CONTACT DISPUTES:
NARRATIVE CONSTRUCTIONS OF ‘GOOD’ PARENTS

ABSTRACT. This paper explores contact disputes in England and Wales. We discuss the legal background as well as separating parents’ experiences of contact disputes. Contact has been high on the agenda since the U.K. Government report, Making Contact Work, (2002) examined various means for facilitating contact between non-resident parents and their children. More recently, the issue has featured prominently in the headlines, largely as a result of the campaigning efforts of fathers’ rights groups who complain of injustice and demand changes in the law. The idea that contact is necessary for children’s well-being seems to have acquired the status of uncontestable truth. This paper examines the ways in which these ideas about children’s interests have become embodied in a dominant welfare discourse that is embedded in law and informs policy thinking. Family law has long abhorred parental conflict, particularly that which involves the children. It is frequently assumed that conflict can be reduced if parents could be persuaded to accept the premises of the welfare discourse. In this paper, we consider how parents themselves, in talking about their experiences of contact disputes, makes sense of family law. We found that parents regularly invoke the welfare discourse in their talk, but they interpret it in unexpected ways. Often these interpretations fuel conflict rather than reducing it.

KEY WORDS: children’s interests, contact disputes, family law, family policy, good parents, welfare discourse

Government statistics show that every year the family courts make more than 50,000 enforcement orders [for contact] but around half are flouted . . . . In the most extreme example, [Fathers 4 Justice, a campaigning group] cites the case of Mark Harris, who has had 133 orders broken by his ex-wife.1

For thousands of women, the issue of child contact has become fraught with danger . . . . [W]omen’s groups . . . have watched recent developments with mounting alarm.2

INTRODUCTION

In recent months, the issue of post-separation arrangements for children has been catapulted into the headlines of U.K. newspapers, largely as a

1 A. Asthana and J. Doward, “This far, but no Father”, The Observer, 26 October 2003.
2 A. Moore, “Some dads need to be kept away”, The Observer, 26 October 2003.
result of the campaigning efforts of fathers’ rights groups complaining of injustice and demanding changes in the law. Judges, it is reported, are considering measures, including the use of parenting plans, in a further attempt to discourage litigation and to impress on parents the need for children to spend time with both non-resident and resident parents. Enforcement mechanisms are being mooted. Underlying these moves towards change is the assumption, it seems, that most cases will be more easily resolved if they do not go as far as litigation and that settlements will be more easily reached if parents are apprised of the needs of their children. Ultimately, punitive measures, it is assumed, will bring the most recalcitrant parents into line. We will suggest, however, that these assumptions may prove, at least in part, to be unfounded; the kinds of intractable disputes which some parents currently find themselves locked into are unlikely to be resolved through the use of the proposed measures.

In our research, we have listened extensively to the personal narratives of disputing parents. We have sought to discover why some parents become involved in protracted litigation over post-separation arrangements for their children, to examine how parents make sense of their experiences, and to understand what those disputes mean for parents themselves. We discuss here some of our reflections on what those parents said.

**DIVORCE: WELFARE AND LAW**

Divorce is a process that is framed at the intersections of legal practice, social policy, welfare ideology, relationship breakdown and personal pain. A range of discourses and institutional practices serve to ‘contain’ diverse aspects of the divorce process, providing frameworks in which the experiences of divorcing parents take shape. Getting divorced thus obliges parents to position themselves in relation to a range of often competing

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4 Our research, funded by the Leverhulme Trust, adopted a narrative approach to research the ways in which individuals themselves make sense of their lives, drawing on the range of biographical experiences and cultural resources that are available to them (see, e.g., Andrews et al., 2000). Narrative work illuminates both individual lives and broader social processes (Rustin, 2000). It generates knowledge about how people negotiate social structures and manage institutional demands (see, e.g., Andrews et al., 2003). We were particularly interested in the ways in which disputing parents framed their thoughts, feelings and actions, with particular reference to the welfare discourse in family law.
discourses (legal, welfare, therapeutic and, most recently, human rights) and to find ways of living alongside them.

Most prominent is what we call the dominant welfare discourse. Children are conceptualised as especially vulnerable and divorce and separation are perceived as particularly damaging. According to this thinking, children are at risk of harm if their parents fail, for whatever reason, to manage the divorce, and their parenting, properly. What qualifies as ‘good enough’ parenting post-divorce is not universally agreed; there are conflicting research studies within child welfare science and differing conceptions of the problems and ‘solutions’ for children. Nevertheless, it is possible to discern, within the dominant discourse, a range of prescriptions for parenting – guidelines for a ‘good’ divorce (Day Sclater, 1999) and for post-divorce relationships.5

Law, charged with the task of regulating the post-separation family, must take cognisance of child welfare knowledge and incorporate it within its regulatory framework. This it does through a process of reconstruction and simplification of the dominant welfare discourse, a process that enables law to establish “clear normative principles” (King and Piper, 1995, p. 51; see also Kaganas, 1999) which accord with political imperatives (see Day Sclater and Piper, 2000) and which can be operationalised in decision-making. In the context of contact,6 English law has embraced a construction of child welfare that places co-operative parenting and contact with the non-resident parent at the centre of children’s well-being.

This norm is endorsed by policy-makers and by professionals too. In a consultation paper (Lord Chancellor’s Advisory Board on Family Law: Children Act Sub-Committee, 2001), the U.K. Government sought views on how to improve practice. Making Contact Work (Lord Chancellor’s Advisory Board on Family Law: Children Act Sub-Committee, 2002), a report published pursuant to this consultation, comments on the “remarkable unanimity” of the responses received from “all the different disciplines working within the Family Justice System” (ibid., letter to the Lord Chancellor). Making Contact Work examines various means

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5 For a notable example, see Sturge and Glaser (2000).
6 Section 8 of the Children Act 1989 provides for a range of orders available to courts called upon to decide disputes relating to children. These orders are available irrespective of whether the disputants are divorced or separated. The parents need never have been married to each other and, indeed, s. 8 orders are available to persons other than parents. In this article, the focus is on contact orders. Such an order imposes an obligation on the person with whom the child lives to allow that child to visit or stay with the person specified in the order. Apart from direct contact, provision is also made for indirect contact, for example in the form of letters, cards or telephone calls. Residence orders determine the “arrangements with whom the child is to live”.

by which contact might be facilitated. It raises questions about the role of the court in resolving contact disputes, explores other mechanisms for managing disputes (such as mediation, lawyer negotiation, the use of contact centres as well as the involvement of C.A.F.C.A.S.S.\textsuperscript{7}) and considers how contact orders might best be enforced.

The report recognises that contact is often a site of conflict, but nowhere is its value in the generality of cases doubted. Like the consultation paper, it affirms the desirability of preserving ties between children and non-resident parents. The consultation document adopted as its starting point the “premise”\textsuperscript{8} that children’s welfare is best served by maintaining relationships with both parents. In a similar vein, the report notes what it describes as effectively unanimous approval of the suggestion that separating parents should be given information about the “positive benefits of maintaining contact with the non-resident parent” (\textit{ibid}, para. 3.7). Indeed, the title of both the consultation paper and the report, \textit{Making Contact Work. The Facilitation of Arrangements for Contact between Children and their Non-Residential Parents and the Enforcement of Court Orders for Contact}, testifies to the conviction that contact is something to be striven for.

It would appear that the proposition that contact with a non-resident parent is generally in children’s best interests\textsuperscript{9} has passed into the realms

\textsuperscript{7} The new Children and Family Courts Advisory and Support Service (C.A.F.C.A.S.S.) merges functions performed by the Family Court Welfare Service in private law cases, the Official Solicitor’s Department of the High Court, and the Guardian \textit{ad Litem} service in public law cases. The aims of the new service include providing advice to courts in family proceedings, promoting the welfare of children and providing advice and support services to families. The report envisages the role of C.A.F.C.A.S.S. in relation to contact as encompassing not only investigation and reporting to the court, but also as providing information and education to separating parents (chapter 6).

\textsuperscript{8} Lord Chancellor’s Advisory Board on Family Law: Children Act Sub-Committee (2002, para. 2.9). This premise is taken from s. 11(4) of the now defunct Part II of the Family Law Act 1996 and derives some support from an expert report: see Sturge and Glaser (2000). The reading of the experts’ report to support the proposition is, however, selective. Little is made in the Consultation Paper of the risks of contact identified by the authors.

\textsuperscript{9} Since the early 1970s, a vast social scientific literature on the ‘effects’ of divorce on children has been produced. This literature is generally taken as supporting the dominant discourse that children do best when they can maintain relationships with both parents and has therefore been invoked to support the presumption of contact in practice, and to persuade parents that conflict puts children at risk of harm (see Kaganas, 1999). However, it is worth noting that the social scientific literature is equivocal in its conclusions (see, e.g., the review of British research by Rodgers and Pryor, 1998); and, further, the range of models that have been proposed to account for the detrimental effects of divorce on children remains undeveloped and depends more on the concurrence of models with dominant
of uncontestable ‘truth’. And in the hands of the courts, this ‘truth’ has become embedded in the law. Ever since Wrangham J. declared in *M. v. M. (Child: Access)*\(^\text{10}\) that contact is a “basic right in the child”, the courts have increasingly emphasised its importance. They created and consolidated what amounted to a strong presumption – now recast as an “assumption”\(^\text{11}\) – in favour of contact, a process culminating in the statement in *Re O. (Contact: Imposition of Conditions)*\(^\text{12}\) that contact is “almost always” in the interests of the child. Judges accordingly prioritised contact in cases of parental separation and divorce\(^\text{13}\) and took to describing as “implacably hostile” those mothers who sought to oppose it. Because this concept of implacable hostility depends, implicitly, on the belief that contact is critical for children’s welfare, mothers, when they are described in this way, are positioned\(^\text{14}\) as “bad” (selfish, irresponsible and unable to put the assumed needs of the child before their own). And, at the same time, this discourse of welfare generally positions fathers as benign\(^\text{15}\) and designates their presence as necessary for children’s well-being and normal development. So, the normative principle in law sustains and is, in turn, sustained by dominant images of good and bad parents.

But it has long been recognised that law is a clumsy tool for managing complex family problems, let alone intimate relationships or emotional trauma. The law is clumsy because it deals in generalities and is ill-equipped to take full account of the complexities of human behaviour.
or the subtleties of emotion and motivation. The assumptions about citizens that underlie law and the legal process often take little account of individual circumstances or of more recent research knowledge. More specifically, they may fly in the face not only of current psychological thinking but also of what matters to divorcing people themselves. Contact disputes are a case in point.

Our concern in this article is, first, to review the case law in order to highlight some of law’s assumptions relating to contact. Secondly, we explore, from the vantage point of separating parents’ own talk, the extent to which law’s assumptions, and the dominant welfare discourse that they embody, enter into the ways in which parents make sense of their involvement in contact disputes. We discover, unsurprisingly, that the welfare discourse commonly provides a basic framework for parents’ talk. But the law’s prescriptions for parenting and assumptions about what is best for children are not passively accepted. They are matters for ongoing negotiation, with mothers and fathers interpreting and re-framing notions of children’s best interests according to their own criteria. Contact, despite the law’s propensity to cast parenting as a gender-neutral activity, remains very much a gender issue and the meaning of a contact dispute to parents varies with gender. In addition, those meanings take shape in a complex matrix of legal practice, welfare ideology and personal psychological imperatives.

Our research with disputing parents reveals that, whilst mothers and fathers do position themselves in relation to the dominant welfare discourse, they do so in a variety of ways, and the interviews with parents manifest contradictory thoughts, actions and feelings. A verbal performance of the dominant discourse is often in evidence, but it is undermined by the simultaneous expression of more critical discourses. Overall, parents’ narratives are ones of finely-tuned negotiations with legal and welfare discourses and the positionings for good and bad parents that they imply.

**HOW THE LAW THINKS NOW**

*The Presumption/Assumption*

Within English law, the dominant welfare discourse was interpreted so as to create so strong an association between contact and welfare\(^\text{16}\) that

\(^{16}\) Although the issue is still formulated in terms of children’s rights on occasion: “There is no question in this case of there being no contact. The court’s duty is simple . . . that is to foster contact between father and child . . . and the court intends to make sure that the rights of this child will be upheld” (per Judge Tyrer in *A. v. Y. (Child’s Surname)* [1999] 2 F.L.R. 5 at 8).
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neither risks to mothers’ health\(^{17}\) nor, until recently, serious violence on
the part of the non-resident father\(^{18}\) were regarded as sufficient reason to
deny an order.

This trend has now begun to be checked, most clearly in cases of
violence but perhaps in other cases of ‘genuine’ fear or ‘rational’ maternal
hostility. The first intimations of change came with the judgement of Hale
J. in \textit{Re D (Contact: Reasons for Refusal)}.\(^ {19}\) In that case, the Court of
Appeal dismissed an appeal by a father against a refusal of an order for
direct contact, accepting that he posed a risk to the child, whether directly
or indirectly through harm to the mother. Importantly, Hale J. considered
that the term “implacable hostility” was sometimes misleadingly applied
to cases where mothers’ fears were “genuine and rationally held”. Then
in \textit{Re P. (Contact: Discretion)},\(^ {20}\) Wilson J. adopted a three-tier analysis of
hostility cases according to which “rational” grounds for hostility might
warrant a denial of contact. Even in the absence of “rational” reasons,
contact might be refused if, in the light of the mother’s hostility, it could
create a serious risk of emotional harm for the child. And, in cases where
there are sound arguments both for and against contact, the mother’s
hostility could, itself, prove decisive.\(^ {21}\)

The mother’s fear and its effects were again underscored in \textit{Re M.}
(\textit{Contact: Family Assistance: McKenzie Friend}).\(^ {22}\) The Court of Appeal
said that the essential question in a case of this kind is, first, to determine
whether the mother’s fears are “genuine”. The court must then look not
only to the immediate short-term consequences of contact or its denial, but
to medium- and long-term matters as well. In this context:

\ldots the issue is not so much as to the capacity of the father to be a good father, but as to the
capacity of the mother to be able to cope with the contact taking place in such a way that
it does not have her anxiety spill over to affect adversely the behaviour of her children.\(^ {23}\)

Even so, contact ought not to be denied unless there is evidence that its
continuation will seriously interfere with the children’s well-being.\(^ {24}\)

17 \textit{Re F. (Minors) (Contact: Mother’s Anxiety)} [1993] 2 F.L.R. 830.
361.
21 Subsequent reported decisions, particularly those of Wall J. in the Family Division,
also reveal an emerging tendency to treat much more seriously the fears of mothers who
have been physically abused by violent partners (see Kaganas and Day Sclater, 2000).
23 \textit{Ibid.}, at 77.
24 \textit{Ibid.}, at 79.
A more recent decision of the Court of Appeal,\(^{25}\) dismissing four appeals by fathers seeking direct contact, illustrates growing judicial awareness of the effects of paternal conduct, and violence in particular, on mothers and children. In this case, *Re L.*, Dame Butler-Sloss P. set out guidelines for courts dealing with cases where there are allegations of violence that might affect the outcome. First, the allegations must be adjudicated on. Then, if the court finds that violence has occurred, it should apply the s. 1(3) checklist.\(^{26}\) Violence does not create a bar to contact. Nor does it raise a presumption against contact. Rather, in cases of “proved domestic violence” – the risk of violence does not suffice\(^{27}\) – the court must engage in a balancing exercise. It must take into account the conduct of the parties; the impact on the residential parent and the children; the motivation of the non-resident parent; any risk to the children; and also the wishes and feelings of the children. In serious cases, the ability of the offending parent to recognise his conduct and his readiness to try to change would be an important consideration.\(^{28}\) The effect of this decision is that, where domestic violence is proved, the presumption, or as Lord Justice Thorpe preferred to call it, the “assumption”, in favour of contact does not operate.

While the court focused primarily on the fathers’ violence, it did also advert to other forms of harm to children. It referred to the risk of harm to a child where a non-resident parent deliberately or inadvertently sets different moral or behavioural standards from those of the resident parent.\(^{29}\) More generally, Thorpe L.J., in his judgement, took the view that domestic violence cases should not be singled out as a special category. Proof of violence may “offset” the general “assumption” in favour of contact, he said, but it is only one factor among many that might do so. Others would be, for example, child abuse, substance abuse, mental illness, or a desire to obtain contact in order to dominate or threaten the resident parent. In addition, he suggested, there might be a weakening of the

\(^{25}\) *Re L. (Contact: Domestic Violence)*, supra n. 11. This decision is largely commensurate with the recommendations made by The Advisory Board on Family Law: Children Act Sub-Committee (1999). For a fuller discussion of the case, see Kaganas (2000).

\(^{26}\) Section 1 of the Children Act 1989 provides that where a court determines any issue relating to a child’s upbringing, the welfare of that child shall be the paramount consideration. Subsection 3 provides a checklist of factors to which the court should have regard when dealing with s. 8 disputes. These include, for instance, the child’s wishes and feelings; the child’s needs; and any risk of harm to the child.

\(^{27}\) See Kaganas (2000).

\(^{28}\) *Re L.* (supra n. 11) at 344.

\(^{29}\) Ibid., at 357.
assumption where there has been no relationship between the non-resident parent and the child.

How far this takes the courts towards denying at least direct contact where there is a risk of disruption to the child or serious misconduct on the part of a non-resident parent remains to be seen. What is clear, however, is that although it is now more circumscribed in its operation, the assumption nevertheless continues to hold sway in all instances not covered by the exceptions. Indeed Dame Butler-Sloss P. affirmed the view expressed by Sir Thomas Bingham in *Re O.* that contact is “almost always” in the best interests of children. She also referred with approval to his assertion that the courts “should not at all readily accept that the child’s welfare will be injured by direct contact”. And she accepted that “intransigent”, “unreasonable” and “uncooperative” parents should not be allowed to think they can “get their own way”. Thorpe L.J. too remained convinced that children’s welfare is enhanced by contact. He endorsed the “universal judicial recognition of the importance of contact to a child’s development” and, on the basis of his interpretation of the expert evidence before the court (see Sturge and Glaser, 2000), declared that “there can be no doubt of the secure foundation for the assumption that contact benefits children”.

**Enforcement**

Alongside English law’s prioritisation of contact has come a preoccupation with enforcement. That this is seen as a major problem is apparent from the fact that the issue has now been placed on the legislative agenda; it forms a major part of the deliberations and the recommendations reported in *Making Contact Work* (Lord Chancellor’s Advisory Board on Family Law: Children Act Sub-Committee, 2002, chapters 14 and 16).

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30 There are cases where disruption to the family or distress to the resident parent have featured as significant factors. See, for example, *Re M. (Contact: Violent Parent)* (1999) 2 F.L.R. 321 at 332. More recently, the inability of a mother to cope with direct contact persuaded the court that the child’s emotional security and the stability of his home would be endangered if direct contact were ordered immediately. However the court stressed that the mother’s state of mind was relevant only insofar as it might affect the child: *M. v. M.* (Contact: Domestic Violence) [2002] 2 F.L.R. 921.

31 *Re L.* (supra n. 11) at 343.

32 Ibid., at 364.

33 In *Re O. (Contact: Imposition of Conditions)* (supra n. 12), the Court of Appeal reiterated a strong presumption in favour of contact. In this case, an order for indirect contact was made and it was said that “neither parent should be encouraged to think that the more intransigent, the more unreasonable, the more obdurate and the more uncooperative they are, the more likely they are to get their own way” (at 129–130).
The approach of the courts towards enforcement has varied over the past two decades. During the 1980s, judges exhibited some reluctance to bring the full weight of the law to bear upon mothers who defied contact orders.\footnote{For example, in Churchard v. Churchard [1984] F.L.R. 635 it was said that the children would be damaged if their father were to be branded as the person who put the mother in prison (for breach of the contact order). Applications for committal, as a means of enforcing contact orders, observed Ormrod L.J., were “inevitably futile” and represented “the last hope of the destitute” (at 638). The court’s concern, it was said, should be the welfare of children, and not its own dignity (see also Thomason v. Thomason [1985] F.L.R. 214). In Patterson v. Walcott [1984] F.L.R. 408 Wood J. said that the powers of the court to commit to prison for contempt should be regarded as the “weapon of the last resort” (at 417).}

Yet, only a few years later, it was clear that the apparent absence of any effective sanctions against mothers who were persistently in breach of access (contact) orders was causing some concern and the 1990s saw a hardening of the courts’ attitude. Judges took an increasingly dim view of mothers who opposed contact,\footnote{In Re D. (A Minor) (Contact: Mother’s Hostility) [1993] 2 F.L.R. 1, while it was said to be “well settled” that a mother’s implacable hostility was a factor that was capable of supplying a cogent reason for departing from the general principle that a child should grow up in the knowledge of both parents, the court made it clear where it thought the mother’s duty lay. It accepted that the mother’s attitude was such that, if contact were foisted upon her, it could put the child at risk of emotional harm. However, the judge expressed the wish that the mother would come to realise the importance to the child of his father.} chastising them for failing to promote their children’s best interests and, on occasion, threatening a transfer of custody (residence) in order to bring them into line.\footnote{In Re S. (Minors: Access) [1990] 2 F.L.R. 167, for example, the Court of Appeal, despite allegations that the father was violent, proposed that if the mother remained obdurate, it would consider a transfer of custody to the father. Transfer of residence is strenuously advocated by some proponents of Parental Alienation Syndrome (P.A.S.) as a scientific theory. This is said to be a condition induced in children by vindictive resident parents, usually mothers, who influence their children so that they refuse to see the non-resident parent. Rather than accept children’s refusal of contact at face value, it is recommended that courts take robust measures to “deprogramme” such children (see, for detailed discussion, Bruch (2002)). In the U.K., there is considerable scepticism about the existence of the syndrome. Sturge and Glaser (2000) stated that the theory was not generally recognised in the field of mental health and that the concept is unhelpful. This view was accepted by the court in Re L (see Kaganas, 2000). The judgement in a more recent Court of Appeal case has been interpreted by one commentator as acknowledging the existence of P.A.S. (Re C. (Prohibition on Further Applications) [2002] 1 F.L.R. 1136, discussed in Hobbs (2002)). This interpretation is not, in the authors’ views, borne out by the words of the judge (see also Masson (2002) and Williams (2002)).}

Some courts seemed willing to go further and to impose punitive sanctions on mothers in the name of children’s welfare. In 1998, the Court of Appeal made a suspended committal order where the mother was...
found to be communicating her hostility to the children.\textsuperscript{37} It has also been suggested that a mother’s reluctance might warrant a child protection investigation.\textsuperscript{38}

In a somewhat unusual case decided recently,\textsuperscript{39} the full battery of the court’s powers was ranged against a mother who “succeeded in alienating the children from their father and his side of the family”.\textsuperscript{40} She was found to have instilled in the children the false belief that they had been sexually abused by their father and that one of them had also been abused by his paternal grandparents. The court considered imprisoning the mother for contempt of court\textsuperscript{41} but decided, instead, to make an order requiring the local authority to undertake a child protection investigation under s. 37 of the Children Act 1989. The mother’s conduct was found to have caused significant harm to the children sufficient to warrant a care order. However, in accordance with the local authority’s recommendation, the court decided to make an order that the children be moved to live with the father, subject to a supervision order in favour of the local authority. A programme of mediation and therapy was planned to try to persuade the father and paternal grandparents to co-operate in helping to repair the children’s, by now, fractured relationship with the mother. The court emphasised that the s. 37 procedure should not be treated as a panacea and that “this judgement comes with a series of strong health warnings”.\textsuperscript{42}

This appears to have been an exceptional case and there does seem, of late, to have been some retreat from hard line measures. In \textit{Re M. (Contact Order: Committal)},\textsuperscript{43} the Court of Appeal indicated that committal should be seen only as a last resort; the power “exists only to serve the ends of justice and ultimately the crucial consideration remains what the interests of justice in the broadest sense demand, giving proper weight to the interests of the children even if their welfare is not strictly the paramount

\textsuperscript{37} F. v. F. (Contact: Committal) [1998] 2 F.L.R. 237. In this case, the court said that there was a “clear obligation upon the mother to assist the children to come to terms with having contact with their father” (at 242). In A. v. N. (Committal: Refusal of Contact) [1997] 1 F.L.R. 533 the Court of Appeal observed that, in committal proceedings, the welfare of the child was a “material” though not a “paramount” consideration. It dismissed a mother’s appeal against an order committing her to prison for breach of an order for supervised contact with a violent father.

\textsuperscript{38} See the decision of the court below referred to on appeal in \textit{Re M. (Official Solicitor’s Role)} [1998] 2 F.L.R. 815.

\textsuperscript{39} Re M. (Intractable Contact Dispute: Interim Care Order) [2003] 2 F.L.R. 636.

\textsuperscript{40} \textit{Ibid.}, at para. 29.

\textsuperscript{41} A committal order had previously been made but had been stayed.

\textsuperscript{42} \textit{Re M. (supra n. 39)} at para. 7.

\textsuperscript{43} Re M. (supra n. 39) at para. 7.
consideration”. In the light of the adverse effect committal of the mother would have on the children and on their relationship with their non-resident father, the court struck out the committal application.

Certainly, *Making Contact Work* (Lord Chancellor’s Advisory Board on Family Law: Children Act Sub-Committee, 2002, para. 14.10 and Recommendations para. 28) designates imprisonment, along with fines, as a last resort. Nevertheless, it makes enforcement a priority. It recommends a two-stage approach. The first should be non-punitive, involving attendance by the recalcitrant parent at an information meeting, a parenting programme or psychiatric treatment. If these measures do not work, a penal sanction such as community service or probation with conditions of treatment or attendance at parenting classes might be imposed. Fines or imprisonment would be reserved for extreme cases (*ibid.*, Recommendations, para. 28) and the use of transfers of residence or threats to transfer were rejected as inappropriate (*ibid.*, paras. 14.26–14.27).

A Unanimous View?

The significance for our purposes of *Making Contact Work* and of the reported decisions does not lie primarily in their usefulness as indicators of the likely direction the law will take in the future.44 Rather, their importance for our analysis is that policy documents and, more particularly, law form both an important source and confirmation of a version of the dominant discourse surrounding post-separation and post-divorce parenting (see Kaganas, 1999). The norms espoused by the law in the context of contact disputes are derived from social science and from the knowledge generated by the ‘psy’ professions45 while the law, in turn, serves to strengthen the authority of the dominant welfare discourse. *Re L.*, for example, provides a good illustration, in the way that the court commissioned and then interpreted the Sturge-Glaser Report (Sturge and Glaser, 2000), of how law relies upon, then selectively incorporates and simplifies expert knowledge from non-legal discourses (see Kaganas, 2000, pp. 322–323). The resulting legal principles or assumptions are reinforced as ‘truth’ through the interaction of legal personnel and those from other disciplines. As Bailey-Harris et al. (1998, p. 41) comment:

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44 Although the courts maintain that each case must be judged on its unique merits without relying on generalisations (*In re K.* (Minors) (*Children: Care and Control*) [1977] 2 W.L.R. 33, 35), the cases do clearly establish guidelines and “assumptions”.

45 This term is used to denote primarily child development experts whose title bears the prefix ‘psy’, such as psychiatrists, psychologists and psychoanalysts (King and Piper, 1995, p. 53).
We observe family court welfare officers (and, at a slightly different stage in the process, legal advisers and judicial officers) drawing on what are perceived to be research ‘findings’ . . . . This kind of knowledge . . . may be echoed in decisions reached by the Court of Appeal, in which guise it is repeated and becomes transmitted in the form of legal knowledge, capable of forming precedent. Thereafter lawyers will employ it when advising their clients, and when negotiating . . .

It is not surprising then that mediators,46 solicitors47 and courts alike position as unreasonable those mothers who oppose contact. And although there is now growing awareness of the prevalence and effects of domestic violence, the assumptions about the benefits of contact and constructions of “good parents” remain firmly in place. Good mothers not only refrain from obstructing contact but actively facilitate it (see Kaganas, 1999, pp. 113–114). Good fathers, at least for the purposes of contact, take some interest in their children and do not harm them or, generally speaking, behave violently to mothers (see Collier, 2001). Good parents co-operate and do not litigate.

**The Impact of the Human Rights Act**

One might have expected that the Human Rights Act 1998 would affect the hegemony of welfare discourse and so displace the ‘good parent’ from centre-stage. The notion of rights is fundamental to the Act, whereas talk of rights, justice and fairness has had no place in the context of most decision-making about children. In particular, parents’ rights have been designated as subordinate to children’s welfare. In the *Gillick* case, for example, Lord Fraser pointed out that parental rights existed, not for the benefit of the parent, but for the benefit of the child. They were justified only in so far as they enabled the parent to perform parental duties.48 The principle that children’s welfare (however interpreted) should be paramount has long reigned unchallenged (but see Reece, 1996).

The rights discourse embodied in the Human Rights Act 1998 might be thought to pose just such a challenge. The Act incorporates part of the European Convention on Human Rights and, although the Convention

46 Roberts (1997, p. 124) points out that mediators are likely to adopt a strong pro-contact stance in the belief that it is best for children and refers to the risk that mediators might be moved to “brow-beat parents” about the research pointing to the benefits of contact and about the damage children sustain as a result of litigation.

47 Neale and Smart (1997, p. 392), for example, quote a solicitor as saying: “The only time I lay down the law and I’m heavy handed is if I’ve got a mother who’s not allowing contact . . . I try to beat everybody into submission”.

48 *Gillick v. West Norfolk and Wisbech Health Authority* [1986] 1 A.C. 112 at 170.
was conceived of primarily to protect the individual from the depredations of an interfering state, the provisions of the Act are nevertheless relevant also to disputes between individuals (see Kaganas and Piper, 2001). In particular, Article 8 of the Convention, guaranteeing a right to private and family life, appears to require the introduction of rights talk into familial disputes, demanding that courts deciding such disputes take into account and weigh in the balance the rights of all family members concerned. On the face of it, then, it would appear possible to argue that parental rights cannot be ignored or sacrificed to children’s welfare as a matter of course.

With the advent of the Act there was some academic speculation as to its likely effect on the paramountcy principle in general and in relation to contact in particular. Debate centred around the question of whether non-resident parents would be able to rely on Art. 8 of the Convention in order to contest a refusal of a contact order. Equally, it could be argued, resident parents could perhaps rely on their right to privacy and family life to contest the granting of an order. Some scholars suggested that there is a tension between welfare and a rights-based approach necessitating a change in the way the courts deal with cases and perhaps even warranting a declaration of incompatibility (Herring, 1999; Bainham, 1995, 2003; Swindells et al., 1999, para. 3.154). Others argued that the jurisprudence of the E.C.H.R. and the Commission does not polarise rights and welfare (see Kaganas and Piper, 2001).

In the event, the U.K. courts have applied and interpreted the European decisions in a way that leaves the primacy and the manner of applying the welfare principle unscathed. In Dawson v. Wearmouth, Lord Hobhouse of Woodborough said that nothing in the Convention requires the courts to act otherwise than in accordance with the interests of the child. The courts do recognise the existence of independent parental

49 Such as Hokkanen v. Finland (1995) 19 E.H.R.R. 139. See also Elsholz v. Germany [2000] 2 F.L.R. 486; T.F. and K.M. v. United Kingdom [2001] 2 F.L.R. 549; Hoppe v. Germany [2003] 1 F.L.R. 384; and Yousef v. The Netherlands [2003] 1 F.L.R. 210. The latter case is described by Bailey-Harris (2003) as confirming the “by now well-established Strasbourg jurisprudence that the interests of the child prevail”. See also Sahin v. Germany; Sommerfeld v. Germany [2003] 2 F.L.R. 671, paras. 66–67. In that case the European Court of Human Rights found that there had been no infringement of Art. 8 where access was refused because the serious tensions between the parents were being communicated to the child. There was a risk that this would affect her undisturbed development in the care of her mother and the decision was therefore justifiable as being in her best interests.

rights and in *Re K.D. (A Minor) (Ward: Termination of Access)*, Lord Oliver accepted that a parent has a "substantive right of access to his child". Nevertheless, his Lordship said, this is a "right which will always be overborne if the interests of the child so dictate". The words of Thorpe L.J. in *Payne v. Payne* explicitly reaffirm the centrality of the welfare principle under the new legislation:

"Whilst the advent of the Human Rights Act 1998 requires some revision of the judicial approach to conclusion, as a safeguard to an inadequate perception and application of a father's rights under Arts 6 and 8, it requires no re-evaluation of the judge's primary task to evaluate and uphold the welfare of the child as the paramount consideration, despite its inevitable conflict with adult rights.

Children's welfare, then, remains key to the decision-making process and judicial constructions of welfare remain as crucial now to decision-making as they were prior to the legislation. And while this brief discussion of the reported cases reveals some important shifts in judicial interpretations of the welfare discourse, courts as well as professionals continue to stress the importance of contact as well as conflict-free and co-operative decision-making and parenting.

It is in the context of these norms and assumptions that we will now consider the results of our research, a study which focused on the accounts given by mothers and fathers of their experiences of contact disputes. Our concern was to uncover disputing parents' own perspectives on their involvement in protracted disputes. It is immediately apparent that the welfare discourse embodied in law and espoused by professionals has entered parents' vocabularies; it is routinely used by parents as a framework for understanding and talking about their experiences. But the myriad ways in which parents invoke the discourse suggest that, although they accept it in the abstract, they are actively interpreting it according to

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53 *Ibid.*, at 587. See also *Re L. (Contact: Domestic Violence)* (note 11 above).
54 [2001] 1 F.L.R. 1052, para. 57. Although this case was concerned with a dispute over relocation, the principle that children's interests remain paramount is capable of general application.
55 For a fuller discussion of the reported cases see Kaganas and Day Sclater (2000). For a fuller discussion of the European case law, see Kaganas and Piper (2001).
56 See also the Home Office publication *Supporting Families: A Consultation Document* (1998). Collier (2001, p. 527) describes it as portraying the family as an institution marked by the "qualities of . . . equality, mutual rights and responsibilities, a negotiated authority over children, co-parenting and . . . a clear belief in promoting the commitment on the part of both women and men to lifelong obligations to children".
their own criteria. Law’s prescriptions become matters not for passive acceptance but for active, often critical, negotiation. For instance, contact, despite the law’s gender-neutral approach to parenting, remains very much a gender issue.

**WHAT PARENTS SAY**\(^{57}\)

*Gender Bias*

Both mothers and fathers frequently framed the meaning of the dispute in terms of a battle of the sexes. The legal system was perceived to be colluding with the opposite sex; respondents of both sexes expressed a strong sense of injustice, which they talked about in terms of gender bias. Gina, for example, saw the system as favouring men: “It seems to me with the legal system, . . . there doesn’t seem to be any protection for the woman, or for the children. But as long as they all pander to the man’s rights . . . His ‘right’ to see the children”. Gina’s indignant talk of the apparent dominance of men’s ‘rights’ challenges law to fulfil its own stated objective of putting children first.

That contact disputes are seen as battles in a sex war should perhaps not be surprising because contact is seen by parents of both sexes as being about parenting, and parenting remains a strongly gendered activity. The law’s gender neutrality ascribes equal value to mothering and fathering, and thereby effectively silences talk about gender politics in the legal arena. But, from the mother’s perspective, law’s apparent refusal to accord greater recognition to the weightier responsibilities that accompany motherhood can exacerbate feelings of resentment. It was clearly a deep sense of unfairness that prompted Nathalie to challenge the morality of the welfare discourse and the images of ‘good’ fathers and mothers that underpin it.

*We [mothers] shouldn’t have to . . . prove why we think contact is not suitable. It should be the other way around. The husband should have to say why they can have contact when they’ve never cared for the child, never washed them, dressed them, sung to them, or been with them, or taken them to the child minder . . .*

*Mothers often feel that the legal system favours fathers, but fathers feel equally aggrieved. James, for example, averred that “the whole judiciary is*

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\(^{57}\) With the assistance of a fellowship grant from the Leverhulme Trust in 1999–2000 we conducted in-depth interviews with eight mothers and fifteen fathers who had been involved in a contact dispute for at least a year. Seven of the mothers reported having been subjected to physical violence during the relationship and the eighth saw herself as having been subjected to prolonged emotional abuse.
biased in favour of women”. Welfare professionals too were seen as biased. Harry asserted that the Court Welfare Officers\textsuperscript{58} were “only interested in the mother’s point of view”. And in Charlie’s opinion, “the politics of social work is about abusing men”.

The dominant welfare discourse links children’s well-being with the need for separated parents to have ongoing constructive, if not amicable, relationships with each other. But against the background of a deep dissatisfaction with the perceived gender bias of the legal system, parents often find this unacceptable or, at best, problematic to put into practice. For some parents, it seems, it is asking the impossible.

**Good Mothers**

For some mothers, resistance to contact presents them with a dilemma: how can they be seen by the courts and professionals to be ‘good’ mothers, ‘doing the right thing’, whilst at the same time opposing contact? Such is the power of the welfare discourse that many mothers appear to accept that contact can, in principle, be good for children. But practice is a very different matter from principle. Some mothers find that the emphasis on contact exists in profound and continual tension with their own need to break free altogether from the past, from a failed or even abusive relationship, and from the former partner. For these mothers, the meaning of the welfare discourse takes shape against a background of their own practical and emotional needs. The tension thus created can be resolved in creative ways, for example, by reconceptualising the child’s interests. Cora, for example, re-phrased what she wanted in terms of her child’s interests: “I want to go forward. I don’t want to go back. For my child’s sake, I don’t want to go back to that kind of life any more”. By framing her preferences for the future in the language of welfare, Cora positioned herself as a good mother whilst actually resisting contact.

Where there has been a history of physical or emotional abuse in the relationship, as in Cora’s case, mothers seem to find it especially difficult to support contact. Law’s expectation that some sort of relationship will continue between the former partners can be tantamount to asking victims to continue reliving the abuse and to risk prolonging it. Mothers who had been in abusive relationships saw encounters with their former partners as threats to their own safety and to their children’s well-being. Their resistance to contact was justified in their own eyes as a reasonable response.

\textsuperscript{58} Now referred to as children and family reporters.
to their situation – indeed, resistance to contact constituted an attempt to protect their children.

But at the same time as resisting contact, mothers have to avoid being positioned as bad mothers. In particular, the mothers we interviewed sought to distance themselves from the bad mother of so-called parental alienation syndrome: “I don’t want to poison her mind against her father . . . It’s between him and me. It’s nothing to do with her”, said one mother. Another said:

“I tried to bend over backwards, because the children would hate me if I was saying, you know, ‘Right you are not seeing your dad’. And trying to poison their minds and stuff. And then it’s so funny, how the legal system immediately views it, as if you’re a bitter woman, who’s trying to keep them away”.

These mothers were acknowledging the dominance of the welfare discourse whilst they simultaneously challenged it. They accepted that their children’s welfare could be adversely affected if their minds were “poisoned” and if they were prevented from knowing their fathers. Nevertheless, while they subscribed to these general tenets of welfare, these mothers conceived of their particular children’s welfare in ways that precluded contact. Their resistance to contact was achieved by invoking the welfare discourse, but making their own interpretations of it.

Distinguishing the ‘Bad’ Father

Fathers, too, positioned themselves as ‘good’ parents by acknowledging dominant norms and by operating within the welfare discourse. But, in contrast with mothers, they tended to find – as we might expect – that those norms supported their arguments. Within the dominant discourse, contact between non-resident fathers and children is seen to be crucial to children’s well-being. To warrant description as ‘bad’, fathers must have behaved in exceptionally callous or irresponsible ways.59 On the other hand, the qualifications for being a ‘good’ father are not very onerous.60

The fathers in our study held views consistent with the dominant discourse; they felt that, provided they had not conducted themselves badly, their standing as good fathers should be accorded recognition in the form of contact orders. Those who had been accused of acting in ways that they knew might be open to criticism were careful to deny the allegations or to minimise or normalise their conduct.

59 See the analysis of the case law on parental responsibility orders in Kaganas (1996).
60 See for example, Smart (1991). While the law adopts gender neutral language in relation to parenting, and it is assumed that men can and do parent as well as women, it appears that, in practice, men’s traditional role has actually changed little (Collier, 2001).
One of the ways in which fathers sought to establish their credentials as worthy parents was to distinguish themselves from commonly held images of bad fathers. And, like the mothers in our study, these fathers frequently invoked the notion of their children’s interests in support of their case. Jerry, for instance, said, “I’m not a deadbeat dad. I want to see my son. And I feel strongly that it’s in his interests that I do”. Alan saw himself as being prevented from giving his child what his child needed, “You’ve got family blokes that don’t care about their kids. And just run away. And there’s me trying to be a decent, loving father. And I’m not being allowed to”.

Violence was recognised by most fathers as something that might make someone a ‘bad’ father and there was some acknowledgement that it could be a legitimate obstacle to contact. It is not uncommon in contact disputes for such allegations of violence, when raised, to be disputed or denied. Keith, for example, claimed that his former partner’s allegations of violence were untrue, “I’m a man and I’m assumed to be aggressive and violent”. Neil, on the other hand, conceded that he could be “aggressive”. But he dismissed this, stressing that it was not a serious problem:

I’m not violent. I’ve never committed an act of physical violence either on Tina or her mother. I am verbally aggressive you know . . . It’s a case of . . . being denied contact with Tina for no reason. And when you think about the people – with parents who abuse their child, and nothing happens to them . . .

The emphasis on the fact that he had not been physically violent to the child or her mother enabled him to continue to position himself as a good father as did his favourable comparison of himself with child abusers.

David admitted some violence but was at pains to normalise it:

My ex-wife said that I’d tried to strangle her. That I hit her across the face. But those things are basically taken out of context. I’ve never hit my ex-wife. I don’t believe in it. The strangling, it was just one of those things. I think most couples do one violent thing now and again.

He was also keen to play down the effect on his son of his role as the disciplinarian in the home. Implicit in his description is his view of himself as a good father; he exercised discipline and his use of force was neither excessive nor such as to fundamentally damage his relationship with his child. “So, yes, I used to get home and I used to sort of give him a smack

Dobash et al. (2000, pp. 32–36, 165–166) describe the way in which some of their interviewees regarded violence against women as normal or at least justified in certain circumstances. Some wanted to forget past behaviour and expected others to do the same. Finally, the researchers recount instances where the men used strategies of minimisation and denial. Some of our interviewees spoke in similar terms.
I don’t think he was actually ever scared of me. Wary, I think possibly would be a better word”. Neil even considered the nature of his daughter’s reluctance to see him as evidence of his standing as a good parent:

Tina’s saying “Yes, I do want to see my daddy, but I’m scared because he shouts at me”. And I says, “Yeah, but I think it’s a credit to my parenting skills that she’s not saying that” [my daddy is hateful] because if I was a bad parent she’d be saying, “I don’t want to see the bastard, I hate him”.

These fathers, then, seek to position themselves as good parents by normalising and minimising their conduct, so distancing themselves from images of cruel abusers or deadbeat dads.

*Invoking the Bad Mother*

Some fathers sought to strengthen their cases by pointing to the failings of their former partners, suggesting that their presence was necessary to protect their children from bad mothering. Keith kept a record of his partner’s shortcomings while Harry emphasised his wife’s unreliability and recounted examples of her bad parenting. Not only were mothers monitored and criticised for failing to take care of their children properly, they were also accused of deliberately sabotaging the relationship between fathers and children. Some fathers whose children did not want to see them attributed this, in effect, to ‘parental alienation syndrome’. For example, Charlie, alleged by his son to have cut him with a knife, and with whom his stepson declined contact, said:

[My] wife had begun the alienation process with the little boy, which basically consists of going around saying things about his dad which are monstrous and untrue, so that he begins to repeat them . . . Meanwhile the 13-year-old had been taken in to a psychiatrist . . . to give all the reasons why he didn’t want to see his dad. And none of them amounted to anything of substance . . . But he had been so parentally alienated.

Jerry, in turn, insisted that his son had been “brainwashed” and “indoctrinated”. By adopting this explanation, fathers such as Charlie and Jerry could justify stepping in to ‘rescue’ their children. They saw the continuing fight for contact as being in their children’s best interests, despite their children’s expressed wishes. In addition, by blaming their children’s resistance on the malign influences of mothers, they could more easily maintain their images of themselves as good fathers.

This discourse of alienation finds ready acceptance by fathers who are otherwise unable to make sense of their children’s reluctance or refusal to see them. These fathers rest their hopes for a relationship with their children on the medicalisation of the problem. Children are positioned as vulnerable, as easily poisoned and without agency. This enables fathers to
dismiss their children’s own reasons – which are likely to be complex, and not easily admitted or even formulated – for not wanting to see them. And a diagnosis of an individual child of course also obviates the need for the parent in question to examine his behaviour, motivation and relationship with the child. Our research, however, suggests that in some cases it is the parent’s own psychological needs that motivate and sustain engagement in these kinds of disputes.

Continuing the Legal Battle: Psychological Imperatives?

The ideal of the ‘good divorce’ and the conflict-free and co-operative post-separation family, where problems are solved by negotiation, is remote from the experience of many people (Day Sclater, 1999). For some of the fathers in our study, keeping up the conflict in the courts was the only positive thing they felt they could do. They saw the contact battle as the only way they could prove to themselves and to their children their commitment and their merit as fathers. Michael was one of these. “He’s got a right to know that I still have feelings for him, and I still care, and I’m there if he needs me”, he said. Giving up the fight for this father would be to signal to his son that he did not care. Losing the battle for contact was something that, as a good father, Michael could not conceive of doing. “I won’t let her win, really, and my son has got a right to know I’m there”.

Faced with resistance from mothers and sometimes children, some fathers, such as Richard, were determined to continue even when they knew it was futile to do so. Here he speaks of a letter he wrote to his daughter after contact was refused.

But the reason I had done it [legal proceedings] was that I had tried voluntarily, and I had not been successful. I said that one of the strongest reasons why I had done it was that I didn’t want her to grow up and think that she had not been worth fighting over.

For Richard, like Michael, engaging in the contact dispute was proof for his child that he cared. Perhaps it was also proof for himself that he was a good father, despite the fact that he could never ‘care for’ but only ever ‘care about’ his child (see Smart, 1991). For these fathers, giving up just wasn’t an option. Even though they feared the effects of litigation on their children, they believed that what they were doing was right and that they had to continue for the sake of those children: Michael tells about the dilemma succinctly:

‘Cause if I carry on pushing it, is it going to do more harm to him? And if I stop, it’s going to do more harm to him. And I just can’t decide which of these options is right. I’ve just got to carry on with what I think is best at the time to carry on, and carry on. I’ve got no choice.
So, fathers, like mothers, appeared to be driven to continue with contact proceedings once these had begun. And while the parents did, at one level, accept that conflict is bad for children, they located responsibility for this potential harm in the shortcomings of the system rather than in their own dogged pursuit of a remedy.

The psychological processes in divorce, and contact disputes, run deep and are far more complex than the law seems prepared to recognise. The implicit images of good and bad mothers and fathers that are continually constructed and reconstructed within the framework of a dominant welfare discourse, and that populate the reported cases, bear little resemblance to the real mothers and fathers who daily struggle with the pain and anger of separation, loss, jealousy and betrayal. Those feelings cannot be eliminated. It is surely paradoxical that, whilst the experts tell us that parental conflict has adverse effects on children, the parents we interviewed invoked their interpretations of the best interests or the welfare or sometimes the rights of the child in support of their competing claims.62

CONCLUSION

The assumptions embedded in the dominant discourse within both law and welfare sit uncomfortably with the reality of our interviewees’ lives. Their experiences are at odds with images of the ideal post-separation family. Yet disputing parents’ challenges to this dominant discourse were rarely direct; both mothers and fathers had internalised it in varying degrees and spoke in terms that confirmed the centrality of children’s welfare and the importance of sustaining relationships between non-resident parents and children. However, at the same time, they sought to negotiate their way around the dominant discourse in ways that enabled them to maintain their images of themselves as good parents. They also accepted, in principle, the prevailing view that court battles are bad for children but saw their own engagement in protracted litigation as necessary for their children’s benefit. They invoked a variety of justifications for their stance. These justifications enabled parents to accommodate the psychological imperatives that impelled them to persist in the fight over contact despite the emphasis in the dominant discourse on continuity, agreement and co-operation.

62 Indeed the image of the child that inhabits the dominant welfare discourse may exacerbate conflict. The perception of the child as vulnerable becomes all too readily a particular view seen through the distorting lens of adults’ own needs (for further discussion, see Day Sclater and Piper, 2001).
Mothers, trying to resist pressure from courts and professionals to accede to contact, framed their resistance in terms of their children’s welfare. Some conceived of their own wish to be free of their former partners and to move forward as consistent with beneficial change for their children, particularly if they saw themselves as protecting their children from harm. Others contested whether the father was sufficiently committed or capable of being a good parent. A number of those mothers interviewed distanced themselves from, and resented being placed in, the category of the vindictive bad mother who seeks to poison the minds of her children. They felt that, in their particular circumstances, opposition to contact was wholly justifiable.

Fathers, by contrast, tended to invoke the image of the vengeful woman to explain to themselves any unwillingness by their children to maintain contact; to attach credence to children’s hostility might be to acknowledge failure as a father. Even the fathers who accepted that their children had reason to be afraid or wary of them interpreted this apprehensiveness in a way that did not disrupt their images of themselves as good fathers. Like some mothers, some fathers sought to bolster their arguments by finding fault with the parenting abilities of their former partners. Another way of seeking to undermine maternal opposition to contact was to explain this opposition as evidence of instability or unreasonableness. These strategies enabled these men to position themselves as good fathers while suggesting that the mothers concerned were not good mothers.

Being a good father was, to some extent, conceived of in negative terms. While fathers spoke of their love for their children and their practical or financial contributions to their upbringing, there was a sense in which they saw themselves as deserving of contact as long as they were not violent or abusive.

When mothers were ordered to allow contact and when fathers were refused it, or failed to have orders successfully enforced, the aggrieved parent saw the legal system as being at fault. Particular decisions were perceived as evidence of general gender bias and injustice, with both professionals and courts being implicated. Mothers saw the courts as requiring them to expose their children to bad fathers. In the eyes of the fathers, their children were unfairly being denied an opportunity of a relationship with a good father by courts and professionals colluding with bad mothers. For since they were good fathers, what other reason could there be to explain their lack of success? For both mothers and fathers, the only

63 Musician and campaigner, Bob Geldof, refers to this love as “the real love that dare not speak its name” (see Geldof, 2003).
way they could see of protecting their children and promoting their welfare was to continue the battle.

What the future holds for parents in dispute is not yet clear. The changing attitudes of the courts will probably make it easier for mothers who can prove violence to resist contact, or at least direct contact. Perhaps those who manifest extreme distress or who can show serious paternal misconduct will be similarly treated. Otherwise, the dominant discourse continues to hold sway. And more punitive measures may be deployed in cases where mothers are found to be unjustifiably refusing contact.

The prevailing view is that parents must be educated and taught to behave reasonably. At a recent ‘Making Contact Work’ conference, for example, Wall J. designated many contact disputes as power struggles between parents in which children “are both the ammunition and ... the victims”. “In the overwhelming majority of cases”, he went on, “it is the parents who create the problems by failing or refusing to understand that the continuing acrimony between them is damaging the children and seriously dividing their loyalties”. The new measures proposed in Making Contact Work are designed to educate parents and persuade them of the benefits of contact and co-operation. Yet a scheme adopted in Scotland on a voluntary basis, also designed to educate and inform parents of their children’s needs and feelings, seems to have had little impact. Research into the Scottish Parent Information Programme concluded that while parents found the programme informative, it might do little to change parenting behaviour. Parents interviewed said they were constrained by the other parent’s recalcitrance and that “it should really be [the other parent] that hears all this” (Mayes et al., 2003, p. 99). Enlightening parents about their children’s best interests, then, will not necessarily “make contact work”.

Our research suggests that the roots of protracted contact disputes do not lie in parents’ ignorance or rejection of the dominant discourse. Rather, they lie in their need to see themselves and to be seen as good parents. The psychological manoeuvres that underlie contact disputes are, at once, bids by individual mothers and fathers for survival, a manifestation of the power that the dominant discourses hold over us, and a comment on the gender politics of both parenting and divorce (see Day Sclater and Yates, 1999).

It seems quite possible that, in the same way as parents currently reframe the dominant discourse in order to do this, they will reframe the information and education imparted to them under the proposed scheme. We should not underestimate the capacity of parents to reinterpret their

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64 See Newsline Extra (2003).
own conduct and the best interests of their children in ways that induce a sense of grievance and that impels them to continue to fight the ‘good’ fight.

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