

Family Justice: the operation of the family courts

Part 2

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 2

Antony Green, former clerk to High Court judge and guardian ad litem

Alan Kelsall

JUMP (Jewish Unity for Multiple Parenting)

Relate

David Edwards

Barry Worrall, The Cheltenham Group

Peter Cuckson, Chris Thomas and Evan Reynolds

National Society for Children and Family Contact (Formerly Children Need Fathers)

Bridget Lindley, Cambridge Family Mediation Service

Dr Brendan O'Reilly

National Youth Advocacy Service (NYAS)

Dr A J Munro

Shaun O'Connell, Family Links International (FLINT)

Dispute Resolution Consultancy

Unity Injustice

Evidence submitted by Antony Green

I feel I speak with some experience of the family courts having been Clerk to a High Court Judge of the Family Division and later as a Case Officer with the Official Solicitor for many years, acting as guardian ad litem in a great many serious cases involving children within wardship and other child care proceedings in the High Court. The independence I and my colleagues were able to display in those cases, acting as we did, solely on behalf of the children, was mainly as a result of not carrying around the baggage of a Social Work background and being able to look closely at what was possible in the best interests of the children within a legal frame-work. The two are not necessarily closely related at all as many social workers came to realise.

The experience of myself and my colleagues was often dismay at the alacrity with which social service departments would act to remove children often based only on suspicion and innuendo and then conduct a long drawn out investigation which was often against the best interests of the children they had in their care. It was not unusual for this significant delay to be cited as a reason why it was no longer feasible to return children to their natural family.

So, what was wrong? Lack of supervision, lack of suitable experience, reliance upon the dogma and text of social work degree courses and more important than anything else, a serious lack of basic common sense. Examples include: Removing a 12 year old girl from the family home because of allegations against her step-father and then placing her with a foster family only 200 yards away. The involved social worker had no thought or suspicion that the girl might call in the family home twice a day when walking the foster family's dog. Another social worker who had no knowledge of the recommendations of the Cleveland Enquiry and the Children Act concerning the use of sexually explicit dolls when interviewing children. And not least, the social workers and others involved in the cases, to name but only two, of Jasmine Beckford and Victoria Climbié. The judgments in those cases should be required reading for all those involved in the decision making process of child care, if only to make them aware of the negligence and lack of common sense displayed by those responsible for the safety and care of these two children who died.

Of course, there are many serious cases involving the sexual and physical abuse of children where their urgent removal from the source of danger is of prime importance. However, similar urgency should be applied at looking into every possible way in which it might be possible to safely return those children to their families. There also continues to be a built-in reluctance within social service departments to the placement of children with foster families of opposite cultures and religions, often when there is an urgent need to place children with a kind and caring foster family no matter what their colour of faith might be.

With social service departments attracting the largest allocation of local authority funding, we have every right to expect that social workers and others responsible for child care perform to the highest level of knowledge and professionalism. There is some way to go and the time to start is now, beginning with separating guardians ad litem from any connection with social service departments who often pay their fees. How an earth can they be seen to be acting independently on behalf of children in those circumstances?

Antony Green

19 October 2004

Evidence submitted by Alan Kelsall

Taking the four key areas identified in the news release dated 20th September, i.e.

- whether the family court system is being run effectively
- whether family court judges have sufficient powers
- issues surrounding delays caused by the current system

- whether people using family courts are getting the service they deserve

I would comment as below:-

I was pleased to be able to submit, and have accepted, written evidence to the enquiry into the Children and Family Court Advisory and Support Service (CAFCASS). However, having tried to follow events after the publication of the report of that enquiry on 23rd July 2003 I am somewhat disappointed with the outcome.

The situation in my area is now no better, probably worse, than at the time of the enquiry, particularly in relation to Private Law cases. The latest figures supplied to me show that there is a backlog of allocation prior to any work being started in some 38 cases and this is then followed by a 20 week period before the report is produced. This could mean that a child of tender years might have to wait for a quarter of its lifetime to regain contact with an absent parent. Hardly a situation, I suggest, which any of us would call acceptable. We as magistrates are no longer in a position to reduce delay by listing cases for prompt, not early, hearing, despite this being recognised as a judicial function, because we are restricted by the ability of others to carry out their function within a reasonable timeframe.

After such an excellent 'in depth' enquiry I was saddened to find, when I contacted (in June of this year, i.e. approximately a year after the report was issued) the Clerk to the Education and Skills Committee, which has taken over responsibility for this enquiry, that:-

"Since responsibility for these issues was transferred to the DfES the Committee has taken evidence from Margaret Hodge on two occasions, most recently on 7 June. The Committee is now considering how best to discharge its responsibilities in this area, and is planning an inquiry to begin in the autumn. The role of CAFCASS is obviously significant and will need to be addressed in that inquiry, but no decision has yet been taken on whether this will involve a systematic review of all the recommendations made by the Constitutional Affairs Committee in its report. However, given the thoroughness of that Committee's work on CAFCASS I am sure that the Education and Skills Committee will wish to use its report as the starting point for its work".

Not exactly what one would call rapid progress I feel.

Coming now to the effectiveness and delays in the family courts there are two particular points upon which I would like to comment.

Firstly the current situation is that whilst the County Courts seem to be inundated with work, leading to delays in hearing, we in the Family Proceeding Courts are having courts cancelled for lack of business. This leads to our losing experience and expertise despite our willingness to undertake much more training than we did in the past. What is the reason for this? Could it be that solicitors are far more prone to take Private Law cases directly to the County Courts as they receive higher fees for work in those courts? I am reliably informed that the financial difference is of the order of £1000 per case. Can anyone blame them for going for the greater rewards, even though this means that the clients have to endure unnecessary delays? Yes, the County Courts can refer cases back to the Family Proceeding Courts but is this really likely? I think not.

The second point relates to the timing of this new enquiry. The courts system is currently in the middle of a total reorganisation in relation to Unified Courts Administration. Whilst this is to come into effect on 1st April 2005 we don't yet have any indication as to by whom, how or from where we are to be administered. There have been some indications, in writing, as to where we might be heading but we have also been told that we can assume nothing to be finalised as it is all 'work in progress'. No one seems to have realised that we need a new yearbook at the end of December indicating our sittings for the coming year or that we are appointed for a three-year period and we are in the middle of one such. Naturally we will make provisions to cover any eventuality but it would be nice to know in

which direction we might be heading. We have also had some indication that family panel members will need to be authorised, and chairmen will need additional authorisation, to sit. Again we have no idea how and by whom, though it has been suggested that this might be done through the Bench Training and Development Committee (BTDC). It may not, however, be the actual bench BTDC, but rather a special one for family magistrates (based on the bench area, the county or some other area?). Neither do we know whether present incumbents will be given a 'bye' in some way.

The whole situation has a CAF/CASS feel about it in that that organisation is in its present situation due to ill thought out and precipitate reorganisation being imposed without any thought for the consequences.

I would conclude that, in my view, there is unacceptable delay in the courts caused primarily by both the disparity in fee structure and failures within CAF/CASS due, most likely, to under funding. It follows that the family courts are not being run effectively and that the court users are not getting the service to which they are entitled.

Alan W Kelsall JP
October 2004

Evidence submitted by Jewish Unity for Multiple Parenting(JUMP)

JUMP is a voluntary Jewish support and lobby group that aims to try and improve contact arrangements for the non-residential parent to see their children following separation and divorce and to attempt to improve things in the future from a religious, social and legal perspective for other parents who find themselves in this heartbreaking situation. Essentially our aim is to be recognised as equal parents which is fully supported throughout all areas of the Jewish community. We have already met with a number of Rabbis and social, medical and legal representatives to obtain as much support and guidance for our initiatives. We have also established contact with the Chief Rabbi's office and have a planned meeting with him in December. The Chief Rabbi is supportive of both parents maintaining a very positive role in their children's lives following separation/divorce as confirmed by his recent BBC Radio 4 broadcast in March this year, which is attached for information.

JUMP has also built very positive links with all the major national parent and grandparent organisations in this arena (including CEP (member), EPC, FNF, MATCH, and F4J) and will continue to work with them to lobby for change to the current law as it imperative that we finally achieve a legal presumption of parenting rights for all fit parents from the outset. If the "winner takes all" perspective was removed from the beginning the onus would force parents to find a positive and workable solution together for the benefit of their children and ensure as much as possible that children from separated and divorced families maintain a loving and enriching relationship with both parents, grandparents and their extended families.

In this important respect, we strongly feel this Green Paper will fail to bring about the fundamental changes that are needed in the UK Family Law system to reflect the socioeconomic and cultural changes to our family in the 21st century. These changes must happen without delay if the best interests of all of our children are to be upheld now and in the future.

As an example of how the Family Law system in this country has failed me, as a non-resident mother, I have enclosed a document summarising my personal story. It is not just fathers who suffer. More fundamentally it is our children that suffer when good, decent and loving parents, both fathers and mothers, are excluded from their children's lives for no proven or justifiable reasons.

This simply cannot be allowed to continue.

Lisa A Cohen
29 October 2004

Evidence submitted by Relate

I write to enclose a copy of the Relate response to the Consultation Paper on Parental Separation, and to also outline Relates' views on whether people using the family courts are getting the service that they deserve, which is one of the five questions posed by the Committee and the one that we feel able to respond to best. This response has also been sent to Alan Beith, as Chair of this Committee.

Recent research commissioned by the Department of Constitutional Affairs through Professor Jan Walker (University of Newcastle) and Professor Carole Smart (University of Leeds) has clearly shown the need for more emotional help and support for clients of the family court. Relates' experience is that this is essential for those going through the courts and indeed for families trying to avoid the courts in the first place. Yet many families are unable to get this support for a variety of reasons and as a result, in our view, they are not receiving the best service they could from the courts.

Relate sees 140,000 clients a year, many of whom are considering separation and divorce. Of those we see, 2 out of 3 tell us that they hope to stay together after our help, and the third tells us that they are more likely to work out their separation without resorting to the courts.

This number is a small minority of those people in the country who are dealing with this process of divorce or separation.

Relate would like to extend its reach and we are working on a number of initiatives that will help people to access our services more quickly. We are in the process of setting up a 24 hour, 7 day a week telephone and internet support system whilst will allow clients to get immediate help, as well as longer term support from our nationwide service. Despite this, we know that our reach will potentially still be small whilst the voluntary nature of our work demands that clients contribute in some way to pay for our service, and whilst we do not get any funding nationally to pay for the direct service to clients.

We would like to see emotional help and support more readily available to separating and divorcing people before they feel the need to go to court and that this support be available regardless of their ability to pay for it. We would be happy to adopt a co payment scheme where those that can pay, do so, but those that cannot, get help through the Community Legal Service System, or any other appropriate avenue.

It is our view that until emotional support is readily available and easy to access the courts will potentially exacerbate an already heated relationship, and will just add to the damage done to any children involved.

Relate would be happy to give oral evidence to the committee, should you feel that this is appropriate.

Cheryl Turner
Head of Public Policy

21 October 2004

Evidence submitted by David Edwards

LUNATICS are RUNNING THE ASYLUM

Good Law can be made a mockery if those who administer the system use nebulous practices

IT's UNTENABLE

- If insurers took money from insuree's only to provide no cover
- If an airline operator had no airplanes to get to paying customers destination
- If the health service had absolutely no medical facilities or medical doctors
- If airplane operator had no airplanes to get to paying customers destination
- If the health service had on report writers and absolutely no medical facilities or medical doctors

CAFCASS says "It is not possible to have any guidelines because every case is different".

But every motor vehicle on the public roads is different. The road system is made to work, due to the method of the Law enforcers (Police & the Courts) of administrating the Highway Code, in an open, clear and honest practices.

CAFCASS officer's possess no training or guidelines and without any means of facilitation are assigned to Section 8 orders.

CAFCASS officers are masquerading as experts who the Court relies upon to settle disputes regards Apportioning Quantums of Contact by Periods of Time.

There is no evidence to prove that CAFCASS have or would ever provide facilities (time – money – training and above all the practice) to assist with *Apportioning Quantums of Contact*.

CAFCASS :

- in a self-induced circular spiral of inactivity
 - stuck in a chicken and egg dogma.
 - has no idea of reasonable contact.
 - unauditible – they have no records of the type of contact recommended.
 - unpractical – they have no procedures/practices re Apportioning Quantums of Contact
 - incapacitated – by nebulous reason causing their extensive procrastination
 - ineffective – it sees itself as a report writing only service
 - complaints can only be investigated after all Court Proceedings have finished.
-

Learn from other Jurisdiction Best Practices v Have no Best Practices

Radical system v Status quo

Good Reason Principle v Empty Vessel

Facilitators v Empty vessel

Quantums of Contact) v Empty vessel

Parenting Plans v Empty vessel

Early Interventions v Family Resolutions

EARLY INTERVENTIONS (EI) v FAMILY RESOLUTIONS (FR)

“It would be incomprehensible if the Pilot Project did not receive official sanction from the DFES and the Department for Constitutional Affairs” Re Early Intervention Pilot Project - Her Honour Judge Bracewell DBE –15 July 2003:

EI & FR are two distinctly different projects - The November 2004 edition of Family Law¹ provides an insight into the two distinctly different proposed Pilots.

In short

(i) **Family Resolutions** - essentially the existing system practised by CAFCASS OFFICER *ditto* (who have no training or guidelines towards apportioning quantum of contact and no Parenting Plans).

Instead the parents will be directed towards mediators *ditto* (who have no training or guidelines towards apportioning quantum of contact and no Parenting Plans)

(ii) **Early Intervention** the radical proposed system put forward by New Approaches To Contact (NATC 0208 748 1081).

Central to the practice will be **Parenting Plans**. Its the important key towards resolving contact disputes. With the support of the Courts whom arbitrators will possess “Reasonable Contact” templates.

Early Intervention, modelled upon the widely praised Florida administered system, both in terms of Quality and Quantity, possesses widespread support from Judges, lawyers, mental health professionals.

FOR THE SAKE OF OUR CHILDREN

2.1 “Parenting Plans” “facilitators” “Good Reason Principle” “Quantums of Contact” can be delivered by The Early Interventions – administered by New Approaches to Contact (NATC 0208 748 1081).

2.2 Its high time that CAFCASS practices are tested and compared. The two distinctly different pilots – Early Interventions and Family Resolutions could be run concurrently under completely separate management with funding independent of each other.

2.3 Then have the outcomes compared by feedback from end-users (i.e. applicants for Contact Time)

¹ Caroline Willbourne, is a senior barrister who sits as a junior family law judge. Ms Willbourne is the Family Law Bar Association's designated expert on contact issues.

ISSUES SURROUNDING DELAYS CAUSED BY THE CURRENT SYSTEM

3.1 Delays in the short term being the period awaiting a Court Hearing and then further delays whilst awaiting the “Welfare Report”.

3.2 These delays are without an end. The “Welfare Report” often recommends the Court defers the question of Reasonable Contact” to another Court Hearing, sometime in the distant future. And the pattern spirals, without progress, deferrals upon deferral, upon endless deferrals.

3.3 Applicants for Contact.

3.3.1 One or both Applicants apply to the Courts for assistance regarding Apportioning Quantum of Contact by periods of Time.

Applicants expect the Court have the means to assist and define “Reasonably Contact”.

3.3.3 The majority of cases, which reach the Family Courts both parents, are “Good Parents”.

3.3.4 Even in cases where there are absences of a “Good Reason” the presumption to contact for one of the parents will be 0% - whilst the other parent will have a presumption of 100% contact. One parent is all-powerful the other parent is at mercy – Not conducive to “Best Interest of the Child”

3.3.5 Separating parents are discouraged from maintaining contact with their children – Often the current system will keep a good parent away from their own children simply because the resident parent exercise their dominance unwisely.

3.3.6 Delays are endless – because:

- the issue at the centre of contact application is “apportion time with the children” is put towards an organisation (CAFCASS) who have no idea of “reasonable contact”
- instead of CAFCASS (and its predecessor) spending their public purse on establishing facilitators CAFCASS has produced an empty vessel that parents can spend years locked into, wasting and wanting the “system” to help

3.3.6 In the CAFCASS administered system the wait for a Court case, can be a number of weeks for a “Welfare report”.

Usually, recommendation of Welfare reports is to defer the case (because the reporters do not possess a system of implementing and assisting in applying Quantum’s of Contact).

IS THE FAMILY COURT SYSTEM BEING RUN EFFECTIVELY?

The Court system cannot be effective whilst the administrators possesses

- **no facilitators**
- **no training or guidelines of regards Apportioning Quantum’s of Contact by Periods of Time.**

4.1 CAFCASS - The “eyes and ears” of the Court.

4.2 Judges are reliant upon the service and information provided from CAFCASS reports

4.3 The Court Judge – defers to their agent – CAFCASS. **The muddle begins**

4.4 CAFCASS officers are not being trained by their service

4.5 Officers have no Training or Guidelines to Apportion Quantum's of Contact by Periods of Time. e.g. whether reasonable contact for two good parents whom live within proximity of the children. (e.g. 2hours per week or 2 days per fortnight or 2 weeks per month etc.)

4.6 Despite receiving in excess of £60 million per year and more than £1 billion since the Children Act 1989 – CAFCASS possesses no facilitators or facilities to assist with practicalities of assisting the facilitation of staying contact.

4.7 If CAFCASS were to facilitate, the question is

“What history of facilitating does CAFCASS call upon?”

4.8 Concerns are raised - **CAFCASS refuses to learn from other countries best practices**, then how could CAFCASS be entrusted to improve its practices?

4.9 It cannot be valid for CAFCASS, consequently The United Kingdom, to be insular and to ignore how other Jurisdictions, improve and modernise their systems.

ARE FAMILY COURT USERS GETTING THE SERVICE THEY DESERVE?

NO – Court users find the system is an “empty vessel”.

In practice the “Interest of the Resident Parent is paramount”

TO DO - Improving the current system

- Examine and learn Best practices from other Jurisdictions
- Obtain support from Judges, Barristers, Child care experts
- Present the plan to Government – And obtain Government Approval.
- In short all the above has been done by New Approaches to Contact (NATC 020 8748 1081) in The Early Intervention (EI) Project
- EI possesses a framework for Apportioning Quantum's of Contact
- EI possesses a proven method (aka other jurisdictions) of dispute resolution

NOT TO DO

- Ignore best practices from other Jurisdictions
- Refuse to recognise professional & general public concerns anguish of the current system
- Introduce a rouge project – with the lie that the rouge project, Family Resolutions, is broadly similar to the Early Interventions Project.
- CAFCASS recent publication (68 page “*Contact: Principles, Practice, Guidance and Procedures*”). CAFCASS have no intention of changing their status quo practices.
- To push parents towards mediators (*possessing NO training or guidelines towards Apportioning Quantum's of contact*) instead of CAFCASS-officers (*possessing NO training or guidelines towards Apportioning Quantums of contact*) - maintains the status quo.

APPENDIX

NAPO Statement

<http://www.c-g.org.uk/publics/tenc/napo1.htm>

- *1. Critique of the NAPO 'Anti-sexism' Policy*

- *Introduction*

The National Association of Probation Officers (NAPO) is a major trade union and professional body of probation officers and Court Welfare Officers (CWO's).

The role of Court Welfare Officers in disputed children's cases after separation and divorce is very significant, as it is they who produce 'impartial' reports for the court in Section 8 cases under the Children Act 1989 i.e. for contested residence and contact cases. The reports often contain a recommendation, even though the welfare officer's role is essentially to collect information about each side of the case, and not to act as a judge, in what is a very important and sensitive area of the parties' lives. It is unusual for a judge to go against a recommendation made in such a report.

Court Welfare Officers are indirectly employed by the public to provide a service to the parties and to the courts, and therefore fall within the sex equality provisions of SIII of the Sex Discrimination Act 1975 (SDA75).

- *NAPO policy*

In NAPO's policy document *Equal Rights / Anti-sexism* of September 1996 [2] we find, in the section on 'Policy Objectives and Targets for the Family Court System', the following :

a) To develop and promote policies and strategies which strengthen and enhance the ability of women to make and carry out choices within separating families.

b) To develop and implement policies and strategies which challenge the experience of oppression of women in separating families.

c) To support the rights of lesbians as mothers and carers.

d) To develop policies and strategies which challenge the discrimination against women in contested residence and contact decisions.

...

e) To develop and promote training strategies which strengthen the anti-discriminatory perspective of family court work.

- *A critique of the policy*

The bias in welfare reports is well documented [1], but what is not so well known is the official approval given to this.

The courts do not receive accurate and balanced information on which to base a judgement which is meant to be in the children's best interests, so the objective needs of children in this are almost entirely overlooked, and children are quite simply treated as the property of the mother.

The NAPO policy describes the "experience of oppression of women in separating families" and the "discrimination against women in contested residence and contact decisions", and nowhere in the 15 pages of the policy is the interests of fathers and their children mentioned even once.

Part I Section 1(1) of the Children Act 1989 in stating that "*the child's welfare shall be the court's paramount consideration*" requires the children's interests to be given priority. The NAPO policy therefore contravenes the spirit and letter of the law under which CWOs operate and for which reports are produced.

- *Lack of public knowledge of this policy*

In correspondence with The Cheltenham Group [3], NAPO has stated that "the publication [i.e. containing the policy] is a members' document and therefore is not available for sale or for wide circulation to non-members".

This implies that NAPO members, who come into the homes of the public and very significantly order and re-order the lives of the public, are operating under a policy which, by their own statement, is not to become widely known to the public i.e. it is to be a concealed policy.

But the public are entitled, and have every right, to know what policies are applied by Court Welfare Officers, as this determines the most basic rights over one's children, home and finances etc. in matrimonial cases.

- *Conclusions*

There are two aspects of the NAPO policy in contested children's issues which we wish to have addressed :

- 1) the damaging effect of such a policy on the lives of fathers and their children;
- 2) the clear flouting of the provisions of the Children Act 1989.

The Children Act 1989 concerns itself with the principle that "*the child's welfare shall be the court's paramount consideration*" (Part I Section 1(1) of the Act). This principle is used to deny fathers reasonable rights. But further than this, a judge and court must have objective, accurate and balanced information on which to base a decision if this principle is to be applied in practice. However, it cannot be possible for any judge or court determining an issue about children under the Children Act 1989, and relying on a welfare report produced by a NAPO member who applies the policy, to know that this is the case. The NAPO policy is clearly capable of, and we believe does, infringe the Children Act principle.

Based on the evidence, presented below, of the responses to our submissions to the responsible authorities, there appears to be no way of remedying this situation.

- *References*

The Emperor's New Clothes : Divorce Process and Consequence, The Cheltenham Group, October 1996, ISBN 1 900080 04 4.

Equal Rights / Anti-sexism, National Association of Probation Officers (NAPO), 4 Chivalry Road, London, SW11 1HT, September 1996.

Letter, from Gaenor Kyffin of NAPO Administration, 4 Chivalry Road, London SW11 1HT, 23 April 1997.

Evidence submitted by Barry Worrall, Director, The Cheltenham Group

FAMILY JUSTICE - CONSULTATION

I believe I have briefed you previously on this subject, but to remind you that the briefing material is readily available on website, the report being Restoring Control over matrimonial and family law, with hyperlinks to further supporting evidence in other major reports. The report is available at www.c-g.org.uk/publics/rcomfl/report.htm

SOME COMMENTS ON YOUR PRESENT DELIBERATIONS

1. I note that your website states that

“Although responsibility for policies relating to children, parents and families generally now lie with the Department for Education and Skills, the Department of Constitutional Affairs has retained responsibility for the operation of the family courts system. The inquiry will not cover areas of responsibility covered by the Department for Education and Skills.”

This places your committee in a helpless position, as the real issues are policy issues (the policies of no-fault divorce and the child’s best interests applied without restraint), so you will be able to do nothing about the real issues.

You are being asked to deal with the problems (and this is an issue of good against evil) with ‘both arms tied behind your back’.

2. You are consulting with those deeply involved in the system, namely the senior judges and representatives of the lawyers.

The senior judges should never be allowed to develop law and policies, as they are also responsible for enforcing these. If allowed, they are effectively in a dictatorial position. This situation completely undermines the democratic process.

In addition to this, Butler-Sloss is quoted as saying something to the effect that “fathers are treated fairly”, a ridiculous statement, which, coming from one who should know a lot about what is going on, means that she is either mentally deranged or telling fibs. Bearing in mind her unpleasant life experiences (her husband was reported in The News of the World to be ‘associating’ with prostitutes while they lived in Kenya - see below). Someone with this experience can hardly be expected to have a balanced view of ordinary decent men’s lives.

FURTHER EVIDENCE OF WHAT REALLY HAPPENS

I enclose a copy (to Alan Beith only) of my recent Ebook *Without Authority*, 2004. This provides, in Parts 1-5:

1. a sketch autobiography, 1947-1990;
2. a contemporary documentary account of developments in law, 1947-2000;
3. the author’s own legal case, 1990-1993; followed by
4. his involvement in the initial men’s rights movement, 1990-2004;
5. conjecture on the future, 2004+, which includes the author’s own ideals.

If you read Part 3 you will read an actual case history which is shocking, and you will understand what really happens in our courts. If you wish to understand how we in this country got to this position, and who is responsible, that is described in Part 2.

I’m sure Alan will loan the rest of you this book.

Barry Worrall
Director, The Cheltenham Group
22 November 2004

Evidence submitted by Peter Cuckson and Chris Thomas, on Behalf of the Brethren

Our submission to you is on behalf of all men, women and children and written because, whilst we recognise the problems Government has with the increasing number of family breakdowns, we do feel there are some imbalances in the administration of justice.

We write as concerned Christians, known to Government as Brethren and we support Government as of God and for the people.

EVERY CHILD MATTERS PARENTAL SEPARATION

We recognise the current enquiry as being related to the above two enquiries, both of which we have responded to. Copies of our submissions on these are enclosed.

FAMILY JUSTICE: THE FAMILY COURTS

Whilst, no doubt, others would be more qualified to comment on the workings of the Court, we would like to highlight several features of concern, all related to cases of parents being suspected of abuse and the role or effect of social workers in these cases.

1. Social workers appear to have little legal restraint on their judgements and appear to operate above the law, whereas parents' views and statements seem to carry little weight.
2. Whereas there are always extremes in any profession, we would suggest that nowhere is the effect of a professional's faulty judgement more traumatic and devastating in its consequences than where families are broken up and children taken for adoption, through a social worker's presumption or lack of understanding.
3. On the other hand, where undisputed fact and witness substantiate it, the Courts should be empowered to act quickly for the safety of the child, but always with the prime intention of re-uniting the family as soon as possible, where appropriate.
4. The prevailing culture of suspicion with emergency medical staff and social services means that caring parents with children who have suffered genuine accidents are holding back from seeking treatment for them through fear of being assumed guilty of abuse.

- We know of cases where genuine, loving parents have had a household accident with a child in the family. On seeking treatment, instead of sympathy they were subjected to the trauma of suspicious interrogation and risked being charged with abuse, with all its consequences. Are these parents, even though eventually 'cleared', likely to seek medical help when needed again?

- Other young parents, whom we know very well, because they are aware of the prevailing culture, 'think twice' before going to the doctor with their children. The imbalance is that parents who love their children and who would care for them to the uttermost, are themselves having to apply 'probability' in deciding whether to seek treatment or risk false accusation.

The prevailing attitude in the medical and social work professions appears to be that parents can be assumed 'guilty until proved innocent' — exactly the opposite of the basis of world renowned 'British justice'! Is this an attitude the Government wants to foster?

OUR RECOMMENDATIONS WOULD BE:

1. **Find a way to remove the culture of suspicion whilst protecting vulnerable children.**
2. **Raise the level and the perceived standing and quality of the personnel (currently called 'social workers') by a combination of:**
 - a) **Improved basic selection of candidates**

- b) **Improved training**
- c) **Improved remuneration to attract higher calibre candidates.**

3. As in the Irish Republic, false accusations of abuse should be a criminal offence. This would be a powerful deterrent to lightly making an accusation which cannot be substantiated and potentially has life shattering consequences for the innocent child, let alone his parents. Judgements would then be made according to facts, rather than, often nebulous, hypotheses.

It is hoped the Committee will regard this submission as constructive and we would be willing to discuss any matters raised with you.

Peter Cuckson and Chris Thomas
On behalf of the Brethren
1 November 2004

Evidence submitted by Evan Reynolds

Thank you for agreeing to accept this belated submission. It stands related to the submission of 1st November 2004 from Peter Cuckson and Chris Thomas, but treats of a different issue.

Like them, I write as a concerned Christian, one of those known to the Government as the Brethren: we support Government as of God and for the people.

One of the areas of investigation listed in your News Release of 20th September 2004 is:

“- Whether family court judges have sufficient powers.”

Our feeling is that judges already have wide powers, and we would be most concerned if they were augmented without very specific safeguards against their abuse by a biased judge. We hope there will be opportunity to comment at a later stage on any specific proposals under consideration in this connection.

Our own perception is that the problems which impair the effectiveness of court judgements lie more in the operational area of the Court Support Services, which we see are also under review in this inquiry. We welcome this, as any measures which can minimise trauma for the children involved must be to advantage: for example, the elimination of excessive delays in preparing reports, and the transfer of a proportion of the effort of bodies such as CAF/CASS from the preparation of reports into more pro-active activities, as touched on in the Green Paper: “Parental Separation”.

We continue to support the Government sympathetically and in our prayers, in the constructive initiatives being taken in these crucial matters.

Evan Reynolds
5 November 2004

**Evidence submitted by the National Society for Children and Family Contact
(Formerly Children Need Fathers)**

Family Justice: the operation of the family courts.

The National Society for Children and Family Contact is a registered charity, previously known as Children Need Fathers. The NSCF is essentially a non-militant organisation that provides a telephone 'helpline' for distressed parents who are suffering from acrimonious divorce or separation.

The NSCF does not have members as such but is run by the trustees on behalf of supporters. By this method, the organisation avoids militant action being taken in its name.

The manifesto of the organisation is currently published by reference to a now defunct web site www.childrenneedfathers.org. This website is currently in the process of redesign and will be replaced with the NSCF website in the near future.

The NSCF promotes and supports the 'traditional family' as the best provider of child welfare and is alarmed and concerned about the consequences of family law as currently practiced in England and Wales. The organisation is concerned about the effect on children and on society as a whole.

The NSCF, on behalf of its supporters promotes major changes in family law by lobbying MPs, by the collection and analysis of related data and by communication with the police and other involved authorities.

The NSCF have made an application through constituency MPs and through the Shadow Minister for the Family to attend and give evidence to the Committee. We continue to hope that we will have the opportunity to give evidence to the committee in respect of the important issues that they are addressing. This would be of particular importance to our supporters who will then benefit from knowledge that our approach can be influential and that recourse to militant action is not an essential prerequisite for the promotion of changes in what is currently, (in the mind of the NSCF and its supporters), bad law.

The NSCF has obtained copies of uncorrected transcripts of oral evidence given to the committee by reference to publications HC 1247-i, and HC 116-i & ii. These have been part read in advance of preparation of this document.

A/ Welfare of the Child:

1/ We are told that the 'welfare of the child is paramount'. The Children Act 1989 has now been in operation for a period in excess of ten years so to what extent has the Children Act 1989 been successful in achieving this commendable objective?

2/ In many areas of England and in Wales the number of children being born to unmarried parents has increased dramatically over the last 10 years, in some regions in excess of 50% of children are born to unmarried persons (worst area = North East - in excess of 53%).

3/ Crime figures for December 2003 record the following:

a/ The number of criminals aged 11 and under has increased by 150% in ten years.

b/ Over the same period there has been a 50% increase in the number of girls involved in crime.

c/ Children aged 10~17 committed nearly 50,000 crimes in 2002 – up 30% on figures for 1992.

d/ Crimes include:

- 6,000 acts of violence.
- 5,600 burglaries.
- 1,500 robberies.
- 17,000 cases of theft or handling stolen goods.
- 400 sexual offences.

e/ Children aged 10~11 recorded the biggest rise up 150% relative to 1992 figures.

f/ In the 12~14 age group 9,800 were sentenced for serious offences. Up from 5,300 in 1992.

g/ During the same period, children under 14 committed almost double the number of violent attacks, robberies, burglaries and drug offences.

h/ The number of girls aged 10~17 sentenced for an indictable offence was up nearly 50% - from 4,200 to 6,700.

SOURCE NOTE 1: The statistics follow years of warnings from police chiefs and crime researchers about the effect that family breakdown – and homes without fathers – has on youngsters.

SOURCE NOTE 2: Six years ago, the Association of Chief police Officers warned the 'presence of a biological father was found to be significant in mitigating many adverse factors' among children at risk of falling into crime.

SOURCE NOTE 3: On December 29th. 2003, criminologist Dr. David Green, of the think tank Civitas, said the best explanation of rising youth crime was the absence of a father 'to provide a good role model for the son'.

Source: Home Office Statistics published December 2003 and reported by reference to the Daily Mail on Tuesday 30th. December 2003 – latest statistics due publication now – can these be considered by the committee?

4/ The NSCF (formerly Children Need Fathers) attended a meeting during the summer of 2004 that was addressed, among others, by a father who, after leaving the meeting, had to attend his 87th. Court hearing in an effort to have

previous orders of the court enforced. He advised the meeting that he had spent £7,000 of his savings, had been obliged to sell his house and had lost seven jobs during the seven year period of this 'war' due to the demands on his time in pursuing the rights of his children to have a meaningful and on-going relationship with both parents. Further, he had now incurred a legal aid bill of £150,000 and his ex-partner who had always benefited from legal aid, was supported by the tax payer to a similar, if not greater, amount.

Whereas cases such as this may be considered as unusual, they are unfortunately not unique.

The NSCFE suggests this is madness and questions (and invites the committee to question) who benefits?

- The children, whose welfare we are told is paramount, are being used as 'weapons' in a perpetual war that is robbing them of their childhood. And who may be considered as being abused by the parents and the courts?
- The parents have created for themselves a life of misery and poverty due to their inability to consider the welfare of their children as a separate issue to the other things that might be behind the breakdown in their relationship?
- The taxpayer who is spending millions of pounds effectively financing failure?

The only recognisable beneficiaries are the members of the legal professions who, it would seem, have little incentive to suggest or promote changes. Indeed, there is some evidence to suggest that some members of the legal professions actively seek to promote conflict and extend suffering.

5/ It seems that what constitutes the 'welfare of a child' is determined by reference to Section 1(3) of the Children Act 1989. The NSCFE suggest that the whole of this section should be reviewed.

Section 1(3)a: The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

Section 1(3)b: his physical, emotional and educational needs;

Section 1(3)c: the likely effect on him of any changes in his circumstances;

Section 1(3)d: his age, sex, background and any characteristics which the court considers relevant;

Section 1(3)e: any harm which he has suffered or is at risk of suffering;

Section 1(3)f: how capable each of his parents, and any other person in relation to whom the courts considers the question to be relevant, is of meeting his needs;

Section 1(3)g: the range of powers available to the court under this Act in the proceedings in question.

NSCFE observations Children Act 1989 Section 1.3:

1(3)a - A child reaching an age of understanding is likely to determine a view and to act on decisions so formed without reference to the courts. The courts cannot reasonably interfere once a child has made up his mind.

If the courts have a duty in this regard then it should be to ensure that a young child maintains a meaningful and on going relationship with both parents to the extent that, when the child reaches an age of understanding the child can make reasoned decisions. (As far as is possible - free of coercion from either parent).

1 (3) c - It seems that the courts might consider a change of residence as being of major effect when considering a 'change of circumstance'. The NSCFE suggest that a child who on one day enjoys unfettered contact with both parents and on the next finds himself to be denied contact with one of the parents may face a much more traumatic change of circumstance.

1(3)b ~ 1(3)g - these assessments appear to be subjective and open to interpretations. Indeed, different courts, even different CAFCASS officials and judges may come to different conclusions based upon the same facts.

Section 1(3) e is of course of major importance. However, what constitutes harm or risk of suffering can vary according to personal opinion. Further, the courts tend to address the short term while not considering the long-term effects of their decisions. It is likely that all children will suffer, to varying degrees, and in different ways, by the separation of their parents. A short term 'fix' to deal with an immediate problem may have lasting effects with suffering of a greater magnitude in the longer term.

6/ Section 1(5):

Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

NCFE Observation: This is a core problem with the Children Act as it currently stands, primarily because it does not reasonably address or anticipate the possible effects on a child at a time that is contemporaneous with the breakdown of the parents relationship, particularly where there is acrimony between the parents.

7/ The NCFE Suggestions:

a/ By reference to the above (and no doubt by reference to many other authorities), the welfare of children affected by separation or divorce is not being provided for by the Children Act 1989. The whole of the Act should be reviewed with a provision for children's rights. The Government's Green Paper on family law will not reasonably address the problems and may make matters worse.

b/ If the welfare of the children is to be paramount then there is overwhelming evidence (and almost universal agreement) that this can best be provided for within stable (traditional) family circumstances. In the first instance the objective should be to support traditional family values that have a proven performance in this regard.

c/ The NSCFC suggest that the children of separated parents should be treated, insofar as it is possible, in the same manner as children from a stable family home.

d/ A child should have the unfettered right to equal contact with both parents even following separation or divorce. i.e. in the absence of any order of a court the child will benefit from shared (50/50) residency with both parents unless:

i/ The parents mutually agree an alternative arrangement that is acceptable to the courts.

NOTE: Where the parents mutually agree residency and contact agreements on behalf of the children, the agreement can be submitted to a court for approval. A court will generally comply with the wishes of the parents provided that the court is satisfied that the agreement reasonably provides for the welfare of the children. It is anticipated that this will be a simple formality in most cases.

ii/ An emergency order is applied for by the police (or social services), that reasonably identifies a risk to a child resulting from shared residency. i.e. the child is effectively placed in the care of one parent or, into a place of safety, using the same criteria as applied to public law.

NOTE: A parent concerned about a risk to a child in the event of exercise of the child's right to equal residency may contact the police (or social services -possibly a CAFCASS role) in an effort to seek an Emergency Protection Order. Such matters MUST be dealt with expeditiously. Suggested time scales:

a/ Response by the police (or social services) within 24hrs. of notification of an application by a parent for an EPO.

b/ Preliminary report to court within a further 24hrs. max. (This to include brief details of the allegations, a statement made by the complainant, and preliminary observations made by the investigating officer).

c/ The courts to consider the application for an EPO within 14 days of receipt of the complaint. The court may: Refuse an application for an EPO (any temporary EPO within police / social worker powers is immediately withdrawn); Extend a temporary EPO for a further 14 days to permit further investigation; Serve an order as deemed appropriate in the circumstance to address a demonstrable risk).

iii/ A court otherwise orders an alternative arrangement.

NOTE: The primary variance to existing law is that, from the outset, the child has a right to equal residency until and unless the court orders otherwise. Any person acting in a manner that is at variance with the right of the child, without the benefit of a temporary EPO or a court order, should be liable for arrest for abuse of a child's rights with this to be considered as a serious criminal offence.

B/ Gender Bias:

Earlier reporters to the committee have suggested that there is not a gender bias either in the law or in the application of the law.

1/ There is a gender bias inherent in the original Children Act insofar as a father who is not married does not have parental responsibility. This does not apply to unmarried mothers. This part of the Act has been amended to allow for unmarried fathers to obtain parental responsibility by registering his status at the time of the birth.

2/ It is understood that in 85% (or more) of cases where disputes in such matters are brought before the family courts, residency orders favour the mother.

NOTE: This does not in itself illustrate a gender bias but, the reasons given for the judgements, based on Section 1(3), - on the few occasions where such matters come to light - (Appeal Court Judgements) do indicate a gender bias. In one reported case, a child was denied contact with a father because this would cause distress to the mother, and consequently to the child.

3/ By reference to evidence given to the Committee – (*See Uncorrected Oral Evidence HC 1247-1*) – Compare the answer given to Question 23 to the answer given to Question 29.

NOTE: With the presumption that a Barrister or Judge will generally be precise in the use of language. The answer to question 29 implies that if a father says that the mother has been guilty of domestic violence, the courts will ignore the complaint. (*See Domestic Violence below*).

4/ The NFCFC Suggestions:

a/ Where two adults of sound mind consent to an act that gives rise to the birth of a child then, at the time of that act, each party consents to the other party being a parent of the child, further consent is not required and each parent shall be equally responsible for the child.

NOTE: This should apply irrespective of the intent of the parents at the time of conception. I.e. The influence of (self induced) alcohol or drugs or the failure of contraception shall not provide for avoidance of responsibility.

b/ The parents shall be deemed to be married, irrespective of any actual marital status, for the purposes of determining the rights of the child. i.e. The children benefit from the same rights irrespective of the marital status of the parents.

c/ The meaning of 'parental responsibility' needs to be more clearly defined. The concept of 'parental duty' should also be incorporated into family law.

C/ Family Courts:

1/ Family Court duties should be limited insofar as it is possible to the approval of parental agreements and the hearing of Emergency Protection Applications. These issues can be dealt with in closed court conditions.

2/ All other hearings in a Family Court **MUST** be in open courts.

NOTE 1: See Scott v Scott [1913] AC417 – Halsbury LJ 'I am of the opinion that every Court of Justice is open to every subject of the King.'

More recently, (Adelaide 1967) Ld. Denning – Master of the Rolls – said: 'Every court should be open to every subject of the Queen. I think it is one of the essentials of justice being done in the community. Every judge, in a sense, is on trial to see that he does his job properly'.

NOTE 2: It is only by knowledge resulting from the judgements of the Family Courts that proper understanding can be created. As has been correctly observed by the committee, there is the perception that there is a gender bias in the judgements of the Family Courts. The judiciary denies this yet how do we know that their claims are true? If there is not a gender bias then perhaps more fathers would apply for residency orders - (one reason given for the relatively small number of fathers who are granted residency orders being that they do not apply for them). Alternatively, if there is a gender bias this would become clearly identifiable under an open court system and perhaps save fathers thousands of pounds and extended heartbreak and misery in the knowledge that they are wasting their time and money and to find another way of getting on with their lives.

3/ **Time:** The time taken for the courts to deal with family matters, particularly concerning young children is excessive and bears no relationship to a young child's perception of time.

NOTE: The committee has already addressed Time by reference to Q15, 16, 17, 19, 20, 22. In all cases the time scales being discussed were totally unacceptable when considering the needs of a young child who is being denied, (by the courts as much as anyone else) a meaningful and ongoing relationship with both parents pending a court order.

4/ The answer to Q12 indicates that the first port of call for affected parents in 80% of cases is a solicitor. This may be the first step towards seeking a court order. However, in most (if not all cases) there is a period of time spent in attempted negotiation between the parents with varying levels of success. It is only when these negotiations (between parents) break down that court action is commenced. In practice the total time scale can and often does exceed 52 weeks.

a/ **Attempted negotiation – variable. (say 3~6 months).**

b/ **Attempt at mediation (if the facility is available and both parties are willing) – say 3 months.**

c/ **Appoint a solicitor and apply for a court listing – minimum 2 weeks (can be as much as 3 months)**

d/ **Initial hearing: Limited to attempted reconciliation and directions, possible order for the involvement of CAFCASS.**

e/ **2nd hearing following the CAFCASS report 20 ~ 30 weeks following the first hearing.**

f/ **If court orders are ignored, or in the event of a permitted appeal, further court actions are necessary with court actions going on for a period of 7 years or more in some cases. i.e. for the period of childhood.**

In the meantime we have a situation where one parent might be denying (or severely restricting) what should be a child's right to have an ongoing and meaningful relationship with both parents. Additionally, the time may be spent in efforts to persuade the child that the non-resident parent does not care about the child or to otherwise use parental alienation techniques – *See Domestic Violence below.*

NOTE: In the absence of any court order, either parent with parental responsibility should, in theory have the right to have the child reside with them. What happens in practice? This is a question that the committee might wish to address.

Scenario: A father with parental responsibility has limited contact with his child, an application has been made to the court for a residency, shared residency or improved contact order. At the initial hearing the court orders a CAFCASS report before

considering the matter further. The CAFCASS operative has yet to advise a date for interviews and the court has not advised a new listing date for the hearing.

During a contact, the father establishes from unprovoked comments made by the child, that the mother is attempting to alienate the father by distorting events to illustrate that the father does not care for the child. There are no court orders in force. To protect the child from further abuse of this nature the father (with the consent of the child who for this purpose may be considered as not having reached an age of understanding) takes the child home with him and refuses to hand the child back to the mother until the matter has been dealt with by the courts. What, in practice happens then?

5/ The NSFCFC Suggestions:

a/ The period between separation of the parents and the determination (and enforcement of court orders) is the most dangerous period of time. If the courts cannot act within 'child time' (that may vary according to the age and understanding of the child) then, a statutory provision to protect the rights of a child, until the courts can 'catch up' is essential.

b/ There seems to be a general consensus that Mediation is the best course of action for all concerned. This view is supported by the NSFCFC together with the view that Mediation should be a mandatory requirement for all separations / divorces where children are involved. A radical rethink is required that provides for the protection of the rights of a child.

D/ CAFCASS:

1/ The DCA committee has previously considered CAFCASS. The performance of CAFCASS was (almost without exception) criticised by all parties who gave evidence to the committee. Whereas there is a hope of some improvement in the performance there is no evidence to demonstrate that the continuance of this organisation in its current form will provide for answers to the problems that it is intended to address.

2/ CAFCASS practitioners act with varying levels of commitment and competence and produce reports that vary considerably in quality and accuracy. The guidance document for CAFCASS Operatives 'Contact – Principles Practice Guidance and Procedures' provides for wide scope for personal (political) views to be applied.

3/ The guidance seems to be influenced, among other things, by the theories of Drs. Danya Glaser and Lucey Sturge, while ignoring (or discrediting) theories promoted by Dr. Richard Gardner (dec.) and possibly the theories of Dr. Lowenstein and Dr. Cameron.

NOTE: The NSFCFC suggest that psychology is not a precise science and that if the same facts were provided to a number of psychologist then, this is likely to result in a number of conclusions, if not in substance then in detail.

The theories of Psychologists / Psychiatrists may be useful for guidance but should not provide for the sole criteria for the making of decisions that might have lifetime effects.

4/ Currently, it would seem, a CAFCASS officer making a report to a court cannot be cross examined unless cross examination is permitted by the presiding judge, and then only to the extent that is permitted by the judge.

NSFCFC Observation: A copy of the CAFCASS report is generally made available to both parents in advance of the hearing with an opportunity to appeal against the report through a CAFCASS procedure. There is evidence that this procedure is unsatisfactory.

The NSFCFC suggest that it shall be the right of any person, named in, or who is the subject of, any report submitted to any court (by any person or authority) to cross examine the reporter on the content of the report and in respect of the competence of the reporter to deal with any matter that may be included in the report.

5/ Any person, irrespective of status, making a report to a court knowing it to be untrue, including by omission or by the embellishment of fact shall be prosecuted for perjury. (*Portsmouth case*).

6/ The qualifications of CAFCASS operatives are generally limited yet; CAFCASS practitioners are relied upon as being 'expert' witnesses in family court hearings. The judgements of the family courts can have lifetime effects on both children and parents, and to that extent, may be considered as being 'life sentences'.

NSFCFC Observation: The NSFCFC propose that the Appeal Court decision in Canning should apply equally to Family Courts.

To paraphrase that decision in a manner that might apply to family courts:

'If the outcome of a trial is likely to result in the separation of a child from a parent or result in a serious diminishment of a child's right to have equal residency with both parents then such a decision should not depend upon the exclusive advice of experts. It would be unwise and therefore unsafe, to proceed unless there were additional cogent evidence, extraneous to the expert advice, which tended to support the conclusion that the child is likely to suffer harm if the child's rights were enforced.'

Unless the court was sure, the dreadful possibility always remains that the child and a parent might be harmed by the actions of the court. Such an outcome would be abhorrent in our community and in any civilised community'.

7/ The NFCFC Suggestions:

a/ CAFCASS is a discredited organisation in the view of many and it is difficult to see how the performance of the organisation can be improved for the benefit of children or indeed for the benefit of society as a whole. However, the CAFCASS infrastructure could provide a basis for a new organisation (under a different name) that might provide benefits:

i/ To provide for the administrative centre for a national mediation service.

ii/ To provide for an administration centre for the protection of children's rights.

b/ The overriding objective of CAFCASS would be to protect the rights of children. The role of providing for reports for the guidance of family courts would remain. Reporting needs to be limited to facts (not opinion) and concentrated on issues as requested by the courts. CAFCASS would not provide for recommendations but would be permitted to seek opinion from 'experts' when requested to do so by the courts.

E/ Child Safety:

1/ The Government's Green Paper 'Parental Separation: Children's Needs and Parents' Responsibilities' seems to confuse the safety of a child with the welfare of a child. The NSFCFC would agree that the safety of a child is of major importance but that this should not be the sole criterion for assessing the welfare of a child.

2/ Reference to evidence given to the committee to date illustrates that there is concern about the safety of children (in itself indicative of the failure of current provisions) but with no firm proposals as to how to deal effectively with this subject without perhaps, causing a greater long-term risk to the child. An analysis of things said to the committee to date on this subject would indicate that some might wish to see all children placed in some 'safe' institution or for the courts to act on allegation alone based upon a presumption that the child might be at risk is nothing is done, while ignoring the risks if the wrong things are done.

3/ There are numerous cases (from Cleveland to Climbie') where social services have been found to be inadequate in dealing with child safety matters. It is unfortunately, unrealistic to anticipate the elimination of risk to children, even when they are in the care of (say) an Islington care home! So, what can be done?

4/ The NSFCFC believe that a Children's Rights Act could go a long way towards reducing risk. With the provision that the NSFCFC has in mind, actions brought (under a proposed Children's Rights Act) for an abuse of a child could be heard simultaneously under both civil and criminal levels of proof. For a civil remedy (that must essentially exclude a custodial sentence) it would not be necessary to prove *mens rea* and the burden of proof might be on the grounds of reasonable probability. The same case can be heard on the basis of criminal law with *actus reus* and *mens rea* to be proven beyond a reasonable doubt with a custodial sentence to be an option if an alleged offender is found to be guilty. A conviction would be required as a basis for any permanent change to a child's right to equal residency with both parents.

5/ Of course, the major problem will be in defining what a child's rights should be and what constitutes the 'safety of a child'. Some things will be quite simple e.g. statutory rape. In this case a conviction could be achieved on the basis *actus reus*. (This would also protect the civil liberties of adults who currently may be denied employment where children are involved on the basis of allegation and arrest alone – See Soham case). More difficult would be chastisement or the punishment of children by one or both parents. This needs a common sense approach with the current definition of reasonable chastisement amended.

The parents should have the overriding right and responsibility to reasonably control and where necessary, to reasonably discipline their children, in the interests of the child and society as a whole.

Instead of attempting to determine what is reasonable in this regard, a more sensible approach might be to consider what is unreasonable. It is clearly unreasonable to subject a child to sustained punishment of any kind, physical or mental. Clearly it would be unacceptable in the mind of the overwhelming majority of decent people to subject a child to cruel treatment.

It is unfortunate that the word 'discipline' has taken on the mantle of the word 'punishment' in the minds of some. It should be expected that parents do discipline their children, as among other things, they owe a duty of care to their neighbours for the behaviour of their. The appropriate form of discipline may vary according to the nature of the child and the particular circumstances of the incident (or actions) that require attention. While smacking should be a

parental option, smacking might not be an appropriate form of discipline for some children. Similarly, 'confinement' (sending a child into isolation in his / her room) or, 'exile' (grounding a child to prevent or restrict social intercourse with friends) may not be suitable for children of a different character. Parents will make mistakes, but the vast majority of parents will quickly establish what works best with their particular child. Any disciplinary measures applied in moderation during this parental learning period are unlikely to have any lasting effects on a child. Whereas smacking should be acceptable as a parental option, beating would not be acceptable. How can smacking be differentiated from beating? Infrequent mild bruising to the buttocks OR legs might be considered as reasonable. Extensive bruising to any part of the body of a child would not be acceptable.

6/ It should also be an offence of an 'abuse of a child' to knowingly make false and malicious allegations against a parent for the purpose of denying a child a right to 50/50 residency with both parents. Similarly, it should be an offence to directly (or indirectly) influence a child in a manner that seeks to undermine the standing and status of the other parent in the mind of a child.

F/ Domestic Violence:

1/ Domestic Violence is the current 'fashionable subject'. We have recently had National Domestic Violence week with the portrayal of battered women and the promotion of the statistic that 1 in 4 women will suffer from a domestic violence incident during their lifetime. The Metropolitan Police have published posters indicating that males are solely responsible for domestic violence. A representative of the Devon and Cornwall Constabulary (and no doubt others) have supported the 1 in 4 claim in a television programme that displayed exclusively women that had suffered severe physical injury. The implication being that a quarter of women in England and Wales are subjected to severe physical abuse.

2/ The 1 in 4 statistic is derived from Home Office Research Study 276 – (see page 12 of that report under heading 'Since 16'). The questionnaire used for this particular survey has not been published with this particular report. However, it is assumed for this purpose that the questionnaire is not dissimilar to the 1996 Home Office Study No. 191 as published in Appendix E pages 101 ~115 of that report.

NOTE: In the opinion of the NSFCF the 191 document has all of the hallmarks of a questionnaire designed to provide the statistics to support a particular pre determined objective. It is not clear whether or not the responses to the questions shown by reference to Report 191 Appendix E page 101 were used in the preparation of subsequent statistics. The purpose of these questions is unclear.

3/ By reference to Study 276 it can be established that 1.6% of women (and 1.2% of men) per annum have been subjected to the domestic violence of the magnitude portrayed by the police and on our televisions as being representative of a quarter of women in our society. (*i.e. have been subjected to domestic force of a severe nature*). This portrayal is clearly misleading and possibly intended to be misleading. If this is the case then this does no good service whatsoever to those who really suffer from such treatment.

NOTE: The NSFCF analysis of the data included in the 276 study is limited to data related to Domestic Violence – non sexual. The analysis does not include for consideration of data related to Sexual assaults or Stalking.

4/ Domestic violence of a severe nature includes 'Kicked, bit or hit you with a fist or threw something at you to hurt you'. The definition does not require any comment with regard to physical injury caused by the act. (*i.e. the magnitude of the force is not questioned*) This element affected 93.75% of the 1.6% of women recorded as suffering from severe domestic violence per annum. In the case of men 100% of the 1.2% of men affected by such violence is included in this category (See Table 2.2 on page 16). By reference to Table 3.1 page 34, of those affected by the worst incidents of domestic violence:

A/ 40% (0.64%) of women and 21% (0.25%) of men per annum suffered minor bruising or black eye.

B/ 13% (0.21%) of women and 25% (0.30%) of men per annum suffered scratches.

C/ 4% (0.06%) of women and 3% (0.04%) of men per annum suffered other minor injuries.

D/ 15% (0.24%) of women and 5% (0.06%) of men per annum suffered from severe bruising.

E/ 8% (0.13%) of women and 11% (0.13%) of men per annum suffered bleeding from cuts.

F/ 2% (0.03%) of women and 1% (0.01%) of men per annum suffered Internal injuries.

G/ 6% (0.1%) of women and less than 1% (0%) of men per annum suffered from broken bones or teeth.

The picture based upon the same report statistics is that 0.5% (per annum) of women suffer from the physical effects of domestic violence of the magnitude portrayed by media and poster promotions. This is a long way short of the 25% statistic being promoted.

5/ Domestic Violence is not a specific crime. Where a domestic violence incident involves a criminal act then there would appear to be no good reason why the perpetrator should not be dealt with under existing law. The relationship

between the parties should have little or no influence on the issue. Assault, Wounding, Rape and other Sexual offences and Stalking are all criminal offences and can be dealt with under existing law as such.

6/ The 276 report includes a definition of domestic violence but the NSCFC preferred definition is that which has been adopted by the Association of Chief police Officers:

Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender.

7/ Referring to this definition, the NSCFC carried out its own (small scale) surveys by contacting the Metropolitan Police and the Devon and Cornwall Constabulary with request for statistics in response to the following questions:

a/ How many arrests were made, specifically for a domestic violence offence during the period 1st. January 1999 to 31st. December 2003?

b/ Of those arrested, how many were male and how many were female?

c/ How many males and how many females were charged with a domestic violence offence during the same 5 year period?

d/ How many males and how many females were convicted of a domestic violence offence during the same 5 year period?

e/ Where charges were not brought against an arrested person, how many males and how many females were cautioned, warned or summoned during the same 5 year period?

f/ Of the record of arrests, how many males and how many females were arrested for an alleged domestic violence offence in each of the following categories:

i/ Psychological domestic violence. (note 1)

ii/ Physical domestic violence.

iii/ Sexual domestic violence.

iv/ Financial domestic violence. (note 1)

v/ Emotional domestic violence. (note 2)

Note 1 – Not a criminal offence

Note 2 – with the possible exception of stalking – generally not a criminal offence.

8/ The Metropolitan Police advised: In response to question 7a above: *'We cannot get the number of arrests for domestic violence on our Custody system. We can get assaults but not domestic violence'.*

The Metropolitan Police does have arrest records by gender but not specifically related to Domestic Violence.

For assaults:

Charged = 12,458 males / 718 females.

Summons = 163 males / 21 females

Adult Caution = 5385 males / 778 females.

Source *'Corporate Performance Group' on behalf of the Metropolitan Police – e-mail 2nd. August 2004.*

9/ The queries raised with the Devon & Cornwall Constabulary were raised at an earlier date and did not cover all of the elements referred to above, but with the following results:

For the period 1st. January 1998 to 31st. January 2002:

a/ How many arrests were made, specifically for a domestic violence offence during the period 1st. January 1998 to 31st. December 2002? *ANSWER = 13,442 Arrests.*

b/ Of those arrested, how many were male and how many were female? *ANSWER = 12,014 males, 1397 females, 31 unknown gender.*

c/ How many males and how many females were charged with a domestic violence offence during the same 5 year period? *ANSWER = 2,414 (gender breakdown not available)*

d/ How many males and how many females were convicted of a domestic violence offence during the same 5 year period? *ANSWER = Not known – refer to courts.*

e/ Where charges were not brought against an arrested person, how many males and how many females were cautioned, warned or summoned during the same 5 year period? *ANSWER = 2,309 males and 105 females were cautioned, warned or summoned.*

Source: *D&CC letter XID/jh/XS140603 13th. June 2003*

10/ An analysis of the D&CC data illustrates the following:

a/ Arrested: 89% male, 10% female, 0.2% unknown gender.

b/ Charged: 18% - (gender not known).

c/ Cautioned, warned or summoned: 17% male, 1% female.

d/ No Subsequent Action: 64%

e/ Average alleged domestic violence justifying arrest in the D&CC area = 2,403 males and 279 females per annum.

f/ Average males charged: 483 per annum.

g/ Average males cautioned, warned or summoned: 462 per annum.

h/ Average total offences, male against female (*assuming all charged were male*) where alleged offenders were subsequently charged, cautioned, warned or summoned : 945 per annum.

11/ The figures in item 10 above demonstrate that a large percentage of males are arrested. Also, that 64% of those arrested are subsequently released without further action. These elements are currently the subject of further investigation.

NOTE 1: A likely scenario is that the police receive a call out to a domestic violence incident, perhaps where alcohol or drugs are involved. They hear complaints from both parties, and in the absence of any physical or separate witness evidence they have to do something. In these cases the possibility is that the male is arrested (to avoid a breach of the peace when the police have left) subsequently, the complainant withdraws the allegation or expresses a desire that no further action should be taken.

NOTE 2: The NSCFc have clear evidence, admitted by the police that they have carried out an arrest for assault without the benefit of any physical evidence and without taking any witness statements.

12/ The problem with the situation as it stands at the moment is that there are consequences (*or sentences*) arising out of the arrest itself:

a/ A person arrested for a criminal offence is required to declare this when applying for a visa to visit the United States and may be refused a visa as a consequence of an arrest for a violent offence.

b/ A person may not be able to find employment, particularly where children are involved, as a consequence of an arrest record for a violent offence. (E.g. Employment as a school caretaker in Soham).

c/ With effect from January 2005, an arrest record relating to a domestic violence incident is likely to be persuasive, giving rise to limitations (perhaps severe limitations) with regard to contact between a child and a parent.

NOTE: These are serious consequences (sentences) that, among other things, could provide a policeman with a power to blight the life of an innocent person. A power that, in the experience of the NSCFc, the police might feel uncomfortable with.

13/ The NSCFc have contacted the Home Office in respect of this issue, and in particular the possible effects that came into effect in January 2005 (i.e. To tick a box in papers to the court to indicate allegations of domestic violence).

The response from Lord Filkin is addressed as follows:

A/ Power of arrest: *'The police require reasonable suspicion that an offence has been committed in order to make an arrest':*

NOTE 1: 'Reasonable Suspicion' has not been defined in law – it may be something less than prima facie evidence.

NOTE: If the police have been called out to a domestic violence incident and on arrival there is evident animosity between the parties, then the police might have good reason to believe that a domestic violence offence has taken place even without physical or other witness evidence. However, it is unlikely that they will know with any degree of certainty who the instigator of the incident might have been. They may still have to act as a cautionary measure to prevent a breach of the peace. Under these circumstances they may arrest one of the parties. As the D&CC statistics indicate the arrested person is likely to be the male in nearly 90% of cases, irrespective of innocence or guilt.

B/ Consequences of an arrest for a Domestic Violence Offence: Ld. Filkin was unable to provide assurances as to the likely effects of the requirement to notify the courts at the earliest time, of any allegations of domestic violence. Indeed, Ld. Filkin confirmed the NSCFc's worst fears that a 'tick in the box' is likely to result in restrictions to contact with the possible increased use of contact centres that are currently being prepared at a cost of around £3m to the taxpayer.

NOTE 1: Where there is an allegation of domestic violence, the judge will be required to carry out a 'finding of fact'. This has nothing whatsoever to do with any civil or criminal measure of guilt, rather it is a judicial opinion based upon representations.

NOTE 2: A likely process will be that the family court judge will instruct CAFCASS to carry out an investigation and to include opinion in respect of the allegation in the CAFCASS report. The subsequent report is likely to be considered as persuasive by the court. A CAFCASS practitioner, uncertain of the veracity of the allegation is likely to err on the side of caution and, following the guidance of the Government Green Paper will recommend a course of action (or offer opinion) related to the safety of a child rather than the welfare of a child. Thus, persons who are totally innocent and who are of no danger to their child whatsoever will find themselves treated like a guilty person with their lives, and the lives of their children blighted for many years to come.

NOTE 3: The invitation to tick a box indicating allegations of domestic violence is likely to result in a self-perpetuating act. This will invite persons to make the allegation in an effort to secure a court decision that suits their agenda. The advice to all parents must be to tick the box in the hope and expectation that this will level the playing field to the position that existed before this requirement was introduced.

C/ Perjury: There are no provisions within the Green Paper to address perjury. Ld. Filkin indicates that this is not necessary as there are already strong perjury laws.

NOTE 1: According to experiences reported by supporters of the NSCFC, allegations of perjury (even where prima facie evidence exists), will not be considered by the family courts. The family courts will simply recommend that such allegations be reported to the police. The police are reported as being reluctant to investigate, as this is a family matter.

NOTE 2: It should be a serious criminal offence within the scope of any family law to make false and malicious allegations, knowing them to be untrue and that are intended to interfere with a child's right to a meaningful and ongoing relationship with both parents.

Source DfES Letter 2004/0046754POGF 9th. December 2004

14/ By reference to Report 276 and to the Home Office Online Report 18/04, incidents of domestic violence are in decline. Report 18/04 advises a 38% reduction in domestic violence between 1997 and 2002.2003. Table 7.1 of report 276 indicates a decline of nearly 50% between 1995 and 2002/2003.

15/ Nobody should suffer from domestic violence, particularly of the magnitude portrayed by reference to the current propaganda. We do the genuine sufferers of domestic violence no good service whatsoever by the manipulation of statistical data to create and present a picture that is clearly exaggerated or untrue.

It is likely that, where physical violence is concerned, the perpetrators will mainly be males. For domestic violence of an emotional nature the true figure is likely to be in the region of 50/50 male and female. The one aspect of domestic violence that is not considered by reference to this report (or to any other report known to the NSCFC) is the use of children as a 'weapon' to control or influence the life of an ex partner. For obvious reasons, it is likely that females will be the primary perpetrators of this form of domestic violence.

G/ Other Issues:

1/ There are numerous other issues associated with family law that have not been addressed in this paper. e.g. the role of the CSA that would have a considerably reduced workload (with significant savings in costs), if the children exercised a right to 50/50 residency with both parents and another issue (maintenance payments), giving rise to post separation animosities would be significantly reduced or eliminated.

2/ Various 'theories' often promoted in association with the word 'new' have been put forward in connection with children by various pressure groups but there is absolutely no evidence whatsoever that there is any effective alternative to the 'traditional family' that has served as the bedrock for our civilisation and as the primary unit for any successful civilisation. If we are to expend money and effort on anything then it should be to provide support for 'traditional families'. If we really care for our children then why do we want them to be 'parked' in state run 'children parks'? Perhaps so that parents can enjoy all of the benefits of being without children and avoid the demands and responsibilities of parenthood? Perhaps so that the exchequer can benefit from the income generated by parents who choose to 'park' their children in state institutions so that they can benefit from the income of paid employment? The fundamental question is; are our children to be the children of their parents or children of the state? State support from the taxpayer is desirable and to some extent essential, state control of our children is, in the opinion of the NSCFC not desirable, indeed, this could be a dangerous route to follow.

A. H. Palmer

Trustee

For & on behalf of National Society for Children & Family Contact

11 January 2005

Evidence submitted by Bridget Lindley, Cambridge Family Mediation Service

I rang the duty clerk last week about whether or not it was still possible to submit written evidence to the Committee which is considering the family justice system. I am well aware that I have missed the deadline and that this is not written in the usual format for the Committee. However, given that I have done a lot of work on this issue, the Clerk I spoke to thought it might still be worth sending you the attached response to the green paper (plus accompanying papers) which has recently been submitted to the DCA.

In particular we (Cambridge Family Mediation Service) make proposals for some legislative changes:- 1. mandatory meeting with a mediator prior to the issue of court proceedings for ALL applicants, and also 2. an amendment to s.2 Children Act 1989 to the effect that there is a presumption that on separation parents have equal rights in relation to DECISION_MAKING about how their children are raised - this does not denote equal time sharing, as this needs to be worked out in each case, but does address the power imbalance which can arise where one party (with the children) dictates to the other what will and will not happen in terms of arrangements for contact. It is this dynamic which in our experience triggers/fuels many of the highly contested private law disputes. By ensuring mutual consultation on the exercise of PR following separation this dynamic should be vastly reduced if not averted in all but the most conflicted cases.

This all sounds a bit technical but it is clearly set out in the attached response. The proposals are drawn from our extensive practice experience of resolving disputes in a non-adversarial way.

You will see that I make reference in the response to being involved in discussions in the consultation process in the DCA prior to the publication of the Green paper. These proposals have therefore already been aired and seem to have received positive interest from a wide group of practitioners and policy makers.

I realize it may well be far too late for this to be put before the committee members but I was otherwise engaged in preparing a paper for the DFES select committee in recent weeks and simply did not have time for this as well on top of a normal workload.

Bridget Lindley
Solicitor, Researcher and Family Mediator

23 November 2004

Draft briefing on co-parenting

The purpose of this briefing is to achieve cooperative shared parenting between parents when they separate. It is based on the premise that children and parents have a right to family life (Article 8 ECHR) and that it is in children's best interests:

- to be brought up by both parents despite the fact that they do not live together;
- to be supported by each parent to enjoy a positive relationship with the other parent throughout their childhood;
- to have clarity and certainty about arrangements for their care and not be exposed to sudden changes save in exceptional circumstances where this is necessary to protect the child from harm;
- not to be exposed to conflict, which is known to be damaging to children; and
- to maintain relationships with wider family members despite breakdown in the parents' relationship.

It also aims to provide a clear structure for supporting parents through separation by giving certainties as to the legal expectations and processes. To achieve this, we propose that the Children Act 1989 and its accompanying court rules, be amended to

- i) amplify the concepts of parental responsibility and child welfare in the Children Act by giving statutory clarification as to how children's welfare is best promoted (drawing on research evidence on do's and don'ts eg: Trinder research);

- ii) signpost parents to support services according to the circumstances of the case, particularly during the periods of transition (eg: the point of separation), or where specific difficulties arise between them over arrangements for the children; and
- iii) direct parents to mediation/alternative dispute resolution rather than applying to court where there are disputes, with a view to promoting a cooperative rather than an adversarial approach..

These amendments would enforce the non interventionist principle in the CA more rigorously, ensure that the State provides appropriate support to families during periods of crisis/transition in accordance with the requirements of Article 18 of the UN Convention on the Rights of the Child¹, and most importantly would enhance the chances of the parents establishing a cooperative parenting relationship in the future, which in turn will benefit the children. The proposed amendments fall into two scenarios:

1. Where parents negotiate directly with a view to reaching agreement on child-centred arrangements whereby the child continues to be brought up by both of them

1.1 Parental responsibility:

s.2 CA: insert new sub para in this section:

“Notwithstanding the provisions in s. 2(7), when parents separate, they shall consult each other about all important decisions regarding the child’s living arrangements and upbringing, and in the absence of any court order to the contrary, shall make arrangements for the child’s care which enable him/her to be brought up and raised by both parents².”

Negotiations between parents would be eased if they did not have to discuss the relative merits of each of them having a say in, and control over, the arrangements. With such an amendment, the starting point for discussions between the parents would therefore be the practicalities of their child’s needs and lifestyle and how the best arrangements can be devised in the particular circumstances of their albeit separated family life, rather than who has the right to settle the arrangements.

By qualifying the way in which PR may be exercised, this amendment is intended to import the notion of joint decision-making from pre Children Act legislation which was all but lost when joint custody was abolished and PR introduced. It explicitly states what already occurs in the non-conflicted cases, yet does not undermine the autonomy of each parent to make daily unilateral decisions about the child’s care independently of the other because s.2 (7) remains in tact.

Moreover, by importing the statutory presumption in favour of continuing relationships with both parents from the non-implemented Part II of FLA (and from well established case law) this amendment sets out a requirement for consultation and co-operation between parents when they separate irrespective of whether they go to court³. This should therefore militate against the power imbalance which arises when one parent (the one with the children) purports to dictate against the other (the one who hasn’t got the children), and sets out an expectation that both parents will be *equally responsible* for, and involved in, bringing up the child

Note: Non married fathers would not immediately be subject to this provision unless they have acquired PR. The numbers of fathers who have PR henceforth may change statistically now that s.111 ACA has been implemented. For those who are not affected by this, they will need to take steps to acquire PR under s.4 (as usual). Thereafter the above provisions would apply.

1.2 Parenting plans:

These have already been produced by the LCD and are a very useful tool in practice. The preamble already gives some clear pointers about the general do’s and don’ts when parents separate. We propose that:

- i) this be revised to give clearer guidance on the importance to the child of co-operative parenting in the future, the need for clarity of arrangements (with no pro forma or norms!), and signposting the parents about where to go for further help/counselling/parenting support/child counselling where children

¹ UN Convention ratified by the government in 1991.

² Brought up by must by definition imply large periods of time in the company of each parent.

³ There are recent cases which are incrementally establishing this principle anyway regarding change of surname, movement within the jurisdiction – no time to find them now!

distressed etc. Many of these services will be most attractive if they are provided by the voluntary sector as there is stigma, fear and often frustration for many parents trying to access such services from local authorities under s.17 – any policy for early intervention to support families in crisis/transition must be designed with this in mind);

- ii) any such redrafting should endeavour to avoid using the terms residence and contact as they derive from the adversarial route to resolving arrangements for children, namely s.8 CA. If co-operative parenting is to be promoted guidance and official policy needs to be couched in terms of co-operative responsible parenting of children who spend time with both parents⁴. The terms residence and contact can be confined to those cases which are unavoidably subject to judicial intervention. [In our experiment at mediation, avoiding the use of such terms enables the parties to shift their attention away from issue of the relative power balance between them, and enables the discussion about the child's weekly or fortnightly pattern to flow.]; and
- iii) this revised parenting plan be very widely distributed both in hard and electronic copy in all health centres, libraries, the usual information distribution points as they are still quite a rarity. They are often most useful when a third party assists the parents to use them – therefore distribution should be accompanied by press campaigns suggesting how other family members and friends might help the parents work through the plan. Alternatively the parents can access mediation – see below

1.3 Mediation:

Where the parents cannot reach agreement by themselves, we propose that they should be **required** to attempt mediation before they can apply to court. The advantages of this would be that:

- it encourages/enables the parties to communicate directly about the issues (with an impartial third party to keep the discussion focussed) within a *legally privileged* environment, without engaging in brinkmanship behind the protection of their legal advisers;
- an agreement reached by the parties themselves is likely to be far more solution-focussed, with a win-win outcome which the parties “own”, than a decision imposed on them by the court which may inevitably be less to their liking, and may enhance the potential for mutual hostility between them;
- given that continuing conflict is known to be damaging to children, the use of mediation, which promotes co-operative parenting, is much less likely to undermine their future relationship as co-parents than contested court proceedings;
- children can be *consulted directly* within the mediation process which is far less daunting than having to see a CAFCASS officer within contested court proceedings;
- it would reduce the number of applications being made to court; and
- it would be consistent with the State's policy of non intervention (as set out in the no order principle in s. 1(5)).

We therefore propose that this be achieved by:

- i) Rule 4.4 FPR and Rule 4 of FPC (CA 1989) R 1991 being amended to include a requirement that before any party can file form C1 to apply for a s. 8 order they must file a statement from a mediator as to why mediation was not suitable or successful⁵. This would be equivalent to the s.29 FLA provisions but instead of applying to public funded applicants only, it would apply to *all* applicants thereby hopefully reducing the number of applications to court; and
- ii) s.11(1) CA should be amended to empower the court to order the parties to a dispute to attend mediation at any point during pending proceedings⁶. This would enable the court to give strong encouragement to parties who seek to invoke the court's jurisdiction to work out a resolution to a dispute themselves, without CAFCASS having to get involved which takes the matter further out of their hands. Again an 11th hour referral to mediation may still have the advantage of reducing future hostility between parents more than if the court has to adjudicate.

⁴ NB: Housing policy needs to address the fact that both parents need to be able to have the children to stay overnight, and should not have to obtain a residence order to prove this need to the local housing department – see issue of priority need in housing legislation.

⁵ There is clearly a potential problem where one party is willing to mediate and the other is not. If official policy is to promote cooperative rather than adversarial mechanisms for dispute resolution, we suggest there should be sanctions for those parents who, without good reason refuse to engage in mediation. A good reason might include serious violence, preferably evidenced by the existence of court order or medical/police evidence. Little else would suffice. An appropriate sanction would be that the party refusing to attend mediation is very likely to have to pay the other parties legal costs at least of the first hearing.

⁶ This was previously enacted as s.13 FLA but never implemented.

2. Where the parties cannot reach agreement themselves and the court's jurisdiction is invoked:

2.1 Welfare principle:

When, despite official encouragement for the parties to reach their own agreement, the dispute remains unresolved and the court has to adjudicate, we propose that the welfare principle, which the court applies when determining a contested s.8 application, should be amended to include a clear statement that in the absence of evidence that the child is suffering significant harm (in which case the public law provisions of the Act would be invoked to ensure the child's protection) the child's welfare is best promoted by both parents being involved in bringing up and having a continuing relationship with the child on terms defined in the order. This would give statutory authority to a principle which is already very well established in case law and by research finding evidence, and would echo the principle stated above regarding the exercise of PR within a court setting. It would also ensure that the State complies with the requirements of Articles 7, 8 and 9 of the UN Convention on the Rights of the Child.

Accordingly, we propose that a new subsection (which echoes wording already passed by parliament in the non-implemented s.11 (4) FLA) be inserted into s.1 CA:

“In any contested s. 8 application, the court shall have particular regard, on the evidence before it, to the principle that in the absence of evidence to the contrary, the welfare of the child will be best served by him:

- i) being brought up and raised by both parents; and
- ii) having contact with anyone else with parental responsibility and members of his family”

The effect of this would be that those who are *negotiating in the shadow of the law*, whether on their own, in mediation or through negotiations with solicitors, will be clearly aware of the principle which the court will apply if they cannot reach agreement and have to invoke the court's jurisdiction.

We are aware that it is bold heresy to talk of amending s.1 Children Act! However, this is not a question of amending the paramountcy principle. Rather it is a question of amplification of how the government and the courts view child welfare when parents separate. It has been done before in relation to issues which need to be considered in relation to a child being placed for adoption – see s.1 (4)(f) Adoption and Children Act 1989. We therefore have the temerity to suggest it here!

2.2 Enforcement:

If a parent is persistently refusing to comply with the terms of the order then the options open to the court are:

- To fine/imprison the parent for contempt of court. This disadvantage of this is that it may in itself be very damaging to the child;
- To [threaten to] make a residence order in favour of the one who is being denied contact but this is problematic in that the conflict between the parents arising out of such a situation is likely to be so severe that a reversal of roles may well do little to improve the child's chances of having a continuing relationship with both parents; and/or
- Where the threshold for state intervention it may make a care order⁷. This would arise where the parent(s) are causing significant harm to the child by exposing him/her to damaging conflict by showing hostility rather than support for arrangements which enable the child to positive relationship with the other parent, but could potentially result in the child losing the chance to be brought up by either parent and instead facing an uncertain future in the care system.

With all due respect, we suggest that leaving parents to muddle along on their own when there is non-compliance, with threats of imprisonment or switching residence if order s are not complied with, is not constructive and demonstrates a failure of the State to support families through the crises of being in transition. We suggest that the policy in this area needs to be tailored to meet the circumstances of each individual case, involving a combination of

- The parties having an opportunity to review the arrangements, as defined by the parties or by the courts, in a structured environment such as mediation or with the help of a CAFCASS officer to see why the obstacles are arising;

⁷ See re: M (Intractable Contact Dispute: Interim Contact Order) 2 FLR 636 (check ref)

- The court having the power to appoint CAFCASS officers to remain involved to oversee such reviews – this could be along similar lines to the Independent Reviewing Officers (IRO's) recently introduced in public law proceedings to oversee the implementation of care plans – see s.118 ACA.
- CAFCASS officers having the power to refer the parties to parental education programmes about the effect of separation on children,
- The parties having access to:
 - counselling as needed to help them to cope with their own feelings so that they can take a child rather than ego-centric approach;
 - therapeutic intervention in the form of family therapy to overcome obstacles where they relate to separated family functioning (eg: Germany – see McLean chapter in our book), and
 - advice and support from professionals through greater use of family assistance orders (s.16) and/ or services for children in need and their families being specifically geared to meet the needs of families in transition (s.17) [DfES needs to be geared up for this!];
- The court having the power to order parents to attend parental education programmes before it will consider any further applications from either party;
- Child protection processes being alert to the need for even handed therapeutic as well as protective intervention where the child is suffering harm as a result of ongoing conflict [again the State needs to be geared up for this]; and
- As a last resort, the court having the power to impose sanctions in the form of community service orders, fines and ultimately imprisonment in the case of very obstructive parents.

A failure to provide this menu of supportive (if coercive), rather than punitive, interventions simply postpones the problem and increases the chances of having to provide further services at far greater cost to the State and society when family breakdown occurs (see for example research on runaways (many of whom end up in care or prison) which suggests that 1 in 9 children run away and the key trigger is family conflict; mental health problems etc..).

2.3 Domestic Violence cases:

There remains the difficult issue of cases in which abuse is alleged/perpetrated either against adults or children. Specific concerns to be aware of are that:

- Allegations are easily to make, and difficult to disprove – mud sticks! It is therefore the ultimate weapon of a recalcitrant parent. Child protection processes therefore need to be very thorough as to their consideration of the *evidence* and alert to the equal dangers of over and under intervention;
- DV encompasses a huge range of cases: there is frequently some DV at the point of separation. This relatively “normal” stage needs to be distinguished from cases in which violence is endemic, severe, is likely to recur and can even result in death of either party or horrifically the child;
- It is also important to enable previously violent parents to address their behaviour through therapeutic programmes, allowing them supervised contact (or in extreme cases indirect contact) during the intervening period in order to allow genuine perpetrators to change without the child being a denied a relationship with that parent forever. It is too simplistic, and ultimately very detrimental to the child, to deny contact because of albeit proven violence – a more intricate analysis of the potential of the person to change is also important if the child’s welfare is to be promoted.

Government policy on child protection and family support needs to be thoroughly integrated on this issue.

We would welcome an opportunity to discuss any of these points with your further.

Bridget Lindley

(with assistance from colleagues at the Cambridge Family Mediation Service, Association of Lawyers for Children, Parentline Plus, Jo Phillips, Martin Richards....)

23/03/04

Cambridge Family Advice and Information Project

Summary: the following proposal outlines our plans to set up a single point of access in the Cambridge area to key services which will support families through separation, and to act as a referral agency where more specialist

agencies are required to meet the family's specific needs.

1. Aims of the project:

- We propose to develop a FAINS project to assist people experiencing family breakdown in Cambridge and the surrounding area to make arrangements for their children and themselves following separation. We will achieve this by providing a range of direct services on the premises including:
 1. information about the issues which need to be addressed on family separation, the options for dispute resolution and the legal context within which such matters are resolved, and referral to other in house and external services according to identified need (*Information and Referral Meetings*);
 2. information and advice regarding the needs of children on parental separation, drawn from research (*Parental Advice and Support Meetings*);
 3. mediation to assist clients to make their own arrangements regarding arrangements for their children and the separation of their finances, having due regard to the legal framework. This will include consultation with children where appropriate. (*Mediation Meetings*);
 4. independent legal advice to assist clients to make these arrangements (*Legal Advice Meetings*); and
 5. emotional support by referring parents and/or their children to individual counselling (on site) if any member of the family appears to need it to assist them through the separation process (*Counselling*)⁸.
- The aim is to establish a one-stop shop to enable people to access the range of services they need to support them through separation. Where more specialist services are required than those we provide, we will use our well-established links in the area to refer them to other agencies

2. The Project:

2.1 The services we will provide include:

- i) *Information and Referral meetings*: We see these meetings as the core service of this project because it an opportunity for the convenor to:
- identify with clients issues arising from the their specific situations and inform them of range of services which will provide them with support and assistance through separation⁹.
 - refer them to such services once identified, subject to their consent; and
 - provide them with basic information about the needs of children when their parents separate, and the legal framework which will underpin any arrangements which families may make in the short and long term, whether married or not.

The diagnostic and planning nature of this session will enable families to have a clear understanding of the issues they need to address, and how best to address them, with appropriate support. The key services they are likely to need will be provided in house. Should they wish to access more specialist services, we will use our knowledge/database of other local and national agencies working in related fields to make appropriate referrals.

For the period of the pilot, and subject to this bid being successful, we will provide up to 8 of these information sessions per week (probably on Friday afternoons from 1-5pm) when our existing premises can be vacated, with some telephone surgery/helpline sessions and telephone appointments to enable clients to retain anonymity if they wish . The sessions will be convened by any of our existing staff team who will all be trained to deliver core information produced during the preparatory stage of the project.

In addition we will also develop our website so that it will be possible for clients to obtain not just about our key services but also basic information about separation issues, particularly concerning

⁸ We are aware that this is not part of the funding remit of the LSC, and therefore this is not part of our bid. However, we regard this as a key need for some children and families particularly during the transitional period of separation and therefore we will provide it as part of our core services. We have made a separate bid to our local Primary Care Trust for funding to cover the costs of providing this.

⁹ This meeting would also provide an opportunity to identify any specific requirements of clients to enable them to use our other services for example, an interpreter where English was not their first language or an advocate if they had a learning difficulty. We will build links with local interpreting and advocacy services to facilitate the provision of this support as required.

children, with links to appropriate local and national services which will support them through separation eg: parenting plans, on-line diaries etc., as per the green paper Parental Separation: Children's Needs and Parents' Responsibilities.

ii) Parental advice and support meetings: Where the general information provided in the information session is not adequate to assist parents to support their children through separation, we will offer parental advice and support sessions. In these sessions, one of our child counsellors will work with the parent(s) on the issues they perceive as being problematic for their children, and they will advise them specifically on the needs of children on separation and how best to support them to spend time with each parent.

- We have become increasingly aware of the need for this service not just through direct feedback from our existing clients but also from previous research on this point¹⁰. In order to explore this need in greater depth, we are currently conducting a survey amongst our existing clients of their precise needs and wishes in this respect. (See attached documentation on this)

iii) Mediation: Where parties wish to conduct their own negotiations regarding the arrangements for their children and the separation of their finances, they will be referred to our existing mediation service. This involves an impartial third party, the mediator, assisting the parties to negotiate on the issues which divide them, in a legally privileged environment, with a view to them making their own decisions. The mediator ensures that the discussion is conducted within the relevant legal framework and to this end can give the parties legal information but in order to preserve his/her impartiality s/he cannot give them legal advice. Thus parties may consult with their own separate solicitors alongside mediation to inform their negotiating positions, but they conduct the negotiations themselves.

- The goal is that the parties make their own arrangements for separation, without recourse to litigation. The only involvement of the court is therefore to convert any agreement they make into a consent order, unless mediation breaks down. This service is provided by experienced mediators all of whom are LSC accredited and collectively have 70 years mediation experience between them.

Our mediation service includes provision for **children to be consulted directly by the mediator** (subject to the parents and children agreeing) in order to assist their parents to make arrangements for their care following separation. Further details about this are included in our information sheet about mediation (see attached).

The costs of the mediation service are currently covered by our franchise (except where there is direct consultation with children) unless clients fall outside the LSC eligibility limits, in which case they pay privately for this service. We would expect this arrangement to continue, save that if children are consulted in a case in which the clients are publicly funded, our existing franchise arrangement will need to be amended to allow for a disbursement to cover the costs of this, unless funding is provided for this as part of this bid, since otherwise it is unfunded work.

iv) Legal advice meetings: At any stage in the process either party may need specific legal advice on their situation to inform their thinking and proposals during negotiations about the arrangements they are making for themselves or their children. Thus we will provide legal advice meetings to which clients may be referred during any of the other meetings they attend in house, where their need for legal advice is identified *by a member of our staff*.

These meetings will be convened by our legal consultants, who are local solicitors from two different firms. There will be up to four one hour sessions per week, and since these will be provided free to clients, they are part of the bid.

¹⁰ Janet Walker, Peter McCarthy, Cathy Stark, Karen Laing, Picking up the pieces: Marriage and Divorce two years after information provision Summary, Centre for Family Studies, University of Newcastle upon Tyne, 2004; Dowling, E. and Gorrell Barnes, G., London, Working with Children and Parents through Separation and Divorce, Macmillan (2000)

Following an initial free session, clients who need further legal advice will be referred on to local solicitors in accordance with a Referral and Engagement Protocol¹¹ which we will develop during the pilot period of the project with local solicitors and the local Law Society. These solicitors will then assess them for public funding or advise them of their private client costs in the usual way.

- The aim of these sessions is to provide individual advice to enable each party to participate confidently in mediation, or any other forum in which they are negotiating between themselves. We believe there is an increasing need for this service to be offered to clients on the premises because many clients have difficulty obtaining assistance under the Help with Mediation scheme or find themselves just outside the public funding eligibility levels yet they are unable to pay solicitors' private rates. Thus the aim is that everyone who uses our "one stop shop" will be able to access initial independent legal advice, on referral by a staff member (which will screen out those who are only seeking *information only* at this stage). Thereafter, clients receive any further legal advice off the premises, on a private paying or public funded basis in accordance with the protocol outlined in the footnote below.

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- v) **Counselling:** in our experience of mediation we are aware that some clients can cope with the emotional impact of separating much better than others. Indeed within each case there is usually one party who is more able in this respect than the other. In order to preserve the power balance between the parties, and thus ease the negotiations, we think it is important to acknowledge this differential and provide appropriate emotional support alongside the mediation process so as to enable parties to feel supported in the arrangements they make. We therefore propose to refer clients to our in-house child and adult counselling service when requested, or when the need is manifested in the course of our other work with each family. The costs of this are not part of the bid as they are outside the remit of the LSC but we mention this service here as it is a key part of our plan to address the wide-ranging needs of separating families.
- vi) **In-court advertising stand:** Subject to the approval of the court, we would like to set up a permanent stall in the county court building to display useful information about mediation, child counselling, adult counselling, parental advice meetings, information meetings, parenting plans and so forth. This would also display prominently the contact details (telephone, email, postal address etc) for the CFMS 'one-stop-shop' to make it easy for clients to get in touch with us. We have already had preliminary discussions with one of our local judges about this who responded positively to this suggestion.
- vii) **Outreach staffing within the court:** Subject to the approval of the court, we would like to explore the possibility of having a mediator from CFMS in court on a regular basis, say once per week. It would be sensible for this to coincide with the court's 'applications day' –the day when all child applications have their first directions hearing at court and when the cafcass officer is available for in-court conciliation. We would hope that the mediator could assist in identifying those cases in which mediation might be a constructive way forward for the parties and thus save them, even at that late stage, from becoming caught up in the court process.

2.2 Staffing:

The staff team at Cambridge Family Mediation Service comprises:

- ❑ family mediators who collectively have approximately 80 years of mediation experience and also have extensive relevant legal and counselling qualifications and experience;
- ❑ legal consultants from two local solicitors firms; and
- ❑ counsellors who specialise in working with children (and their parents) in this context, and with adults experiencing separation.

¹¹ The purpose of this Protocol will be to ensure that the distribution of referrals to local solicitors is equitable between firms, subject to client choice, and is affordable for clients. To this end we would endeavour to encourage local solicitors to whom we refer, who take on clients on a private paying basis, to agree a fixed sum which would cover the client's legal advice alongside mediation and the drafting of the Minutes of Consent order where proposals are agreed. Obviously such a sum would have to be augmented where matters became very protracted or a dispute arose to be resolved between solicitors, but in the main we will promote in the protocol discussions the idea that clients would be able to receive legal advice and support through mediation on a fixed fee basis.

We believe that our collective expertise and experience equips us to provide the range of services which we believe separating families need, at least for the period of the pilot of the project. We are therefore the sole applicants in this bid, and do not propose to make any *formal* partnership with other organisations working in the field for the time being, although we will establish *informal links* with other such agencies through our proposed local FAINS development forum outlined below.

However, if the evaluation data drawn from the pilot suggests that our current staffing and expertise is not meeting the needs of the population we serve, we will consider expanding our services and/or staff team in partnership with other local agencies to meet such identified needs.

**2.3. FAINS Development Forum:
(How the project will link into any other public initiatives, including community-based initiatives and/ or add value to existing schemes of provision)**

We will establish a Cambridge-based FAINS development forum to bring together key local agencies into a working group which will focus on the needs of separating families in the area and the extent to which services currently meet, and/or need to be developed to meet, their needs. To this end we have already held several events to develop links with local solicitors, barristers, judges, CAF/CASS officers, Relate and local community advice agencies. Although no formal forum has been established as yet, a core potential membership has already been identified and will be further developed as part of the pilot of this project. This will also link in to current plans in the city to develop an Advice Arcade in the future.

2.4 Time scale (Pilot 15 months February 2005-April 2005):

October – December 2004:

- Prepare core information for information meetings and details of the scope of each service, plus training all staff accordingly;
- Develop all relevant paperwork
- Develop local and national resource database to support our referrals to external services;
- Develop a local Referral and Engagement Protocol with local solicitors and the local Law Society;
- Develop and consult with FAINS development forum;
- Plan evaluation with approved research teams.
- Publicise service

May 2005-April 2006

- Deliver FAINS service comprising:
 - Information meetings (8 hours per week free of charge)
 - Parental advice meetings (4hours per week, free of charge subject to funding being available).
 - Mediation meetings
 - Legal Advice meetings (4 hours per week, free of charge)
 - Counselling for adults and children
- Consult regularly with development group
- Evaluate

3. Who the project will be targeted at:

Adults and children experiencing family breakdown.

4. The geographical area that the project covers:

South and East Cambridgeshire and the surrounding areas of West Suffolk, North Hertfordshire and North Essex (in line with the current franchise)

5. Evaluation (Any measurable benefits that the project will achieve):

We propose to pilot our composite service for 6 months, following which we will conduct an evaluation and review of the needs of clients and whether or not our services meet their needs. Such an evaluation would gather data on:

- Client satisfaction
- Client perceptions of degree of co-operation and durability of arrangements made;
- Numbers of cases in which issues were not resolved;

In addition, by developing our ethnic monitoring, we will endeavour to identify sectors of the local population for whom the service is less accessible, and thereafter, by further developing our links with local advice and support agencies working with such communities, we will develop a programme of outreach work to promote equal access to our service for separating families in the region.

We are also currently in contact with researchers at the Centre for family Research, University of Cambridge, who wish to evaluate our service and in particular the Parental Advice and Support meetings. They were previously involved in the evaluation of the work of our child counsellors who provided group counselling to children experiencing family breakdown in local schools, a research study which was funded and published by Joseph Rowntree foundation¹². They propose to assist us with the evaluation of the pilot stage of this FAINs project in order to inform our service development. Thereafter, assuming it develops into a permanent service, they propose to apply for funding to conduct a research evaluation of the service, collecting both quantitative and qualitative data and using a control group in order to explore the experiences of clients and outcomes in depth. At this stage we are only seeking funding to cover the costs of the evaluation of the pilot. as part of this bid.

6. Evidence of need for the project to exist in this region:

- Research confirms that people experiencing family breakdown often do not know where to go for advice and information, and would like an accessible one-stop resource. (They also find that legal advice on financial issues can be vague. They often resolve matters by voluntary arrangements, which depend on continuing goodwill (Perry et al¹³).
- The service we propose is ideal to meet the needs of those who seek support with regard to the legal, procedural and practical issues which need to be addressed on separation, not only because the key services they need will be provided on premises, but also because our well-established links with other local and national agencies will enable us to signpost clients to more specialist services as required.
- Moreover, our recent evaluation of our mediation service suggests that clients were very positive about the support they received to make co-operative arrangements (copy attached) within our existing service and therefore we believe we are well placed to extend the range of services we offer to meet their needs using the preferred one-stop shop model.

In relation to children's arrangements specifically, we are aware from our discussions with the local judiciary, that there has been an increase in applications to the Cambridge County Court for residence and contact orders under s.8 Children Act 1989 over the last 5 years, yet all but 4% of these settle after the first directions appointment. Given the evident potential for such cases to settle, we believe that if parents accessed our proposed services earlier there may be a reduction of the numbers of such applications to court, thereby freeing up the courts for the most complex contested cases.

8. Why us?

- We have a well-established reputation in the region as a key not-for-profit agency which supports children and families through separation, and continue our outreach work to encourage referrals from all sectors of the population.
- We already have a very experienced staff group of mediators and child counsellors whose other concurrent employment extends our links to other agencies, both locally and nationally. This enables us to refer clients to more specialist services which are indirectly related to family separation such as benefits, housing, education, family support and child protection etc... according to their needs
- We are fortunate to have easy access to advice on evaluation and research methodology through our links with the Centre for Family Research, University of Cambridge. The Director of the Centre (Professor Martin Richards) is our patron and has a passionate interest in our work having had research and policy experience in the field for 30 years.

¹² Wilson, A and Edwards, J, School-based support work for children whose parents have separated, JRF, York, 2003

¹³ Perry A, Douglas, G, Murch, M, Bader, K and Borkowski, M, How Parents cope financially on marriage breakdown, JRF, York, (2000).

9. **Budget:** needs to include

- XX staff time during 3 months preparation,
- printing of publicity materials and publicity costs –
- launch event, then
- 8 hours pw Information meetings, 4 hrs pw Legal advice meetings and 4 hours pw Parental Advice and Support meetings if fundable as part of the FAINs project
- costs of installing and maintaining a telephone helpline
- costs of developing and maintaining website information and links
- evaluation costs
- costs of stand and outreach at CCC (4 hours per week)
- admin/overheads.

Evidence submitted by Dr Brendan O'Reilly

May I firstly say that I am sorry to write to you directly. I listened to the session of the Constitutional Affairs Committee on television on Sunday 12th December involving the Law Society and the Bar Council representatives answering questions about the Family Law Courts.

It is fantastic that such sessions are so open to the public and it is also fantastic that the public are able to use the internet to follow up information, as I have done.

I would be very grateful if you would allow me to comment on some aspects of the session because I was really interested in several parts of this discussion which was clearly very important.

May I say that I have no affiliation to any of the bodies mentioned at all and I have only last week joined the new political party 'Peace and Progress'. I have an interest in human rights issues for many years (Northern Ireland and Cambodia amongst others). This letter will not be given or disclosed to any group or party and I am writing it as an individual and because of my genuine concerns. I have no 'agenda' whatsoever.

You asked about contacts between men's groups and the Law Society, which is the best question I think I have ever heard. The reply, I felt was somewhat unfair in that it seemed to imply that the reason that they have not met one particular group is because of some threat. I may have that incorrect, however, the way the question was answered was to the effect that the Law Society and the Bar would not meet this group. Meetings with other such groups were not really elaborated on. This is such an area for progress and as it has been raised I feel that a recommendation by the Committee that such groups meet and listen to each others concerns and experiences would be invaluable with much good coming from them over time.

The issue of 'in camera' was also raised and as I remember the Barrister representative said that on occasions clients ask if the Hearing will be in public and they are relieved to hear that such Hearings are not held in public. This was a very shrewd and wily answer!

This answer gives the impression that people are in favour of the 'in camera' nature of Family Law proceedings which is entirely different from hearings and outcomes held in open court without the public being allowed to be aware of identities etc. The answer did not refer to the important point about whether people were aware of the legal intricacies of 'in camera'. If people are not knowledgeable of the Law, it is not possible for them to have or to give an informed opinion on this and their understanding of 'private' may bear no relationship to their understanding of 'in camera'.

As in camera proceedings have developed over the years it is clear that fundamental principles are done away with, such as, the right of the public (the people) to know what the Courts are doing in their name. A loosening up of the current in camera nature of the Courts is, in my opinion, essential. I do welcome what the barrister had to say on the issue of Judgements being made more widely available.

At the very least, in the current climate, there is much distrust surrounding in camera proceedings. I do not feel that the arguments in favour of maintaining the current secret nature of these Courts any longer outweighs the argument for much greater openness, if only to allow greater accountability of the Courts and the protection of litigants. I believe that the system historically whereby in camera proceedings existed was to occasionally and in particular circumstances to allow sensitive issues to be discussed in the Judge's Chambers or in closed Court. However, it has developed to now encompass a huge section of the Court Service and this is therefore an unintended development and, unfortunately, it also results in unaccountability and it therefore impossible to know that justice is being done or that in camera Courts are acting in the public interest.

Another issue that was raised that was, in my opinion, misleading, was about children recognising themselves in published reports. This does not seem to be a good reason to stop or to interfere with the public right to know what is happening in the courts. The principle of individual protection is already firmly laid down in the reporting of cases such as rape and abuse cases. I don't believe that it is right to make blanket statements about how individuals will react or feel when they read judgements etc. This is the privilege of the individual. However, it would be interesting to see a study done on this issue. Comments, such as this, clearly reflect attitudes amongst lawyers as well as their knowledge of these issues and this is reflected in the training received (see below). There is, of course, the opposite

argument in that the majority of such individuals would benefit from knowing what has happened and how their lives have been affected, and they would certainly seem to have this right should they wish to exercise it and this would clearly be just and fair for those people.

A discussion took place about the training of Mediators in a new system being developed. Please forgive me because I cannot remember the title of this new system. This new system of mediation does seem to have much to recommend it and I believe that it is in use in the USA.

What was very worrying about the Law Society's answer in relation to this was that when they were asked about how long the training took, the reply was two days.

I believe that this reply was very informative and also opens up really important questions about the legal profession and how lawyers train for Family Law proceedings and possibly proceedings in other areas. It seems most unsatisfactory that issues of such importance can be taught in two days and the practitioner allowed, unsupervised, to handle such negotiations, the outcome of which will have life-long effects. I think that this needs to be studied further. However, having said that it is indeed a welcome development.

The general issue of training lawyers is thus raised. In all aspects of the law solicitors and barristers deal with individuals who are very vulnerable and people who will be affected in many diverse ways because of Court decisions etc. I do not believe that lawyers are properly equipped as professionals to do much of this work. In order to assist this I believe that lawyers should study subjects such as psychology and sociology at University.

And there is the issue of post-graduate training. In other professions, such as Medicine, people who wish to specialise are required to undergo specialised postgraduate training. I believe that this is essential for the legal profession.

I think that this would also have benefits in that such undergraduate and postgraduate training would have great benefits when many practitioners become judges and if any training is required in order to progress to the judiciary the basic training in these subjects could easily be built upon, thereby also having a further beneficial effect for the judiciary.

Another point here is that if an expert witness appeared in an important case and it was discovered that s/he received two days training with unsupervised practice subsequently s/he would be unlikely to be considered to be a credible expert witness by a Court.

During the questioning of the Law Society and Bar Council Representatives, I felt that the way that the questions were answered was also interesting and important. I certainly do not mean or wish to personalise the issue, however, it must be said, that the replies were delivered in a way that implied that all of the answers were forthcoming and that lawyers had all of the answers and 'knew best'. This is also really important and is, I believe, connected with a certain approach to problems and this emanates from the atmosphere within the legal profession as well as undergraduate and postgraduate training.

It is obvious that most problems that professional people come across there will be more than one answer, if not many. And there will be more than one to approach each problem. This did not come across during that session, and I find this really very worrying. I believe that this is another area that could be examined further.

Finally, there is no need for you to reply to this letter, as I am aware that you are extremely busy. I would be most grateful if you feel that this letter contributes in any way that you give a copy to the other members of the Committee. If you wish I would also be pleased to elaborate on any point and / or to appear before the Committee to make some or all of these points in public session.

Thank you very much and every good wish.

*Brendan O'Reilly
14 December 2004*

Evidence submitted by The National Youth Advocacy Service

The National Youth Advocacy Service (NYAS) welcomes the Select Committee of Inquiry into the way that the Family Justice system and the courts deal with family cases. NYAS is both a Children's Charity and a Community Legal Services Help Point with its own family law practice and team of children's caseworkers and advocates. NYAS has socio legal services of information, consultation, casework support and legal advice and representation to children and young people aged 0-25 resident in England and Wales. Over the last 15 years NYAS has developed particular experience and expertise in dealing with intractable and disputed contact cases and it is in this context that we are submitting the enclosed two reports to the Constitutional Affairs Committee as evidence to the Inquiry.

One report deals with research carried out by NYAS and the Centre for the Study of the Child the Family and the Law at the University of Liverpool into 'Effective Support Services for Children and Young People when Parental Relationships Break Down- a child-centred approach'. This research was carried out just before the establishment of CAFCASS, and contains important messages from young people about the sort of family justice system and range of support services they would like to see.

The second submission is a research snapshot of recent cases involving 95 children, in which NYAS represented children in family proceedings pursuant to Rule 9.5 of the Family Proceedings Rules 1991. A significant feature of the research and NYAS' model is its child-centred nature and the high levels of satisfaction the children themselves felt with the outcomes.

We hope these two reports will be helpful to the inquiry. We would be very happy to give oral evidence to the Committee if required.

Elena Fowler
Chief Executive
21 October 2004

Annex

RULE 9.5 SEPARATE REPRESENTATION

A review of cases involving 95 children in which The National Youth Advocacy Service (NYAS) represented children in family proceedings pursuant to Rule 9.5 of The Family Proceedings Rules 1991

NYAS is unique, in being the only children's charity which is also a Community Legal Services Help Point, with its own family law practice. NYAS has developed and delivered a range of socio legal services of information, consultation, social work support, casework and legal advice and representation to children and young people resident in the UK, aged between 0 and 25 years.

The majority of NYAS' legal work is concerned with the representation of children involved in private law proceedings and, in particular long-running disputes about residence and contact arrangements. In relation to these disputes NYAS has developed a model in which its caseworkers work alongside a team of in-house family lawyers, in very much the same way as children's guardians work with children's panel solicitors in public law proceedings. NYAS' practice in this area is growing and the present 'snapshot' review is considered timely and hopefully informative, bearing in mind the President's Direction of April 2004 giving clear and welcome guidance on the circumstances in which Courts may consider making children parties under Rule 9.5 of the Family Proceedings Rules 1991. It is also timely, given the publication in July 2004 of the Government's Green Paper 'Parental Separation: Children's Needs and Parents' Responsibilities' and the imminent implementation (now scheduled for 2005) of Section 122 of the Adoption and Children Act 2002, s.122, which adds Section 8 proceedings to the list of those specified in s.41 of the Children Act 1989 in which children may be made parties and be represented by both a solicitor and a children's guardian.

All the children in the cases reviewed were parties and were represented by NYAS under Rule 9.5 of the Family Proceedings Rules 1991.

During January and February 2004 52 of the most recent NYAS Court files were examined in order to identify the

circumstances of the 95 children involved, the reasons for referral to NYAS and the outcomes of NYAS' involvement.

REASONS FOR REFERRAL

In her Practice Direction of April 2004 the President of the Family Division set out, ten examples of the circumstances which might influence a Judge to make a child a party in any particular case. The ten circumstances are offered as guidance to the courts. In 100% of the NYAS referrals 2 or more of the circumstances set out by the President as justifying the making of a 9.5 appointment, were present.

THE REASONS FOR REFERRAL

	%
Adversarial and hostile parents, including obstruction to contact arrangements	35
Entrenched and protracted cases at the time of referral	28
Domestic violence present	9
Alleged Sexual abuse	9
Alleged Physical abuse of the child	8
Cultural issues, including fear of abduction	7
Parents' substance misuse	1
Agreed co-working with CAFCASS	2
Lack of confidence in CAFCASS by parents	1

AGE OF CHILD/CHILDREN AT THE START OF THE PROCEEDINGS

<i>Age of child/children at time of referral to NYAS</i>	%
Age 1-5	25
Age 6-11	59
Age 12-16	16

TOTAL TIME THE CHILDREN HAD BEEN INVOLVED IN PREVIOUS COURT PROCEEDINGS

<i>Time involved in court proceedings</i>	%
Between 1-3 years	44
Between 3-6 years	38
Between 7-10 years	16
Under 1 year	2

REFERRAL SOURCE

<i>Source of referral</i>	%
County Courts	80
High Court	8
CAFCASS	8
NYAS Helpline, direct from young people themselves	4

GEOGRAPHICAL AREA OF REFERRALS

<i>Area of referral</i>	<i>%</i>
North West	27
London	30
Midlands	12
South East	6
Other areas of England and Wales	25

PREVIOUS CAFCASS INVOLVEMENT IN THE CASES

73% of the cases had a CAFCASS report and, of those, 8% went on to recommend the appointment of NYAS under rule 9.5. In 2% of the cases had there been active co-working with CAFCASS.

In 11% of cases CAFCASS' Legal Department had declined a Court's request to take the referral.

NUMBER OF CAFCASS REPORTS PRIOR TO REFERRAL TO NYAS

No. of previous CAFCASS reports	<i>%</i>
1 or 2	56
3 or 4	33
5 or 6	11

TIME TAKEN TO APPOINT A NYAS GUARDIAN

In 90% of the cases a NYAS Guardian was appointed within 2 weeks, although it should be noted that the current timescale is nearer to 4-6 weeks as the result of an increased volume of work.

RANGE OF WORK UNDERTAKEN BY THE NYAS GUARDIAN

Almost all (98%) of NYAS' cases involved an intractable dispute over contact. Many of the children were found to be caught between two warring parents who had overtly attempted to influence them. 59% of the children were extremely reluctant to express their opinions because they were not consistent with their parent's views. The caseworker was active in conflict resolution between the parents and enabling the child's views to be represented to them safely and without further acrimony. In these cases the parent's views were not consistent with those of their children and the child's interests could not have been represented by either of their parents.

The caseworkers were instrumental in achieving resumed contact in cases in which contact had previously completely broken down. Supervised contact was a significant part of this work.

Work was done with a wide range of relevant people or bodies in addition to parents and children (schools, relatives, other professionals etc.)

Lifestory work was done with individual children (helping them to understand their relationship with their parents).

Working across, and with different cultural values within the family was also a significant part of the work..

In a number of the cases where no action had been taken following a Section 7 Report, the Judge still had serious concerns about the child's welfare and their wishes and feelings, and appointed NYAS to represent the child.

OUTCOMES OF NYAS' INVOLVEMENT

In 100% of the cases in the sample the Court followed the recommendations of the NYAS Guardian. In some cases more than one recommendation was made.

<i>Recommendations</i>	<i>%</i>
Future contact arrangements	86
Ongoing contact monitoring with further reporting	15
Residence Orders made	19
Therapeutic intervention for parents or children	15
Proceedings terminated at the child's wish, due to the length of time involved with the Courts	4
Concern about safety of children and further investigation by Social Services Dept. recommended	10
Recommendation to present truth about the child's family history to the child	8
Other	11

OUTCOMES FOR CHILDREN

- In 89% of cases, the reports the children's views coincided with the of outcome of the proceedings.
- In 95% of cases the child/children's views had a significant impact on decision-making.
- In 100% of cases there was an ongoing process of information/explanation/progress reporting back to the child.
- In 88% of cases the child was seen in a neutral venue, away from any potential conflict.
- In 67% of cases there was separate reporting of a sibling's views or needs. In a small number of those cases the welfare of siblings had been found to be in conflict, particularly where children had been divided between parents and contact had ceased with the non-resident parent. Very often in cases where that had happened, contact between siblings had also ceased. Many of the children then found themselves in reconstituted families with additional and newly established separate family relationships associated with their parents' new relationships. These complicated cases require careful representation of each child.
- In 44% of cases there were questions about the mental health, physical health or learning disabilities impacting upon the ability of a parent to care adequately for their child.
- 27% of the cases involved serious allegations of physical or sexual abuse, including domestic violence.
- Although there was no record of contested issues about blood testing, 8% of the cases resulted in recommendations to present the child with the true facts about their paternity.

52% of the cases had been before the courts for more than three years, and in 16% for between 7 and 10 years. The amount of time that children had been involved in court proceedings, prior to their referral to NYAS, and the age of the children at the time of referral, indicates that these are seriously entrenched cases, in great need of being moved forward.

All of the cases referred to NYAS in this sample were exceptional and complex, as defined by the President's Direction of April 2004. Although prior to the practice direction the involvement of NYAS in AvA (2004) 1FLR 195-1225, demonstrated what can be achieved by an imaginative use of social work in the Tandem model, providing separate representation for the child. The case demonstrates the distress and damage caused to children by long standing and continuing hostility between the parents. Lord Justice Wall in his paper to the NAGALRO conference on the 11th October 2004 said 'this case demonstrates the value and importance of the children having their own separate representation in difficult cases'.

A significant feature of NYAS' involvement is its child-centred nature. The NYAS caseworkers spend time with children, their parents and significant people in the child's life, actively working to achieve a resolution of conflict. Their views become an active dynamic in the process of conflict resolution and through the process of consultation within a safe environment, the children are able themselves, to become agents of change rather than the passive

subject of intractable disputes.

Elena Fowler and Sara Stewart
National Youth Advocacy Service

Evidence submitted by Dr A J Munro

Mutual Care Agreements — to influence family courts

I would be most grateful if you and your colleagues in the Constitutional Affairs Committee would consider the following propositions:

1. Current family law procedure grants divorce on demand and allocates the property of the partners according to need, without regard for behaviour during the marriage, nor willingness to make the partnership pleasant and successful. Appellants are routinely advised by their solicitors that with the law as it stands they should not defend themselves against divorce petitions even if they are false. This devalues marriage vows and leads many divorcees to feel a sense of injustice. It leads some who are richer than their partners to avoid marriage.
2. That the high divorce rate in Britain is leading to misery, poor performance in education and employment, crime, and increased public expenditure on social and health care.
3. Marriages and other caring partnerships would be more likely to succeed if the partners themselves formulated and signed a mutual care agreement defining what they offer to and expect of each other, and covering such areas as:
shared principles and ideals
living arrangements
personal conduct
conduct towards each other
conduct to each others' family members, friends and colleagues
shared property
inheritance
procedure for handling disagreements
procedure for appraising and monitoring the agreement procedure on break-up.
(an example is appended)
4. That those who independently conduct regular appraisal and monitoring of such an agreement would have a valid, well-informed impression of the partners' adherence to it.
5. In the unlikely event that such a carefully managed relationship were to break down, the views of the appraisers should influence family courts in their allocation of shared property. That family courts should respect individual agreements entered into by caring partners, provided that these are not exploitative.

This last item 5 requires legislation, regulations and guidance. Parliament might also wish to issue guidance on the formulation of mutual care agreements that would be seen as non-exploitative and acceptable to family courts.

Already we are seeing many couples developing pre-nuptial agreements covering allocation of shared property in the event of divorce. What I would like to see is people who may already be married, people contemplating marriage, same-sex couples, and family groups of more than two, formulate wider mutual care agreements focusing on partners' behaviour and expectations to reduce the risk of breakdown. To this end I am developing a website (*not/or profit*) for information sharing, registration and practical help on the matter of mutual care agreements.

Your thoughts on this will be much appreciated. I will be pleased to meet you or chat with you on the telephone about it if you so wish.

Dr A J Munro MRCP

Appendix

ENHANCING MARRIAGE WITH A MUTUAL CARE AGREEMENT

Alick Munro -

Partners in marriages and other loving relationships can benefit from devising a mutual care agreement defining their responsibilities to each other and their expectations of each other. Doing so is likely to enhance their commitment to the relationship and help them sort out any difficulties at an early stage.

By mutual agreement, the operation of this agreement could be appraised by one or more trusted friends or by an appraiser appointed by an independent agency.

If such a relationship ended, the agreement and the appraiser 's report could be taken into account by a family court. For marriages, the agreement may usefully include a condition that allocation of property of the marriage on divorce may be influenced by the partners' behaviour during the marriage and their willingness to maintain the marriage. This will involve a change in practice in family courts.

The general acceptance of this practice could improve the quality of marriages and reduce marital breakdown. It could prevent the injustice felt by divorcees when a partner whose behaviour in the marriage has been inadequate, or who has sought divorce on minimal pretext is awarded half or more of the property of the marriage, and where custody of children passes to one partner only.

Religious, political and social organisations may wish to consider promoting mutual care agreements and set up agencies to provide marriage appraisers for couples who seek this provision.

Working as a GP I encounter many people of both sexes saddened by the failure of their marriages, and facing a lonely life on their own. We are also all aware that some of the rise in the cost of social and medical services is due to the lack of care for family members in failing health who live alone. We are also aware of the relatively poor social performance of the offspring of broken homes. There is now evidence that parents who maintain their commitment to sharing a home even although their relationship is strained have more successful offspring than do those who separate or divorce.

Every few months in my surgery I encounter another parent bitter that divorce has reduced him to living in a bed-sit while devoting much of his earnings to maintaining his former family home, now the property of his or her ex-partner. These people are aggrieved that the practicalities of working life and the hostility of their former partner deny them access to their children even if they have never been guilty of any abuse. These people are angry that divorce is granted on demand to appellants and that there is no point in disputing their appeals in family courts, although they themselves are willing to work at repairing a strained marriage. Many prefer to stay unmarried to their partners rather than take this risk, but this is not conducive to providing a stable home for their offspring.

Marriage as an institution in Britain needs to be strengthened if we are to make it more popular and to reduce the 40% proportion of marriages that end in divorce, and the consequent toll of misery and isolation.

My second wife and I met after we both had endured the misery of divorce in which we felt ourselves to be innocent and injured parties. We bought a house and moved in together but did not marry for a year. During this year we both felt the need for a formal assurance of our commitment to each other. We therefore devised and signed a mutual care agreement akin to that which is appended to this article. Our marriage has been a happy one. Disagreements have occasionally arisen but have been kept in check, and often this has been because we have remembered the content of the agreement. We have both felt at times that had such an agreement been in place in our previous marriages they might not have ended in failure. We wonder if this is not also true of other couples and whether they should be aware of this possibility as a means to enhance their marriage.

The major benefit of mutual care agreements is the assurance they provide to partners, and the reminder when required of the standards to which they have committed themselves. The fact that the agreement has been devised by the couple themselves and can later be modified by mutual agreement makes it more meaningful to the individuals than the standard marriage vows. The formation of such an agreement stresses that marriage is seen as a contract for mutual care; something which is explicit in marriage vows, but the details and effects of which may not be considered adequately by the couple. However if mutual care agreements are to be fully effective they also need to be subject to external appraisal, and where necessary to carry weight in family courts in a way that marriage vows currently do not.

Couples may invite trusted friend to provide a service of appraisal in their marriage. Parents in many denominations

are used to appointing godparents for their children. Marriage appraisal is a similar role and just as necessary. For younger couples their own godparents may be very suitable appraisers. Others may consider trusted friends and colleagues. In most cases the role will be more pleasure than discomfort — an annual dinner before which the couple discuss separately and together with their appraiser, how their relationship is going, celebrating its joys, and considering how to mend any defects. This may make the marriage anniversary a more fulfilling occasion, helping the couple see their care for each other as an open thing, possibly the first step in accepting mutual care as the basis of wider relationships. The appraiser would be expected to keep confidential notes of the discussion and agreements and to share these with the couple. Professions including that of general practice and employers have developed appraisal arrangements for their own purposes and they are effective in stimulating constructive reflection and commitment.

Agencies are needed to provide an advisory service for couples and for marriage appraisers and possibly to help couples choose an independent approved appraiser from among those who have completed a course of training. Departments of social services in local authorities are overburdened to take on this role. Churches are well placed to provide this service and to provide voluntary trained appraisers.

Such arrangements are likely to reduce marital strife and breakdown. There will however still be couples whose marriage fails and who have recourse to divorce proceedings. Family law currently disregards fault and the parties' willingness to work at maintaining the relationship when apportioning property. There are good reasons for this: courts only have the accounts of the parties involved in the divorce case to go on; the stress of dispute in court may embitter and estrange the parties worse than ever; the partner with the more skilled lawyer, or the party more willing to misrepresent the facts may obtain an unduly favourable settlement; and children may be called on to give evidence that is critical of one parent. However the report of a marriage appraiser who has known the couple for a long time could and should be of interest to the court in cases where there is dispute on whether divorce is appropriate or how the property of the marriage should be allocated. A statement that the couple accept that their behaviour should be considered by the court in allocating the property of the marriage would give the court the freedom it needs to make proper enquiry and to act justly. However couples who make such a commitment are probably much less likely than others to appear before a family court.

The impetus for mutual care agreements, and for annual appraisal has to come voluntarily from partners in marriage or other relationships and partners forming such relationships. No-one seeks to impose these arrangements on those who do not seek them. However knowledge of the existence of an advisory service for couples devising mutual care agreements and one which could provide independent appraisers would do much to promote these initiatives.

The government is currently considering revisions of family law, and this may be a good time to develop and promote this theme.

Alick Munro.

Appendix

Mutual Care Agreement

Date

I _____ and I _____

hereby agree to do the following from this day forth:

To uphold principles of love, truth and beauty in thought, word and deed.

To care for each other's personal comfort, health, welfare, and intellectual and spiritual development and for all matters for each other that make life enjoyable and meaningful as though for our individual selves.

To pool and share our property, savings and incomes according to the needs of each individual.

To live together.

To share the tasks of housekeeping and maintenance of our joint property equally.

To share our thoughts openly with each other to the best of our ability, and within the precepts of tact and care.

To provide adequate time for each other to relieve loneliness and to aid in adjusting to life and reaching decisions.

To maintain our personal appearances, demeanour, hygiene, sobriety, health and manners so as to provide pleasure in companionship for the other.

To provide sexual satisfaction to each other and to no others.

To facilitate and share the development of the other's family relationships, friendships and collegiate relationships and acquaintances.

To care for the material and spiritual welfare of our offspring and any offspring of the other as though they were our own individual offspring, both during our lives together and thereafter.

To undergo annual appraisal of our relationship by _____ and

In addition either partner may invite these appraisers at any time to meet them individually or preferably with the partner. Parties shall aim to attend meetings called by the appraiser.

In the event that an appraiser retire, we shall appoint a replacement by mutual agreement, or failing a mutual agreement we shall ask²

_____ to appoint a replacement.

Dissolution

In the event that either of us shall wish to dissolve this agreement they shall do the following: Inform the other party and the appraisers of their concerns and allow a period of six weeks for adaptation of behaviour, and formal weekly discussion of progress in the presence of appraisers where possible with a view to making the relationship desirable to both parties. At the end of this period either party may declare their wish to have this care agreement dissolved. However if no such decision is reached at this time, the relationship shall continue and no dissolution may be reached without another six-week period for adaptation of behaviour and formal weekly discussion.

In the event of a dissolution, the shared property and savings shall be distributed in ratio to their derivation and to the derivation of incomes during the period of the existence of the agreement.

There shall be a proviso that neither party shall receive less than a third of the proceeds or value of the shared property and savings.

Subject to the above there shall be an additional proviso that the appraisers of the agreement may require that a preliminary reallocation of up to 50% of the total joint property be awarded to the party who in their joint view bears less responsibility for the breakdown of the relationship.

Gifts that we make to our children and inheritances that we grant to our children during the period of this agreement and thereafter shall be such that all our children shall finally receive an equal share. These gifts and inheritances will be made known to each other and to the monitors of this agreement.

Evidence submitted by Shaun O'Connell, Family Links International (FLINT)

We write as an NGO interested in promoting healthy families as the base of any civilised society.

We are concerned at the lack of clear information and use of partial research behind the policies that successive Governments have been steering in relation to children and families.

Grandparents, fathers and older children are desperate for help as they have had their civil and human rights abused by what are essentially anti-father and anti-family institutions e.g. CAFCASS, Social services and the family courts. We are aware of many cases where violent and/ or abusive women are given residence which would seem to show a bias in the application of Family Law.

The Government's Green Paper and the select committee enquiry in their present formats are ignoring the issues except in the context that it is designed to continue the human rights abuses fostered on the family by successive Governments over the last full generation.

There is a plethora of research on the links between fatherlessness and criminality, teenage pregnancy, poor mental health, drug and alcohol abuse, delinquent behaviour, and rape. The economic costs of this are tremendous not only to individuals but also to society at large.

The Government yet again repeat the myths of domestic violence with 'where contact is safe'. This blatantly ignores the research that shows women to be equally or more violent than men e.g. -The Fiebert report.
<http://www.csulb.edu/~mfiebert/assault.htm> REFERENCES EXAMINING ASSAULTS BY WOMEN ON THEIR SPOUSES OR MALE PARTNERS: AN ANNOTATED BIBLIOGRAPHY. SUMMARY: This bibliography examines 130 scholarly investigations: 104 empirical studies and 26 reviews and/or analyses, which demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships with their spouses or male partners. The aggregate sample size in the reviewed studies exceeds 77,000.

Violence against children by women is another issue where the public and Governmental attitude is very different than the facts revealed by formal studies. Some examples of the research which should inform policy are given below:

Source: The Third National Incidence Study of Child Abuse and Neglect (NIS-3) from the US Department of Health and Human Services reveals data about child abuse by mothers.

Women commit most child abuse in intact biological families. When the man is removed from the family the children are at greater risk. Mother-only households are more dangerous to children than father-only households. Children are 3 times more likely to be fatally abused in Mother-only Households than in Father-only Households, and many times more likely in households where the mother cohabits with a man other than the biological father. Children raised in Single-mother Households are 8 times more likely to become killers than children raised with their biological father.

Other studies reveal more about female violence against children:

Women hit their male children more frequently and more severely than they hit their female children. Women commit 55% of child murders and 64% of their victims are male children.

Eighty two percent of the general population had their first experience of violence at the hands of women, usually their mother. Our culture learns to be violent from our mothers, not our fathers.

Yet, 3.1 million reports of child abuse are filed against men each year, most of which are false accusations used as leverage in a divorce or custody case. Source: Statistics validated and verified by: Murray Straus, a sociologist and co-director for the Family Research Laboratory at the University of New Hampshire and Richard Gelles of the University of Rhode Island and author of Intimate Violence and other studies, also validated the statistics used by matching it to previous research.

Researchers in Michigan determined that "49 percent of all child abuse cases are committed by single mothers." Source: Joan Ditson and Sharon Shay, "A Study of Child Abuse in Lansing, Michigan," Child Abuse and Neglect, 8 (1984).

A study of 156 victims of child sexual abuse found that the majority of the children came from disrupted or single-parent homes; only 31 percent of the children lived with both biological parents. Although stepfamilies make up only about 10 percent of all families, 27 percent of the abused children lived with either a stepfather or the mother's boyfriend. Source: Beverly Gomes-Schwartz, Jonathan Horowitz, and Albert P. Cardarelli, "Child Sexual Abuse Victims and Their Treatment," U.S. Department of Justice, Office of Juvenile Justice and Delinquency prevention. <http://www.prevent-abuse-now.com/stats.htm>

Perpetrators: Most States define perpetrators of child abuse or neglect as a parent or other caretaker, such as a relative, babysitter, or foster parent, who has maltreated a child. Fifty-nine percent of perpetrators were women and 41 percent were men. The median age of female perpetrators was 31 years; the median age of male perpetrators was 34 years. More than 80 percent of victims (84 percent) were abused by a parent or parents. Almost half of child victims (41 percent) were maltreated by just their mother, and one-fifth of victims (19 percent) were maltreated by both their mother and father.

<http://www.nccanch.acf.hhs.gov/index.cfm> <http://www.preventchildabusewi.org/perpetrators.htm>

Child Abuse Perpetrators

- There is no "typical" child abuser.
- * May be male or female -Data from 21 states indicate that 61.8% of perpetrators were female.
- * The majority of instances of child abuse are committed by someone who knows the child.
- * In 87.3% of cases at least one parent was identified as the perpetrator. In 17.7% of cases both parents were identified as perpetrators.
- * Mothers acting alone were most often identified as perpetrators of neglect and physical abuse.
- * Fathers acting alone were identified as perpetrators of sexual abuse at the highest percentage.
- * Together, substitute care providers and family relatives were only identified as 5.4% of cases.
- * May be young or old-In 1999 the highest percent of perpetrators fell between the ages of 30-39.
- * May be of any ethnicity or nationality.
- * May be a former victim of abuse or neglect.

(Statistics from National Child Abuse and Neglect Data Systems, 1999)

NSPCC report shows that fathers are 'less violent' than mothers in their disciplining of children.'Child Maltreatment in the United Kingdom', published in November 2000 by the National Society for the Prevention of Cruelty to Children (NSPCC)

<http://www.acf.dhhs.gov/programs/cb/publications/cm99/table3b.htm>

Child Maltreatment 1999 Reports From the States to the National Child Abuse and Neglect Data System
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children and Families
Administration on Children, Youth and Families Children's Bureau
Table 3-2: Perpetrator Relationship to Victim, 1999 DCDC
Relationship to Victim Number Percentage

Female Parent Only 145,028 44.7%
Male Parent Only 51,752 15.9%
Both Parents 57,320 17.7%
Female Parent and Other 25,703 7.9%
Male Parent and Other 3,544 1.1%

One of the greatest weaknesses of the Government's Green paper is that essentially the same civil servants and female anti-father and anti-family vested interest organisations which regularly exclude fathers and the wider family, who are putting forward policies that are totally unworkable and responsible for the destruction of the family as the base of a civilised society.

An example of this is CAFCASS with its poorly trained personnel who are expected to be child psychologists, medical paediatric specialists, social workers, psychoanalysts, legally trained persons, and court officer. Who investigates abuses, policies and procedure by CAFCASS which transpires little or no confidence from the families themselves?

The decline in proper and meaningful research has been on the increase for some years now. Another example is that given the vast difference in prognosis of family by type i.e. co-habiting or married when referring to anti-social behaviour, domestic violence or child abuse, the Government extended the bias in the statistics by stating for the 2001 census that " a lone parent was allowed to be classified as married if she denoted her status as married or remarried but had no spouse or partner." 'Population Trends' (Spring 2004 Ed, page 66)

If the Government is serious and honestly wishes to promote healthy family harmony and strengthen the family unit, the role of the father has to be strengthened and not weakened and the nuclear biological family restored for all children in the interests of all children and wider society.

Statistics of outcomes should be made available from the Familyman database and dissected by gender. The DCA have informed us they cannot do so due to the data protection Act. Yet this appears untrue when health statistics can be produced.

Many would appear to be forced away from the court setting because of the cost, the knowledge needed and the nightmare stories emerging.

The Government needs to do more research (there is plenty already available) on personality disorders, ADHD/ Parental alienation syndrome and childhood onset conduct disorder type symptoms arising from family breakdown and to put in training on parental alienation syndrome for all child welfare workers.

- We know of few reaching Court ordered satisfactory agreements. Many are forced to accept pitiful, unworkable and/or unhelpful contact and are too asset poor and/ or emotionally distressed to return to the Courts for more.

Appeal courts do not consider Appeals on the amount of time they can spend with their children which is where most unhappiness lies. Others find the gender bias in the operation of the system to be the fundamental problem. Fathers should only apply for shared residence since by definition accepting a contact order shows you are accepting you are a second class parent.

Further, contact orders are given for any amount of time including indirect contact which is meaningless. Either parents are parents or they are not. If 90% are with their mothers, then others are in care, with a relative or other arrangement. We have reason to believe that over 97% of resident parents are mothers and this figure certainly would seem correct especially in Court ordered arrangements.

I would remind the DFES that over 60% of fathers have no or meaningless contact with their children and 40% lose all contact 2 years after separation.

Most importantly without the recognition of Parental Alienation syndrome no-one will ever know if the alleged wishes and feelings of the child are their true wishes and feelings or not. Children should not be making such choices when you consider if children should make other lesser important decisions for themselves e.g. do you want to eat chocolate biscuits all day? Do you want to drink coca-cola all the time? What time do you want to go to bed? Part of the responsibility for parents is to teach children manners, good behaviour and a responsible lifestyle. The breakdown of the family affects children's development at many angles including being able to use a knife and fork to how to manage their own relationships.

Is contact with both parents good for children?

There is abundant research attached to this submission to show it is of great value. Statistics on outcomes show the harm caused to children's emotional and psychological development without it e.g. criminality, drug and alcohol abuse, teenage pregnancies, defiant behaviours etc.

If the Courts allow mother's to do as they please children will suffer. Whilst the Courts will not imprison a mother for breaking a court order they will do for those whose children do not go to school. The loss of a parent through

family breakdown is a tragedy and should not be allowed to happen. Since the sacred bond of marriage has been destroyed by successive Governments and fault in divorce is not considered then the strength of a lasting and strong marriage is unlikely to return. We would ask for no fault divorce to be thrown out and for marriage to be given its sanctity again as the basis of a stable society.

Without independent and impartial research being used to alleviate intergenerational abuse through GENUINE Domestic violence rather than making a gender war based on partial research by the feminists, no policies can properly be made.

Abuse and neglect are matters for statutory child protection bodies i.e. Local Authority social services, NSPCC and Police. Private law Court Welfare Officers are not adequately independent, trained, supervised or accountable. Much the same concern also exists for local Authority social workers.

We would argue that a majority of Court ordered cases or cases that meet the Family Courts are inadequately addressed and the contact given is that which the mother will tolerate. This applies also to applications from Grandparents.

We have heard the every case is different scenario for many years. It behoves the Education dept to maintain this falsity. Most parents are normal parents who just love their children, BUT the Legal system creates adversarial actions and the lawyers often ignore their own duties to the Court, to the public, the tax-payer and their own procedures and guidelines.

If the Courts are not seen to be firm and fair then mediation will not work. ADR if backed by a suitable system of speedy compliance would suit families better.

We believe that follow up research should be carried out by an independent body and not by an organisation with vested interests. This should also be monitored by the Dept of health given the link between family breakdown, criminality and the current health of the child population which has been steadily worsening in terms of teenage pregnancy, mental health, drug and alcohol abuse etc.

The CAF/CASS annual report is a joke. <http://www.cafcass.gov.uk/> Apparently Anthony Hewson and the board resigned according to this report, not sacked as stated in the media and they even congratulated the board for the job they did! The statistics show a totally different picture from that emerging on their complaints system: 33, 803 private law cases, 13, 470 public law cases, 47, 723 applications involving 73, 937 children, 1303 practitioners, 500 complaints and ONLY 1 complaint upheld at stage 2 and Partly upheld: 4 at stage 1, 25 at stage 2, 3 at stage 3, and 2 at stage 4. Clearly there is a vast difference in these statistics and the reality.

Much more energy and time should be spent on stopping the breakdown by positive support for the nuclear family/marriage as the base of a civilised society. Research in the US shows that in the States where shared residence became the norm divorce reduced remarkably as the financial incentive had been removed.

It is imperative that Governmental organisations that are there to help parents do not have a biased agenda, base their practice on independent and impartial research and are held accountable for their actions if they are not so. Parents should not have to fight bias and partial actions of the State bodies simply in order to be a parent.

The Legal Context: The way the family court system works

Other Legal Issues: ECHR Issues

ECHR is a misnomer. Cases are now thrown out by a clerk to the Court with no legal training. Rapporteur reports are secret and you are not allowed to see the report by the Rapporteur upon which the judge used to throw cases out without a judgement. There is no redress after the event. They are not competent Courts to deal with errors of fact or errors in law.

Your presence in the National court, legal representation or by yourself and the possibility of putting your case are enough to comply with the national Court's decision making process.

Local Authority Social Workers like CAFCASS are virtually unaccountable for their actions. We have abundant case studies to show this. A no fault complaint procedure would remove the fear of litigation and the staff must be held accountable for misfeasance, lack of due care and knowingly carrying out fraudulent actions and/ or omissions.

Our rights and the rights of both the parents and the children are more than adequately protected in law in Common Law, civil law, Human Rights law etc. The problem in the Family Courts is due to 1. secrecy 2. Knowing wrongdoing by not only the Court reporters and the legal machinery/ Family Law judiciary and also due to the lack of accountability 3. Reliance on partial research and the failure to recognise PAS 4. Gender bias.

Dr. Richard Gardner, of Creskill, NJ, a child psychologist, was one of the leading authorities on children of dysfunctional families. What he found in his research is that no matter the financial or cultural background, alienation of one parent from the other could occur.

("www.rgardner.com"www.rgardner.com"www.rgardner.com"www.rgardner.com) According to Dr. Richard Gardner, PAS is described as a disturbance in which children are obsessively preoccupied with depreciation and/or criticism of a parent. In other words, denigration that is unjustified and or exaggerated.

"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm) In effect, these children are taught to hate the Targeted Parent to the point of wanting to eliminate them from their lives. Dr. Gardner considers this psychological abuse and it is the only form of psychological abuse that has clear-cut unmistakable signs and symptoms and therefore the only psychological abuse that can be easily diagnosed.

PAS can be further described as a form of psychological kidnapping

"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm) where the child's mind has been forced to prejudicially believe and discriminate against the Targeted Parent. This is perpetrated by creating fear, not of the Targeted Parent, but of the Alienating Parent whom the child must reside with, or as Gardner calls it, the hostage taker parent.

"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm"www.familycourts.com/pas.htm) It is also called the Stockholm Syndrome and best compared to the Patti Hearst kidnapping.

According to Kemp in his book Abuse in the Family, domestic violence is defined as a form of Maltreatment perpetrated by a person with whom the victim has or had a close personal relationship. (Kemp, P.36) Furthermore, the clinical and textbook definitions and categories of Child Psychological Maltreatment found in Table 3-1 of Alan Kemp's book, Abuse in the Family, on pages 72-77, can easily be applied to PAS showing it as a form of Domestic Violence via Psychological Maltreatment. This book is a technical training book for Students studying for their Masters in Counselling and Social Work. It is just one of many textbooks used to teach the students and professionals about Psychological Maltreatment and the categories that make it up.

Those categories are:

- Rejecting (spurning)
- Terrorizing
- Corrupting
- Denying essential stimulation, emotional responsiveness, or availability
- Unreliable and inconsistent parenting
- Mental health, medical, or educational neglect
- Degrading/devaluing (spurning)
- Isolating
- Exploiting

As we correlate the above definition, we will see how it fits in classifying PAS as Psychological Maltreatment and

thus Domestic Violence. For example, by deliberately alienating the victims from other family members and social supports, isolation is occurring. The whole premise of PAS is to isolate and alienate the children from the Targeted Parent or any other individual who supports the Targeted Parent. If the alienator uses threats or denigrating tactics, to force the victims to comply, this can be seen as terrorizing. (Kemp, P. 225-228) As well, verbal denigration, harassment and exploitation of the Targeted Parent is very prominent and a key indicator of PAS. In addition, DV includes the exploitation and use of the children for personal gain. Thus in PAS when the children are used to destroy the Targeted Parent by denying visitation or a relationship between TP and the children or is used for monetary gains such as excessive expenses beyond child support, they are in affect committing Domestic Violence. It is for these reasons that PAS or alienating the children from the Targeted Parent can be considered as a form of domestic violence.

Let's take this a bit further in its application. When a parent REJECTS a child because the children show any love or affection for the Targeted Parent that is a form of abuse. This is not only a form of rejection, but terrorization. In fact, a child's refusal to come to the Targeted Parents home for fear of losing the Alienating Parent's conditional love is fear and fear is terror.

Next, there is corrupting. When an Alienating parent refuses to comply with court orders and tells the children they do not have to either, this is corrupting. It is teaching the children that they are above the law and therefore immune to the courts authority. When a parent files false allegations of abuse and convinces the children to do the same, this is corruption. When an Alienating parent tells the children lies about the Targeted Parent, and that anything having to do with the Targeted Parent is illegal, immoral and disgusting, this is corrupting. In fact, this is a form of discrimination and prejudice, which corrupts the children's minds.

Next, let's look at Denying essential stimulation, emotional responsiveness, or availability. By refusing to allow the children to have a relationship with the Targeted Parent, for no reason other than their own need to control the ex-spouse, the Alienating Parent's are denying them the basic elements of stimulation, emotions and availability with the Targeted Parent. In fact, the Targeted Parent has little to no opportunity to defend themselves against the false allegations. Though they will have you believe that they or the children feared for their lives and that the Targeted Parent was abusive, this is usually unsubstantiated or proven by the courts to be a fabrication. With no basis for this denial, the Alienator refuses their children a warm and loving relationship with the Targeted Parents. Thus it causes unreliable and inconsistent parenting. Since the children have been denied a relationship with the Targeted Parent, they have also been denied a reliable and consistent parenting situation and the Alienating Parent has proven that they cannot parent consistently and reliably in the supporting of a two-parent relationship with the children.

This brings us to the Mental, medical and Education Neglect. When an Alienating Parent refuses to comply with numerous separate court orders for counselling, they are denying their children's mental health. Thus mental neglect has occurred as defined in the DSM IV as Malingering. (V65.2) and by Neglect of Child (V61.21).

If despite numerous court orders or request and recommendations, the alienator continues to insult, verbally abuse and denigrate the child's Targeted Parent in front of them, this behaviour degrades and devalues someone the children once respected and loved and in most cases, secretly want a relationship with. This disdain and disrespect for the Targeted Parent in front of the child(ren) is another form of Psychological Maltreatment as it permanently affects their view of that Targeted Parent, which transfers to their view of themselves. This creates a distorted sense of reality, of themselves and their ability to trust and accurately judge others.

When a parent deliberately sabotages a relationship with the Targeted Parent, with no evidence of abuse, this is called Isolation. Furthermore, when a parent has initially allowed continuous contact with the children during the separation and divorce period, but reneges on this refusing them visitation, especially when they find out their ex-spouse has a new partner, this is isolation and abuse. This is also called Remarriage as a Trigger for Parental Alienation Syndrome and can be further reviewed in an article by Dr. Richard Warshak,

["http://www.fact.on.ca/Info/pas/warsha00.htm"](http://www.fact.on.ca/Info/pas/warsha00.htm)<http://www.fact.on.ca/Info/pas/warsha00.htm><http://www.fact.on.ca/Info/pas/warsha00.htm><http://www.fact.on.ca/Info/pas/warsha00.htm>) There is no doubt this is isolation and thus psychological abuse.

EXPLOITATION. When a parent uses the children as pawns to get back at their ex spouse for not loving them anymore or to control them further, this is exploitation. When an Alienating Parent uses the children and makes false

allegations of abuse, terrorizing the children to state they hate the Targeted Parent, this is exploitation. When a parent uses the children for monetary gains, but yet does not allow the children a relationship with the targeted parent, this is exploitation.

When you add all these factors up, it is easy to see how Cross-Generational Coalitions, Parental Alienation, Parental Alienation Syndrome, Enmeshed Relationships, Triangles and Borderless Boundaries can be classified as Child Psychological Maltreatment in a divorce situation. When you put it all together, the DSM sums up the Alienator quite nicely under Cluster B Personality Disorder, Antisocial Personality Disorder, (301.7). The Alienating Parent wilfully and without regard to the child(ren) or the targeted parent's welfare, or the innocent extended families welfare, continually violated their rights and disregarded their needs for a relationship. The Alienating Parent uses and exploits the children. The Alienating Parent isolates the children from a nurturing parent and family. The Alienating Parent denies the children their basic needs of love and belonging from the Targeted Parent. The Alienating Parent thus neglects the children's mental welfare. They rejected the children's and Targeted Parent's testimony of love and need for each other. The Alienating Parent terrorizes and corrupts the children. The Alienating Parent callously puts their own desires, wants and needs above those of everyone else including their own children. This all adds up to one thing, Domestic Violence in the form of Psychological Maltreatment.

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The side effects of the current bias and State sponsored abuse of families is evidenced in the increase in male suicides and this is reflected throughout the Western industrialised world: Male suicide rate is the single biggest cause of accidental or violent death among men in England and Wales. Figures from the Office for National Statistics show that during 2001 more men took their own lives than died in road accidents. In total, there were 3,538 cases where suicide was either confirmed, or suspected among men. This accounted for more than one third (34%) of the total number of male accidental or violent deaths during the year. In comparison, just over a fifth of the total were caused by road accidents. In all, there were 16,569 deaths from injury and poisoning in England and Wales in 2001. The risk for men was nearly twice that of women.

In early 2003, the Australian Bureau of Statistics (ABS) released a report on suicide in Australia. A small ripple of interest ran through the media and press pointing out that suicide now claimed more lives than motor vehicle accidents. Approximately 5 males commit suicide in Australia every day.

Mental health experts say this unrecognized figure could be because men unlike women are too embarrassed to ask for help with their problems.

An Office for National Statistics report (UK), entitled Social Focus on Men, revealed that the suicide rate for men aged 15 to 24 had more than doubled to 16 per 100,000 of the population since 1971.

And in the 25 to 44 age group the number of suicides grew to a record high of 26 per 100,000. Figures for women show that in the 15 to 24-year-old category, just 4.1 per 100,000 committed suicide in 1999, rising to 6.5 per 100,000 for the 25 to 44 age group.

Some 35% of deaths among 16 to 24-year-old men involved accidents, compared to 24% of deaths among young women.

Lesley Warner, of the Mental Health Foundation, said the suicide figures highlighted their concerns about the mental health of young men in particular.

"We know that there is a problem with young men in particular committing suicide. I think these statistics are really worrying and bear out thoughts in the way crisis services are not really working at the moment." She said too many men were bottling up their problems rather than going to the professionals for help.

The number of male suicides in the 15-19 age group rose from 55 per million of the population in 1970 to 100 per million of the population in 1990. Dr McClure said: "It is something of a crisis for young males. It is always a mistake to look for one single cause, but it is probably a crisis of confidence among these young people.

"There are many, many more suicides in the 'undetermined deaths' category who are suicides, but aren't labeled because coroners are more reluctant to give a verdict of suicide." A crisis of confidence could arise for a variety of reasons, including psychiatric disorders, disturbed family or partner relationships, unemployment and involvement in crime, leading to contact with the judicial system.

An underlying culture of drugs, alcohol and delinquency is blamed for teenagers "getting out of their depth" and turning to suicide when their grip on life spirals out of control.

Health psychologist Dr Rory O'Connor believes the growing suicide rate reflects the urgent need for society to address the wider underlying issues. She said "Suicide is an index of an ill society."

In short there has been a holocaust within the Family Court system and we want to support moves to change this with immediate effect and for our society to be helped to be the 'safe and tolerant' society we are all hoping for.

I append to this addendum thirty witness statements showing the way in which the system is actually working as we know it to be and not as the Government would have us believe. We would be more than happy to give oral evidence to the committee.

The Government and the Family Law system must institute the following:

1. There must be an independent body to oversee CAFCASS with no vested interests and properly and impartially knowledgeable on matters related to children's health and safety.
2. All CAFCASS reports must be electronically taped by both parties in order to avoid any accusation of biasness.

3. Any allegations made of physical or sexual abuse by either party must be substantiated not only by the alleging parent but also by other statutory body. Note the present reporting system does not have provisions for female abusers of their partners/ children and in the cases that we have been involved, where raised, this has been laughed at.

4. Both warring factions must be made to understand that deliberate attempts to deny contact will be met with a strong reaction. Note: At the moment any factual allegation of abuse and/ or violence by mothers are ignored by social services, CAFCASS and/or the Police resulting in tragedies for the children.

5. The assumption is that mother's make better parents must be banned and judges who sit in family cases must have a proven record of their participation in family life i.e. bringing up children themselves. There is abundant serious research that Domestic violence is not a gender issue as currently portrayed and that both the biological mother and the stepfather are greater risks to children than the biological father.

6. At the present moment the concept of parental alienation syndrome (PAS) is totally ignored and it is amusing when judges make such statements as the mother is 'deceitful', 'cunning', 'dishonest' etc in denying the father access yet deny the existence of PAS.

7. A no-fault complaints procedure for all bodies related to the health and safety of children so that mistakes may be rectified without fear of litigation at the earliest opportunity. This would allow lessons to be learned and procedures amended to prevent harm from befalling any children who are the most vulnerable in our society.

8. Professionals who abuse the trust and integrity of the family and/ or children must be removed from working in a position where they can influence outcomes for other children and the matter rectified at the earliest opportunity.

9. The Courts must respect the law and act impartially and independently when examining cases. The powers of the Court of Appeal should be used in full which are not restricted by statute and the judges must do us justice by mercy and right.

On behalf of family Links International FLINT <http://www.familieslink.co.uk>

Signed

Shaun O'Connell BSc PGCE

Additional appended research relevant to this submission:

"Children in joint-custody settings have fewer behavioural and emotional problems, have higher self-esteem, and better family relations and better school performance than children in sole custody (usually with the mother). Moreover, the bulk of the studies show that children in joint-custody arrangements are virtually as well adjusted as those in the intact families, "probably because joint custody provides the child with an opportunity to have ongoing contact with both parents."

http://www.jointparenting.org.au/robert_bauserman_of_the_maryland.htm

(Journal of Family Psychology)

Moreover, the American Psychological Association (1995) the world's largest organization of practising psychologists, in an objective analysis of joint custody research commenced with the following statement:

A search of the empirical research specific to joint custody was conducted. Major data based studies available at the time of this review have been individually summarised and evaluated relevant to findings and adequacy of the methodology as requested. While flawless studies on such a complex subject are extremely rare as indicated by the evaluations, the goal of this report is to provide a synthesis so that... policy recommendations may be predicated on the best available empirical base. To minimize some of the confusion in such a highly charged area of study, this review focused on the weight of evidence as determined by both replication of findings and consideration of methodological rigor.

The document then reviewed results from 23 studies, providing abstracts of each and summary findings according to criteria of:

- Best interests of the child standard,
- Father involvement,
- Relitigation and costs to the family,
- Financial child support, and;
- Parental conflict.

On each of these measures, the report supported the conclusion that joint custody is associated with favourable outcomes. The report further noted that: ... the need for improved policy to reduce the present adversarial approach that has resulted in primarily sole maternal custody, limited father involvement and maladjustment of both children and parents is critical. Increased mediation, joint custody, and parent education are supported for this policy.

Reference:

Doll B. American Psychological Association. Preliminary Summary: Empirical Research Describing Outcomes of Joint Custody. Washington DC (14 June 1995).

The Views of Children: Importantly, joint physical custody, insofar as it allows them to continue their relationship with both parents is what children want. Each of the studies that sought the views of children indicates that while they would prefer the intact family of origin, they are satisfied with joint custody and value the opportunity to continue their relationship with both parents.

In Deborah Luepnitz's (1982) work for example, nearly all the joint physical custody children were content with the arrangement. These children echoed the sole physical custody children in responding to the question, "With whom would you have wanted to live after the divorce?" by saying, "With both." Not only were joint physical custody children not confused by the arrangement they were able to cite specific advantages in the two-household lifestyle. They described their arrangement as "more fun, more interesting or more comfortable."

Similarly, an earlier investigation conducted by the University of Michigan (1979) asked 165 school children in grades three to six from divorced and intact families their custody preferences. The study found that the majority of interviewed children wanted to live half the week with one parent and the remaining half of the week with their other parent. None of the children in the divorced group had experienced this type of parenting. The high prevalence of reconciliation fantasies among children in sole custody arrangements would also seem to indicate a strong desire for continued involvement of both parents in children's lives.

Finally, a more recent study adds weight to the view that children are better off spending equal time with both parents after divorce. The study is one of the first in Australia to look at how children feel about spending time with their parents, When they were asked how parents should care for children after divorce, the most common answer was equal or half and half. Half also said they wanted more time with their non-resident parents (Parkinson, Cashmore & Single 2003).

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A number of studies indicate that children adjust much more successfully in the immediate post-divorce period when a strong positive relationship is maintained with both parents. Clearly a stronger relationship with two parents is much more likely in joint residence arrangements where one parent does not have the opportunity to prevent contact between the child and the other parent. In this sense, judicial decisions resulting in sole residence tend to abrogate the human rights of the child—to know and love two parents in an every day setting—as much as these abrogate the fundamental privileges of non-resident parents and grandparents.

Children living in joint residence arrangements have described a sense of being loved by both parents and reported feeling close to more than one parent (Luepnitz 1982; 1986). Contrasted with children in sole maternal residence, joint residence children were more satisfied with their arrangements (Handley 1985; Luepnitz 1982; 1986) and did not struggle with a sense of loss and deprivation so characteristic of children in sole residence households (Luepnitz 1982).

Most children considered having two homes advantageous and worth the effort of making the transition between homes because it enabled them to remain close to both parents. Joint residence does not create uncertainty and confusion for most youngsters about either the arrangements or about the finality of the divorce (Luepnitz 1986; Shiller 1986b).

In summary, both boys and girls in joint residence have reported more positive experiences during their lives after divorce than children in sole residence arrangements. These children had much higher self-esteem than children in sole residence situations. Further, the boys in joint residence have reported fewer negative life experiences after divorce than boys in maternal residence (Cowan 1982; Shiller 1986b).

Isabel Lerman (1989) in her work compared 90 children in various post-divorce situations, with equal groups in joint guardianship, sole maternal residence and joint residence. The type of parenting order and the amount of father-child contact were significant predictors of child adjustment, with higher father-child contact associated with better adjustment of the children. The results in this study, as in the vast majority of this research, suggest that joint residence is much more beneficial for successful post-divorce adjustment of children than sole residence.

Luepnitz (1982) contrasted children in joint residence with children in sole residence arrangements. Whereas children in sole residence situations did not maintain strong healthy emotional relationships with both parents, children in joint residence situations did. Also, the children in joint residence arrangements indicated that they were generally satisfied with their level of involvement with both parents, in marked contrast, children in sole residence indicated that they were not satisfied. She found:

- There was no evidence that joint residence families sustained more post divorce conflict than sole residence households;
- Contrary to the claims of Goldstein, Freud, & Solnit (1973) there was no evidence that children experience disruption from living in two houses. In fact, most children felt their new lifestyles held certain advantages over the nuclear family household;
- Children in sole residence desired more contact with their non-resident parents;
- Many non-resident parents but no joint residence parents lost contact with their children;
- No joint residence fathers had ceased to support their children financially, as many non-resident fathers had;
- Joint residence children had maintained meaningful relationships with both parents, in contrast with single residence children for whom the visit was a vacation;

- Single residence parents reported feeling burnt out and overwhelmed in a way that joint residence did not.

The results of the Luepnitz study refute the unsubstantiated claim by Goldstein, Freud & Solnit (1973) that the children of divorce need one primary parent and one primary home. All of the joint residence children valued the arrangement and said they would have chosen it. By contrast, half of the sole residence children were dissatisfied with their arrangements and wanted more contact with the non-resident parent. Moreover, the responses of the children to parental authority were not shown to be adversely affected by the fact that their parents no longer cared for each other. Luepnitz found that points six and seven form the essence of the case that joint residence should be a rebuttable presumption at law. She concluded that joint residence at its best is superior to sole residence at its best.

The following synopsis of data on joint residence leads to the conclusion that a rebuttable presumption in favour of joint residence is preferable to the judicial flip of the coin currently being employed as a solution in the average case before the Family Court.

Finally, in one of the more recent meta-analytical studies, Bauserman (2002) from the Maryland Department of Health and Mental Hygiene, examined 33 studies that looked at 1,846 sole-custody and 814 joint-custody children, as well as youngsters in 251 intact families.

Children in joint-custody settings have fewer behavioural and emotional problems, have higher self-esteem, and better family relations and better school performance than children in sole custody (usually with the mother). Moreover, the bulk of the studies show that children in joint-custody arrangements are virtually as well adjusted as those in the intact families, "probably because joint custody provides the child with an opportunity to have ongoing contact with both parents."

(Please go to http://www.jointparenting.org.au/robert_bauserman_of_the_maryland.htm and highlight Journal of Family Psychology)

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Have you noticed that whenever 'domestic violence' is mentioned the automatic assumption is that the overwhelming majority of victims are women?

(PRWEB) August 17, 2004 -- Home Office statistics. Of the 400,000 victims of domestic violence listed by the Home Office, a further 105,000 were male victims. Male have, in fact, represent a significant 25% - 30% of all DV reports for many years past.

For some reason there seems to be a reluctance by government departments and local agencies to acknowledge this latter figure. To the casual listener the impression is given that something in the region of 90% of victims must be women if the situation is described as "overwhelming".

What can we do about this? Workers in the front line will tell you that the numbers of male victims could possibly double if men were encouraged to speak out and secondly if police stations were geared to accept these complaints. This has happened in the case of female complaints but has yet to happen for men.

This is an aspect borne out by the work of Erin Pizzey who opened the first refuge in this country (indeed in the world) in London, back in 1971. She was a feminist and thought that women needed to be helped. But in her book *Prone to Violence*, published in 1982, she stated that, of the first 100 women who entered that refuge, 64 of them were as violent, or more violent, than the men they were allegedly running away from. So with this evidence available for over 20 years, why are the public and politicians so ignorant of it?

The simple answer is the book was censored. Erin Pizzey received death threats from feminists in the UK who, at that time, were riding on the crest of a powerful wave, and Erin had to leave the country.

This complete censorship of domestic violence has now been replaced by a one sided presentation of the facts of domestic violence with the feminist spin machine presenting carefully selected facts to present to the public in an effort to suggest that domestic violence is a sex issue, and not showing it in its true colours as a social issue.

Violence in couple relationships has always existed. Some examples of male victims include Abraham Lincoln, and more recently, Humphrey Bogart and John Wayne, to name but a few.

The majority of male victims feel that the police and social agencies are generally unsympathetic to their plight and in some cases antagonistic. A Dispatches programme, broadcast in the UK on 7th January 1999 reported on the experiences of 100 male victims of domestic violence and found that: 30% had been attacked while asleep; 25% had been kicked in the genitals; 25% of the male victims had themselves been arrested after seeking police help, and 89% felt that the police had not taken their complaints seriously. Only 7% of the female assailants had been arrested and none was subsequently charged.

Despite the huge body of research I have referred to, the assumption that women are always the victims and men the victimisers still largely underpins government and public policy and is the reason for giving many millions of pounds of public money to women's groups and refuges every year, and none to help male victims. There are over 445 refuges for battered women in England and Wales where women can flee and take their children. At the moment, in the UK there are just two refuges for men, one opened in December 2003 and the other, which is the only one exclusively for men, in January 2004.

Domestic violence is not a sex issue, it is a social issue, and until both sides of the problem are acknowledged and addressed by those who claim to be concerned about the matter, no cure will be found.

CHILD ABUSE Research a sample that conflicts with Domestic policy and Family courts:

PHYSICAL, SEXUAL, MENTAL (INCLUDING PAS - Parental Alienation Syndrome -THE WORST KIND OF MENTAL ABUSE)

The U.S. Department of Health and Human Services states that there were more than 1,000,000 documented child abuse cases in 1990. In 1983, it found that 60% of perpetrators were women with sole custody. Shared parenting can significantly reduce the stress associated with sole custody, and reduce the isolation of children in abusive situations by allowing both parents' to monitor the children's health and welfare and to protect them.

The Truth About Child Murder

The Relationship between Sex, Household Incomes, Families, and Child Abuse

The Third National Incidence Study of Child Abuse and Neglect (NIS-3)

US Department of Health and Human Services, page 6-11, table 6-4

NIS-3 is a comprehensive, credible nationwide study of the extent of child abuse and who the perpetrators are.

It reports that in 1993 children were 59 times more likely to be fatally abused [read: murdered] by natural mothers than by natural fathers.

Source: <http://christianparty.net/nis3.htm>

From: CSOCWORK - Canadian Social Work Discussion List
Subject: The Invisible Boy

Interesting snips from The Invisible Boy:

<http://www.travel-net.com/~pater/invis-3.htm>

The research suggests that, overall, female and male perpetrators commit many of the same acts and follow many of the same patterns of abuse against their victims. They also do not tend to differ significantly in terms of their relationship to the victim (most are relatives) or the location of the abuse.

Source: (Allen, 1991; Kaufman et al., 1995).

When the victim is male, female perpetrators account for 1%-24% of abusers. When the victim is female, female perpetrators account for 6%-17% of abusers

Source: (American Humane Association, 1981; Finkelhor and Russell, 1984; and Finkelhor et al., 1990).

In the Ontario Incidence Study, 10% of sexual abuse investigations involved female perpetrators (Trocme, 1995). However, in six studies reviewed by Russell and Finkelhor, female perpetrators accounted for 25% or more of abusers. Ramsay-Klawnsnik (1990a) found that adult females were abusers of males 37% of the time, female adolescents 19% of the time.

Both of these rates are higher than the same study reported for adult and teen male abusers...

Violence against children by women is another issue where the public attitude is very different than the facts revealed by formal studies.

Source: The Third National Incidence Study of Child Abuse and Neglect (NIS-3) from the US Department of Health and Human Services reveals data about child abuse by mothers.

Women commit most child abuse in intact biological families. When the man is removed from the family the children are at greater risk. Mother-only households are more dangerous to children than father-only households.

Children are 3 times more likely to be fatally abused in Mother-only Households than in Father-only Households, and many times more likely in households where the mother cohabits with a man other than the biological father.

Children raised in Single-mother Households are 8 times more likely to become killers than children raised with their biological father.

Other studies reveal more about female violence against children:

Women hit their male children more frequently and more severely than they hit their female children.

Women commit 55% of child murders and 64% of their victims are male children.

Eighty two percent of the general population had their first experience of violence at the hands of women, usually their mother.

Our culture learns to be violent from our mothers, not our fathers.

Yet, 3.1 million reports of child abuse are filed against men each year, most of which are false accusations used as leverage in a divorce or custody case.

Source: Statistics validated and verified by:

Murray Straus, a sociologist and co-director for the Family Research Laboratory at the University of New Hampshire and Richard Gelles of the University of Rhode Island and author of *Intimate Violence* and other studies, also validated the statistics used by matching it to previous research.

Researchers in Michigan determined that "49 percent of all child abuse cases are committed by single mothers." Source: Joan Ditson and Sharon Shay, "A Study of Child Abuse in Lansing, Michigan," *Child Abuse and Neglect*, 8 (1984).

A study of 156 victims of child sexual abuse found that the majority of the children came from disrupted or single-parent homes; only 31 percent of the children lived with both biological parents. Although stepfamilies make up only about 10 percent of all families, 27 percent of the abused children lived with either a stepfather or the mother's boyfriend.

Source: Beverly Gomes-Schwartz, Jonathan Horowitz, and Albert P. Cardarelli, "Child Sexual Abuse Victims and Their Treatment," U.S. Department of Justice, Office of Juvenile Justice and Delinquency prevention.

<http://www.prevent-abuse-now.com/stats.htm>

Perpetrators: Most States define perpetrators of child abuse or neglect as a parent or other caretaker, such as a relative, babysitter, or foster parent, who has maltreated a child. Fifty-nine percent of perpetrators were women and 41 percent were men. The median age of female perpetrators was 31 years; the median age of male perpetrators was 34 years. More than 80 percent of victims (84 percent) were abused by a parent or parents. Almost half of child victims (41 percent) were maltreated by just their mother, and one-fifth of victims (19 percent) were maltreated by both their mother and father.

<http://www.nccanch.acf.hhs.gov/index.cfm> <http://www.preventchildabusewi.org/perpetrators.htm>

Child Abuse Perpetrators

- * There is no "typical" child abuser.
- * May be male or female -Data from 21 states indicate that 61.8% of perpetrators were female.
- * The majority of instances of child abuse are committed by someone who knows the child.
- * In 87.3% of cases at least one parent was identified as the perpetrator. In 17.7% of cases both parents were identified as perpetrators.
- * Mothers acting alone were most often identified as perpetrators of neglect and physical abuse.
- * Fathers acting alone were identified as perpetrators of sexual abuse at the highest percentage.
- * Together, substitute care providers and family relatives were only identified as 5.4% of cases.
- * May be young or old-In 1999 the highest percent of perpetrators fell between the ages of 30-39.
- * May be of any ethnicity or nationality.
- * May be a former victim of abuse or neglect.

(Statistics from National Child Abuse and Neglect Data Systems, 1999)

NSPCC report shows that fathers are 'less violent' than mothers in their disciplining of children. 'Child Maltreatment in the United Kingdom', published in November 2000 by the National Society for the Prevention of Cruelty to Children (NSPCC)

<http://www.acf.dhhs.gov/programs/cb/publications/cm99/table3b.htm>

Child Maltreatment 1999 Reports From the States to the National Child Abuse and Neglect Data System
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children and Families
Administration on Children, Youth and Families Children's Bureau
Table 3-2: Perpetrator Relationship to Victim, 1999 DCDC
Relationship to Victim Number Percentage

Female Parent Only 145,028
44.7%

Male Parent Only 51,752
15.9%

Both Parents 57,320
17.7%

Female Parent and Other 25,703
7.9%

Male Parent and Other 3,544
1.1%

Table 3-4: Perpetrator Relationship to Victims by Maltreatment Type,
1999 DCDC

Maltreatment Type Perpetrators' Relationship to Child Victims Neglect Medical Neglect
Physical Abuse Sexual Abuse
Number Percentage Number Percentage Number Percentage Number Percentage

Female Parent Only 114,905

51.7%

6,793

61.3%

20,863

35.6%

1,027

3.9%

Male Parent Only 27,548

12.4%

730

6.6%

15,565

26.6%

5,419

20.8%

Both Parents 41,177

18.5%

2,114

19.1%

8,310

14.2%

3,217

12.3%

Female Parent and Other 18,258

8.2%

829

7.5%

4,283

7.3%

2,878

11.0%

Male Parent and Other 2,204

1.0%

88

0.8%

763

1.3%

518

2.0%

Table 4-4: Maltreatment Fatalities by Perpetrator Relationship, 1999 DCDC

Relationship of Perpetrator to Victim Number of Fatality Victims

Percentage of Fatality Victims

Male Parent and Other 5

1.1%

Unknown 12

2.7%

Family Relative 20

4.5%

Other 25

5.7%

Substitute Care Provider(s) 27

6.1%

Male Parent Only 47

10.7%

Female Parent and Other 72

16.3%

Both Parents 94

21.3%

Female Parent Only 139

31.5%

A perpetrator of child abuse and/or neglect is a person who has maltreated a child while in a caretaking relationship to that child.

Three-fifths (61.8%) of perpetrators were female. Female perpetrators were typically younger than their male counterparts-41.5 percent were younger than 30 years of age, compared to 31.2 percent of male perpetrators.

Almost nine-tenths (87.3%) of all victims were maltreated by at least one parent. The most common pattern of maltreatment was a child victimized by a female parent acting alone (44.7%).

Female parents were identified as the perpetrators of neglect and physical abuse for the highest percentage of child victims. In contrast, male parents were identified as the perpetrators of sexual abuse for the highest percentage of victims.

3.1 AGE AND SEX OF MALTREATMENT PERPETRATORS (DCDC)

Data on perpetrators from 21 States indicate that, of the 554,047 perpetrators identified, 61.8 percent were female and 38.2 percent were male. As shown in figure 3-1, female perpetrators were typically younger than male perpetrators. Of female perpetrators, 41.5 percent were younger than 30 years of age, but only 31.2 percent of male perpetrators fell within this age group.

3.2 PERPETRATORS BY RELATIONSHIP TO THEIR VICTIMS (DCDC)

As shown in Figure 3-2, the most common pattern of maltreatment was a child victimized by a female parent acting alone (44.7%). Both parents were identified as perpetrators for 17.7 percent of the child victims, and male parents acting alone were identified as perpetrators for 15.9 percent of the victims. Thus, at least one parent was identified as the perpetrator for 87.3 percent of the victims. Substitute care providers and family relatives were infrequently identified as perpetrators; these two categories combined were identified as perpetrators for only 5.4 percent of the victims. These percentages are similar to the percentages reported for 1998.

3.3 RELATIONSHIP OF PERPETRATORS TO VICTIMS OF SPECIFIC TYPES OF MALTREATMENT (DCDC)

The data in figure 3-3 are based on the association of perpetrators with specific types of maltreatment. The relationship of the perpetrator(s) to the child is reported more than once if the child was a victim of more than one type of maltreatment.

As reported in previous years, female parents acting alone were identified as the perpetrators of neglect and physical abuse for the highest percentage of child victims. In contrast, male parents acting alone were identified as the perpetrators for the highest percentage of sexual abuse victims.

Parents were perpetrators for 91.8 percent and 85.0 percent of victims of neglect and victims of physical abuse, respectively. However, parents were perpetrators for only 50.0 percent of victims of sexual abuse.

<http://equality.virtualave.net/Reality.htm>

Erin Pizzey:

Of the first 100 battered women she gave refuge to, "62 were as violent or even more violent than the men they'd left." But nearly 30 years later, society is still unwilling to acknowledge that violent women exist and is therefore still not offering them any help. "I have pleaded for the cause of violent women," says Pizzey.

Today, virtually all battered women's shelters -- including the one Pizzey founded -- are operated by feminists whose analysis automatically stereotypes men as aggressors and women as victims.

On both sides of the Atlantic, employment ads for women's shelters routinely require that applicants subscribe to a feminist understanding of domestic violence.

As a result, the large number of women served by these shelters who require assistance themselves to interrupt destructive patterns are actually having their behaviour reinforced when shelter workers assure them they are not to blame.

Pizzey says this sends a terrible message to children trapped in violent families. Kids learn that "this is what women do, this is what women are. My mother can batter me, hit me, beat me, shame me, humiliate me, and society ignores what she does. But my father has only got to lose his cool" and he's stigmatized, criminally charged and "loses his family" in divorce proceedings.

S.657- Strengthening Families Act of 2003 (Introduced in Senate)

SEC. 2. FINDINGS.

Congress makes the following findings:

- (1) Nearly 24,000,000 children in the United States, or 34 percent of all such children, live apart from their biological father.
- (2) Sixty percent of couples who divorce have at least 1 child.
- (3) The number of children living with only a mother increased from just over 5,000,000 in 1960, to 17,000,000 in 1999, and between 1981 and 1991 the percentage of children living with only 1 parent increased from 19 percent to 25 percent.
- (4) Forty percent of children who live in households without a father have not seen their father in at least 1 year and 50 percent of such children have never visited their father's home.
- (5) The most important factor in a child's upbringing is whether the child is brought up in a loving, healthy, supportive environment.
- (6) Children who live without contact with their biological father are, in comparison to children who have such contact--
 - (A) 5 times more likely to live in poverty;
 - (B) more likely to bring weapons and drugs into the classroom;
 - (C) twice as likely to commit crime;
 - (D) twice as likely to drop out of school;
 - (E) more likely to commit suicide;
 - (F) more than twice as likely to abuse alcohol or drugs; and
 - (G) more likely to become pregnant as teenagers.
- (7) Violent criminals are overwhelmingly males who grew up without fathers.
- (9) Responsible fatherhood includes active participation in financial support and child care, as well as the formation and maintenance of a positive, healthy, and nonviolent relationship between father and child and a cooperative relationship between parents.
- (10) States should be encouraged to implement programs that provide support for responsible fatherhood, promote marriage, and increase the incidence of marriage, and should not be restricted from implementing such programs.
- (11) Fatherhood programs should promote and provide support services for--
 - (A) loving and healthy relationships between parents and children; and
 - (B) cooperative parenting.
- (12) There is a social need to reconnect children and fathers.
- (13) The promotion of responsible fatherhood and encouragement of married 2-parent families should not--
 - (A) denigrate the standing or parenting efforts of single mothers or other caregivers;
 - (B) lessen the protection of children from abusive parents; or
 - (C) compromise the safety or health of the custodial parent;but should increase the chance that children will have two caring parents to help them grow up healthy and secure.
- (14) The promotion of responsible fatherhood must always recognize and promote the values of nonviolence.
- (15) For the future of the United States and the future of our children, Congress, States, and local communities should assist parents to become more actively involved in their children's lives.
- (16) Child support is an important means by which a parent can take financial responsibility for a child and emotional support is an important means by which a parent can take social responsibility for a child.
- (18) Despite declining national and State rates, in the United States 4 out of 10 girls get pregnant at least once by age 20, nearly 1,000,000 girls each year. There are nearly 500,000 teen births each year.

Antidepressants filling therapy gap - GPs

<http://stuff.co.nz/stuff/0,2106,2854329a7144,00.html>

24 March 2004

Doctors in New Zealand are prescribing potentially dangerous drugs to depressed young people instead of therapy, because of a lack of available counselling services, the Medical Association GP Council said today. Warnings were issued yesterday by the Food and Drug Administration (FDA) in the United States that 10 of the most popular modern anti-depressants should be closely monitored for warning signs of suicidal behaviour. New Zealand health authorities are investigating the American concerns, which centre around controversial anti-depressants, known as Selective Serotonin Re-uptake Inhibitors (SSRIs). Since 1998, the number of New Zealand children and young people using SSRIs such as Prozac and Aropax has increased by almost two-thirds. The US warning said that SSRIs shouldn't be used in most circumstances, and Britain has banned their use completely for teenagers following the studies. Chief executive of the UK National Association for Mental Health Richard Brook said after examining the results, British regulatory authorities decided the drugs were not only ineffective for teens, but unsafe. "What we have is a series of drugs deemed not to be effective... What we also found in the UK when we put these studies together was there was an increased risk of hostility and suicidal thinking," he told National Radio. Teens faced different issues than adults, he said. Cognitive behaviour therapy, counselling, talking and helping young people with their social life and friendships seemed more effective, Dr Brook said. "These drugs don't seem to be particularly helpful, useful or indeed even safe for under-18s." Despite fierce lobbying from pharmaceutical companies, licensing arrangements banned the drugs. However, doctors could occasionally use their discretion to prescribe them to teens in some occasions. New Zealand GP Council chairman Peter Foley said it was often difficult to refer people to counselling so "it may be the case" that GPs gave them medication instead. "The services offered around the country are not as easily sourced as medication is," he told National Radio. Dr Foley called for better funded alternatives to medication. "GPs are not well funded for spending time with patients. We would like that to happen and therapeutic services in different DHBs (district health boards) in the way of counselling are very hard to source, so they need to be better funded as well." Dr Foley said the US results were so far inconclusive, and New Zealand GPs were awaiting more definite conclusions before changing their approach. Despite the statistics, he said GPs here had a "cautionary" approach to prescribing anti-depressants as a "second line" treatment for teenagers. He acknowledged the prescribing of antidepressants to under-18s had increased by 60 per cent in the past four years, but said the diagnosis of teenage depression had improved and "the incidence of depression is probably rising in our community". The Ministry of Health's medicines and adverse reaction's committee is reviewing the use of the SSRIs and expected to respond today. The SSRIs are not registered for use by under 18-year-olds but the ministry says it is aware some doctors choose to prescribe them. The FDA issued a caution on paediatric use of anti-depressants last year, but this week's action goes significantly further. It follows pleas from dozens of anguished parents citing pre-teens and teenagers who hanged themselves or slashed their wrists shortly after starting the anti-depressants. Researchers at the Christchurch School of Medicine have been seeking funding for a three-year study of anti-depressant use in up to 400 New Zealand children and adolescents. About 24,500 antidepressant prescriptions are written for New Zealand children and young people each year. An Otago Medical School study released last year linked anti-depressants to 41 deaths in 2001, with anti-depressant overdoses the cause of 23 of the deaths. The FDA has said it is not yet "clear" that the drugs actually did lead to suicide, but until that was settled, it called for stronger warnings to doctors and parents that the anti-depressants may cause agitation, anxiety and hostility.

Sexual Activity and Teen Pregnancy

Adolescent females between the ages of 15 and 19 years reared in homes without fathers are significantly more likely to engage in premarital sex than adolescent females reared in homes with both a mother and a father.

--Source: Billy, John O. G., Karin L. Brewster and William R. Grady. "Contextual Effects on the Sexual Behavior of Adolescent Women." *Journal of Marriage and Family* 56(1994): 381-404.

A survey of 720 teenage girls found:

97% of the girls said that having parents they could talk to could help reduce teen pregnancy

93% said having loving parents reduced the risk

76% said that their fathers were very or somewhat influential on their decision to have sex

--Source: Clements, Mark. *Parade*. February 2, 1997.

Children in single parent families are more likely to get pregnant as teenagers than their peers who grow up with two parents.

--Source: U.S. Department of Health and Human Services. National Center for Health Statistics. National Health Interview Survey. Hyattsville, MD 1988.

A white teenage girl from an advantaged background is five times more likely to become a teen mother if she grows up in a single-mother household than if she grows up in a household with both biological parents.

--Source: Whitehead, Barbara Dafoe. "Facing the Challenges of Fragmented Families." *The Philanthropy Roundtable* 9.1 (1995): 21.

A longitudinal study carried out on a cohort of teenagers and taking into account factors such as poverty, race and class shows clearly the link between fatherless-ness and teenage pregnancy.

FATHER ABSENCE

Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?

Bruce J. Ellis

University of Canterbury, New Zealand

Abstract

The impact of father absence on early sexual activity and teenage pregnancy was investigated in longitudinal studies in the USA (N = 242) and New Zealand (N = 520), in which community samples of girls were followed prospectively throughout childhood. Greater exposure to father absence was strongly associated with elevated risk for early sexual activity and adolescent pregnancy. This elevated risk was either not explained (in the USA study) or only partly explained (in the New Zealand study) by familial, ecological, and personal disadvantages associated with father absence. After controlling for covariates, there was stronger and more consistent evidence of effects of father absence on early sexual activity and teenage pregnancy than on other behavioral or mental health problems or academic achievement. Effects of father absence are discussed in terms of lifecourse adversity, evolutionary psychology, social learning, and behavior genetic models.

Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?

In modern Western societies, adolescent girls face a biosocial dilemma. On the one hand, the biological capacity to reproduce ordinarily develops in early adolescence; on the other hand, girls who realize this capacity prior to adulthood often experience a variety of negative life outcomes. Specifically, adolescent childbearing is associated with lower educational and occupational attainment, more mental and physical health problems, inadequate social support networks for parenting, and increased risk of abuse and neglect for children born to teen mothers (e.g., Furstenberg, Brooks-Gunn, & Chase-Lansdale, 1989; Konner & Shostak, 1986; Woodward & Fergusson, 1999). Despite these consequences, the United States and New Zealand have the first and second highest rates of teenage pregnancy among Western industrialized countries: Approximately 10% of girls in the United States and 7% of girls in New Zealand between the ages of 15 and 19 years become pregnant each year, with around half of these pregnancies culminating in a live birth (Cheesbrough, Ingham, & Massey, 1999; Dickson, Sporle, Rimene, & Paul, 2000). Given these costs to adolescents and their children, it is critical to identify life experiences and pathways that place girls at increased risk for early sexual activity and adolescent pregnancy.

Many studies have identified the absence of the biological father from the home as a major risk factor for both early sexual activity (e.g., Day, 1992; Kiernan & Hobcraft, 1997; Newcomber & Udry, 1987) and teenage pregnancy (e.g., Hogan & Kitagawa, 1985; Geronimus & Korenman, 1992; McLanahan, 1999). This finding is consistent with lifecourse adversity models of early sexual activity and teenage pregnancy, which posit that a life history of familial and ecological stress provokes earlier onset of sexual activity and reproduction (e.g., Belsky, Steinberg, & Draper, 1991; Coley & Chase-Lansdale, 1998; Fergusson & Woodward, 2000a; Robbins, Kaplan, & Martin, 1985; Scaramella, Conger, Simons, & Whitbeck, 1998). Lifecourse adversity models, however, do not attribute any special causal significance to father absence. Instead, these models conceptualize father absence as just one of many factors that can undermine the quality of family environments. According to lifecourse adversity models, it is not father absence per se but a variety of other stressors associated with father absence (e.g., divorce, poverty, conflictual family relationships, erosion of parental monitoring and control) that foster early sexual activity and pregnancy in daughters (see Belsky, et al., 1991, p. 658; Chisholm, 1999, p. 162; McLanahan, 1999, p. 119; Robbins et al., 1985, p. 568; Silverstein & Auerbach, 1999, p. 403).

In addition to the effects of lifecourse adversity, underlying personality traits may account for the relation between father absence and early sexual outcomes in daughters. Specifically, certain personality traits that predispose girls toward early sexual activity and teenage pregnancy may covary with father absence. Differences between children in externalizing behavior problems—those behaviors considered to be aggressive, disruptive, or oppositional—derive in part from individual differences in temperamental characteristics such as negative emotionality and resistance to control (Bates, Pettit, Dodge, & Ridge, 1998; Rothbart & Bates, 1998). Children who display externalizing behavioral problems early in life are at elevated risk for a variety of negative psychosocial outcomes in adolescence,

including early sexual activity and teenage pregnancy (e.g., Bardone, Moffitt, Caspi, Dickson, & Silva, 1996; Quinton, Pickles, Maughan, & Rutter, 1993; Woodward & Fergusson, 1999). Moreover, individuals who have a history of externalizing disorders are not only at increased risk of becoming single parents or absent parents (e.g., Emery, Waldron, Kitzmann, & Aaron, 1999; Sampson & Laub, 1990) but also may transmit a genetic disposition toward externalizing behavioral problems and associated personality characteristics to their children (Rhee & Waldman, 2002; personality characteristics associated with both sexual risk-taking and other forms of delinquent behavior in adolescence are discussed in Kotchick, Shaffer, Forehand, & Miller, 2001). Thus, girls from father-absent homes may be at elevated risk for early sexual activity and teenage pregnancy because of higher genetic loading for externalizing behavior problems.

In contrast to the lifecourse adversity and personality trait models, evolutionary models suggest that early onset of father absence places daughters at special risk for early sexual activity and adolescent pregnancy. Specifically, evolutionary psychologists have hypothesized that the developmental pathways underlying variation in daughters' reproductive strategies are especially sensitive to the father's role in the family and mothers' sexual attitudes and behavior in early childhood (Draper & Harpending, 1982, 1988; see also Ellis, McFadyen-Ketchum, Dodge, Pettit, & Bates, 1999). Consistent with Hetherington's (1972) work on the effects of early father absence on personality development in adolescent daughters, the evolutionary model suggests that girls detect and internally encode information about parental reproductive strategies during approximately the first five years of life as a basis for calibrating the development of motivational systems, which will make certain types of sexual behavior more or less likely in adolescence. The model thus posits a direct effect of quality of early paternal investment (e.g., father presence vs. absence, quality of paternal caregiving, father-mother relationships) on early onset of sexual and reproductive behavior.

Goals of the Current Research

In light of these theoretical considerations, the current research examined the following set of questions:

1. Is earlier onset of biological father absence associated with increasing risk of early sexual activity and teenage pregnancy in daughters?

Despite voluminous research on father absence, very few studies have examined the relation between timing of onset of father absence and daughters' sexual outcomes. In a small observational study, Hetherington (1972) found that adolescent girls from early father-absent homes (divorced before age 5) tended to initiate more contact with, and seek more attention from, adult males than did girls from late father-absent homes (divorced after age 5). In a large retrospective survey, however, McLanahan (1999) did not find statistically significant relations between timing of onset of father absence and rates of teenage childbearing in daughters. The current research is the first to prospectively measure timing of onset of father absence throughout early and middle childhood and then test for its effects on early sexual activity and pregnancy in adolescence.

2. Does earlier onset of biological father absence uniquely increase risk for early sexual activity and adolescent pregnancy in daughters, independent of both early externalizing behavior problems and familial and ecological stressors that covary with father absence? That is, does more exposure to father absence place daughters at special risk for early sexual outcomes—regardless of whether girls are rich or poor, black or white, cooperative or defiant in kindergarten, born to teenage or adult mothers, grow up in violent or safe neighborhoods, experience many or few stressful life events, have warm-supportive or harsh-rejecting parents, are exposed to functional or dysfunctional marriages, are closely or loosely monitored by parents, and so forth?

A number of studies have found that father absence uniquely predicts early sexual activity (Day, 1992; Devine, Long, & Forehand, 1993; Miller et al., 1997; Upchurch, Aneshensel, Sucoff, & Levy-Storms, 1999) and adolescent pregnancy or childbearing (Hogan & Kitigawa, 1985; Robbins et al., 1985), after controlling for such confounding variables as race, socioeconomic status, neighborhood danger, and parental monitoring and control. All of these studies, however, began when daughters were already in early to late adolescence and thus were unable to assess familial and ecological stressors prior to daughters' risk for involvement in sexual activity. The current research is the first to prospectively assess lifecourse adversity throughout early and middle childhood, and then control for its effects when testing for the relation between timing of father absence and rates of early sexual activity and adolescent pregnancy.

3. Does earlier onset of biological father absence discriminantly increase risk for early onset of sexual activity and teenage pregnancy—but not for adolescent behavioral and mental health problems more generally—independent of early externalizing problems and lifecourse adversity? In other words, is greater exposure to father absence a general risk factor for the development of psychopathology, or is it specific to sexual development?

To our knowledge, only Newcomer and Udry (1987) have explicitly addressed this question. In a short-term longitudinal study of white adolescents, Newcomer and Udry found that the effect of father absence on a composite measure of age-graded minor delinquencies (e.g., smoking, drinking alcohol, cheating on a test) was statistically significant and about equal in magnitude to the effect of father absence on onset of first sexual intercourse in girls. Newcomer and Udry, however, did not control for potentially confounding third variables (e.g., race,

socioeconomic status, mother's age at first birth) that could account for the correlation between father absence and delinquency. The current research examined the unique effects of timing of father absence on a variety of psychosocial and educational outcomes, after controlling for the effects of child conduct problems and familial and ecological stressors during childhood.

This set of questions was investigated in two independent longitudinal studies in the United States and New Zealand. In the American study, a community sample of girls was followed prospectively from the summer prior to kindergarten through to the 12th grade. In the New Zealand study, a birth cohort of girls was followed prospectively from infancy through to age 18.

Cost of Children in need in England Sept/Oct 2001

- Preliminary results of survey of activity and expenditure by local Authorities

This report summarises the provisional results of a survey of Children in Need and the activity and expenditure reported by Social Services in respect of provision for Children in Need in a "typical" week in September/October 2001. The figures update an earlier survey - the first of its kind - in February 2000.

MAIN RESULTS:

Key findings from 2001 census

Numbers of Children in Need:

- There were approximately 376,000 Children in Need in England in 2001;
- 69,000 of them were Children Looked After and the remaining 307,000 were other Children in Need;
- Social Services are providing services for nearly a quarter of a million

Children in Need in a typical week;

- 90% of Children Looked After and 52% of other Children in Need receive a service or have money spent on their behalf in a typical week (either in terms of staff/centre time or in terms of cost of the Local Authority paying for provision needed - e.g. residential costs);
- authorities report about 12,600 asylum seeking children in need.

Characteristics of Children in Need:

- The main need for social service intervention for children is cases of "abuse and neglect" which account for just over half (55%) of all Children Looked After and 26% of other Children in Need;

- About 13% of the Children in Need population are disabled, and they received 15% of gross expenditure on Children in Need;

- At least 17% of Children in Need are from ethnic minorities (which is almost twice the figure for the under 18 population as a whole from the census).

Costs and resources: - Services for Children in Need cost Social Services on average about £50m per week, £31m per week on Children Looked After, and £19m per week on other Children in Need;

- Nearly half of these Children's costs are accounted for by regular payments (on residential/fostering/adoption costs) for Children Looked

- The average Child Looked After receives 3.4 hours per week of service from Social Work staff either in teams or centres, of which 0.2 hours is in group work; - Other Children in Need receive on average about 2.4 hours per week of staff or centre time, of which 0.6 hours is group work .

comparison with 2000 census:

- The number of children receiving services fell by 3%; the number of Children Looked After receiving services rose by 8% but this was offset by a fall of 6% in the numbers of children supported in their families and receiving a service.

- The cost of providing services to Children in Need rose by about 26% from £40.1m per week in 2000 to £50.4m per week in 2001;

- The average amount spent per child per week on Children in Need rose by just under 30%; the increase for Children Looked After was 15% from £435 per week to £500 per week, and for children supported in their families up 33% from £90 per week to £120 per week.

14 October 2004

Evidence submitted by Kenneth Lane, Dispute Resolution Consultancy

MY BACKGROUND

I am a qualified counsellor based in Cardiff. Since 1998, working full & part-time, I provide an innovative service for separating parents caught up in an unhelpful legal system, offering a timely alternative approach.

Prior to, for 8 years I served as an Engineer Officer in the Navy, and thereafter worked for 16 years as an Engineering Liaison for an International Chemical Company — ensuring timely manufacture of development products to full scale production.

Given my own experience in the Family Court system [1995-98], and research undertaken in resolving the matter, I retrained and work as a counsellor - specialising in post separation disputes involving children.

Utilising a cognitive-behavioural approach, I assist clients toward a timely resolve of disputes (where applicable), based on child-centred parenting plans - underpinned by guidelines of the professional Association of Family Court Welfare Officers - '*A Child's Contact with No-Residential Parents*' (crafted by Association Chair, Mr A Sealey: Dec 1996)]. These have since been superseded by '*A Child-Centred Application of the Children Act (1989): Early Post-Separation Parenting Planning*' crafted & presented by Dr H Cameron at the Royal Society [Mar 2002]

My caseload is generated mainly by referral from former clients; via Welsh National Assembly members; MPs; and various parenting & Christian Family Groups. Also, having published articles on the subject I have appeared in local and national television & radio programmes. In addition, I have represented parent groups on the Cardiff Family Court Forum.

SUBMISSION

I craft this submission on the understanding that the Committee is investigating key areas, including:

1. whether the Family Court system is being run effectively
2. whether Family Court judges have sufficient powers
3. issues surrounding delays caused by the current system
4. whether people using Family Courts are getting the service they deserve.

In order to respond to the above it is important to appreciate that the Family Court system in it's present form is 'run' very much as a lottery of time, with opposite conclusions based on the same facts. There are no guidelines.

There is also no meaningful presumption of contact, even in cases that favour such. Every case is treated differently & reliance on 'empty' allegations can lead to simple disputes over quantum being needlessly protracted, in some cases indefinitely. Based on the same facts, the Courts can and do arrive at opposite outcomes; rubber-stamping recommendations of potentially misleading Cafcass reports in over 95% of cases. Court Orders for nugatory levels of contact often lead to child-parent severance and Court enforcement, where needed, is rare.

I am encouraged by the Early Interventions project, supporting Court assisted post separation parenting planning; which is not only supported by leading figures in the Family Law establishment and health care professionals but by the Government's Green Paper.

Conversely, I was naturally surprised and gravely concerned to find that this important initiative had been replaced by Cafcass's Family Resolutions project. cursory analysis reveals that FR is not only the opposite of EI but ensures a continuance of the existing process, overseen by the very agency —CAFCASS - that brought the Family Justice system into disrepute.

THE IMPACT OF PARENTING PLANS UNDERPINNED BY GUIDELINES

I have found that, in cases where the 'Sealey' or 'Cameron' guidelines are accepted as a basis to establish a child-centred solution - matters are often resolved in a timely manner; even where disputes have reached the Court. Indeed, such guidelines are especially effective at the point of separation, in part as an 'educational tool' leading to a resolve

at, or prior to, mediation.

Conversely, in cases where FCWS/ Cafcass, or legal 'professionals' have persuaded clients to rebuff such parenting plans, based on guidelines - matters are more usually protracted for months, or years, via the Courts; the most likely outcome being permanent child-parent severance.

Thus, 'Court assisted' parenting plans hold the key to dissolving conflict in disputed child-contact cases.

GRAVE RESERVATIONS CONCERNING CAFCASS

Whilst I shall not enter into detail regarding my case here (which concluded in 1998) - it may be helpful for this submission to understand what happens if concerns are raised about misleading welfare reports. [Note: Courts endorse their recommendations in a reported 95% of cases].

Having filed a complaint against an FCWO, whilst requesting sight of the guidelines upon which FCWS staff relied:

- a) the FCWS assured that guidelines, and proper training, were in place; but that such documents were secret.¹⁴
- b) The complaint against the FCWO was 'fobbed off' by the Service by passing it to the Court; who, in turn, passed it back to the FCWS.
- c) After 3 months, further complaints followed, headed:
 - i) Addendum following the failure of the Cardiff FCWS to produce any evidence of training documentation in regard to 'parental alienation' or any other aspect of welfare work, despite numerous written requests to senior Staff over a 3 month period.

Thereafter, in the absence of any material response, the following complaints were filed with the South Glamorgan Probation Committee against its Chief Probation Officer:

- ii) Failure to address a complaint
- iii) Failure to address gross misconduct on behalf of staff which he thereby condones
- iv) Failure to implement, install or abide by any or any proper guidelines on contact residence or shared residence contrary to all or any principles governing the general conduct of professional life
- v) Failure to inform staff about parental alienation, being a specimen head of charge by way of a more general failure to train his staff
- vi) Whether weight should be attached to South Glamorgan's Welfare Service work in Contact cases [Sections: I — VI]

Rather than pursue a solution the South Glamorgan Probation Committee met in secret and fobbed off all concerns, thereby abdicating responsibility & threatened criminal proceedings. Further complaints followed against the SG Probation Committee; the Head of Probation; the Probation Inspectorate & The H.O. Minister.

At the next Hearing, aware of the above complaints, Cardiff's senior Family Judge removed the FCWS from the case & Ordered contact. Legal Aid was withdrawn. In line with arrangements based on 'Sealey' guidelines¹⁵ for post separation contact, we have since co-parented of our children.

However, 6 years hereon, despite the severity of the concerns raised, all the above complaints remain unaddressed. Moreover, confirmation via Hansard [10 Apr 2000: 121 &122] reveals that FCWS had no guidelines, no proper training, and no records on case outcomes (& no requirement to keep such).

CREATION OF CAFCASS (IN THE FORM OF FCWS)

Concerned that the failings that led to the disbanding of the FCWS may manifest themselves in CAFCASS, I entered

¹⁴ Note: Neither FCWS, or its successor CAFCASS, recognise the 'Sealey' guidelines on child contact and can see no need for them. In so doing, it would appear that both Services consider it of no great import whether children see their parents after separation.

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into correspondence with MPs, WNA members and health care professionals, in Wales.

Prior to the CAFCASS opening its doors, I sent a standard copy letter (with supporting attachments) on 12 Sept 2000 to all WNA members, under the main head '*Public Manufacture of Needless One-Parent Families*', which stated in part:

The FCWS is the Service upon whom the Courts rely as 'experts' to settle, by a single report, the lives of approximately 60 000 children a year. As no documentation exists suggesting how a child's time should be apportioned between parents after divorce (L& in their job) it must follow that outcomes are being decided on whim.

It is peculiar to establish a new unified Service without installing a proper training manual, containing proper guidelines. Perhaps the Welsh Assembly can take a lead role, thereby better safeguarding the welfare of children and Justice in Wales.

To my knowledge, approximately 50% of WNA members wrote to Cafcass senior staff seeking a full and proper explanation; yet — despite the foregoing - all responses consisted of excuses, evasions and empty assurances.

Thus, I remain concerned that any reform overseen by Cafcass that conflicts in any way with its current role may not realise its full potential and aims without appropriate external support.

GOVERNMENT PROPOSALS FOR CHANGE OF THE FAMILY COURT SYSTEM

Whilst the Government's Green Paper, *Parental Separation: Children's needs and Parent's Responsibilities (Cm 6273)*, highlights many of the problems that face parents who turn to the Courts for help, namely:

1. that the Family Court's intervention in disputed child contact cases is often inconsistent and can often be unhelpful;
2. that it is in the interests of children to continue to sustain a meaningful relationship with both their parents following separation, thus the systems in place need modification where necessary to ensure this outcome;
3. and that substantial change is needed to the existing system - so that, where 'professional' intervention is required, it helps to ensure effective child-centred solutions

The fact remains that the FR project does not encapsulate the spirit of the EI project, through which the aims of the Green Paper would be achieved.

EARLY INTERVENTIONS VS. FAMILY RESOLUTIONS

The positive child-centred benefits of the EI project are already well documented, and the project has gained both professional and judicial support. Its purpose, based on extensive research over an 8 year period, was to ensure the timely resolve of child contact disputes even before they reached the Court.

Contact-focused mandatory mediation and pre-hearing parenting plans have been shown in other areas to be highly successful in producing timely child centred outcomes, whilst significantly reducing the need for enforcement. Given the findings, there is no reason why properly piloting this project in the UK courts would not experience the same outcome. Indeed, through my own work - I find that where these principles are applied - the most likely outcome is via timely child-centred solutions.

Despite these key areas which the Green Paper seeks to address, the DfES has in fact rejected EI - and in its place has substituted the Cafcass *Family Resolutions* project; that not only lacks judicial support, but is the exact opposite of the EI project. Continuing in this vein will merely result in the Government piloting the existing process.

A more in-depth overview can be found in the FLJ [Nov 2004] article, headed '*Family Resolutions vs. Family Interventions*' which states, in part, that:

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 occur-ed' ([2003] Pam 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 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 [121]), 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 s8 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.

[Full copy of this article by Caroline Wilbourne (Barrister) in original text attached (FLJ: Nov 04)]

Given the foregoing, in my opinion, the substitution of the EI project for the unsupported FR project, can only result in a continuance of the existing system, unchanged, to the detriment of children in separating families.

RECOMMENDATIONS

I am gravely concerned to find that the DfES has accepted *Family Resolutions* to the exclusion of the *Early Interventions* project, given that FR is devoid of the key ingredients contained in the EI and thus cannot meet the expectations of Green Paper. The solution must be to reinstate EI with the involvement of appropriate independent support.

The bottom line must always be to act in the 'best interests of the child' but this key principle cannot be properly served, if at all, by treating 'every case as different'. This forms the basis of the FR project, which provides nothing new. FR is also focused on 'quality' rather than quantum of time. Whilst 'quality' is important, there remains the obvious fact that co-parenting requires children spending meaningful time with both parents. FR should thus be rejected or run in comparison with EI.

Achieving child-centred arrangements through parenting plans is key, but can only be possible and practical if the Courts and professionals support such. To this end, early information containing the Courts expectations, with defined guidelines on quantum, outlining meaningful periods of time -will not only dissolve conflict at the earliest stage; but will help to educate both parents that, they continue to share the responsibility for the upbringing of their children, after separation.

Latterly, it is not uncommon for irresponsible 'resident' parents frustrate contact arrangements with the 'non-resident' parent. Mindful of the fact that delay (or failure to act), can only expose children to emotional harm and resulting mental problems, in both the short and long-term, the Courts must be empowered to act swiftly; including transferring residence of the child to the responsible parent.

Further, false 'allegations' are a common factor — often made in an effort to minimise or sabotage child contact arrangements. Given the dire ramifications for children, it is imperative that proper guidelines are installed outlining, i) how to deal with false allegations, and ii) how to distinguish between substantiated allegations and unsubstantiated ones..

Finally, when relationships break down, and children are involved, it is imperative that parents are properly assisted (if sought) by professionals, through an appropriate intervention to resolve child-contact matters, in a timely manner. To this end, the Court and associated professionals have an opportunity — via EI - to adopt a more proactive and educational 'user friendly' role, in helping parents to identify the importance of separating their feelings for each other from the daily practicalities of parenting their children. Long-term social benefits will flow.

Kenneth Lane
31 October 2004

Evidence submitted by Unity Injustice

I am writing to you in offering our services and expertise in the family courts arena of which I was an end user of ten years nearly in attendance. I approached my MP Robert Walters whose private secretary gave me the contact details that this missive has followed.

I am not subject at the moment to any court orders or forms of subjudicy and there I am able to speak of some of my experiences.

Unity Injustice is a peaceful group focused on lawful campaign and reform.

No doubt much has been said of the difficulty of fathers to gain contact; I can say that in my own case, the Judges involved never once hesitated upon bestowing residency of my child to me. I remain a single father to this day and it has never been an issue for the courts although the same could not be said for social service departments involved in my case.

THE COURTS IN GENERAL

There seems to be no level of equality of the courts, some Judges simply ignore the parents, some address them as equal in the proceeds which is just, these things may seem to a parent daunting as attendance of familiar people to the courts breeds some familiarity and this may lead also to parents feeling that the courts are against them.

COMMENCEMENT OF PROCEEDINGS

Here lies a problem before it all begins, at the start of proceedings, it is very rare that a parent is allowed to speak until the final hearing, in a great many cases, parents may have evidence that is crucial at the time yet 40 weeks on will not be allowed as it has become "historical", what would serve the parents, the child and the courts would be a session of presentation of evidence or cross examination, social services are allowed to process their case and make their case in entirety but the parent is not allowed to respond there and then It would save the taxpayer alone quite a considerable amount of money if a case could be quickly concluded.

Based on the work of Charles Pragnell Unity Injustice would also submit that 85% of cases through the family court would not survive past the evidence giving section of a criminal court, we feel that social services have only to include the words significant harm and likely into their application and that is all the evidence sufficient to proceed to draconian measures.

PRESENTING TO THE COURT OF LOCAL AUTHORITY EVIDENCE

We also feel that if social services in certain areas were either restricted in use of such evidences as untidy properties without testimony or evidence and other vague statements designed to attack the character rather than serve the case of law or even have any relevance to parental ability, this would serve the judge well also, yes it may be of benefit to have a general picture of the family in question but much reliance has been seen in cases where untidiness, lack of intellect, unemployment have no real relevance except as a statement of fact in general.

In other situations social services must be forced to evidence wild claims NOT of an abusive nature, in my own case because I would not comply, social services proceeded to portray me as a mentally ill person and even went as far as to "diagnose me to the Judge sitting which placed me in a position to prove my sanity, the question of family cases in these instances must be on the probability of potential or likely abuse, is it not the case where people with neurosis and in some cases lesser psychosis make superb parents, the question must not dwell on parenting *perceived* but on parenting *observed*.

Many cases that have led to adoption have been made on two or three hours of observation under hostile conditions, not all parents are cooperative and indeed many social workers do not help this by assisting the parent to be at more at ease, again referring to Charles Pragnell's work, most social workers are predisposed to guilt despite nothing evidenced in that direction. In fact it has been seen and researched that many times social workers are aware of evidence that indemnifies the parent yet this is withheld and discarded in favour of the more dubious. What chance

then does a parent have when a social worker knows full well they have no need to present *prima facie* evidence and that their word is tantamount to decree.

It seems an unjust situation when a parent must present evidence so overwhelming that a Judge must take notice yet the local authority has to claim some potential to an uncertain future event, we feel that unless there is a serious concern then a Judge would be better served by allowing continuing assessments rather than removal.

FAIR KNOWLEDGE OF THE CASE MADE AGAINST THE PARENT

Although it may not be of much relevance to this committee, the Data Protection Act is of no use to a parent if there is no enforcement of it.

Many parents need to see their files before the case goes before the court; this is not broaching privileged materials but a right given under the Data Protection Act and its revisions. To quote Jean Robinson of AIMS in her letter to Cassandra Jardine of the Telegraph, she states "that not one department has ever complied fully with the data protection act", this is not an exaggeration but a statement of the reality of things, social services defy the data protection act because they fear no reprisal, there is a criminal offence attached yet it is to be seen whether the Information Commissioner will ever enforce obvious criminal activity.

Local Authorities hence refuse to allow fair access to peoples files, they could omit and do so in many cases, facts of relevance that would change the face of things in the court setting, I applied for my own files and finally saw them 10 months later, heavily edited and they were not in compliance with the Data Protection Act or my rightful request.

We at Unity Injustice feel the family courts and the parents would be better served if there was legislation forcing Local Authorities to surrender these files to court and that a Judge be empowered to enforce and punish flagrant abuses of this sort of thing. Certainly the child would be served better if the whole files were made available to those in application and response, we are not asking for the privileged materials to be made available but the general case files that Barristers may glean all facts, not those of choosing by persons who have no interest except winning the case.

RETRIBUTION AND DAMAGES

At this point there is no retribution for parents who have been falsely accused or have been dealt with in a most heinous manner, since Lord Philips Judgement last year, this has also led to the fact parents cannot litigate against these factors in cases of mental trauma or suffering.

What must be brought into the arena is the fact that if a department is shown to have acted anything less than professional then they can be held contemptuous of court, struck off the impending register or managers and team leaders also brought into account, at the moment there is no culpability, no accountability for actions brought against parents which should not have been taken to court..

DIRTY TRICKS AND FRIVOLOUS APPLICATIONS

Yes, dirty tricks are used in the courts against parents, the two worst being applying to the LASC and stating that the case has no place in public law or applying to the Judge for a sec 91.

By denying a person of low income any chance of fighting their case is a terrible injustice, they should be able to respond regardless, especially if they are the respondents in any case, a parents ability to fight their Childs case should not be a matter of income and if they are not in the position of funding legal defence then they should be given all state assistance and costs awarded to local authorities as a deterrent for frivolous applications. There is scope that a judge could be empowered to assist the parent in cases of importance, if a parent states they are innocent and there is no overwhelming evidence of guilt then it would serve the family unit and the child wholly if all avenues were pursued.

The second scenario is where a local authority will file for a section 91, this can happen when a parent has yet to file supporting evidence, indeed, one of the situations is the catch all where a parent is portrayed as obstructive simply by fighting his case in court, that before a full case has been heard, a section 91 is applied for and this prevents a parent applying for access to the Judge for two years if so ordered. If the matter is a matter re: a child then social services

MUST be forbidden the use of section 91 unless it is justified as a deterrent that assists the placement of an abused child.

APPEALS

If the case again is re: a child, then if it is contested then appeals should be mandatory if one point can be argued in justification, this could mean that a respondent may show to the Judge that social services have withheld information on purpose and can either claim a retrial or appeal in the upper courts. Indeed referring back to the abuse of the Data Protection Act, by fair scrutiny of the files held would this not weed out the cases of frivolous and stubborn refusal. It is to be remembered that the parent is fighting for their child and has many hurdles, most of them unfair to bridge before they even get to court, too many cases have gone through on the worst of evidence and many of these overturned or upheld in the ECHR.

EUROPEAN CONVENTION OF HUMAN RIGHTS

It seems that the local authorities pay this certain lip service; it seems more a case of the ends justifies the means and this can be exhibited in court too. Local Authorities present their cases in breach of Articles 6, 8 and 12 of the ECHR, it should be seen that the ECHR must be argued at the same times as the Children's Act otherwise what is the point of having such a higher entity.

To quote a senior manager of my own council...

"...of course parents have no say in child protection, this is to stop sexual offenders gaining control, we are the experts in this matter and we should do things the way they are being done."

Too many cases though go to ECHR, this indicates that the Judiciary is not working well under its auspices and that people are losing their children, indeed at the moment, the Rt. Hon. Margaret Hodge MP is investigating many cases whose validity have been questioned and their safety of law a concern.

I am willing to testify to the committee, as I have stated, I am an end user of the courts for a long period of time, I am not under subjudicy at this time and whilst not able to discuss details of my case in fear of identifying my child, I am able to comment and evidence manners of the cases presentation.

I would also submit the name of one of our regional representatives, Yvonne Coulter who has been tackling her local department for the last 15 years over a forced adoption and other heinous issues; again she is free to speak in general and is also not under subjudicy.

Ian Watson
National Coordinator
Unity Injustice UK
17 November 2004

Enc: Charles Pragnell Statement 2004

CHILD PROTECTION IN BRITAIN A NEED FOR ROOT AND BRANCH REFORM

(A Paper presented to an International Conference in Sydney, Australia on 4/5 February 2004 to examine problems in child protection systems and procedures internationally, and to discuss the need for reforms.)

WHAT I HAVE TO SAY TODAY IS A COMMENTARY ON THE CHILD PROTECTION SYSTEM AS IT IS IN BRITAIN. I CONFESS TO KNOWING VERY LITTLE ABOUT THE SYSTEM IN AUSTRALIA BUT I SHALL LEAVE IT TO YOU TO DRAW ANY PARALLELS WHICH YOU MAY THINK APPLY FROM YOUR OWN EXPERIENCES.

I WOULD FIRSTLY LIKE TO TALK A LITTLE BIT ABOUT THE BRITISH CHARACTER. IT IS NOT WIDELY RECOGNISED BUT IN MANY WAYS THE BRITISH CULTURE IS PUNITIVE AND

OPPRESSIVE TOWARD CHILDREN. THE BRITISH WILL ALWAYS STATE THAT THEY LOVE THEIR CHILDREN AND MOST PROBABLY DO, BUT THEY ARE NOT OPENLY LOVING AND AFFECTIONATE WITH THEM.

THESE PUNITIVE AND OPPRESSIVE ATTITUDES ARE PARTICULARLY APPARENT IN THE JUVENILE JUSTICE SYSTEM, IN THE STRONGLY HELD BELIEFS REGARDING CORPORAL PUNISHMENT OF CHILDREN, AND IN THE CHILD PROTECTION SYSTEM. THERE ARE MANY HUNDREDS OF CHILDREN UNDER THE AGE OF SIXTEEN WHO ARE BEING HELD IN SECURE FACILITIES FOR COMMITTING WHAT ARE SEEN AS SERIOUS OFFENCES — BUT THEY RECEIVE VERY LITTLE IN THE WAY OF THERAPY, COUNSELLING, OR SUPPORT IN REHABILITATION AND ARE SEPARATED FROM THEIR FAMILIES FOR SEVERAL YEARS. AN INTERNATIONAL STUDY IN THE EARLY 1980'S AMONG SCHOOLS AROUND THE WORLD FOUND THAT IT WAS ONLY IN BRITAIN AND ITS FORMER COLONIES THAT CORPORAL PUNISHMENT WAS STILL USED — MOST EUROPEAN COUNTRIES HAD ABANDONED THE PRACTICE OVER A CENTURY BEFORE AND SOME HAD NEVER PERMITTED ITS USE.

BUT WHAT THE BRITISH ARE VERY GOOD AT IS IMPORTING AND EXPORTING CHILDREN. DURING THE INFAMOUS YEARS OF THE SLAVE TRADE, THE BRITISH IMPORTED MANY SMALL BLACK CHILDREN FROM AFRICA AS FASHION ACCESSORIES FOR THE LADIES OF BRISTOL AND LIVERPOOL, TO COMPLEMENT THEIR CRINOLINE DRESSES AND PARASOLS. THEN FROM THE LATE 1800'S, THE BRITISH BEGAN TO EXPORT CHILDREN AND THIS CONTINUED UNTIL THE LATE 1960'S. CHILDREN WHO WERE BEING LOOKED AFTER IN LARGE CHILDREN'S HOMES WERE COLLECTED TOGETHER AND TAKEN OFF TO LIVERPOOL WHERE THEY WERE PUT ON SPECIALLY CHARTERED SHIPS AND TRANSPORTED TO THE NEW WORLD OF AUSTRALIA AND CANADA, WHERE THEY HAD BEEN TOLD, A WONDERFUL NEW LIFE WITH GREAT OPPORTUNITIES AWAITED THEM. WE NOW KNOW DIFFERENTLY.

MORE RECENTLY, THE BRITISH HAVE AGAIN BEGUN TO IMPORT CHILDREN. FROM 1970 ONWARDS, THE NUMBERS OF UNWANTED CHILDREN AVAILABLE FOR ADOPTION BEGAN TO DECLINE VERY RAPIDLY FOLLOWING A RELAXATION IN THE LAWS ON ABORTION AND NEW DEVELOPMENTS IN CONTRACEPTION. HOWEVER, THE NUMBERS OF CHILDLESS COUPLES WANTING TO ADOPT CHILDREN CONTINUED TO INCREASE. SO IN ORDER TO PROVIDE THE SUPPLY TO MEET THIS DEMAND, THE BRITISH BEGAN TO IMPORT CHILDREN FROM EASTERN EUROPEAN COUNTRIES WHEN THE SOVIET UNION BEGAN TO BREAK UP IN THE EARLY 1990'S AND CHILDREN WERE TAKEN FROM THEIR FAMILIES AND THEIR ETHNIC AND CULTURAL BACKGROUNDS FROM SUCH COUNTRIES AS RUMANIA, BOSNIA, KOSOVO ETC. THIS WAS LATER EXTENDED TO CHILDREN FROM CHINA AND THE FAR EAST. OF COURSE, THIS WAS ALL DONE FOR THE BEST OF INTENTIONS AND AS BEING "IN THE BEST INTERESTS OF THE CHILDREN".

BUT THEN, FAR GREATER HARM IS OFTEN DONE BY THOSE WITH GOOD INTENTIONS TOWARDS OTHERS, THAN IS EVER DONE BY THOSE WITH BAD INTENT.

THERE CAN BE LITTLE DEBATE THAT THE CHILD PROTECTION SYSTEM IN THE U.K. IS DEEPLY FLAWED, ERRATIC, AND GROSSLY DYSFUNCTIONAL.

IN THE LAST THIRTY YEARS THERE HAVE BEEN OVER 40 INSTANCES WHERE CHILDREN HAVE DIED WHILE UNDER THE CARE OR SUPERVISION OF CHILD PROTECTION WORKERS. MANY OF THESE HAVE LED TO PUBLIC INQUIRIES AND IT IS SIGNIFICANT THAT ALMOST ALL OF THESE INQUIRIES HAVE HAD TWO THINGS IN COMMON IN THEIR FINDINGS. FIRSTLY THAT THERE WAS A LACK OF COMMUNICATION BETWEEN THE VARIOUS AGENCY WORKERS INVOLVED AND SECONDLY, THEY HAVE BLAMED 'THE SYSTEM' FOR THE ERRORS WHICH HAVE BEEN MADE RATHER THAN FIND FAULT WITH THE INDIVIDUAL ACTIONS OF ANY OF THE CHILD PROTECTION WORKERS.

ACCORDINGLY, THE SYSTEM HAS BEEN CHANGED EVERY TIME WITH INCREASED POWERS AND RESOURCES FOR THE CHILD ABUSE INDUSTRY BUT WHICH HAVE RESULTED IN IT BECOMING EVEN MORE OPPRESSIVE AND PUNITIVE.

BUT THE PROBLEM IS NOT IN 'THE SYSTEM', THE PROBLEM IS IN THE ATTITUDES AND BELIEFS OF THE WORKERS.

ONE OF THE CLAIMS OF CHILD PROTECTION SOCIAL WORKERS IS THAT THE AMOUNT OF REPORTED CHILD ABUSE IS ONLY THE TIP OF AN ICEBERG AND THERE IS FAR MORE ABUSE OF CHILDREN GOING ON THAN IS BEING REPORTED. THEY REGULARLY TRY TO CREATE A MORAL PANIC AND TO OVERSTATE THE SITUATION IN ORDER TO ATTRACT PUBLIC AND POLITICAL SYMPATHY AND OF COURSE MORE RESOURCES TO EXPAND THE CHILD ABUSE INDUSTRY.

THERE IS NO EVIDENCE TO SUPPORT THESE ASSERTIONS — IN FACT QUITE THE OPPOSITE. CHILD ABUSE IS NOT A MAJOR PROBLEM IN BRITAIN OR AT LEAST NOWHERE NEAR AS LARGE A PROBLEM AS THE CHILD ABUSE INDUSTRY WOULD WANT THE PUBLIC AND POLITICIANS TO BELIEVE.

ENGLAND AND WALES HAVE A CHILD POPULATION OF APPROXIMATELY 11 MILLION CHILDREN AND IN 1997 THERE WERE REPORTS OF CHILD ABUSE INVOLVING 160,000 CHILDREN BUT OVER 85% OF THOSE REPORTS WERE FOUND TO HAVE **“NO SUBSTANTIVE BASIS”**. THAT IS, THEY HAD BEEN MADE FOR MISTAKEN, MISCHIEVOUS, MALICIOUS, OR MONETARY REASONS. HOWEVER THE CHILD ABUSE INDUSTRY PERSUADED THE GOVERNMENT TO INTRODUCE MANDATORY REPORTING WHEREBY IF A CHILD ARRIVED AT A SCHOOL, A HOSPITAL, OR A DOCTOR'S SURGERY WITH CUTS AND BRUISES, THIS HAD TO BE REPORTED TO THE CHILD PROTECTION SERVICES.

CONSEQUENTLY BY 2002 THE FIGURE FOR REPORTS OF CHILD ABUSE ROSE TO 570,000. HOWEVER, FOLLOWING INVESTIGATION OF THESE REPORTS, THE NAMES OF ONLY 11,500 CHILDREN WERE ADDED TO THE CHILD PROTECTION REGISTERS AS BEING 'AT RISK' OF ABUSE, AND IT MUST BE EMPHASISED THAT THESE ARE NOT PROVEN CASES. THESE ARE DECISIONS THAT CHILDREN ARE AT RISK, AND ARE BASED ONLY ON THE OPINIONS OF SOCIAL WORKERS AND ON VERY LITTLE EVIDENCE, AND IN SITUATIONS WHERE SOCIAL WORKERS ARE TERRIFIED TO RISK BEING WRONG.

SO JUST AS SOCIAL WORKERS HAVE FAILED TO INTERVENE WHEN THEY SHOULD HAVE DONE, THEY ALSO HAVE AN APPALLING RECORD OF INTERVENING WHEN THEY SHOULD NOT HAVE DONE. THE MOST GLARING EXAMPLES OF THIS WERE IN CLEVELAND IN 1987, THE ORKNEY ISLANDS IN 1990, AND IN NOTTINGHAM AND ROCHDALE AND MANY, MANY OTHER INSTANCES.

THE EVENTS IN CLEVELAND INVOLVED THE USE OF AN UNPROVEN MEDICAL DIAGNOSIS TERMED THE ANAL DILATATION TEST WHICH RESULTED IN 121 CHILDREN BEING REMOVED FROM THEIR FAMILIES - SOME IN MIDNIGHT AND DAWN RAIDS WHEN THE CHILDREN WERE PULLED FROM THEIR BEDS AND TAKEN AWAY TO RESIDENTIAL AND FOSTER HOMES. THE SOCIAL WORKERS VIDEO-RECORDED THEIR INTERVIEWS WITH SOME OF THE CHILDREN AND IT SHOWED THEM ASKING LEADING QUESTIONS THREATENING THE CHILDREN, AND EVEN ATTEMPTING TO BRIBE THEM INTO SAYING THEY HAD BEEN ABUSED. AT THE TIME THE SOCIAL WORKERS HAD A MANTRA OF **“ALWAYS BELIEVE THE CHILD”** - YET WHEN THE CHILDREN TOLD THEM THEY HAD NOT BEEN ABUSED, THE SOCIAL WORKERS REFUSED TO BELIEVE THEM.

THE COURTS HOWEVER, DISMISSED THE CASES INVOLVING 96 OF THE CHILDREN, I.E. OVER 80% WERE FALSE ACCUSATIONS.

IN ORKNEY, NOTTINGHAM, AND ROCHDALE A THEORY WAS USED OF SATANIC RITUAL ABUSE AND AFTER THOSE SCANDALS THE GOVERNMENT APPOINTED A RESEARCHER PROFESSOR JEAN LA FONTAINE TO UNDERTAKE A STUDY OF SUCH ALLEGED ABUSE. THE RESEARCH FOUND NO EVIDENCE OF THE EXISTENCE OF SATANIC RITUAL ABUSE.

AND NOW OF COURSE THERE IS NOW THE MEADOW SCANDAL INVOLVING 5,000 CHILDREN AND 258 PARENTS WRONGLY CONVICTED ON “MANIFESTLY WRONG AND GROSSLY MISLEADING EVIDENCE” GIVEN BY MEADOW AND OTHERS.

WHAT THIS SHOWS IS THAT THERE IS A READINESS AMONG SOCIAL WORKERS TO UNCRITICALLY ACCEPT ANY NEW BUT UNPROVEN THEORY OF CHILD ABUSE AND TO IMPLEMENT IT IMMEDIATELY INTO THEIR PRACTICE AND WITHOUT A THOUGHT FOR THE CONSEQUENCES.

THERE IS NOW GROWING ANECDOTAL EVIDENCE FROM MANY PARENTS IN BRITAIN WHO HAVE CHILDREN WITH SPECIAL NEEDS THAT THEY ARE BEING TARGETED FOR REFERRAL TO CHILD PROTECTION PROCEDURES IF THEY APPLY FOR STATUTORY ASSESSMENT FOR THEIR CHILDREN UNDER THE EDUCATION ACTS. IN PARTICULAR THIS IS AFFECTING FAMILIES WITH CHILDREN WITH ADD! ADHD/ ASPERGERS SYNDROME! HIGH FUNCTIONING AUTISM! MODERATE TO SEVERE DYSLEXIA AND DYSPRAXIA! AND CHRONIC FATIGUE SYNDROME OR ANY COMBINATIONS OF THESE CONDITIONS. THERE ARE MANY FAMILIES WHO ARE DAILY REPORTING TO ORGANIZATIONS SUCH AS THE AUTISM SOCIETY THAT, INSTEAD OF EDUCATION WORKERS CARRYING OUT STATUTORY ASSESSMENTS OF THEIR CHILDREN, THEY ARE REFERRING THEM INTO THE CHILD PROTECTION SYSTEM.

IN SHORT, SOCIAL WORKERS ARE INTERVENING WHERE THEY SHOULD NOT HAVE DONE AND ARE **NOT** INTERVENING WHERE THEY SHOULD HAVE DONE. AS A CONSEQUENCE, MANY CHILDREN HAVE LOST THEIR LIVES WHILE MANY HUNDREDS OF THOUSANDS OF OTHERS HAVE BEEN AND ARE, CAUSED UNNECESSARY HARM BY UNWARRANTED INTRUSIONS INTO THEIR LIVES AND THE STIGMA OF CHILD ABUSE ACCUSATIONS WHICH STAY WITH THEM FOREVER.

I AM NOT OF COURSE THE FIRST PERSON TO DRAW ATTENTION TO THE IDIOSYNCRASIES AND DYSFUNCTIONS OF THE CHILD PROTECTION SYSTEM.

IN 1990, IN A BOOK TITLED WOUNDED INNOCENTS, RICHARD WEXLER STATED,

“THE WAR AGAINST CHILD ABUSE HAS BECOME A WAR AGAINST CHILDREN. THE CHILD ABUSE SYSTEM IS HURTING CHILDREN THAT IT IS ATTEMPTING TO HELP”.

THIS WAS FURTHER CONFIRMED IN 1995 BY OTHER AMERICAN RESEARCHERS, WAKEFIELD AND UNDERWAGER, WHO STATED,

“WE HAVE BUILT A SYSTEM THAT, WHILE INTENDED TO PROTECT CHILDREN, OFTEN DOES MORE HARM THAN GOOD. FROM 1979 TO THE PRESENT EVERY SOCIAL SCIENTIST WHO HAS INVESTIGATED THE LEVEL AND TYPE OF ERROR COMMITTED BY THE CHILD PROTECTION SYSTEM HAS CONCLUDED THERE IS AN UNCONSCIONABLE LEVEL OF FALSE POSITIVES, THAT IS, SAYING THERE IS ABUSE WHEN THERE IS NOT”.

HOWEVER THERE ARE MANY CHILD PROTECTION WORKERS WHO WILL NOT ACCEPT THAT THERE ARE FALSE ACCUSATIONS OF CHILD ABUSE, ONLY THAT THEY CANNOT FIND THE EVIDENCE TO PROVE IT. AND EVEN THOSE WHO ACCEPT THERE ARE FALSE ACCUSATIONS, TAKE THE VIEW THAT, AND I QUOTE;

“WHO CARES IF NINE INNOCENTS SUFFER, AS LONG AS WE GET THE GUILTY ONE! “.

AGAIN AMERICAN RESEARCHERS STATE THAT,

“THE CHILD PROTECTION SYSTEM RESPONDS TO ABUSE ALLEGATIONS WITH MUCH REINFORCEMENT FOR MAKING AN ACCUSATION BUT HAS NO ACCOUNTABILITY; AN ALLEGATION PRODUCES LARGE AND IMMEDIATE PAY-OFFS AND HAS NO COST TO THE SYSTEM NOR THE ACCUSER. THIS MAKES THE CHILD PROTECTION SYSTEM VERY VULNERABLE TO MANIPULATION AND DISTORTION BY TROUBLED AND DISTRESSED

PERSONS PURSUING THEIR OWN PRIVATE PURPOSE.”

THERE ALSO SEEMS TO BE LITTLE APPRECIATION OR UNDERSTANDING AMONG SOCIAL WORKERS OF THE HARM CAUSED TO CHILDREN AND THEIR FAMILIES BY UNNECESSARY AND UNWARRANTED INTERVENTIONS.

BUT INVESTIGATION OF FALSE ACCUSATIONS SHOW THAT SUCH INVESTIGATIONS CAUSE IMMENSE HARM TO CHILDREN AND THEIR FAMILIES. AMERICAN RESEARCHERS IN 1995 FOUND THAT,

“ALTHOUGH THE DAMAGE TO A FALSELY ACCUSED PERSON IS OBVIOUS, IT IS NOT FULLY REALISED THAT A CHILD IS ALSO DAMAGED BY A FALSE ACCUSATION AND A MISTAKEN DECISION. IF A CHILD IS INVOLVED IN ALLEGATIONS OF ABUSE THAT ARE ILL-FOUNDED AND ERRONEOUS, IT IS NOT AN INNOCUOUS, NEUTRAL, OR BENIGN EXPERIENCE. A CHILD INVOLVED IN A FALSE ACCUSATION OF ABUSE IS SUBJECTED TO HIGHLY DESTRUCTIVE EMOTIONAL ABUSE. THE HARM DONE TO CHILDREN WHEN ADULTS MAKE MISTAKES IS SEVERE AND LONG-LASTING.”

SO WHAT MISTAKES DO SOCIAL WORKERS MAKE IN THE COURSE OF THEIR INVESTIGATIONS?.

IN 1991 AND 1995 RESEARCH CARRIED OUT BY TWO ENGLISH RESEARCHERS PROSSER AND LEWIS SHOWED THAT THERE WERE MAJOR FAULTS IN CHILD PROTECTION INVESTIGATIONS AND THESE WERE;

- 1. THE SOCIAL WORKERS PERCEIVED THAT ABUSE HAD OCCURRED AND THE ACCUSED AS GUILTY FROM THE BEGINNING OF THE INVESTIGATION;***
- 2. THEREAFTER THE INVESTIGATORS ONLY SOUGHT CONFIRMATORY EVIDENCE OF THEIR ASSUMPTIONS AND DISREGARDED EVIDENCE WHICH WOULD CAST DOUBT ON THE ALLEGATIONS;***
- 3. THERE WAS POOR RECORDING OF EVIDENCE;***
- 4. INAPPROPRIATE INTERPRETATIONS BY INVESTIGATORS OF STATEMENTS OR ACTIONS;***
- 5. IDIOSYNCRATIC BEHAVIOUR AND INTERPRETATION OF POLICIES BY INVESTIGATORS;***
- 6. INVESTIGATORS FOCUSING ON A SINGLE PIECE OF EVIDENCE AND IGNORING CONTRASTING SETS OF EVIDENCE;***
- 7. CONFUSION OVER WHAT CONSTITUTES A MEDICAL INDICATOR OF ABUSE AND “NATURAL” CONDITIONS;***
- 8. THE HIGH STATUS OF DOCTORS HAVING SUBSTANTIAL INFLUENCE OVER OTHER INVESTIGATORS;***
- 9. EXPERTS DEVIATING FROM THEIR AREAS OF EXPERTISE***

PROSSER AND LEWIS IDENTIFIED THREE AREAS OF PARTICULAR CONCERN I.E.

- 1. THE IMBALANCE OF POWER WITHIN THE INVESTIGATING AGENCIES;***
- 2. THE ABANDONMENT OF PROFESSIONAL CODES OF CONDUCT AND PRACTICE BY SOME INVESTIGATORS; AND***
- 3. THE FAILURE OF THE SYSTEM TO ADEQUATELY ACKNOWLEDGE OR COMPENSATE THE WRONGLY ACCUSED FAMILY FOR THE TRAUMA AND LOSSES SUFFERED.***

ON VERY RARE OCCASIONS, SOCIAL WORKERS HAVE ACKNOWLEDGED TO FAMILIES THAT THEY GOT IT WRONG OR THAT THE ACCUSATIONS AGAINST THE FAMILY WERE COMPLETELY FALSE. THESE FAMILIES REPORT HOWEVER THAT THEY NEVER RECEIVED SO MUCH AS AN APOLOGY NOR RECOGNITION OF THE DEVASTATION CAUSED TO THEIR LIVES AND WERE TOLD, “JUST FORGET ABOUT IT AND GET ON WITH YOUR LIFE!.”.

THE BRITISH GOVERNMENT HAVE THEIR OWN IDEAS ABOUT CHANGES TO THE CHILD PROTECTION SYSTEM AND LAST OCTOBER ISSUED A DISCUSSION PAPER (GREEN PAPER) SETTING OUT THEIR THINKING AND PROPOSALS. IT IS NOT HOWEVER A REFORM OF THE SYSTEM, BUT MERELY A REORGANISATION AND EXTENSION OF WHAT ALREADY EXISTS.

THE MAJOR PROPOSALS INCLUDE:

1. MOVING CHILD PROTECTION WORKERS FROM SOCIAL SERVICES DEPARTMENTS INTO EDUCATION AUTHORITIES I.E. BASING THEM IN SCHOOLS;
2. CREATING A NATIONAL COMPUTERISED DATABASE OF ALL CHILDREN IN THE COUNTRY AND THEIR FAMILIES;
3. EXTENDING THE ASSESSMENT PROCEDURES FOR CHILDREN AND FAMILIES.

TAKING THE FIRST OF THESE, RE-ORGANISING THE SYSTEM. THE MAJOR FINDINGS AND RECOMMENDATIONS OF MOST, IF NOT ALL, OF THOSE CHILD ABUSE INQUIRIES HAS BEEN TO 'BLAME THE SYSTEM' AND THE SYSTEM HAS ALWAYS RESPONDED WITH "WE HAVE LEARNED IMPORTANT LESSONS AND WE WILL MAKE APPROPRIATE CHANGES TO OUR PROCEDURES". HOWEVER THE FACTS SHOWN BY SUBSEQUENT EVENTS ARE THAT THEY HAVE LEARNT NOTHING AND DESPITE CHANGES TO THE 'SYSTEM' THEY CONTINUE TO GET IT WRONG. IT HAS BEEN PATENTLY OBVIOUS OF COURSE TO ANYONE WITH A CAPABILITY FOR RATIONAL THOUGHT, THAT IN EVERY ONE OF THOSE OCCASIONS WHERE CHILDREN HAVE DIED OR FALSE ACCUSATIONS HAVE BEEN MADE, THAT THE PROBLEMS HAVE BEEN IN THE ATTITUDES, ERRATIC BEHAVIOURS, INCOMPETENCE, AND NEGLIGENCE OF INDIVIDUAL WORKERS.

THERE IS A SAYING BY AN UNKNOWN AUTHOR THAT,

"PURSUING STRUCTURAL CHANGE AS A MEANS OF SOLVING ORGANISATIONAL PROBLEMS IS AS VAIN AS THE SEARCH FOR THE PHILOSOPHER'S STONE IF YOU CHANGE ATTITUDES, STRUCTURES WILL LOOK AFTER THEMSELVES, AND IF YOU CAN'T, THEN NO STRUCTURE WILL DO THE JOB FOR YOU."

ON THE SECOND POINT OF SETTING UP A NATIONAL DATABASE — THIS WILL INCLUDE THE NAMES AND PERSONAL DETAILS OF OVER 40 MILLION PEOPLE AND WILL BE OPEN TO COUNTRYWIDE ACCESS BY EVERY SCHOOL, DOCTOR'S SURGERY, POLICE STATION, HOSPITAL, AS WELL AS STAFF IN THE STATUTORY CHILD PROTECTION AGENCIES WHO WILL ALL BE ABLE TO ADD INFORMATION SUCH AS INCIDENTS OF DOMESTIC VIOLENCE, OFFENDING BEHAVIOURS, DRUG TAKING, ALCOHOLISM, PROSTITUTION ETC WITHOUT DEFINITIVE PROOF OF SUCH EVENTS AND NO MATTER HOW ACCURATE OR INACCURATE SUCH INFORMATION MAY BE. FRANKLY I FIND THIS FRIGHTENING FOR OBVIOUS REASONS. SUCH A DATABASE WILL ALSO BE EXTREMELY VULNERABLE TO PAEDOPHILE HACKERS AND MISUSE OF THE INFORMATION BY DISGRUNTLED EMPLOYEES.

ALSO OVER MANY YEARS, CHILDREN AND FAMILIES HAVE COMPLAINED THAT DESPITE THE PROVISIONS OF THE DATA PROTECTION LEGISLATION, THEY FACE ENORMOUS DIFFICULTIES IN OBTAINING ACCESS TO WHAT HAS BEEN WRITTEN ABOUT THEM AND EVEN MORE DIFFICULT GETTING WRONG INFORMATION ERASED OR AMENDED.

FAMILIES ALSO COMPLAIN THAT EVEN WHEN THEY ARE COMPLETELY EXONERATED, INFORMATION REMAINS ON THE SYSTEM FOREVER. EVEN IF THE ALLEGATIONS ARE CLEARLY SHOWN TO BE FALSE, THEY ARE UNABLE TO GET THE RECORDS EXPUNGED AND IN CONSEQUENCE THEY OFTEN MEET WITH HOSTILITY AND ANIMOSITY IF THEY TAKE THEIR CHILD TO A DOCTOR, HOSPITAL, OR SCHOOL THEREAFTER BECAUSE THAT INFORMATION, WITHOUT AN EXONERATING STATEMENT, OFTEN PRECEDES THEM.

THIRDLY REGARDING THE ASSESSMENT PROCEDURES. CHILDREN AND FAMILIES REPORT THAT THEY HAVE UNDERGONE NUMEROUS ASSESSMENTS IN THE HOPE OF RECEIVING SERVICES BUT AFTERWARDS HAVE REALISED THAT THE ASSESSMENT PROCEDURE IS AN END IN ITSELF - NOTHING HAPPENS AFTERWARDS BECAUSE AGENCIES DO NOT

ALLOCATE SUFFICIENT RESOURCES TO MEET THE DEMAND FOR THOSE SERVICES. THE QUESTION MUST BE RAISED AS TO JUST HOW MUCH OF AGENCY RESOURCES ARE GIVEN TO ASSESSMENT PROCESSES WHICH COULD BE BETTER USED TO PROVIDE THE SERVICES.

IN CHILD PROTECTION PROCEDURES, CHILDREN AND FAMILIES FREQUENTLY COMPLAIN THAT THE INFORMATION IN SUCH ASSESSMENT REPORTS IS OFTEN INACCURATE, DISTORTED, EMBELLISHED, AND EVEN FABRICATED.

WHAT NEEDS TO BE DONE TO CORRECT THE PRESENT CHILD PROTECTION SYSTEM?.

1. **INQUISITORIAL** - CHILD PROTECTION INVESTIGATIONS AND CIVIL PROCEEDINGS SHOULD BE INQUISITORIAL AND NOT ADVERSARIAL. THE PRESENT ADVERSARIAL SYSTEM IMMEDIATELY THROWS THE PARENTS AND FAMILY INTO AN ACCUSED ROLE AND IN CONFLICT WITH THE SYSTEM, WHEN ALL PARTIES INVOLVED SHOULD BE WORKING TOGETHER IN A SPIRIT OF COOPERATION AS FAR AS THIS IS POSSIBLE. PARENTS OFTEN COMPLAIN THAT THEIR RIGHTS IN SUCH PROCEDURES ARE DENIED OR VIOLATED AND THEY ARE IMMEDIATELY CAST INTO THE ROLE OF CULPRITS WITHOUT AN OPPORTUNITY TO EXPLAIN WHAT HAS OCCURRED AND MATTERS REACH THE COURTS BEFORE THEY CAN DEFEND THEMSELVES. THE GOVERNMENT GUIDELINES ON CHILD PROTECTION PLACE GREAT EMPHASIS ON 'WORKING TOGETHER' BUT THIS DOES NOT APPARENTLY INCLUDE WORKING TOGETHER WITH PARENTS AND OTHER CONCERNED FAMILY MEMBERS;
2. **NEW THEORIES OF CHILD ABUSE** - WE HAVE SEEN THE HARM CAUSED TO INNOCENT FAMILIES OVER SEVERAL DECADES BY ALLEGATIONS OF ABUSE BASED ON UNPROVEN THEORIES SUCH AS THE ANAL DILATATION TEST, REPPRESSED MEMORY SYNDROME, SATANIC RITUAL ABUSE AND MUNCHAUSEN SYNDROME BY PROXY. THERE SHOULD BE AN INDEPENDENT NATIONAL BODY WITH THE RESPONSIBILITY TO THOROUGHLY RESEARCH ANY NEW THEORY WHICH MAY BE PROPOSED AND TO VERIFY AND VALIDATE SUCH THEORIES BEFORE THEY ARE INTRODUCED INTO CHILD PROTECTION PROCESSES;
3. **DESTRUCTION OF RECORDS** - IN SITUATIONS WHERE NO SUBSTANTIVE EVIDENCE IS FOUND AFTER INVESTIGATION OF AN ALLEGATION OF CHILD ABUSE, THE PARENTS SHOULD BE PROVIDED WITH A DOCUMENTARY STATEMENT STATING THAT THERE IS '**NO FOUNDATION**' TO THE ALLEGATION. THE PARENTS SHOULD THEN HAVE THE RIGHT TO HAVE ALL RECORDS REGARDING THE EVENT DESTROYED;
4. **IMPROVED TRAINING** - THERE NEEDS TO BE AN INTENSIVE FORM OF TRAINING INTRODUCED TO TRAIN SOCIAL WORKERS IN INVESTIGATORY SKILLS AND IN PARTICULAR, TO ENSURE THAT CHILD PROTECTION INVESTIGATIONS ARE APPROACHED IN AN OBJECTIVE, IMPARTIAL, AND EVEN-HANDED MANNER
5. **FALSE ACCUSATIONS** - A CRIMINAL AND CIVIL OFFENCE - IT SHOULD BE MADE A CRIMINAL OFFENCE TO MAKE A FALSE ACCUSATION OF CHILD ABUSE, AS IT IS IN IRELAND AND SOME STATES IN AMERICA, AND THERE SHOULD ALSO BE THE RIGHT OF INDIVIDUALS TO TAKE ACTION IN CIVIL COURTS FOR DAMAGES WHERE SUCH FALSE ACCUSATIONS HAVE CAUSED THEM HARM;

Charles Pragnell

Charles Pragnell is an independent social care management consultant, a Child/Family Advocate, and an Expert Defence Witness — Child Protection, and has given evidence to Courts in cases in England, Scotland, and New Zealand. Charles has over forty years of experience in working directly with children and young people as a social worker, a senior manager of social services, and Director of an independent organization providing services for children and families. He has undertaken research for the National Children's Bureau and several local authority Social Services and Education Departments and for Health Authorities. He has also made presentations at national and international conferences on child care issues (including child protection) and social policy issues, and has presented occasional lectures at Universities in England and Australia. For over eleven years Charles was an External Examiner to social work qualifying courses at the Universities of Sunderland, Central Lancashire, and the John

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