.

****

EARLY INTERVENTIONS: Summary

A one-page project summary supplied to the DCA:

A modest innovation could change the way the Children Act works, producing:

- reduced litigation
- savings to the public purse
- expedited case-resolution
- better outcomes for children

TIME- LINKED PARENTING PLANS

The Pilot's key innovation is simple. It consists of written-down "Parenting Plans". These set out the type of contact-arrangements the Courts would like to see. The act of committing this consensus to paper, and telling parents what it is, confers two gains:

(i) a capability to stop litigation before it starts
(ii) case-outcomes matching the needs of children

EARLY INTERVENTIONS

The Plans cover the child's need for contact in the common categories of case; the Plans say what sort of outcome is generally in the child's best interests. So most cases need not litigate to discover what that outcome should - and will - be. Instead, the Court can intervene early (before the first hearing) to advise parents on what will happen.

CONSEQUENTIAL PROCEDURAL CHANGE

Foreknowledge of what the Courts are likely to order, as embodied in the Plans, is conveyed to parents before the first hearing by three procedural innovations:

New Hurdle 1: court-issued information (leaflets etc) to all applicants
New Hurdle 2: Parent Education Classes for potential litigants
New Hurdle 3: one-off mediation for those still reluctant to agree

Many cases are liable to settle pre-court; similar systems work elsewhere.

PROJECT MANAGEMENT

Possibilities include an independent management agency with a judicially-led Committee.

3.11.03 NATC/DCA 02088 748 1081

N.A.T.C. **NEW APPROACHES TO CONTACT**

56 Perrers Road London W6 OEZ 020 8748 1081 mail@cyriax.freeserve.co.uk

The current state of play:

Lord Filkin
DfES
Sanctuary Building
Great Smith Street
London SW1P 3BT

12 October 2004
By email and hard copy

Dear Lord Filkin,

CONTACT: installing workable reform by early 2005

Thank you for seeing me on 5 October. To summarise our meeting:

- The project launched by the DfES in September '04 (FamRes) reverses the judicially-agreed EI project submitted fully-designed in October '03.
- Whitehall has built the wrong project.

This outcome is the result of a decision by individual civil servants to (a) discard the agreed EI project without telling you (b) start again from scratch (c) exclude all input from the multi-disciplinary professionals familiar with EI.

The FamRes pilot, which reiterates the status quo, will inflame civil unrest. Hence:

Agreed:	the priority is to produce EI
Disagreed:	asking civil servants to turn FamRes back into EI may not work
Danger:	high political risk

The alternative, which will work, is to invite informed professionals to produce EI.

That way, FamRes can be left intact. Fam Res is perfectly sound in its own right; it will be useful to pilot it alongside EI as a comparative exercise.

Is there an objection in principle to doing the EI pilot quickly, reliably and well?

Yours sincerely,

Oliver Cyriax

Encl: Attachments 1 and 2

FAMILY LAW: Resolving the Contact Problem

Background:

On 8 October 2003, the EI project was submitted to Government, fully-designed and approved by leading legal opinion. After this project had secured Ministerial approval, Whitehall replaced it with an unformed CAFCASS initiative (FamRes). The Minister was told the replacement was the same as EI.

- *Fam Res and EI are diametric opposites*
- *The DfES has done no work on EI since the date of its submission / approval*
- *Fam Res, launched in September 2004, pilots the status quo*
- *The Green Paper, which gained approval from leading legal opinion, is based on EI* [3]

EI, correctly approached, can be running in six months, with favourable advance 'trailers'.

DECISIONS to be TAKEN: Setting Family Law to Rights

A. Principles

1. Not to build EI?
2. To build EI?

B. Management

1. To build EI in-house?
2. To build EI out-house?
3. To build EI out-house *without* the project originators / developers ?
4. To build EI out-house *with* the project originators / developers ? [4]

C. Method of Construction of EI

1. To use the components / resources / assets / reputation of FamRes for EI ?
2. To build EI from the ground up ?

D. Public Profile

1. To recall and disassemble FamRes ?
2. To leave FamRes intact ?

E. Piloting

1. To pilot Fam Res by itself ?
2. To pilot EI by itself ?
3. To pilot Fam Res and EI concurrently and comparatively?

[3] The relevant EI clauses, inserted in the Green Paper at the last moment, were incorporated as a result of intensive backstairs labour by the NATC and its associates Oct '03 to July '04.

[4] The EI originators can 'deliver' the legal, child development and parenting group sectors almost in their entireties.

N.A.T.C. **NEW APPROACHES TO CONTACT**

56 Perrers Road London W6 OEZ 020 8748 1081 mail@cyriax.freeserve.co.uk

[Names withheld]
[Section withheld]
Department for Education and Skills
Caxton House
Tothill Street SW1H 9NA

REGISTERED DELIVERY
17 June 2004

Dear

EARLY INTERVENTIONS: Replacing an Agreed Project with its Opposite

I refer to my letters of 12 April, 19 April, 5 May, 14 May and 3 June 2004 to which a substantive reply is awaited. Might I summarise the position?

There are widespread concerns, within the professions, public and media, that you have replaced a professionally approved-and-designed project with its opposite.

That is, on 8 October 2003 the DCA received a detailed proposal for the NATC Early Interventions Pilot Project - which has the written support of the DCA Minister, the President of the Family Division, the High Court Judiciary, the Family Law Bar Association, the 03/04 Chair of the SFLA and the Coalition for Equal Parenting; and strong support from leading child development psychiatrists.

Instead of implementing this finished project, you took it as an invitation to start on design afresh with "no in-built assumption in favour of an already existing model". This backwards step, dismantling nine years' development work, has to date yielded no more than a DfES concept which is not viable on first principles. I quote the record:

***"DfES Project Management** 8 October 2003 to 11 May 2004*

- *project delivered to DfES in turnkey condition*
- *core papers mislaid*
- *core papers unread*
- *key feature overlooked*
- *project replaced by its opposite*
- *key appointments made on lack of project familiarity*
- *project originators excluded*
- *project divested of almost all relevant expertise"* NATC / DfES 14.5.04

May I have your comments?

Yours sincerely,

Oliver Cyriax

Family Resolutions / Early Interventions pilot

The MANAGEMENT of GREEN PAPER Family Policy

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1. The July '04 Green Paper *Separating Parents* announced a new reform initiative.

2. This initiative turns on giving parents guidance, before the case, about how much contact should be allowed in various categories of case.[5]

   (i) The **F**amily **R**esolutions pilot - FR - ***does not*** have this characteristic
   (ii) The **E**arly **I**nterventions pilot - EI - ***does*** have this characteristic

3. The EI project, delivering on the Green Paper, was submitted 8 Oct '03; it has Ministerial / professional / judicial support; it is not being piloted; perhaps it should:

   "This is the way forward… It would be incomprehensible if the [EI] Pilot Project did not receive official sanction from the DfES" [6]

   The Hon Mrs Justice Bracewell
   Early Interventions: Towards a Pilot Project; ppd NATC, July 2003

FAMILY RESOLUTIONS *A Reiteration of the Existing Model*	
General Characteristics [7]	**Points of Divergence**

[5] See Green Paper, *Separating Parents*, e.g. Paras 4 and 55*:* "We will produce practical tools - Parenting Plans - giving guidance about parenting arrangements known to work for children and parents in a range of circumstances. These will also illustrate how the courts are likely to deal with disputes'; 'Co-operative parenting arrangements are what is needed in order to promote the interests of the child. A typical arrangement might be alternate weekends... '

[6] The EI project was replaced by FR after receipt its by the DfES:
1(i). Those who *did not know* about the EI project were appointed to the DfES Design Team 1(ii) Those who *opposed* it were appointed to the DDT 1(iii) Project originators were *excluded* from the DDT
2. The project papers were not distributed / were not read / were mislaid
By the time of first DDT meeting on 17 March 2004, knowledge of what the project was about had been lost.

[7] As announced in *Family Law* September '04 by the DDT Chair, Mavis Maclean CBE.

Family Resolutions, which acknowledges that *'the child's welfare is the paramount consideration'*, is based on respect for the *'diversity of family life'*. The refinement is that parents will attend two pre-court group meetings, first, *'to refocus on the child's needs'*; and a second, to help avoid *'exacerbating conflict by learning what may trigger anxiety'*. Before the court hearing, in conformity with existing practice, conciliation is applied by CAFCASS. The scheme, which *'may enable some parents to begin to manage, if not resolve, conflict'*, derives from the customary premise that every-case-is-different (reaffirmed in CAFCASS's 16.8.04 guidelines).	• no Parenting Plans • no time-linked Parenting Plans • no 'good reason' principle • no view on reasonable contact • no categories of case • no guidance on quantum • no expert framework • no court-*backed* framework • no court-*applied* framework • no court-*issued* framework • no court-*disseminated* f'work • no foreknowledge of order • no modified expectations (?) *13. 9.04 NATC*

Fam Law [2004] 835

November 2004

Newsline Extra

Family Resolutions v Early Interventions

Mavis Maclean's exposition of the family resolutions pilot project ([2004] Fam Law 687) provides the answer to the question – whatever happened to the early interventions project (EI project)? The EI project, formally submitted to the Department for Education and Skills (DfES) and the Department for Constitutional Affairs (DCA) on 8 October 2003, after 8 years' development, was fully specified, properly designed and costed. It commanded across-the-board professional support. The position at that time was clear cut:

> 'The need was not so much for an open-ended inquiry into what to do but the more proactive task of ensuring that an early interventions trial … actually occurred.' ([2003] Fam Law 455)

A close study of the EI project, as submitted, and the family resolutions project (FR project) described a year later, does not disclose any significant similarities between the two.

This is not what was meant to happen. 'Family Resolutions' was billed as 'Early Intervention' under a different name. In the words of DCA Minister, Lord Filkin, in a letter to the Coalition for Equal Parenting, dated 29 April 2004: 'The early interventions project, developed by the [organisation] New Approaches to Contact (NATC) and others, is being developed and taken forward'. This letter, which first introduced a sentiment repeated in Mavis Maclean's article, explained the technical reason why the project was 'renamed the Family Resolution Project', namely that 'whilst the intended intervention is early in the current court process, it is not early in the process of relationship breakdown'.

So what are the differences between the two projects? And do they matter? The core of the EI initiative hinged upon giving parents guidance, before the case, on how much contact there should be. This development, which finds no counterpart in the FR project, entailed a new partnership between the courts and child development experts. Together they would devise parenting plans which would set out norms of contact as a framework for negotiation. Judicial support for the concept of parenting plans always lay at the heart of the EI project. Without backing from the court, any guidelines would be written in water. As Bracewell J observed, summarising the NATC's 2003 conference in its publication *Early Interventions – Towards a Pilot Project:* 'This is the way forward … It would be incomprehensible if the pilot project did not receive official sanction from the DfES'.

But the incomprehensible did happen. On examination, it transpires that the FR project is based upon a well-rehearsed mantra –'every case is different' – which is the antithesis of EI.

Bringing the two projects into alignment would not be a simple matter of changing horses midstream. This is not just because the Children and Family Court Advisory Support Services (CAFCASS), which will apply conciliation under the FR pilot, has confirmed its stance that 'every case is different'. Its view that there are no categories of case (see *Contact: Principles Practice Guidance and Procedures* (CAFCASS, 16 August 2004)) means that there can be no parenting plans outlining what should happen in the various case categories. Equally important, every component and every protocol of the two divergent projects are designed for a different function. The EI parenting plans would not be agreed by the court and its experts, nor be backed by the court, nor be issued by the court, nor be applied by the court, nor be disseminated by the court. Nor could they take root throughout ancillary support services such as mediation, legal professionals and potential litigants.

This does not mean that the FR project is not a useful undertaking in its own right. The pre-court group sessions – one 'to refocus on the child's needs' and the other, on 'conflict management' – could pay dividends. FR is also bound to yield valuable data on how much can be achieved by a careful repackaging of the existing regime. But by the same token it is not the same as the EI project.

Perhaps the least useful outcome would have been a half-way house where a sound concept was marred by poor construction or indifferent management; or where a slipshod version of the new thinking was adopted. The FR project eliminates this risk. There is no overlap between the two projects.

This means that the way remains clear to pilot the EI project as originally designed and agreed. The two pilots (EI and FR) could run side by side as distinct comparative exercises at different courts. This could not come too soon, not least because the support for EI, which was sufficient to secure its submission, acceptance, ministerial assent and funding, has not abated. Written statements of support are on the record from the President of the Family Division **(***Re S (Contact: Promoting Relationship with Absent Parent)* [2004] EWCA Civ 18, [2004] 1 FLR 1279, at para [12]), the High court judiciary (Munby J (*Re D (Intractable Contact Dispute: Publicity)* [2004] EWCH 727 (Fam), [2004] 1 FLR 1226, at paras [37]–[38]), Bracewell J (*Early Interventions: Towards a Pilot Project* (NATC, July 2003)), the Family Law Bar Association (by letter to the DfES Project Chair (9 March 2004)), Solicitors Family Law Association Chair ((2004) 104 *SFLA Review* 12), the Coalition for Equal Parenting (by letter to the DfES Project Chair (29 March 2004)), and Dr Hamish Cameron (*Early Interventions: Towards a Pilot Project* (NATC, July 2003)).

The Green Paper, *Parental Separation; Children's Needs and Parents' Responsibilities*, Cm 6273 (2004), adopts, at paras 4 and 55, the EI concept of time-linked parenting plans as the key to resolving contact disputes. In line with the ministerial view on the continuity between the FR and EI projects, parenting plans are proffered as the backbone of the government's s 8 reform project. Hence the conundrum of the present situation: the FR pilot – produced by civil servants – does not have the prime characteristic supported by the Cabinet - but the civil servants have not produced the EI pilot, which does have the prime characteristic supported by the Cabinet. The inference – that EI lost its way in Whitehall's bureaucracy – is borne out by the project's history. Put forward as a fully articulated concept ready for installation, it has not been seen since.

Should the FR project have been produced in-house by civil servants? After, as the author is aware, the DCA forwarded the EI project to the DfES for implementation – intact, approved and with a plan for external local management – the DfES then set up its own in-house design team. This curious step (for a project where the design had already been finished) had a marked consequence. By the time the DfES design team first met in March 2004, knowledge of what the project was about had been lost. Core EI documents did not reach the DfES project manager until May 2004 when the project was nearing completion.

How did this happen? One answer is that 'Family Resolutions' is the name of an old CAFCASS project which was undefined and unfunded. From the moment the EI project first went to the DCA in the autumn of 2003 it became evident that EI would attract funding. CAFCASS was well placed to claim EI as 'its' project.

It is the author's understanding that the customary procedure would have been to commission the project out to an independent management agency which would have retained the project originators. Had this

happened, the EI pilot could and would have been up and running by September 2004.

Independent management adds commitment and expertise and removes the project from the political (in its broadest sense) arena. Under independent control, turf wars, demarcation disputes and extraneous considerations of institutional prestige should abate. Perhaps such a solution will have been adopted, or be in the offing, by the time these words find their way into print.

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Evidence submitted by Refuge

General Statement

1. It is well understood that separation and divorce can have a negative affect on children, particularly where conflict characterises the break up and in general Refuge believes it is valuable for children to maintain contact with both parents where it is safe to do so. The negative impact of harsh and punitive parenting is also well understood as is the harm that can be caused by witnessing domestic violence. It is vital therefore that there is a balance between the child's right to maintain contact with both parents following separation and the duty of society to protect children from harm; a parents' right to maintain contact with their child should not overshadow either of these central aims.

2. The contentious issue of contact and residence presents particular problems for legislators and policy makers yet the importance of 'getting it right' cannot be more strongly emphasised, for to get it wrong can and indeed does lead to fatal consequences. Legislative change in other jurisdictions has led some to create a legal presumption of 'safe contact' together with mandatory risk assessment in an effort to protect children from harm[8] Yet even with these safeguards in place, protecting children (and the non-abusing parent) during contact visits with a father who has perpetrated domestic violence remains difficult, though it is not impossible if stringent screening, effective assessment and monitoring systems are in place.

3. The role of the family courts in ensuring the protection of children (and the non-abusing parent) cannot be overstated. All those working in the system should have a firm grounding in domestic violence and its impact on victims. There must be a clear understanding and acceptance that domestic violence, whether experienced or witnessed, represents a serious risk both now and in the future for any child and where this risk exists, there must be a resolve to say 'no' to contact, at least in the short-term.

The Risks

- Domestic violence has overtaken gestational diabetes and pre-eclampsia as a cause of foetal death[9]
- Attempts to leave a violent partner, with children, is one of the most significant factors associated with severe domestic violence and death[10]
- Research has shown that the emotional and behavioural problems of children exposed to domestic violence are associated with their relationship their father. The more fear and anxiety, the greater the problems; the longer children are away from a violent father, the greater the improvement in adjustment[11].

The Reality

- Less than 1% of contact applications were denied in 2002
- In 35% of contact applications there were concerns about the safety of a child or the residential parent[12]

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[8] This is the case in New Zealand The US has a Model Code (1993) with a rebuttable presumption that it is not in a child's best interest to be placed in the custody of a perpetrator of domestic violence. Contact is only granted where this is safe for the child and the non-abusing parent. Access to information about the child, such as medical and school records may even be denied if this information could be used to locate the custodial parent.

[9] Friend, J (1998) *Responding to violence against women: a specialist's role'.* Editorial, Hospital Medicine, 59(9)

[10] Websdale N. (1999) Understanding Domestic Homicide

[11] Jaffe, P. Zerwer, M. & Poisson, S. (2003) Access Denied. The Barriers of Violence and Poverty for Abused Women and their Children After Separation.

- 10 children were killed during contact visits in the past two years[13]
- Around 75% of children on the child protection register live in homes where there is domestic violence[14]

4. In view of these concerns, Refuge's response has focused upon the fourth of the select committees questions, that is "whether people using family courts are getting the service they deserve" and how the system, in its broadest sense could be improved to better meet the needs of domestic violence victims. And with this in mind, Refuge recommends:

Legislation in favour of a presumption of safe contact at the earliest opportunity.

5. Although Refuge recognises there is not a legal presumption in favour of contact, there is a stated assumption[15] that maintaining contact with both parents is in the best interests of children and this appears to have influenced significantly, judicial decision making in the area of family/private law and whilst this assumption is generally well founded, Refuge believes there are circumstances when it is not. Circumstances where a child has been exposed to domestic violence and or has been abused by the non-residential parent are prime examples[16].

6. The government assures concerned groups such as Refuge that current and planned protocols will be sufficient to ensure the safety of children and non-abusing parents alike and it has stated its intention throughout the passage of both the Children Bill and the Domestic Violence Crimes and Victims Bill, to leave legislation on the matter of contact, unchanged. Refuge, on the other hand believes further action is necessary and in addition to a change in the law, Refuge is calling for:

A legal definition of domestic violence.

7. The first step in addressing domestic violence is to agree upon an accurate definition of the problem. Domestic violence is a term commonly used to describe the abuse which occurs between intimate partners or ex-partners and although it is important to recognise that domestic violence also occurs within dating relationships, sex-same relationships, familial relationships, towards elders and in some instances in a female to male direction, we should acknowledge that the vast majority of domestic violence incidents are experienced by women and perpetrated by men. Refuge understands domestic violence as behaviour which causes physical, emotional and or psychological harm; it is the systematic, patterned and purposeful exercise of power and control, occurring over time, often within a climate of fear. Domestic violence can include a wide range of behaviours such as verbal remarks, financial control, intimidation, isolation, threats, sexual

[12] Cited in Parental Separation: Children's Needs and Parents Responsibilities (2004)
[13] Women's Aid Website
[14] Into the Mainstream – Strategic Development of Mental Health Care for Women (DOH 2003)
[15] this is stated both in the Children Act 1989 and in the recent green paper Parental Separation: Children's Needs and Parents' Responsibilities; the Council of Europe Convention on Contact Concerning Children also states that it is the child's right to maintain contact with both parents
[16]the damaging effect of witnessing domestic violence is now enshrined in law (The Adoption and Children act 2002) and recognised by professionals, such as social workers, who frequently propose separation from a violent partner as a child protection strategy where abuse perpetrated against a parent is observed to also result in harm to the child

assault and physical assault. It can also include the enforced involvement of children, as well as the direct abuse of children.

8. Refuge believes that gender based discrimination such as violence against women, often interfaces with other forms of discrimination such as race/ethnicity, class, sexual orientation, age, disability and religion, creating even greater difficulties for many women. Some women from black minority ethnic groups also experience violence from other family members and community leaders. For this reason, the definition may need to be broader. Work has already been done attempting to create agreed definitions in this area and a working party to consolidate these efforts might be valuable.

9. It is crucial that our definition and approach to domestic violence acknowledges and responds to the overlapping abuse of women and their children. Domestic violence impacts on women and children simultaneously, individually and perhaps most importantly it has the potential to affect their relationship with each other. Although legislation, policy and practice tend to conceptualise women and children's needs separately, Refuge believes the key to successful intervention is to recognise the *inter-connectedness* of this abuse. Legislation, policy and services must reflect this reality.

Appropriate domestic violence training for all professionals and mandatory training for those working in and for the courts.

10. Domestic violence is an issue about which most people have a view, and many myths and misinformation about the subject abound. In recognition of this problem, the government mounted a campaign to increase public awareness of the facts and to encourage victims to seek support[17]. Professionals in and outside the court system are as likely as anyone to hold erroneous beliefs or negative attitudes about domestic violence and to exercise these views through their working practices. Unfortunately training to rectify this problem remains patchy and it is therefore unsurprising that Refuge continues to hear of instances where the courts have failed to take account of the complex nature of domestic violence and its impact on victims, particularly in relation to contact arrangements and also with regard to matters of child protection.

11. Consider the circumstances of a woman, systematically abused over a number of years, who depressed, traumatised and in genuine fear, is unable to protect her child from violence perpetrated by her partner. Reason tells us that a rational person would leave in order to protect herself and her child, thus a woman who stays must enjoy the violence or be a reciprocal partner in the abuse, as well as a neglectful mother who is unable to put the needs of her child before her own. Yet typically, she will have been isolated from family, friends, colleagues (if she is allowed to work) she is likely to be afraid or even ashamed of speaking out and she might blame herself for the violence she and her child have suffered. She infrequently has access to money and may believe there is no where safe she can go. She might even have been told that if she leaves with the child they will both be killed – so she stays. If the courts do not understand the complexity of

[17] Home Office campaign to raise awareness of the new 0808 2000 247 Freephone 24 Hour National Domestic Violence Helpline run in partnership between Women's Aid and Refuge.

domestic violence (the controlling nature and mind altering consequences of abuse perpetrated within an intimate relationship) and recognise that her reasons for staying might have been to protect her child in the short-term, or that she was so paralysed by trauma and depression that she was unable to see a way out, she could be convicted of neglect and face losing her child to the care system.

12. It is Refuge's view that agencies which work alongside the courts such as social services, should operate according to an accurate definition of domestic violence and a broad understanding of the problem. For example, during the course of child protection proceedings, the parenting capacity of an abused woman is likely to be monitored and assessed by social services; with some suggesting she and her children should leave the perpetrator as a child protection strategy. Yet in order to do this and provide the appropriate level of care and protection to her child, the woman will often need dedicated services to enable her to focus upon, understand and recover from *her own* experiences of abuse. She will frequently need specialist support to build her self esteem and promote insight into the impacts that domestic has had upon her as an individual and as a parent, unfortunately specialist domestic violence services of this type, particularly those which integrate children's needs with those of the non-abusing parent, are rarely available. And even if a woman does decide to leave her abusive partner, either through pressure from social services or of her own volition, the cruel irony is that she and her children are often unable to entirely escape from the abuse because the family court system (and or social work intervention) is likely to promote contact following separation, even with a man who is a known abuser. Without comprehensive training and clear good practice protocols, for all professionals working within and for the courts, such practices are likely to continue and the negative impacts of domestic violence will go on and on for the women and children who have become its victims.

Appropriate policies and procedures that prioritise and ensure safety for children and non-abusing parents with regard to contact and residence

13. The government has stated that "*the child's welfare must be the paramount concern*"[18] and Refuge is in full support of this principle but suggests that to achieve this aim, particular safeguards must be in place for those affected by domestic violence, including:

Thorough and on-going screening for domestic violence prior to and during the process of contact

14. Proposals indicate that screening for domestic violence will occur at the earliest opportunity with the aim of protecting those at risk and to this effect, the government is about to introduce new 'gateway forms' where disclosures of domestic violence can be recorded. Good practice guidelines[19] for the courts developed by the Lord Chancellor's department have already highlighted the importance of early identification of domestic violence in cases involving children and CAFCASS practitioners are advised to "*ensure risk factors are considered, that recommendations made to the courts prioritise safety issues, that they are informed of the*

[18] Parental Separation: Children's Needs and Parent's Responsibilities (2004)
[19] 'Guidelines for Good Practice on Parental Contact in cases where there is Domestic Violence', (1999)

outcome of the court judgement or finding of fact and that if required, the welfare report does not reveal the whereabouts of the child and resident parent directly or indirectly"[20] but Refuge is not confident that this will be sufficient to protect children from harmful contact with violent fathers. Recognising and responding to domestic violence requires training, skill and the application of appropriate tools, one of which is a screening process based on an accurate definition of domestic violence together with a thorough understanding of the dynamics of an abusive relationship and its impact on victims. An understanding of the problems victims can face in terms of disclosing abuse should also be reflected within an effective screening process and system of routine enquiry, ensuring there are repeated opportunities for adult and child victims to reveal their experiences and voice concerns within an atmosphere of safety and trust. An awareness of and capability to assess risk is also essential.

Family courts should always accept evidence 'on the simple balance of probabilities' when investigating allegations of domestic violence or serious abuse to a child

15. Refuge agrees that prior to making decisions about contact and residence it is correct that allegations of domestic violence need to be investigated, ('findings of fact') particularly as there may be counter-allegations and or denials. Yet in reality domestic violence is often a secret with many women being assaulted up to 35 times before they call the police. Some women tell no-one about the abuse until they arrive in a refuge and so there are no records, no 'evidence' they can call on and as such, no facts. This does not mean that the violence did not occur it means they did not tell anyone. Some women and children suffer from years of psychological abuse without being physically hurt. In these circumstances, evidence of the kind required by the courts is rarely available, yet the effects of sustained psychological abuse can leave lasting scars. It is important that screening and investigation processes respond appropriately to this reality and that the courts always accept evidence 'on the simple balance of probabilities' in such circumstances. Refuge would suggest that the same approach is used in relation to allegations made by children, including serious allegations such as sexual abuse. For instance, where there is sufficient concern that a child is at risk, Refuge believes that the courts should act to protect that child by issuing a restraining[21] order and they should examine very closely, any continuing risk to the child presented by proposed or existing contact arrangements.

Mandatory risk assessment in cases where domestic violence is a known or suspected factor

16. CAFCASS recognise the risk of harm to children posed by some contact arrangements and state that *"every effort must be made to understand and assess possible risks"* and that *"the degree of a child's exposure to risk needs to be balanced against the negative consequences of that child having no contact with*

[20] CAFCASS Draft Principles on Contact 2004

[21] Using as a model the New Zealand Guardianship Act Section 16B(6):
Notwithstanding subsection (2) of this section where, in any proceedings to which this section applies,

(a) the Court is unable to determine, on the basis of evidence presented to it by or on behalf of the parties to the proceedings, whether or not the allegation of violence is proved; but

(b) the Court is satisfied that there is a real risk to the safety or the child, the Court may make such order under this section as it thinks fit in order to protect the child

that person or persons[22]*"* Refuge believes that it is insufficient to make every effort to assess risk and that comprehensive and validated risk assessment in cases involving potential harm to a child and or non-abusing parent should be mandatory. Refuge would assert that prior to arranging contact where exposure to risk is a factor, steps to address risk should be taken, including compulsory attendance at a group[23] or individual therapy for perpetrators of domestic violence. Intervention of this type should address the attitudes and behaviour of the perpetrator and help them to appreciate the impact their behaviour has had upon their children; it should also monitor current/future risk to their victims. Refuge would suggest that participation in intervention programmes of this kind should be a precondition of contact agreements in all high-risk cases[24].

The wishes and feelings of children should be ascertained in relation to decisions which concern them

17. Although the Children Act 1989 states that a child's views on important matters which concern them should be taken into account, Refuge's experience is that children, particularly young children are rarely consulted about either the violence or their wishes in relation to proposed contact: Refuge considers the practice of a single meeting with a CAFCASS officer (when this occurs) and a meeting with a social worker where there are allegations of direct abuse to the child, generally insufficient to achieve either. Refuge's experience of children exposed to domestic violence suggests that they rarely talk to anyone about the violence occurring within their family, not even their mother. For such children, domestic violence is a secret, kept over many years and they are unlikely to disclose the abuse or share their wishes and feelings with a 'stranger' particularly if they do not feel safe and no assurance can be given that they will be protected from contact with their father[25].

18. Refuge recommends that appropriate attempts are made to ascertain the wishes and feelings of *all* children in relation to *any* legal proceedings which involve them, public or private, but acknowledges that it is not always easy to find out what children 'wish and feel' especially in relation to contact with a violent father, for a number of reasons:

- The child is being asked to talk about a sensitive family secret, possibly for the first time.
- For children who have been traumatised, there may be difficulties (or avoidance[26]) in disclosing thoughts and feelings about traumatic events that have occurred.
- There may be fear that full disclosure of the abuse which has taken place could result in the child's removal from home.
- The power dynamics within the family often result in women and children agreeing to almost anything, including contact, if they think this means they can avoid further violence.
- Unknown to others, the child may also have been abused by the father and fear of reprisals may inhibit a child's ability to disclose their true feelings about contact.
- Children are unlikely to disclose experiences of abuse or their wishes and feelings if they fear they will not be protected from contact with a father of whom they are afraid.

[22] CAFCASS Draft Principles on Contact (2004)
[23] Refuge would suggest using only groups/programmes which adhere to good practice and minimum standards for work with perpetrators of domestic violence such as thoSE developed by RESPECT
[24] Refuge also recommends that similar therapeutic and support services are available for victims as they try to recover from the abuse and build a more positive view of the future.
[25] Analysis of Refuge casework files shows that 58% of children did not talk to *anyone* about the violence whilst they were still living with the abuser, not even close family members. Until they were given a safe, confidential opportunity to talk about their experiences by a Refuge based child psychologist, 37% did not talk to about the violence to anyone even after leaving home.
[26] Avoidance is a symptom of posttraumatic stress

19. Cafcass draft principles on contact make reference to the difficulties of accepting without question a child's wishes on contact, recognising the balancing act that many children must perform in order to please both parents. On the other hand, they also recognise that officers of the court "*rarely acknowledge that children might rationally prefer one parent to another for legitimate reasons …and… hold the general view that children should not see fault in a parent and that they should love their parents equally"*[27]. This perspective represents a significant risk for children who have been exposed to violence at home and wish to remain free from contact with their father. Refuge is in agreement that each case must be viewed individually nevertheless, a legal presumption that contact must be safe, removes from the child the responsibility for making a 'decision' which could significantly influence the outcome; it also assures the child that if contact is thought to be unsafe then it will not take place and whatever they 'decide', they will be protected. With a legal presumption of safe contact, the decision making power and responsibility lies firmly with the state and that is as it should be.

Effective, comprehensive assessment of the impacts of abuse where a child has been exposed to domestic violence.

20. When considering on the balance of probabilities whether a restriction or exclusion to contact should be applied, Refuge recommends that an objective assessment of the impact any abuse might have had is also used to inform the decision making of the court.

21. Domestic violence affects children in different ways – some that are quite evident (behaviour problems, under-achievement, developmental delay etc) and others that are more hidden (emotional/psychological problems, posttraumatic stress disorder, depression, negative attitudes/beliefs etc). Refuge believes that in order to discover the impacts of domestic violence, an age appropriate comprehensive assessment should be carried out by a competent child focused professional who has a thorough understanding of domestic violence and its impact on adults and on children. The assessment should be broad based enough to identify general difficulties which could be at the root of a child's problems and specific enough to be sensitive to particular difficulties which can result from domestic violence.

22. Refuge believes there is a pressing need for the development of assessment protocols and policies for intervention with young children and infants exposed to domestic violence, either as witnesses or as victims. There is a growing awareness that not only is this group the most neglected in terms of service provision and research attention but that they are also at greatest risk; research suggests that exposure to domestic violence

[27] James A L, James A, McNamee S (2002) 'Constructing Children's Welfare', University of Bradford, ESRC Cited in CAFCASS Draft Principles on Contact (2004)

as an infant or pre-schooler has significant impacts on the developing brain, resulting in long-term cognitive and behavioural consequences[28].

23. Refuge acknowledges the need to minimise delay in resolving matters concerning children, whilst also recognising the need to allow sufficient time to ensure that effective assessment and investigations are undertaken. Refuge recommends that in order to maximise assessment outcomes, children should be given the time to build a degree of familiarity and trust with a professional and in turn, the professional should have the time to build up an accurate picture of the child and his/her family. Thorough assessment takes time and skill and both should be available in cases where a child is at risk.

Automatic separate representation for children exposed to domestic violence in private law proceedings and the use of domestic violence experts and other specialists to assist the court.

24. Refuge also recommends the use of domestic violence experts and other specialists to assist the court, as well the provision of separate representation for children in private law cases[29]. Currently, children who are the subject of private family law proceedings such as contact and residence rarely benefit from either. Refuge suggests there should be a balance between providing children with the necessary legal support so their views are placed before the court and placing too much responsibility upon children for being the 'decision maker' in matters of contact and residence. Refuge would suggest that separate representation for children in private law cases should be automatic and work in tandem with the use of child specialists such as guardians, family reporters and experts.

Assessment of and protection for the non-abusing parent.

25. Domestic violence is widely recognised as a highly traumatising situation and a significant risk for anxiety and depression. Being parented by a person suffering from depression, anxiety or posttraumatic stress is likely to have an adverse effect on many children, particularly the very young. Refuge suggests that 'consideration' of a child's welfare should include an assessment of the impact domestic might have had on the non-abusing parent, as well as any risks, both physical and psychological, presented by maintaining contact with the perpetrator. Refuge recommends that a mandatory risk assessment includes risk of further harm to the non-abusing parent, the risk of the child witnessing that harm and or the chances they could be

[28] Perry BD (1997) Neurodevelopmental Factors in 'the Cycle of Violence' in 'Children in a Violent Society'. Ed. Osofsky, J. Refuge has been carrying out innovative work exploring the impacts of domestic violence on pre-school children and developing assessment tools to this end and will publish its findings early next year.

[29] In New Zealand children in private law proceedings are automatically entitled to separate representation. Counsel for the child is paid for by the court but the Judge may order the parents to contribute to the cost.

used as a tool to maintain control or inflict further abuse upon the other parent. Refuge believes that by considering the welfare and safety of the non-abusing parent, the courts will be giving due consideration to the welfare and safety of the child.

Clear protocols to ensure contact is safe

26. Refuge believes there are dangers in assuming that contact supervised in a centre means that contact will be safe. Refuge is aware of children for whom supervised contact has been yet one more opportunity for their father to make verbal threats and continue his abuse of the family. Research exploring New Zealand's legislation on contact found that even when contact was formally supervised at a centre, custodial parents 'commonly reported' experiencing abuse/harassment in the centre car park from their ex-partners[30]. Other risks include the use of supervisors who are not conversant in the language of the child and the non-residential parent, as they will be unable to ensure contact is safe if they cannot understand what is being said. Refuge has heard of several instances where fathers' have threatened to follow children home then find and harm their mothers', including those for whom English is a first language.

27. Refuge also suggests the need for caution in using family members to supervise contact. Evaluation of New Zealand legislation on contact found that when extended family provided supervision within an informal context, children benefited from these relationships but "despite this, children were not always emotionally safe when contact was supervised by extended family. Problems reported were the non-custodial parent using the child to pass abusive messages to the custodial parent; the non-custodial parent's family harassed the custodial parent"[31]. Furthermore, around 50% of residential parents also highlighted concerns about neglect and abuse of their child during unsupervised informal contact arrangements. All of these families (n73) had been granted protection orders which included protection of children[32]. Refuge suggests that the most dangerous option of all is to use the non-abusing parent to supervise contact between their child and their ex-partner and this is born out in the same study which found that in the 12% of cases where the residential parent supervised informal contact, children often witnessed abuse; 4% of non-residential parents were also reported to have abused their children during this type of contact.

28. The government has stated its commitment to promote contact which is safe and to protect children from harm; Refuge believes that in order to ensure this commitment is realised, in addition to a legal

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[30] Chetwin A et-al (1999) The Domestic Violence Legislation and Child Access in New Zealand

[31] ibid

[32] Ibid.

presumption of safe contact, it is essential to apply stringent assessment and monitoring systems prior to and during the contact process, focusing upon the welfare of the child and the non-abusing parent as well as any risk posed by the perpetrator.

Development of protocols to ensure consistency between orders and appropriate communication across jurisdictions, placing safety for victims at the centre of decision making

29. In many circumstances the family courts and criminal courts are likely to find their orders at variance. This has the potential to create confusion for the police, the applicant and the recipient and to result in dangerous, possibly lethal consequences. In cases where contact or residence is in dispute and criminal proceedings are concurrently brought against the perpetrator, the family court (ignorant of any serious risk to the non-abusing parent and her children) may well direct unsupervised contact and in the worst cases, even grant a residence order to the abusive parent.

30. Refuge is aware of several instances where women have been involved in simultaneous civil proceedings for non-molestation orders, family proceedings for contact and criminal proceedings where they have been a victim of domestic violence. Thus, women who have been granted non-molestation orders can find themselves in the untenable position of being forced to take their children to the perpetrator for contact visits or face the consequences of contempt, even when children express reluctance or refuse to attend contact. When the system fails to protect women and children in this way, many say they feel further abused by those they have turned to for help. Refuge suggests that orders for protection should over-ride orders permitting unsafe contact[33].

31. The use of Recovery orders can also be problematic, even dangerous in circumstances of domestic violence. Whilst Refuge is in agreement that such orders are necessary to establish the whereabouts of children when one parent alleges 'abduction', there is growing concern that such legislation is most often used by violent fathers to find and 'recover' children from mothers who have left the family home in order to escape abuse. For this reason, Refuge supports an amendment to the Family Law act 1996, put forward by Women's Aid[34] which aims to redress this balance by granting a recovery order *only* if the applicant already has a residence order in their name. Where neither parent possesses a residence order the court may grant a recovery order, requiring both to attend court within 24 hours of the discovery of the child, or the first working day thereafter. Thorough checks must be carried out prior to returning the child to the parent who applied for the order or before sharing any information relating to the whereabouts of the child. These checks should include police records to see if either parent has committed acts of violence, if either is listed on the register of domestic violence perpetrators, and perhaps most significantly, it should include a welfare

[33] In Northern Ireland, the courts must consider whether a child has been or continues to be at risk from a person who both applies for contact and is the subject of a non-molestation order. In New Zealand a protection order made under the Domestic Violence Act 1995 automatically includes the applicant's children as protected persons, though in practice inclusion does not necessarily result in a denial of contact if this can be safely arranged[33] and there is another order or written agreement which permits contact.

[34] For detailed wording of this amendment contact Women's Aid.

assessment of the child. Refuge therefore supports any steps which would promote information sharing in these circumstances, as it could save lives.

Clear policies regarding confidentiality and disclosure of information about domestic violence victims

32. Refuge believes that all professionals working for and alongside the courts need a clear understanding of client confidentiality, current legislation and how to create an inter-face which promotes safety for victims. In practice there can be confusion about what information can and should be shared. Sometimes this has tragic consequences, as in the Victoria Climbie case. All agencies should have a policy which has regard to an individuals right to privacy (under the Data Protection Act) and respects client confidentiality but also recognises the limits of that confidentiality (under the Children Act) when it becomes necessary to safeguard children from significant harm. Refuge suggests that

- safety should be the guiding principle in any decision to share or keep information confidential
- the government needs to promote greater clarity through training on legislation re: data protection, professional confidentiality and child protection
- there are clear polices and procedures for information sharing across disciplines, *particularly between adult and child services*.

33. It is also essential to recognise that sharing information can *endanger lives*. Women's organisations generally work within the bounds of confidentiality for reasons of professionalism and of safety. Refuge recommends that confidentiality is retained with respect to sharing information (especially during court/legal processes) about

- women's addresses
- current or proposed addresses
- telephone numbers
- place of work
- child's school
- GP's details
- details of the woman's associates including family and friends

34. Whilst it is clear that sharing information between professionals is valuable for the majority, in order to promote effective multi-agency working, to promote the welfare of children and to avoid unnecessary duplication, there are concerns that establishing a database (as proposed in the Children Act 2004), which contains personal details, including address (especially a confidential refuge address) school, GP etc, is likely to place those escaping from domestic violence at risk. In the past, violent partners have been able to trace (and sometimes abduct, harm or even kill) children using educational, health or social service paper trails. Refuge would recommend that safeguards are developed as a priority for these children and other vulnerable groups.

Routine exemptions from mediation, in-court conciliation, family resolution projects and enforcement of contact orders in circumstances where domestic violence or child abuse is a risk

35. Refuge also has concerns about the government's emphasis on mediation, in-court conciliation and processes of family resolution in circumstances where there is on-going dispute relating to children. Whilst there are some assurances that these processes will not be appropriate where there has been domestic violence (and there is broad acknowledgement that such measures are inappropriate in other jurisdictions[35]), Refuge fears that in the absence of stringent screening and comprehensive training for all those working in and for the courts, domestic violence may go undetected. Difficulties relating to disclosure of abuse have already been highlighted above.

36. Perhaps most concerning is the government's proposal to enforce contact arrangements and to apply sanctions to those who fail to comply with orders of the court. Refuge believes that unless we get the screening process right and combine this with monitoring which offers frequent opportunity for disclosures of abuse to be made (by adults and by children,) women may find themselves facing legal consequences for non-compliance with contact orders which in reality, place them and or their children in danger. Rather than moving directly towards measures to enforce contact, it seems important to explore reasons why contact has broken down, one of which may be new or renewed violence, threats of violence, psychological abuse etc. On-going monitoring of high risk cases (those involving violence and abuse) should be integral to the contact process. It is worth reiterating the importance of using an accurate working definition of domestic violence during the screening process, as this is essential if one is to be alert to the broad spectrum of abusive behaviours which constitute domestic violence. A thorough understanding of domestic violence is particularly relevant in circumstances where a victim has been so beaten down by years of psychological abuse that she blames herself the abuse she has suffered and may fail to properly recognise her experiences as consistent with domestic violence.

A centrally driven and appropriately resourced national strategy on domestic violence incorporating a strong legislative response,, specialist domestic services and strategies for prevention

37. Refuge believes that in addition to appropriate legal processes, domestic violence victims need specialist services, information and resources. Prevention, particularly strategies which are embedded within programmes for the very young (and for young parents) is also crucial to eliminate violence in the long term. Refuge suggests that integration of these key elements within an appropriately resourced national strategy (which works in tandem with effective co-ordination at a local level) would ensure that high quality specialist services/programmes are available to all across England and Wales. In the absence of such an approach, Refuge believes the current pattern of service development, where ad hoc services spring up and then close down as funding evaporates, will continue, leaving many victims facing an inconsistent response from services and the legal system.

Summary of Recommendations

[35] In Canada the Criminal Code was amended in 1996 to permit the use of alternative measures (including restorative justice) for adult offenders; domestic violence cases were excluded in all but 3 jurisdictions (Final Report of the ad-hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation. Canada 2003)

1. A centrally driven and appropriately funded national strategy on domestic violence. This would ensure that domestic violence victims across the country received the same high quality service both within and outside the court system. It would also ensure a consistent and appropriate response to perpetrators.

2. A legal definition of domestic violence

3. Appropriate domestic violence training for all professionals and mandatory training for professionals working in and for the courts.

4. Legislation in favour of a presumption of safe contact at the earliest opportunity.

5. Appropriate policies and procedures that prioritise and ensure safety for children and non-abusing parents with regard to contact and residence including:

    - thorough and on-going screening for domestic violence prior to and during the process of contact
    - that family courts always accept evidence 'on the balance of probabilities' when investigating allegations of domestic violence or abuse to a child
    - a mandatory risk assessment in cases where domestic violence is a known or suspected factor
    - prior attendance at a group/individual therapy for perpetrators of domestic violence (focusing on the effects of domestic violence/abuse on children) should be a precondition of contact agreements in all high-risk cases
    - the wishes and feelings of children should be ascertained in relation to decisions which concern them
    - an effective, comprehensive assessment of the impacts of abuse where a child has been exposed to domestic violence.
    - the development of effective assessment protocols for infants and pre-schoolers exposed to domestic violence
    - a balance between minimising delay in resolving matters concerning children and allowing sufficient time to ensure that effective assessment and investigations are undertaken.
    - automatic separate representation for children exposed to domestic violence in private law proceedings and the use of experts and other specialists to assist the court.
    - assessment of and protection for the non-abusing parent.
    - clear protocols to ensure contact is safe
    - the development of protocols to ensure consistency between orders and appropriate communication across jurisdictions, placing safety for victims at the centre of decision making
    - the premise that orders for protection should over-ride orders permitting unsafe contact
    - clear policies regarding confidentiality and disclosure of information about domestic violence victims.
    - routine exemptions from mediation, in-court conciliation, family resolution projects and enforcement of orders in circumstances where domestic violence or child abuse is a risk

Refuge

December 2004

SUPPLEMENTARY MATERIAL FOR THE SELECT COMMITTEE INQUIRY INTO FAMILY JUSTICE: THE FAMILY COURTS

Screening and assessment

Refuge believes it is important that screening tools and processes are in place to enable those working in and for the courts to accurately identify domestic violence and differentiate it from general relationship breakdown or relationships characterised by conflict. Identifying individuals at risk and ensuring safety is crucial but this is not always easy, with difficulties to overcome for both interviewer and client.

For the client, shame or fear might prevent disclosure of domestic violence during the screening process. Another possibility is that the client has been so worn down by years of psychological abuse and her reality so distorted, that she does not recognise her experiences as abusive[36]. Blaming the victim, denying responsibility, minimising the abuse, making excuses and distorting reality is behaviour typical of domestic violence perpetrators. Within this context of power, psychological control and oppression it is hardly surprising that many victims begin to also deny, minimise and excuse the abusive behaviour and even blame themselves for 'angering their partner so much that he is driven' to hurt them. It is likely that patterns of blame and denial will emerge during screening or assessment and there is a danger that professionals might accept initial statements at face value.

Identifying oneself as a victim of domestic violence is often a *process* which takes time. Identifying domestic violence victims takes skill on the part of the interviewer, use of an accurate working definition of domestic violence[37] and an understanding of the impact of abuse on victims. Furthermore, a system which is suspicious of domestic violence allegations can pose particular difficulties for victims as it appears to mirror the abuser's behaviour by minimising and denying the victims experiences, implying she is exaggerating, lying or mistaken. Proper training is required to ensure the right questions are asked and responses are properly understood.

Refuge recommends that interviews with victims and perpetrators should be conducted on several occasions and where possible, information should be supplemented with information from other sources in order to properly explore the 'nature' of the relationship, the impact on any victims and to assess current and future risk.

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[36] Research has shown that only 17% of abused women view their experiences as criminal and only 33% agree they are victims of domestic violence. (Johnson H., Bunge, V.P. Prevalence and Consequences of Spousal Assault in Canada. Canadian Journal of Criminology 43, 2001. Cited in Jaffe et-al. Child Custody and Domestic Violence: A Call for Safety and Accountability. 2003) Rather than making false claims, research suggests that domestic violence victims are more likely to minimise, cover-up and deny experiences of abuse. (Jaffe,P., Lemon, K., Possion, S. Child Custody and Domestic Violence: A Call for Safety and Accountability. 2003)

[37] The legal definition used in New Zealand incorporates a power and control analysis of domestic violence. It also specifies that an isolated act which appears "minor or trivial may form part of a pattern of behaviour" thus placing an expectation on investigators to consider the 'history' of abuse and the impact on victims. Another important feature is the recognition that "the person who suffers the abuse is not regarded as having allowed the child to see or hear the abuse". This is essential to protect abused parents from being charged with a failure to protect a child who witnesses the abuse. (Jaffe et-al Child Custody and Domestic Violence: A Call for Safety and Accountability. 2003)

Differentiating domestic violence from 'one-off, out of character assaults'.

Refuge believes it is important not to focus on single (or even isolated incident) of violence but rather to consider the history of the abuse and the impact this has had on victims.

When violence occurs for the first time after a relationship has ended, it is likely to be a climax to an established pattern of behaviour, rather than a one off event. For example, the perpetrator may have previously used methods of psychological control within the relationship but recognises this is no longer sufficient at the point his partner is about to leave and the use of greater force, such as physical violence, must now be exerted to maintain power.

This pattern is well known and the point of separation is generally accepted as the time of greatest risk for women and children.

In circumstances where there has not been any previous physical violence or other abuse, the relationship history leading up to the assault would be different to that typically seen within the context of domestic violence. However, the assault is still an assault perpetrated within a domestic relationship and should be treated and recorded as such. It is clear that if we allow perpetrators to 'get away with violence' or collude with their excuses, then they are likely to do it again, with both frequency and severity increasing over time[38].

It is important for those who were physically abused once and or some time ago, that the courts recognise the relevance of that experience in to both the present and the future. It may be that the assault changed the nature of their relationship and the perpetrator was subsequently able to use words or body language to maintain control of the relationship and that the possibility of current and future violence remains.

Measures the Court should take following allegations of domestic violence or abuse to a child:

In the first instance, Refuge believes it is important that the courts should

- Establish whether domestic violence or abuse to the child occurred
- Assess the impact on the victims or experiencing or witnessing abuse
- Assess current and future risk from the perpetrator

Investigation

During the screening process Refuge suggests it is essential to do more than ask whether domestic violence occurred within the relationship,[39] believing that interviews conducted on more than one occasion, over time, might reveal a more accurate picture. Exploring the extent to which power and control featured within the relationship can be particularly helpful and might include questions such " has your ex-partner ever tried to control who you see, such

[38] Domestic violence carries the highest risk of repeat victimisation compared with other crimes. (Home Office, July 2002)

[39] A research study found inconsistencies in reported abuse amongst couples, with significant numbers of husbands reporting violence towards their wives that the wives did not also report. (McDonald, R., J., Jouriles, E., W.,Norwood, Ware, H., Ezell, E., Husband' Marital Violence and the Adjustment Problems of Clinic-Referred Children in Behaviour Therapy, 31, 649-665. 2000)

as friends and family?" "Do you have to change your behaviour in order to keep the peace at home"? "Have you ever been afraid of your partner?" 'Do you have to moderate your opinions and or agree with your partners view in order to stop him getting angry with you?" Information from third parties should be sought and may be useful, not only as a way of corroborating evidence[40] but also in order to more fully understand the impact on victims.

Assessment

Refuge believes there should be a comprehensive system of assessment for both victims and perpetrators in order to explore the impacts of the abuse and the risks of future harm.

Assessment for victims should include tools such as:

- Semi-structured interviews which explore abuse issues within the relationship as well as the impacts on children
- Semi-structured interviews (including puppets, drawing or small world play scenarios) for children
- Standardised measures to screen for anxiety, posttraumatic stress and depression and general psychological health
- Information from third parties such as school, nursery, GP, social services where appropriate, therapists, hospital records, family and friends.

In order to obtain results which are valid and reliable, it is important that assessments are conducted over time, particularly with young children, so that an element of trust can develop and assessment situations are as free from stress as possible.

Assessment of some women victimised by domestic violence may reveal scores in the clinical range for posttraumatic stress disorder, anxiety, depression and this is not surprising given that domestic violence is widely recognised as a highly traumatising situation. This does not mean however, that women affected in this way are impaired as parents and should lose residence of their children – many abused women try very hard to compensate for the behaviour of their partners and offer appropriate parenting to their children. Furthermore without the stress of continuing abuse, many women show significant improvements over time and often cite access to specialist domestic violence services and counselling, as instrumental in this process. It is therefore vital that legislative reform is accompanied by specialist service development in the statutory and voluntary sector and that secure funding is available to sustain this work.

Assessment of perpetrators should include tools such as

Semi-structured interviews to explore abuse issues, including key questions such as:

- Does he accept responsibility for his behaviour,
- Is he remorseful

[40] Information about concurrent court proceedings brought against the alleged perpetrator by the police, the victim or other individual would be helpful.

- Does he acknowledge the negative impact of his behaviour upon his ex-partner and children
- Is he willing to attend a perpetrators programme or individual specialist counselling
- Is there a commitment to change?
- Is his 'changed' attitude borne out by third parties such as professionals.

Issues to consider when assessing risk:

- Is there prior history of violence within the relationship
- Is he obsessive or possessive about his ex-partner.
- Does he feel a sense of ownership over his children
- Has he made threats to kill
- Is he in possession of weapons
- Is there a prior history of violence to other partners
- Has he made threats of suicide
- Has he harmed pets
- Does he have a history of mental illness

The use of standardised measures to assess for general psychological health as well as anxiety and depression might also be helpful.

Courts should exercise caution with regard to the degree of expected change resulting from participation with perpetrator intervention programmes.

Refuge
8 January 2005

Further evidence submitted by Tony Coe, President, Equal Parenting Council

1. This supplementary submission, which I make on behalf of EQUAL PARENTING COUNCIL (EPC), is in addition to EPC's written submission which consisted of the follwing documents:
• Re-Amended Submission dated 3 December 2004
• Reform Proposals - 2004 – EPC's response to the Green Paper – Parental Separation: Children's Needs and Parents' Responsibilities (not printed)
• My presentation on 12 July 2004 at the Conservatives' Family Access Summit (not printed)
• EPC's letter dated 7 December 2002 to LCD - The Intent of the Children Act 1989 (not printed)
• EPC's email response, on 10 January 2005, to erroneous supplementary submission from the President of the Family Division

2. This supplementary written submission arises from the oral evidence I gave to this Committee on 11 January 2005.

USA & BEST PRACTICE

3. First, I should like to deal with the Committee's request for evidence that the USA family justice system (and Florida in particular) employs prevention measures that produce better outcomes for children. Although Florida is not one of the most advanced States in terms of Best Practice, it is at least 20 years ahead of our private law family justice system. Florida has, for example, had a legal presumption of shared parenting on its statute books since 1982.

4. Oklahoma is considered the most advanced State in terms of having a law that secures the child's right to both parents after separation. Statute requires the court, at the first hearing, to apportion the parenting time between the parents on something approximating a 50/50 basis. A judge departing from this guiding principle must give written reasons. Other strong Both Parents States include Texas, Nevada, Maine and California. All US jurisdictions are well ahead of us.

5. Nowhere in the United States has it ever been the case (as it is here) that fit parents have no legal right to have contact with their children. The two major political parties in USA – the Republicans and the Democrats – understand and agree that both separated parents need to have at least one third of the available parenting time on a year-round basis. In Best Practice jurisdictions, it is never a matter of WHETHER contact takes place. It is a matter of HOW MUCH parenting time and WHEN.

6. I attach a copy of a letter dated 17 January 2004 which David Levy, Chief Executive Officer of the Children's Rights Council in USA, has prepared for this Committee (**Annex A**). I will forward on the Exhibits Mr Levy refers to as soon as they are received in the mail.

7. I believe that the Florida model has been highlighted here in the UK recently because a senior Florida Judge, John Lenderman, has in recent years made excellent presentations to family law practitioners in this country. At least one of these educational events was chaired by Mrs Justice Bracewell. Those presentations showcased the advances in his jurisdiction that have led to more children enjoying shared parenting, as the 1982 Florida statute intended. Judge Lenderman is one of a number of the judges we have been fortunate enough to discover in USA jurisdictions who are determined to spread the word about prevention measures that have been proven to produce better outcomes for children.

8. In Florida, as in many other US States, an ounce of prevention has been found to be worth a ton of cure! Florida's model has these key features:
• In families where the child is not at risk from a parent's behaviour, it is automatically assumed that there will be shared parenting (meaning, the child will spend not less than around 70 to 100 nights a year with the non-resident parent)
• Couples attend mandatory educational/mediation programmes that help them agree a shared parenting plan
• If a parent persistently refuses to comply with contact arrangements, sanctions are applied (but this step is rarely necessary)
• Everything is done against the background of a statutory presumption of shared parenting (that there should be frequent and continuing contact with both parents)

9. These key features are evident in all Best Practice jurisdictions in USA. I attach a letter dated 21 January 2005 that

Judge John Lenderman has kindly prepared for the Committee.

10. Another advanced jurisdiction EPC has researched is Arizona. In my oral evidence on 11 January 2005 I referred to a Parent Education Class that I had attended in that jurisdiction as an observer on 3 August 2001. A report of my attendance is available on the EPC website. The invitation was arranged by an Arizona court official, Kat Cooper, who has been kind enough to prepare a letter dated 21 January 2005 for this Committee, which I attach. I also attach the court's Information Booklet for parents concerning the classes. This booklet can also be found on the EPC website.

11. Kat Cooper has helped EPC extensively over the years by providing educational materials (including the court videos referred to in her attached written submission to this Committee) which we immediately made available to the Lord Chancellor's Department (as it was then) and CAFCASS. Both organizations failed to act on any of this information. At the time, former CAFCASS Chairman, Anthony Hewson publicly called this chronic failure (to have regard to proven prevention measures in Best Practice jurisdictions) a disgrace. Because LCD/DCA and CAFCASS have been non-responsive, EPC was forced to place all these wonderful materials in storage until the Government's mind changes, as we believe it ultimately must.

12. I am pleased to attach the following additional documents kindly provided by JoAnne Pedro-Carroll, Ph.D. (a renowned child psychologist with the Children's Institute) specifically for this Committee to show the efficacy of prevention measures:
• Law Journal Article by JoAnne Pedro-Carroll, Ph.D. and Judge Evelyn Frazee
• Family Court Review Article by JoAnne Pedro-Carroll, Ph.D., Ellen Nakhnikian, Ph.D., Guillermo Montes, Ph.D. of University of Rochester

13. On the matter of joint custody (i.e. shared residence) I would refer the Committee to the meta-analysis, published in the March Journal of Family Psychology (Vol. 16, No. 1). The study found that children from divorced families are better adjusted when they live with both parents at different homes or spend significant time with both parents compared with children who interact with only one parent. Robert Bauserman, PhD, of the Baltimore Department of Health and Mental Hygiene, reviewed 33 studies that examined 1,846 sole-custody and 814 joint-custody children. Both groups of children were compared with a sample of 251 children in intact families. Bauserman found that children in joint-custody arrangements had fewer behavioral and emotional problems, higher self-esteem and better family relationships and school performance compared with those in sole-custody situations. And he found no significant difference in adjustment among children in shared custody and those living in intact family situations. Joint-custody children probably fare better, according to Bauserman, because they have ongoing contact with both parents.

14. As I stated in my oral evidence, it is not necessary to re-invent the wheel in our quest to install a system that ensures that children do not lose a fit parent. In my submission it is abundantly clear that the Government has ignored the evidence from so many Best Practice jurisdictions that have trodden the well-worn path to sensible reforms very many years ago.

WHY THE LAW NEEDS CHANGING

15. A change in the law is clearly necessary to give effect to what the Government says it wants to achieve. I have already explained in EPC's previous submissions to this Committee why the lack of a legal presumption of reasonable contact and the "no order principle" conspire together to help a de facto custodial parent shut out the other parent.

16. The Government argues in its Green Paper that the law already states that there should be meaningful contact where it is safe. It does not. When asked to give chapter and verse, the Minister, Margaret Hodge, vaguely points to case law. The Minister has not been able to identify any case that supports the Green Paper's assertion as to the current law. In any event, case law is not binding in family law on the principle that every case is different and turns on its own facts.

17. EPC however can point to numerous cases where reasonable contact has never been achieved when there was no safety issue whatsoever. Even where such cases have been the subject of successful appeals to the Court of Appeal, the President herself has been unable to do anything about upholding the children's and parents' Article 8 right to a family life together. This is in spite of the fact that she and two other appeal court judges have ruled in favour of an appellant.

18. Neither, in practice, has the Court of Appeal been able to secure a parent's Article 6 right to a fair and an impartial hearing within a reasonable time period. This right (which is an unqualified right) is regularly flouted in contact/residence cases. It extends to the non-judicial parts of the process, yet CAFCASS (and I include the new Chair, Chief Executive and Board in this charge) thumb their noses at it!

19. In fact such is the extent of impotence of the Court of Appeal in such cases that the President herself can delude herself into thinking that an appellant was "unsuccessful" before her (as she has wrongly asserted in evidence to this Committee) when in fact the appellant was successful on two occasions against a background of chronic gross negligence and bungling by the High Court and CAFCASS. In spite of these successful appeals, the defects in the law which we cite make it impossible for the Court of Appeal to help the children or parents concerned. CAFCASS are able to ignore the Court of Appeal with impunity. The President of the Family Division in her judicial work shows not the slightest concern about lower courts flouting the Human Rights Act 1998, regardless of the harm that is being done to the children concerned.

20. Of course, the Court of Appeal does not even get to review the vast majority of such cases for a whole host of obvious reasons. One major reason is that we do not allow proper access to our appeals process because of the injustice inherent in the permission gateway. American judges are incredulous when we tell them that a parent in the UK has to first get the permission of the judge whose ruling he wants to appeal! Without the judge's permission it is extremely difficult to get to the Court of Appeal.

21. A parent can seek the Court of Appeal's permission direct, but there is little chance of permission being granted because the court will say it does not have the power to interfere with the trial judge's discretion. The judge's discretion as the law stands is effectively unfettered. The judge need only state that, based on all the circumstances and the welfare checklist, the court's ruling is in the best interests of the child. The error has to be huge and manifest for permission to be granted. The mere fact that zero contact is being permitted between a child and a fit parent (even with absolutely no safety risk being alleged) is insufficient.

22. In any event, as I have highlighted, even successful appeals are pointless because, in our experience, the Court of Appeal merely refers the matter back to the lower court for more delay and bungling.

23. The law also needs to be changed to reflect the fact that financial orders should not be finalized before a shared parenting plan has been established. In other words the money should fit around a parenting plan that serves the children's best interests; never the other way round. In Best Practice jurisdictions, mandatory education and mediation are used under the auspices of the court to settle both components on a global basis.

BIAS

24. There is a clear bias in the system and it is not a "perceived" bias. The bias is in favour of the de facto custodial parent, usually the mother; occasionally the father. Only a non-resident parent has the legal burden to prove to a court of law that
(a) his or her involvement is in the best interests of the child and
(b) the court should make a contact order to secure that involvement. The resident parent has no such burden and can introduce new spouses at will. They become instant stepparents regardless of whether they pose any safety risk to the child. It is plainly wrong that the law should discriminate against non-resident parents in this way and it is this discrimination that is working against the best interests of the children.

25. Nowhere in the law are judges told unequivocally that they should proceed from the outset on the basis that contact is in the best interests of the children unless it would be unsafe. Further they are certainly not told that they should make an order (as soon as possible or ever for that matter) to secure the child's contact with the other parent.

26. As a result lack of contact (or paltry contact) is allowed to become the status quo. I noted that the Government (in the shape either of the Minister and/or Baroness Ashton) in evidence to this Committee themselves stated in effect that, under the present law, the status quo becomes synonymous with what is in the best interests of the child. This is tantamount to an admission that there is a bias in favour of the de facto custodial parent who is given every opportunity to obstruct and delay reasonable contact whilst they manipulate the child.

27. The law needs to clearly state that it is in the best interests of children to have reasonable parenting time (secured by a timely parenting time order) unless a condition exists which would, under the public law, justify restricting the

parent's role in their child's upbringing. These we call the simple cases which, in our experience, represent the majority of cases that go to court. For these simple cases there should be a minimum threshold of one third of the available parenting time on a year-round basis, unless the applicant parent agrees to less time. NOTE: We do not see the relevance of the argument that some non-resident parents opt out of their children's lives out of choice. In the first place, there is no way of knowing how many parents give up because the system is so heavily biased against them. Secondly, there are bad parents in intact relationships as well as ones who are separated. We have to be concerned with those separated parents who desperately want to go on being fully involved in raising their children.

28. No fit parent should be relegated by our legal system to the position of a visiting uncle. Joint custody (i.e. shared residence) should be the normal order as Parliament wisely intended when the Children Act 1989 was introduced. This means that the child will live part of the time with each parent, which allows for a natural parenting environment. This does not mean that parenting time has to be apportioned on an equal basis.

29. The law should require courts to consider which parent would be more likely to support the other parent's contact when considering which (if any) parent should have primary residence.

30. We should get away from the inadequate term "contact" which belittles one parent's importance in the child's life. EPC would like to see the term "parenting time" adopted into law instead.

31. Difficult cases are those where a condition exists that would, under the public law, justify restricting the parent's role in their child's upbringing. Just as it is undoubtedly true that fit parents are being excluded from their children's lives without justification, it is also true that parents who pose a safety risk are sometimes the subject of contact orders that should never have been granted. This is because the courts and ancillary services are clogged up with simple cases that can be litigated for months and years over issues that amount to nonsense. This is a waste of precious resources which should be directed to the difficult cases. NOTE: In public law cases parents enjoy a legal presumption of contact. What possible justification is there for denying this right to parents in private law cases?

32. In our response to the Government's Green Paper (which formed part of our earlier submission) we gave detailed proposals for a systematic approach to these two categories of case. Both types of case require addressing. I fully appreciate why the President would be quick (as she implies in her evidence to this Committee) to take away a judge's family ticket if he granted a contact order that exposed a child to danger. But why would she not apparently even consider doing the same when a judge declines to secure a child's contact through the timely granting of an order where no safety issue exists?

33. Indeed, it is EPC's experience that no remedy exists, even when judges conduct themselves in an "outrageous" manner (and I have in mind a case where the President herself used that word to describe a lower court judge's conduct in a simple case). The President and her colleagues do nothing about such incidents when they hear of them; nor does the DCA. Thus bad judges are left to continue doing bad work, just as they are free to go on damaging the interests of the children and parents whose lives they ruin. There is zero accountability. This state of affairs is totally unacceptable and brings the law into disrepute.

34. I would echo the evidence given to this Committee by John Baker, Chair of the national charity, Families Need Fathers; shared parenting is safer for children (where both parents are fit) as well as being beneficial to them in so many other respects, as everyone agrees.

35. Unclear law is bad law. Parents don't know what to expect which militates against early settlements. Unclear law allows bad judges (and CAFCASS staff) to be shielded from accountability. It means that wronged parents cannot appeal. To illustrate the points (that clear laws and a viable appeal process are vital to justice) I attach three decisions from the Florida Court of Appeal (JOHNSON, KASCHAK and RALEIGH) as provided by Judge Lenderman. [They can also be downloaded from the Hot Documents section of the EPC website]

GOVERNMENT'S PROPOSALS

36. The Government has failed to think through its proposals and shows little understanding of the subject matter. The recent, highly superficial measures it has announced are nothing more than a re-arrangement of deckchairs on the Titanic! They have meanwhile ignored the gaping hole in the ship's hull! Lord Falconer, for example, had no sooner announced the absurd proposal to electronically tag parents who flout contact orders than he was backing away from it the moment it was questioned by the media.

37. The Government says it wants more mediation, but it will remain voluntary. There is nothing to say what will happen to contact while the mediation is being conducted. On this basis, it will merely add more opportunities for delay in a system which is characterized by delay. There is no cohesive, overall strategy to integrate what are piecemeal measures that do nothing more than attempt to paper over the cracks.

38. In her evidence to this Committee, the Minister says parents can't be forced to "sit in a room, staring at each other and refusing to talk". This shows a woeful lack of knowledge of how professional mediators and modern ADR methods work in practice. It is an insult to professional mediators who should be doing this. CAFCASS Officers are not qualified for this work. As CAFCASS's Chief Executive said in his evidence to this Committee, his staff are trained to come down on one side or the other. This is bad for children. Mediators are required to remain neutral. This is just one example of how the Government has failed to do its homework.

39. Another example of the Government's lack of due diligence can be seen in Baroness Ashton's evidence to this Committee on the subject of "collaborative law". The Baroness suggested that collaborative law involves solicitors discussing resolutions "in a court setting". Her evidence showed a complete lack of understanding of the collaborative law process and gives the impression that this concept was thrown in by the Government at the last minute in their rush to go public with the announcement. In fact, collaborative law involves the lawyers on both sides committing to resolving the matter without resorting to court at all. The key component is that, if litigation ensues, both lawyers agree that they will withdraw from the case. A good explanation of the principles involved can be found at: http://www.collaborativefamilylawfl.com/principles.html

40. The Minister in her evidence re-stated her core belief that courts can't help children retain both parents in the teeth of determined opposition from the custodial parent. In answer to Mr Keith Vaz's wise questioning, Margaret Hodge suggested that the only way forward is merely to encourage cultural change. Our children deserve far better than this. They deserve a system that works!

41. But the truth is this Minister has no appetite for reforms that will lead to more shared parenting where the de facto custodial parent opposes it. She is The Reluctant Reformer! Margaret Hodge believes one parent should control all aspects of post-separation parenting and this is why her heart is not in these reforms. Moreover, her department is now watering down the guidance that requires schools to involve both parents. It is this very guidance (which has the force of statute) that has helped excluded non-resident parents maintain some involvement in their children's lives. In some cases it has led to a re-establishment of contact, where the family court system has failed. And yet this Minister is now working to neutralise even the parental rights afforded by this guidance to schools. [Please refer to the email correspondence between Government and EPC on this issue.] So while the Minister seeks to give the impression that she wants to improve the vital relationship between children and their non-resident parents, her actions show that she is actually working behind the scenes to do the opposite!

42. Finally, EPC rejects the notion that we are only talking about a small number of cases. There is actually no means of knowing how many non-resident parents give up (or settle for paltry contact) because the system is so heavily stacked against them. We don't know that the out-of-court settlements (that are negotiated in the shadow of this woefully defective and unequal system) are agreements that are in the best interests of the children involved. But even if we were only talking of a few cases, that does not mean that the children and parents concerned are unimportant. A tiny minority of ships sink, but we put lifeboats on all of them! EPC is concerned about the children, parents and grandparents that are being left in the sea to drown! There is absolutely no point in having a family court system that only works for people who don't need it!!

Tony Coe
President
Equal Parenting Council
27 January 2005

Annex A

The Children's Rights Council is an international child-advocacy organization that has existed since 1985. CRC has chapters in most U.S. States, Canada, UK, Sierra Leone, Japan, and Israel. This is an e-mail report in the interests of time constraints as to why the United Kingdom should strengthen the right of a child to have meaningful contact with both the child's parents – moms and dads -- despite the parents' marital situation. I will mail the supporting documentation mentioned in this email.

Researchers in the United States generally agree that a meaningful relationship between a child and a parent involves each parent having at least one third of the parenting time on a year round basis.
The United States is moving quickly in the direction of shared parenting. And so should the U.K. The U.S. is moving in that direction because the age-old truth that children are born with, need, and love both parents is being re-discovered. After a generation of playing with children's lives by focusing on them having only one parent (the single parent system), American researchers, political leaders, and foundations, are recognizing that for children, and for the safety of women and society, "The Best Parent is Both Parents ®"

The evidence has been overwhelming that children without two parents are at greater risk of involvement in crime and drugs, are less likely to graduate from high school, and more likely to wind up in jail for violent crimes than children raised by two parents. The safety of women and all members of society depends on society encouraging more two-parent involvement as a PREVENTIVE measure.

CRC is a national 501(c)(3) non-profit agency advocating shared parenting, access and education for children of separated, divorced and never-married parents. Shared parenting is the key factor in encouraging that two-parent family. Although the majority of non-custodial parents are fathers, there are an increasing number of non-custodial mothers in the U.S., and that, too, is causing a problem. Mothers as well as fathers need to be involved in their children's lives, regardless of the parents' marital situation.

Shared parenting is the fastest-growing concept in American family law. In just 20 years, it is now legal in all 50 states, and is a presumption, preference, or "first option" (the first option a judge should consider) in a majority of states, although in some states, it is a presumption only if both parents agree. Exhibit 1 will be an update of a report from the American Bar Association.

Leading U.S. states are in Oklahoma, where approximately 50/50 shared parenting is to be given at the first hearing, if either parent asks for it, Texas (where President Bush signed a strong statute when he was governor in 1995), Wisconsin (where HHS Secretary Tommy Thompson signed a strong statute when he was governor), and Maine, where former governor Angus King signed a strong bill in 2002). These and other governors and legislatures are trying to stem the tide of violence and crime among our nation's youth. This will be Exhibit 2.

In November 2, 2004, 25 percent of Massachusetts voters had the opportunity to vote on a non-binding referendum asking the legislature to pass a strong shared parenting law, with a domestic violence exception. The referendum passed 85 percent of 15 percent. As you can see, both "red" states (conservative) and "blue" states (liberal) are joining in this movement for children.

The largest analysis of shared parenting shows that children in shared parenting do as well as children in marriage, and much better than children in sole custody. That meta-analysis was based on a compilation of 33 studies, involving 1,846 sole-custody children, 814 joint-custody children, and 251 intact families and were taken from court and divorce records, convenience samples, national samples, school samples, and clinical samples. The report is Exhibit 3. See report on the study in the Journal of Family Psychology, March 2002, Vol. 16, No.1.

The American Psychological Association (Division of School Psychology) reported that "joint custody is associated with favorable outcomes for children including father involvement, best interest of the child for adjustment outcomes, child support, reduced relitigation costs, and sometimes reduced parental conflict." This is Exhibit 4.

Major U.S. foundations, like the Annie E. Casey Foundation, the Ford Foundation, and Charles Stewart Mott Foundation, have been working on ways to include fathers in the family, and the U.S. government, through grants, has been funding programs to connect children to noncustodial parents. While these are not necessarily joint custody specific, the aim is clear – to move towards children having greater access to two involved parents. The U.K. should do no less.

Again, there is no greater danger to women than a child raised without a father to set a positive example.

We have all heard of the deadbeats, and the violent parents. But there is another type of parent, whom noted author Ms. Gail Sheehy noted in a New York Times June 21, 1998 – the "deadbolted dad" – pushed away from his own children by how divorce is handled. There are also deadbolted moms in the U.S., and we must work against that just as forcefully.

One more very important issue. There is no such thing in the U.S. as the lack of a "contact" order (or what we call access/parenting time/visitation). Every parent who does not receive custody is entitled to contact with his or her child. It is unheard of to bar a child/parent relationship, except in pathological circumstances. In this sense, the U.K. is very far behind the U.S. I pointed this out in meetings you and I had with Government representatives (including your Children Minister, Margaret Hodge), opposition Ministers, lawyers and mediators when I was in the U.K in January 2004. The individuals we talked with appreciated that a moderate group like the Children's Rights Council was offering helpful suggestions.

As to preventive measures, we have found in the United States that parent education/mediation programs must be mandatory to be effective. This is because 80% of parents go into these programs saying they don't need them; yet 80% of those come out saying they found
them useful.

I hope you will take these views into account for the children, women and society of the U.K. If I can provide further information, please let me know.

David L. Levy, J.D.
Chief Executive Officer

Annex B

January 21, 2005
Tony Coe, President
Equal Parenting Council
Dear Mr. Coe:

It is a privilege to have this opportunity to provide information about the Family Court programs created for the Superior Court jurisdiction of Maricopa County in the State of Arizona. The success of the programs has been overwhelming. Hopefully, the esteemed Parliamentary Committee will find significant merit in the progress that can be achieved for children and their families, as a result of education and mediation.

Extensive research upholds the theory that children have far greater probability of thriving when both parents are actively involved in the decision-making and care that guides their welfare and development. A year or so ago, I heard testimony provided to a Family Court judge by political scientist and author, Warren Farrell, PhD, who wrote **Father and Child Reunion**. Dr. Farrell cites hundreds of scholarly studies that support the scenarios promoting optimal physical, emotional, and academic success for children. I was very impressed with his presentation, which does not appear to be motivated by personal agenda.

As reference to my professional background, I have attached a resume of qualifications. In brief, I am a former educator, marriage and family therapist, Court mediator, and administrator in behavioral health, private, judicial and governmental settings.

Undoubtedly, education, counsel, and mediation have been invaluable, and the least invasive to the countless families with whom I have worked for the past thirty years. Although many parents possess the personal resources to work out their difficulties, most simply do not and require some form of intervention. Until very recently, for ten years, I served as Associate Clerk of the Superior Court, Director of the Family Support Center, which included oversight of Expedited Services. This department was established in 1988 to assist the Court in enforcing court-ordered child support and parenting time, formerly called visitation.

Services have been enhanced with the introduction of State-mandated education,

known as the Parent Information Program. Additionally, I was fortunate to obtain Federal funding to create and produce three educational videos in a series entitled **Family Ties and Knots**, two of which are shown in the **Parental Conflict Resolution** class, which I conceived and implemented in 1999. The PCR class was designed for parties (parents) in high conflict, and for those parties who are chronically non-compliant with Court-ordered parenting time, commonly known as visitation.

In Arizona, most child support obligations are withheld from wages by the employer, sent to a State-managed Clearinghouse and forwarded to the residential parent. Wage assignments for child support have mitigated the difficulties Courts encounter in determining whether financial support has been paid. Financial support of children is shared by the parents, according to Guidelines established by the State, after numerous factors have been considered. If you have interest in those Guidelines, the web address is http://www.supreme.state.az.us/dr/childsup/drguide2005.htm

Arizona's legislature changed statutory terminology from visitation to parenting time, recognizing that visitation is an offensive term to parents who prefer a more respectful description of their relationships with their children.
When parents report conflicting accounts, it is clearly more challenging for Family Court judicial officers to ascertain if a parent is receiving access to the child or children. With the issue growing more and more formidable, it became necessary to establish a process for professional mediation-trained staff to help the parties negotiate resolution, thus restoring the Court's orders.

When a parent reports that the other parent is denying access to the child, or is undermining the relationship, the Court orders both parties to Expedited Services, or to the **Parental Conflict Resolution** class. In Expedited Services, a mediator serves as a neutral resource assisting the parties in reaching agreement and compliance with the Family Court judicial officer's orders regarding sharing time with the child. In the 4-hour PCR class, a genderbalanced team of behavioral health professionals provides information about the impact upon children when parents participate in ongoing high conflict and interfere with the child's access to the other parent and extended family.

My personal story is evidence that divorce does not have to have negative consequences for children, if BOTH parents are responsible for the children's physical and emotional needs. Fortunately, my children's father and I placed emphasis on the children's needs, rather than on our own. We did not allow ill feeling to interfere with our children's lives. As a result, I am proud to say that they have grown to be fine, responsible adults with healthful life patterns. I credit their strong relationships with both father AND mother.

On the other hand, my second husband, to whom I have been married for nearly 27 years, suffered the loss of being part of his children's lives, due to nothing other than his former wife's animosity and vindictive nature. His children have been reunited with their loving and decent father for the past 6 years, and fortunately now enjoy excellent relationships with him. It is evident that during their elementary and high school years, they sorely missed his guidance and nurturing. The damaging repercussions of their mother's denial of access to their father are quite apparent, and we have since learned about the many hardships they endured as a result of her choice to deny them their father. My husband attempted countless times to make peace with his former wife, having seen the possibilities of constructive co-parenting in my situation, but to no avail. Had the current programs been in existence when my husband and his former wife divorced in 1976, I am confident that the Family Court would have helped avoid this type of situation.

Judicial officers have lauded the programs that help them to promote viable relationships children and both parents. I would like to add that children lose other important attachments, such as grandparents, aunts, uncles, cousins and family friends when a custodial parent is permitted to shut that door to the child. During my tenure directing the Family Support Center, my office received well over 600 requests from jurisdictions across the United States, as well as outside the country, for materials and videotapes. It appears that the need for similar education and mediation programs is rampant.

I recommend that the Committee members contact a sampling of jurisdictions using mediation and education components in their work with families of divorce. The Honorable Norman Davis is the current Family Court Presiding Judge in Maricopa County in Arizona. His telephone number is (602) 506-5262. Former Family Court Presiding Judge Mark W. Armstrong may also be a helpful resource, having been active in the Arizona chapter of the Association of Family and Conciliation Courts. His number is (602) 506-7896.

If I can possibly offer additional information or assistance, please feel free to telephone me at (602) 284-6913. My e-mail address is kat.cooper2@cox.net

Sincerely,
Kathryn Cooper
4428 E. Rocky Slope Drive
Phoenix, Arizona
United States of America
(480) 940-1543

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SUMMARY

Innovative, accomplished executive administrator with extensive experience in leadership capacity: management development, award winning educational programs and services. Demonstrated ability to form cohesive, achievement-oriented teams and processes for successful organizational performance. Proven organizational, problem-solving and mediation skills in educational, behavioral health and judicial settings. Excellent writing and media skills.

EXPERIENCE AND SELECTED ACCOMPLISHMENTS

1994-10/2004 **MARICOPA COUNTY, CLERK of SUPERIOR COURT**, Phoenix, AZ
Reported directly to elected County government official regarding complex administrative, operational and judicial functions.
Associate Clerk of Superior Court,
• Directed Family Support Center, serving judicial officers, legal community, legislators and the public. Oversight of $3.5 million budget, grants and special funds.
• Led team of 75 managerial, professional, technical and customer service employees.
• Created award-winning three-part educational video series, Family Ties and Knots.
• Designed nationally recognized educational resource Parental Conflict Resolution for judicial referral.
• Served on numerous legislative and multidisciplinary committees and work groups.
• Member of adjunct faculty – Maricopa County Management Institute

1992-1994 **MARICOPA COUNTY, SUPERIOR COURT**, **Conciliation Services**, Phoenix, AZ
Mediator/Family Evaluator/Counselor
• Mediated disputes with voluntary clients and court-ordered high-conflict parties.
• Conducted comprehensive child custody evaluations for Domestic Relations Court.
• Provided conciliation counseling to parties contemplating divorce.

1988-1991 **CHARTER HOSPITAL of the EAST VALLEY,** Chandler AZ
Director, Clinical Services
• Served as key member of hospital administrative management team.

• Responsible for all clinical inpatient and outpatient programs and services, including needs assessment, program design and implementation, quality improvement and evaluation, recruitment for clinical staff. Supervised staff of 40.
• Ensured compliance with State and professional licensing and accreditation. Developed policies and procedures.
• Proficient in areas of communication, training, team development, marketing. Adult Program Administrator/Director of Social Services

Administrator, adult psychiatric and substance abuse programs
• Led multi-disciplinary team with oversight of creative and flexible treatment programs.
• Maintained effective work relationships with physicians and referral sources.
• Met budget and census goals. Developed policies and procedures, maintained JCAHO compliance.

Director, Charter Counseling Center
• Responsible for overall management and provision of behavioral health and chemical dependency outpatient services for individuals, couples and families.
• Created fiscally viable center, expanded direct services via community education and marketing efforts.
• Provided individual, marital, family and group counseling to diverse populations.

1981-1988 **FAMILY SERVICE AGENCY, Phoenix AZ**

Assistant Executive Director
• Planned, developed, administered and evaluated agency programs and activities.
• Organized and guided clinical staff, coordinated appropriate staff and resources.
• Prepared program and contract proposals, represented agency in public relations capacity.
• Interfaced with community agency administrative and professional leadership
• Worked with Board of Directors, serving as Acting Executive Director.

FAMILY SERVICE AGENCY

Coordinator, Special Programs
• Developed comprehensive educational services/training. Conducted needs assessment.
• Identified potential business and community groups to receive training.
• Designed, coordinated and marketed services.

Counselor/Social Worker
• Managed branch office, providing individual, couple and family therapy to diverse populations.
• Provided consultation in personal and professional development with emphasis on communication, problem solving, and team building. Personnel, program design and education. Utilized writing and media skills.

1981 **MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT**

Trainer, Mesa Community College, Special Educational Services
• Designed and presented training programs for governmental and social service populations, and conducted seminars for businesses and community organizations to improve employee relations.

EDUCATION AND TRAINING

B.Sc., Education, Wright State University, Dayton OH
M.S.W., Arizona State University, Tempe AZ
Western Institute for Group and Family Therapy, Watsonville, CA
National Training Laboratories, Bethel, ME
CDR Mediation training, Boulder CO
Maricopa County Management Institute (Manager School) AZ

Past and Present Professional Associations

Joint Legislative Committee for Domestic Relations
Family Court Advisory Council
Association of Family and Conciliation Courts
National Association of Court Management
National Child Support Enforcement Association
Children's Rights Council
National Association of Social Workers
State of Arizona Certified Independent Social Work (Past certification #SW-1177I)
Adjunct Faculty Member - Maricopa County Management Institute

Educational Projects

• Co-contributor with Ron Neff, Ph.D., Parental Conflict Resolution, **Family Court Review**, January 2004 Vol. 42, No. 1

• Developed Family Ties and Knots Educational Video Series:

Children of Divorce

Parents on the Seesaw

A View for the Bench: Helping Children of Divorce

Responsibilities included production, writing, interviews, direction, and funding.

• Contributed Chapter 10 "On Behalf of the Children: How Do We Decide?" with Cathi Culek Resource Guide for Custody Evaluators: A Handbook for Parenting Evaluations, AFCC, February 1995

• Conceived, designed, obtained funding, and implemented Parental Conflict Resolution class for Superior Court, Maricopa County

• Co-produced ***Parental Conflict Resolution*** videotape with Wanda Weber, Ph.D.

• Designed and presented with David Jacob: Maricopa County Pilot for State-mandated Parent Education

• Developed Family Ties and Knots website: www.familytiesandknots.com

• Wrote and created materials for Family Ties & Knots Booklet and numerous brochures and articles, including article for **Child Support Quarterly**, Summer 2004, Vol. XXXXII, No. 15