THE ADVISORY BOARD ON FAMILY LAW: CHILDREN ACT SUB-COMMITTEE

MAKING CONTACT WORK

A REPORT TO THE LORD CHANCELLOR ON THE FACILITATION OF ARRANGEMENTS FOR CONTACT BETWEEN CHILDREN AND THEIR NON-RESIDENTIAL PARENTS AND THE ENFORCEMENT OF COURT ORDERS FOR CONTACT
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Dear Lord Chancellor,

*Making Contact Work*

The Children Act Sub-Committee (CASC) of your Advisory Board on Family Law, takes great pleasure in presenting to you on behalf of the Advisory Board its final report *Making Contact Work*.

You will see that it follows the format of our previous report to you on contact in the context of domestic violence entitled *Contact between children and violent parents*, the main recommendations of which we were pleased to see the Government has accepted and is in the process of implementing.

The current consultation was both extensive and detailed and, like its predecessor, resulted in responses of extremely high quality and remarkable unanimity from all the different disciplines working within the Family Justice System as well as from a number of those directly affected by it. We commend our recommendations to you.

There is one particular aspect of our recommendations to which we would draw your attention. You will see that we retain our aspirations for *the Children and Family Court Advisory and Support Service (CAFCASS)*, and our strong belief that a properly functioning Advisory and Support Service for Children and Families is essential to the efficient operation of the Family Justice System. This implies, in our view, a significant increase in the resources allocated to it.

As we make clear in the Report, however, we are not making the point in the belief that by throwing money at *CAFCASS* all the problems of the Family Justice System will be resolved. First and foremost, we see the expanded functions of *CAFCASS* as being of critical importance to the overall recommendations we are making to you. Secondly, however, we have little doubt that a properly functioning expanded *CAFCASS* will result in substantial savings in other areas of the system – fewer contested court proceedings, with consequential substantial savings in both time and money spent in court, without counting the more intangible emotional benefits to children and families brought about by the amicable resolution of contact disputes.

We quite understand the difficulties encountered by any Department in justifying additional expenditure; but in this case we believe that the potential benefits, financial as well as social, make a compelling case.

This is the last piece of work that CASC will be undertaking prior to the dissolution of the Board. We have been extremely fortunate, we feel, to have had the opportunity and the facilities to address issues of principle arising from the continued operation of the Children Act.
We have, however, been no substitute for the proper inter-disciplinary body which the Family Justice System both needs and deserves to fulfil and expand upon the functions of the Children Act Advisory Committee (CAAC) whose abolition in 1996 is now we think universally recognised to have been a serious mistake.

We were very glad to learn that the long-awaited consultation paper on future interdisciplinary arrangements is about to be published. While there may be points of detail on which we will comment, we are delighted that the underlying need for such arrangements has been accepted. We will be happy, as you request, to provide any advice you may require in the period before the new structure is in place.

Yours sincerely

Nicholas Wall,
Thomas Boyd-Carpenter,
Naomi Angell,
Carole Kaplan,
David Skidmore,
Jane Simpson,
Tony Wells.
The Consultation

1. The Consultation Paper *Making Contact Work: a Consultation Paper from the Children Act Sub-Committee of the Lord Chancellor’s Advisory Board on Family Law (CASC) on the facilitation and enforcement of contact* was published in March 2001, with a closing date for responses of 22 June 2001. A total of 240 responses were received, and a list of respondents, broken down into their different categories is attached as Appendix 1. It will be seen that, as with the responses to our previous consultation on *Contact between Children and Violent Parents*, all the different areas of the family justice system are represented. The only material difference is that in the present consultation, a larger number of individual parents gave their perceptions of how the system worked and how it had treated them.

2. We would like to apologise for the delay in the preparation of this report. We had hoped to have it in the public domain by the Autumn of 2001. The volume of the responses received, however, and the complexity of the issues raised, have meant that the report has been longer in gestation than we would have wished.

The Structure of this report

3. In the consultation paper, we posed 53 questions. It would, we think, be indigestible to try to contain the responses to all the questions within one chapter. We have, accordingly, abandoned the numbering of the questions we used in the consultation paper, and have divided the responses into separate chapters each dealing with a specific aspect of the problem. We hope that this makes for easier reading and identification of particular issues.

4. Following this Preface, therefore, Chapter 1 sets out the major themes emerging from the Consultation. Chapters 2 to 15 contain summaries and analyses of the responses received to each question. We have quoted from as many responses as we felt was
possible. The individuals from whom we have quoted are identified in the text and the names of the bodies or institutions whose views we have recorded are highlighted for easier identification. We are very conscious that in this exercise we cannot do justice to all the responses received. Our quotations are necessarily selective, and, in places, our summaries of the responses somewhat broad. We are sorry about this. We have, however, tried faithfully to reflect the overall balance and content of the responses received to each question.

5. Chapter 16 sets out our recommendations. Whilst we have retained the order in which these emerge from the text, we have also divided them into four broad categories, and allocated a category to each: (1) those capable of immediate implementation; (2) those which require the allocation of additional resources; (3) those which require legislation; and (4) those which require further study. We have in each case identified the agency to which the recommendation is addressed.

6. There are 5 appendices. Appendix 1 lists the respondents to the consultation who did not seek to keep their responses confidential. Appendix 2 is a summary of the recent *Family Advice and Information Networks Consultation (FAINS)* instigated by the Legal Services Commission. Appendix 3 deals with the important question of *Shared Parenting* and *Shared Residence* raised by *Families need Fathers*, the *Equal Parenting Council* and the *Association for Shared Parenting* in particular. Appendix 4 deals with a point raised by the *Women’s Federation of England* on the case of *A v N (Committal: Refusal of Contact) [1997] 1 FLR 533*, which does not otherwise fit easily into the text. Appendix 5 identifies the members of CASC.

7. It had been our intention to set out in an Appendix a summary of the response from the Judiciary in New Zealand, and more detail of the position in Australia, both of which we found extremely helpful and informative. In the event, space has not allowed this. This material is, however, available on the Lord Chancellor’s Department website, ([www.lcd.gov.uk](http://www.lcd.gov.uk)) as are Section 5 and Appendix A to the Consultation Paper, which deal with the approach to enforcement in other countries.
8. "Families Need Fathers", with others, led a fundamental assault on the underlying philosophy which gives one parent “residence” and the other “contact”, when the objective should be to achieve the full involvement of both parents in the care and upbringing of their children post separation. The remedy proposed was the introduction and expectation of “shared care”, a presumption of shared parenting irrespective of the ability or willingness of the parents to work with each other. Shared care, it was stressed, did not mean an equal division of children’s time between their parents: the time actually spent was a matter for negotiation and discussion. What was important was that the court order should be a recognition that both parents had important parts to play in their children’s lives.

9. The point was well argued, and is plainly one of importance. We felt, however, that the radical reform being proposed by "Families need Fathers" and the two other groups went beyond the scope of this consultation. We are advising on the question of contact in the framework of the way in which the current legislation has been interpreted by the courts over the past 10 years. A move to joint residence orders / shared parenting as the norm would, we think, require substantial investigation and validation. We have not, accordingly, dealt with the issue in the text or in any of our recommendations. We have, however, set out the argument in Appendix 3, where we canvass the possibility of the Government setting up a pilot scheme if it thinks the concept of shared residence / parenting worth considering.

**Domestic Violence**

10. We were both surprised and disappointed that all the women’s groups took us to task for our apparent failure to mention domestic violence in the body of the Consultation Paper. Women’s Aid Federation of England (WAFE) was representative. Under the heading **Key Points**, this was said: -
Women’s Aid Federation of England is deeply concerned that this consultation paper considers how contact can be facilitated and enforced without ever mentioning the fear of abuse, which is one of the most common reasons for not complying with a contact order. We believe it is dangerous to enforce contact in cases of domestic violence or child abuse, and we regard the consultation paper as seriously flawed because it fails to address this issue.

In our view, it is inappropriate to address the issue before a wide range of preventive measures have been taken to ensure that contact arrangements are safe.

11. With great respect to WAFE this represents a misunderstanding of the nature and purpose of the consultation paper. If the current consultation stood alone, the criticism would be well founded. But of course it does not. Our previous consultation was devoted exclusively to contact between children and violent parents. Our Report to the Lord Chancellor on the Question of Contact in Cases where there is Domestic Violence was published in the Spring of 2000, and was cited with approval in the important decision of the Court of Appeal, Re L, V, M and H (Contact: domestic Violence) [2000] 2 FLR 334. The Guidelines for Good Practice, amongst other recommendations contained in the report were designed to assist courts in dealing with cases involving domestic violence. The Guidelines were accepted by the Government earlier this year.

12. We have not forgotten or abandoned our previous conclusions and recommendations on domestic violence. Self-evidently, they continue to apply. So, where domestic violence is involved, cases will need to be dealt with according to our previous recommendations and Guidelines.

13. The focus of the present consultation is on cases where domestic violence is not an issue. However, where domestic violence is relevant to the present consultation, we deal with it. For example, information designed to be given to separating couples (Chapter 3) will self-evidently need to address the question of domestic violence.
Other issues

14. There are several issues we have not addressed. The first is that of contact to children in care. We did not discuss this as it is subject to its own statutory code, and the issues it raises are not, in our view, relevant to the issues in private law applications between parents.

15. Secondly, we did not deal with contact by grandparents, although we had a helpful response from the Grandparents’ Federation. This is a very wide subject, which would warrant a consultation exercise of its own. However, we do support a more active examination of the potentially constructive role to be played by extended families in meeting the needs of children in contact disputes. This is a matter to which we return in Chapter 10.

16. Thirdly, we have not dealt with international cases. This is both because of their relatively small number and because they raise very difficult legal issues, consideration of which, we felt, would detract from the main thrust of the report. Fourthly, we have not addressed the question of contact between siblings. This, again, is a very important subject. However, it is governed by reasonably well established legal principles (separated siblings should normally see as much of each other as possible) and was only raised as an issue by a small number of respondents. Nonetheless, it is a subject which will need to be addressed by CAFCASS where it arises.

17. Finally, we would like to express our thanks to the Secretariat, and in particular to Philip Dear, for his uncomplaining efficiency, and to Jacqui Brown, who prepared section 5 in the Consultation Paper, and who has since moved on.
CHAPTER 1

THE MAIN THEMES WHICH EMERGED FROM THE CONSULTATION PROCESS

1.1 The reader will find our specific recommendations set out in Chapter 16. We thought it would be helpful, however, before going into the detail of the questions we asked, to identify the main themes which emerged from the Consultation, and our response to them.

1.2 Unsurprisingly, the Consultation has confirmed our perception of disputes over contact as a highly emotive, difficult and sensitive subject to which there is no one, straightforward answer. The following themes, however, emerged most clearly from the Consultation: -

(1) a general dissatisfaction with the legal process as a mechanism for resolving and enforcing contact disputes;

(2) the need at an early stage to provide information for separating parents and their children about the likely effects of the separation, the difficulties they are likely to encounter, and the means whereby those difficulties can be addressed;

(3) the need to address the problem by a wide range of different mechanisms which are not based on court proceedings; and

(4) the need to ensure that those alternative mechanisms to court proceedings are in place and are accessible to those who need them.
1.3 We regard the provision of information for separating couples and their children as being of critical importance. What follows is not an exhaustive list, but within the broad areas of information identified in paragraph 1.2(2) are:

- the importance to children of maintaining contact wherever possible with the parent with whom they are not living;
- the very substantial difficulties involved in successful post separation parenting for both parents;
- the serious harm caused to children by continuing acrimony between their parents; and
- the services which are available to assist in the resolution of difficulties over contact.

1.4 As was stressed in a number of the responses to the consultation, it is vital that this information is available to both parents, and that wherever possible, parents should be encouraged and helped to agree contact arrangements for their children.

1.5 The final bullet point in paragraph 1.3 leads to the consideration of the next stage, which is the means of access by parents to those facilities which can assist them reach agreement over contact. These include mediation, counselling, help lines, advice groups, various charities, and, of course, legal advice.

1.6 Research shows that a solicitor is the first port of call for something in the order of 80% of divorcing couples. It is clear to us that the legal profession, and specialist solicitors in particular, have come a long way since the passing of the Children Act. Reference is made in the report to the code of conduct of the Solicitors Family Law Association and the protocol issued by the Law Society. These are, in our view, very important steps forward towards ensuring that the alternatives to litigation are fully explored, and making disputes over children less adversarial.
1.7 We are, however, quite satisfied that much more needs to be done in the provision of facilities, which separating or separated parents can approach for advice over contact. Dealing with couples or individuals in the immediate aftermath of what is often a traumatic separation requires special skills, particularly if part of the process involves the negotiation of contact.

1.8 There will, of course, always be a role for the court to play in making contact work. The court remains the one institution which has both the authority to define and the power to impose a solution which is in the interests of the child. At one end of the scale there will always be the difficult, intractable cases which, for example, involve allegations of serious physical or sexual abuse, or where one of the parents may be mentally ill or suffering from a personality disorder. At the other end, there will be the relatively straightforward cases which prove to be incapable of being negotiated or mediated and which require an imposed decision from a court such as the family proceedings court.

1.9. We have, however, come to the conclusion, that wherever possible, an application to the court for an order should not be the first response but, if anything, should the remedy of last resort. To this, however, we would add the proviso that there is always a risk that, in a case which needs an application to the court, fruitless negotiation / mediation may in fact delay the resolution of the dispute. Equally, an application to the court should not be seen as bringing to an end to the process of conciliation: - an issue we develop in Chapter 10.

1.10. The Consultation demonstrated clearly that the majority of respondents, and not just the disappointed or disaffected litigants, regarded the court process as slow, unpredictable and adversarial, with the consequence that the disputants became, if anything, more entrenched in their respective positions at the end of the proceedings than they were at the outset. Court proceedings are also, of course, expensive.
1.11 This general response to the nature of court proceedings is disappointing, but not, we think, surprising. However, as the court will, inevitably, remain a major feature in determining contact, it is very important that its procedures are improved, and that steps are taken to reduce the adversarial nature of the proceedings.

1.12 Apart from accreditation for the lawyers conducting such disputes, tighter court control of time-tabling, and the development of a culture of judicial continuity, two further important steps, in our view would be; (1) to make universal the practice in some courts of having a **CAFCASS** officer present at the first appointment to attempt in court conciliation; and (2) to use the provisions of the new Family Proceedings Rules to involve **CAFCASS** reporting officers much more with the children about whom they are reporting, so that Officers would be able to spend more time with the children, and, in appropriate cases, to continue to maintain contact with them after the hearing for which the report has been prepared.

*Enforcement*

1.13 Once again, the overwhelming weight of the responses to the consultation was that enforcement of contact orders by proceedings for committal leading to fines and imprisonment is not only a crude way of enforcing contact orders: it is also ineffective. Whatever the intellectual force of the argument that it is in a child’s interest to enforce a contact order because the order for contact was made on the basis that it was in the child’s interest to have contact, the simple fact remains that it is very difficult to see how it can ever be to the benefit of children for their primary carer to be sent to prison.

1.14 As a consequence of the responses to the consultation, we have come to the clear conclusion that the Government should legislate to provide the courts with a range of remedies in intransigent contact cases where the courts order is not being obeyed. We detail these proposals in chapter 14. Some are designed to be therapeutic: others will have sanctions attached.
1.15 However much we may wish to ensure that provisions for the enforcement of contact orders should flexible, and designed to address the specific problem, we also agree with the majority view of the respondents to the consultation that for as long as the process is a court process providing orders which are to be obeyed, the power of the court to punish disobedience has to be maintained. However, under our proposals, the use of fines or imprisonment will genuinely be the last resort only when education, therapy and persuasion have failed.

1.16 The power to send one or both parents on courses designed to address intransigence over contact; or the power to refer one or both parents to a particular resource implies, of course, that the resource exists and will be available. We believe such courses should be tailored to the issues which the order is seeking to address. In so far as such programmes currently exist they will need to be funded: in so far as they do not exist they will need to be developed in line with the proposed legislation. We are, however, in no doubt at all that the need to broaden the court’s powers of enforcement of contact orders is an important and a pressing reform.

CAFCASS

1.17 The tribulations of CAFCASS have, alas, been only too public. In the report we are critical of Government, as we have been before, for the manner in which CAFCASS was set up, and the wholly inadequate time provided from the passing of the Act to the date of implementation.

1.18 We prefer now to look forward. In the Report we see a number of functions which are tailor made for CAFCASS if it is to fulfil all the elements in its title. We have no doubt that CAFCASS has a crucial role to play. But – and although we have said this many time it needs saying again and again – CAFCASS must be properly funded. The idea that the amalgamation of the Court Welfare Service, the Guardian ad Litem Service and the children’s arm of the Official Solicitor’s Department is cost neutral when many
additional and necessary functions have been given to CAFCASS is, in our view, untenable. CAFCASS is there to provide a vitally necessary service to children and families. If the Government is serious about providing an effective children and families court advisory and support service, CAFCASS must be properly structured and funded.

1.19 In saying this we are not, of course, merely repeating a mantra, or arguing that if you throw enough money at CAFCASS the problem will be solved. We firmly believe that a properly functioning CAFCASS is not only necessary for the proper running of an effective family justice system: we believe that an expanded role for CAFCASS is likely to produce valuable savings elsewhere in the system, notably in a reduced number of contested court proceedings, with consequential substantial savings in both time and money spent in court, without counting the more intangible emotional benefits to children and families brought about by the amicable resolution of contact disputes.

1.20 We set out in the report some of the functions which we think CAFCASS should be undertaking. Amongst the most important are as an information provider, and as a means of ensuring that, where appropriate, children are represented in proceedings. We also see CAFCASS as having an important role as an in court conciliator and in education programmes and parenting classes in cases where the court seeks to use these resources as a means of enforcing its orders.

Contact Centres

1.21 Funding is, once again, an issue when it comes to Contact Centres. We describe them in the report (paragraph 8.35) as a resource which must be cherished. Some of them, deeply proud of their independence and volunteer status, refuse government money. But since they are a vital resource, and since the service they provide is expanding, funding has become an important issue. Once again, the obvious source of funds is the Government, through CAFCASS.
1.22 We welcome the diversification of some Contact Centres into providing facilities for supervised contact, with the potential for using their premises for therapeutic sessions with parents. We also think there is a need for more specialist centres such as Coram Family and the Accord Centre in Brent.

Research

1.23 A wealth of ideas emerged, as chapter 15 shows. Ideas came from every quarter. This, in our view, shows the interest and enthusiasm of those who work in the family justice system, which has survived the numerous vicissitudes of the last few years.
CHAPTER 2: THE PRINCIPLES UNDERLYING CONTACT

OUR ANALYSIS OF THE RESPONSES TO THE SPECIFIC QUESTIONS POSED IN THE CONSULTATION PAPER

THE QUESTION WE ASKED

2.1 Do you agree that the principles set out by Dr. Sturge and Dr. Glaser and summarised in Section 2, Part 1 represent a generally accepted professional view? If not, what is your basis for disagreement?

RESPONSES

2.2 Of the 240 respondents, 167 answered this question. Of the 167, 148 said “yes”; 19 said “no”. Whilst some respondents pointed out that the question was phrased in such a way that a “yes” answer did not necessarily imply agreement with the principles set out by Dr. Sturge and Dr. Glaser, the overwhelming majority of those who answered “yes” made it quite clear that they agreed with the two doctors’ analysis.

2.3 Disagreement with and qualification of the doctors’ views came largely from men and men’s organisations. Of those who disagreed, the majority did so on two bases. The first was that the doctors were wrong not to recognise the existence of parental alienation syndrome; the second was that the description of the “centrality of the child as all-important” was discriminatory and placed too great an emphasis on the interests of the parent with residence. Mr. Tony Coe, on behalf of the Equal Parenting Council, wrote:

The idea that a parent should have to prove the purpose of contact is plainly flawed … The purpose of contact is self-evident. It provides the child with parenting time. Should the custodial parent also prove that their parenting time has purpose?
2.4 District Judge Mitchell was also concerned, in the light of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, that the Sturge / Glaser approach “carries the risk of a parent or child having to justify contact, whereas it is the cessation of contact which needs to be justified”.

2.5 Families Need Fathers did not take issue with Dr Sturge and Dr. Glaser over the issue of parental alienation syndrome. Whilst fully endorsing the need to address the issue of domestic violence and to ensure that genuine victims are protected, their concern was that policies and practices necessary to deal with what they described as “a minority of exceptional cases” should not prejudice attitudes and practices towards the vast majority of non violent families in which it was inappropriate to consider whether contact was beneficial for the child. They pointed to the importance of the involvement of fathers for children at all stages of their development, and commented that it was difficult to understand how some attitudes and practices prevailing within the family justice system could justify being so at odds with such trends.

2.6 From a different perspective, a number of women and women’s groups made the point that the Sturge / Glaser principles had to be seen in the overall context of their report, which included how contact should be approached where domestic violence was alleged or had occurred.

2.7 This is not the place to debate whether or not parental alienation syndrome exists. Dr. Sturge and Dr. Glaser provide in their report a description of the range of circumstances with which the family justice system has to deal - that is from an entirely justified hostility to contact based on a well founded fear of harm to or abduction of children on the one hand; to what they describe as “wholly biased hostility which is not based on real events or experience” on the other. For the purposes of this report and, we suspect, for those faced with these cases, what matters is not the label which is attached to the phenomenon, but the principled approach which is required to address it.
2.8 A number of respondents welcomed the fact that the Court of Appeal had sought out evidence and advice from another discipline in order to inform its approach to contact. We share that view. We regard it as imperative that there should be an ongoing mutual interchange of information and expertise between the various disciplines operating within the family justice system, and we are heartened that a very substantial majority of the respondents to the consultation agreed with the views of Dr. Sturge and Dr. Glaser.

2.9 Whilst we note the caution expressed by some respondents, and note in particular the comments made by Families Need Fathers, we do not see anything in Dr. Sturge and Dr. Glaser’s “child centrality” argument or the proposition that “contact can only be an issue where it has the potential for benefiting the child in some way” which is in any way inconsistent with either section 1 of the Children Act (the principle of the paramountcy of the child’s welfare) or section 11(4)(c) of the Family Law Act 1996 which, although it is to be repealed, was accepted as appropriate by the overwhelming majority of the respondents to our previous consultation Contact between Children and Violent Parents.

Recommendation

2.10 We recommend that the Lord Chancellor’s Department either prepares or commissions a leaflet setting out the approach of the courts to issues of contact. This should summarise the Sturge / Glaser report. It should also contain references to the decision of the Court of Appeal in Re L, V, M and H (Contact: domestic violence) and the approach of the court to cases where domestic violence is an issue. It should be designed to be made available to couples with children who have separated or who are contemplating separation. It should be distributed in the manner described in Chapter 3.
CHAPTER 3: INFORMATION AND HELP FOR PARENTS

THE QUESTIONS WE ASKED

3.1 Do you think that information about the likely effects of separation on their children, and the positive benefits of maintaining contact with the non-residential parent should be made available to separating parents together with information about how parents can gain access to the services which will help address them?

3.2 If your answer to the question at 3.1 is “yes”:

(a) What mechanisms would you propose to make such information readily available?

(b) What information would you like to see made available?

3.3 Do you think more should be done to help all separated parents to understand the potential benefits to their children of contact with the non-resident parent, and to facilitate the maintenance of a continuing relationship with that parent? If so, what would be the single most helpful action that could be taken?

3.4 For ease of reference, we will repeat each of the questions before dealing with the responses to each.

Question 3.1

Do you think that information about the likely effects of separation on their children, and the positive benefits of maintaining contact with the non-residential parent should be made available to separating parents together with information about how parents can gain access to the services which will help address them?

3.5 Of the 173 responses to this question, 172 answered “yes” and only one respondent answered “no”. The one negative response was from the Domestic Violence Intervention Project (DVIP) and resulted, we think, from the misunderstanding about the place of domestic violence in the facilitation of contact to which we referred in paragraphs 10 to 13 of the Preface. Thus DVIP asserted: -
It is inappropriate and potentially dangerous to give the message to a resident parent who has experienced domestic violence from the non-resident parent, that it is beneficial to maintain contact. This is not true. In many cases maintaining contact is highly dangerous, and in some cases has led to the death of either or both the mother and child(ren).

Where cases have been screened for domestic violence … and there are found to be no safety concerns, then such material and messages may be appropriate and useful.

3.6 As the report of Dr. Sturge and Dr. Glaser makes clear, and as the Guidelines attached to our previous report emphasise, the greatest care needs to be taken in cases involving domestic violence that the residential parent and the child are safe, and that there is benefit for the child in contact taking place. Any literature dealing with the facilitation of contact must make this point.

3.7 There was, accordingly, effective unanimity on the need to provide information on the likely effects of separation on children and the positive benefits of maintaining contact with the non-resident parent. We should, we think, make it clear that the information we have in mind is aimed at both parents. We say this because Families Need Fathers argued that ‘the terminology used automatically bestowed unequal parenting status upon parents and assumed that the ‘benefits’ of continuing relationships have to be proven in one parent only’. This was not our intention, nor is it, we think, the effect of the question.

3.8 Professor Jan Walker, giving the response of the Newcastle Centre for Family Studies, with her extensive experience in this field, wrote: -

There is abundant research evidence that most parents are unprepared for the magnitude of the transitions and upheavals, emotional, social and economic, which they experience during separation and divorce. The findings from the information meeting pilots demonstrate very clearly that the information about the impact of divorce on children and the importance of children being able to maintain a positive relationship with both parents struck a chord with the vast majority of parents.
3.9 We think this is an extremely important point. As we make clear in Chapter 1, and in our recommendations, we regard the provision of information to separating and separated parents as a crucial element in the process of making contact work. Whilst it is in no sense a panacea, we are strongly of the view that if parents have ready access to high quality information about the effects of their separation on themselves and on their children; about the difficulties involved in post separation parenting; and about the effect of continuing parental hostility on their children, then their views on contact will be much better informed. An understanding of the traumatic process through which both adults and children are going is likely to help make contact easier for both adults and for children.

3.10 Two other points need, we think, to be made at this stage. The first is that separating parents need access to this information at the earliest possible stage in the breakdown of their relationship – preferably before they have parted. The second is that two kinds of information are, we think, required. The first is the general need to promote understanding of the importance of the involvement of both parents in the upbringing of children; the second needs to focus more specifically on the issue of contact and the difficulties likely to be encountered. The first is an ongoing process, in which we see the National Family and Parenting Institute having an important role. The second is more specifically linked to the court or divorce process, an area where we think the Family Advice and Information Networks (see Appendix 2) have a valuable contribution to make. However, the second area of information we have identified is not a substitute for the first.
If your answer to question 3.1 is “yes”:

(a) What mechanisms would you propose to make such information readily available?

3.11 A question such as question 3.1 might be subject to legitimate criticism had it been asked in isolation, on the basis that it would be difficult to say “no” to it. However, the validity of the unanimous response to question 3.1 is, we think, established by the wealth and diversity of the contents of the answers to question 3.2.

3.12 Professor Walker advised us that parents responded particularly well to videos which included children talking about their needs and their feelings, and that leaflets were well received as was verbal information. The research suggested that the greater the variety of mechanisms for providing information the better. She also stressed the need for the same information being provided to both parents.

3.13 The charity NCH encapsulated the answers given by many respondents when it argued that if the benefits were to be maximised, information had to be made available generally and should not be confined to the procedural arena. It suggested information could be available in Post Offices, Libraries, Citizens Advice Bureaux, Health Centres and Child Guidance Clinics. Information packs should also be available in all solicitors’ offices, supported by effective referral mechanisms to enable people to access mediation, counselling and other support services where they can receive tailor made information, if they want it. NCH also argued that the dissemination of information should also be supported by the inclusion in teacher training of this subject area, so that teachers are better able to support children experiencing family breakdown.
3.14 In addition to the mechanisms identified by NCH, the Law Society, in its response suggested information should be available on the internet, through Relate and other counselling or mediation services, through solicitors and through the court. There was also the medium of public service broadcasts. The Law Society stated that solicitors were often the first port of call for separating couples, and pointed out that its Protocol for family lawyers encouraged the provision of information, and suggested that provision of information to solicitors for onward transmission would be one significant way of disseminating information.

3.15 Other mechanisms suggested included CAFCASS, family planning clinics, youth services, help-lines, nurseries, schools, community centres, banks, and educational media campaigns.

3.16 In its response, CAFCASS emphasised that the material needed to be consistent across the jurisdiction, that it should be creative, using new technology, and should not be dependent on the reader’s language, reading and writing skills. It needed to be developed nationally in close consultation with parents’ groups, children’s organisations and universities with Family Study Units. Professionals using it should be trained in how to best to use it, and people needed to see it at an early stage. Mechanisms for its dissemination included (ideally) divorce survival courses (i.e. a therapeutic, supportive approach to family breakdown); in addition there needed to be easy access to one to one meetings with an experienced practitioner / mediator. Information should be available from the court as well as from the other sources already identified.

3.17 In its response, the Legal Services Commission saw no reason why CAFCASS should not also routinely provide the sort of information to separating parents identified in Section 3 of the Consultation Paper. The Commission also pointed out that it had powers itself under section 4 of the Access to Justice Act 1999 to fund the provision of general information about the law and the legal system. There was obviously scope, it added, for the Commission to be involved in future planning and distribution of information aimed to minimise acrimonious contact disputes and promote mediation and
the negotiation of workable and civilised arrangements. The Commission also gave details of the implementation of the Family Advice and Information Networks (FAINS) which we have set out in more detail in Appendix 2

3.18 The Family Welfare Association suggested the use of video material as well as the written word, given the low literacy levels of some parents. Videos had the advantage that they could be dubbed into different languages.

3.19 NAGALRO pointed out that decisions needed to be made now about who would take responsibility for providing the information. It suggested as a regional resource an extended telephone consultation with a childcare consultant at an appointed time, and a free-phone number for children.

QUESTION 3.2 (b)

What information would you like to see made available?

3.20 Professor Walker again set the tone here when she argued that in addition to the information about children provided in the pilots, there needed to be a very realistic picture given of the difficulties many parents face when making contact arrangements work. It is not helpful, she said, to make post divorce / separation parenting sound easy when in reality it is fiendishly difficult for both non-resident and resident parents. It would be helpful if parents could be given examples of the types of difficulty they might encounter; about the transitions (e.g. a new partner) which can destabilise and threaten contact arrangements; and it should be pointed out, she said, that making contact work requires parents to make some personal sacrifices for their children’s well-being and best interests.
3.21 Professor Walker also pointed out that in the Information Meeting pilots, parents said that they needed help in knowing how to talk to and consult with their children, what to say, and when to say it. Parents, particularly fathers, would welcome advice about how to be “good” parents post-divorce. They also need to realise that contact involves a process of negotiation and re-negotiation between the parents demanding patience, tolerance and, critically, a belief and commitment that contact is of positive value to their children.

3.22 Dr. Liz Trinder from the University of East Anglia School of Social Work made the valuable point that it was critical that information went beyond exhortation about “doing the right thing” for the children or simply referring parents to services. Echoing Professor Walker’s statement about the difficulty of post separation parenting, she argued that it was vital that parents and children be given information about practical strategies from real people, which they can adopt themselves, to help to prevent, overcome or at least manage difficult issues. Her research had already identified a range of coping strategies for parents which she was happy to make available to those responsible for developing information packs.

3.23 Dr. Trinder identified the information which she would like to see available: -

- The impact of divorce on children and adults. Non-alarmist information about the impact of divorce – what to expect and how to minimise the impact.

- Straightforward basic principles about the benefits for children (and adults) of good contact: putting children first, joint parental responsibility, shielding children from conflict, informing and consulting children about arrangements.

- Ideas about how to manage contact, including quotations from parents and children in easy and difficult contact situations, strategies for getting through and things to avoid. Ideas about explaining divorce to children and consulting them about arrangements. Recognition that all contact arrangements will be problematic for some at some point. What to do when contact is risky or harmful.

- Information about where to get help, advice and support.
3.24 Dr. Trinder’s view was that written material for all divorcing / separating families should be developed by a respected national organisation independent from the courts. She thought the National Family and Parenting Institute (NFPI) was the most obvious and appropriate mechanism: that literature could be available from the NFPI’s web-site and distributed to the outlets already identified. Dr. Trinder also favoured use of the mass media as a source of information for many families.

3.25 Dr. Trinder’s view about the need for a national body whose function was to prepare and distribute relevant information was echoed by Child Concern, the Manchester charity. The same point was made by NAGALRO, whose suggestion of a regional resource providing an extended telephone consultation with a childcare consultant we have already noted.

3.26 The Family Welfare Association made the important point that information must be clear, and not patronising. They emphasised the value of video material.

3.27 Detective Inspector Joyce Green, Domestic Violence Co-ordinator for the Preston Constabulary, whilst supporting the dissemination of information, made the point also made by a number of women’s groups that where there was domestic abuse, help must be sought to determine the risks / benefits of contact.

3.28 NCH was pleased with the information leaflets produced by the Lord Chancellor’s Department. They stressed that parents needed information about the impact of conflict on their children and strategies for resolving it. The emphasis should be on the needs of the child and on the importance of continued positive parenting by both parties. Information packs needed to be supported by effective referral mechanisms to enable people to access mediation, counselling and other support services where they can receive tailor made information if they want it.
3.29 It is plainly impossible for us to identify all the individual responses to these two questions. We hope we have given a flavour of their quality. We were very impressed by both the volume and the content of the ideas generated. There was general agreement that parents need information about the impact of conflict on themselves and on their children and strategies for resolving that conflict. It was important to stress the needs of the child and the importance of continued positive parenting by both parties. Information should identify the means of access to different services. There needed to be co-ordination and consistency of information.

Discussion

3.30 Two principal issues appear to emerge from the answers to these two questions. The first is: if consistent, co-ordinated information is to be made available across the country, who should be responsible for producing it? Secondly, how is the usefulness and effectiveness of this information to be tested?

3.31 As to the first, any institution undertaking such a task would have to have a national as opposed to regional or local base. If the task is to be undertaken by government, the obvious choice is the Lord Chancellor’s Department. The alternative is for the Department to commission the work from a body such as the National Family and Parenting Institute working in co-ordination with other national charities and interested bodies such as CAFCASS and those University departments which have conducted research into the subject.

3.32 In its response to our consultation, the NFPI stated that it was set up to provide a strong national strategic focus on family and parenting matters, to disseminate research and policy knowledge and information, and to bring together organisations working in the field of family support. It had just completed a mapping and strategic analysis of family support services across England and Wales.
3.33 The provision of appropriate and effective information is a substantial task and one requiring continuous evaluation and review. There will be value in the provision of such information being supported by clear leadership either from the Lord Chancellor’s department or from a body such as the NFPI. Testing its effectiveness will require the participation of all involved in the family justice system, and this suggests a role for any future inter-agency body that will replace the Children Act Sub-Committee.

QUESTION 3.3

Do you think more should be done to help all separated parents to understand the potential benefits to their children of contact with the non-resident parent, and to facilitate the maintenance of a continuing relationship with that parent? If so, what would be the single most helpful action that could be taken?

3.34 Of the 160 respondents who answered this question, 153 said “yes” and 7 said “no”. Those who said “no” mostly did so for the reason we have already identified namely (as argued in the NSPCC answer) that “it was not always helpful or safe for children to inform all parents of the potential benefits of contact when figures and research demonstrate the danger to children of contact in cases of domestic violence”. As we have already explained, this response demonstrates, we think, a misapprehension of the thinking behind the question. We therefore proceed on the basis that there was effective unanimity on this question also.

3.35 A variety of single most helpful actions were proposed. Many followed the ideas for information and access to services already discussed. Dr. Sturge, in her response to the consultation paper proposed a well-publicised national freephone number for parents to telephone for information. Judge Mark Hedley said the most helpful action would be the recognition that this is everyone’s problem and not just those caught up in separation: it should be dealt with as a public information issue like road safety or smoking, and full use should be made of the media to alert everybody to the issues involved and the consequences that it may have for the next generation. This approach was echoed by Dr. Trinder and Professor Walker (a public education / information campaign) and several
other respondents who said the most important issue was to raise the profile of the subject.

3.36 The Oxfordshire CAFCASS team proposed a leaflet to be given or sent to both parents at registration following the birth of their child detailing the implications of parental responsibility. Dr. Judith Trowell on behalf of the Tavistock and Portman NHS Trust also took up the theme of early information: she suggested discussion of parental responsibility at ante-natal classes and information to be included in primary and secondary school education.

3.37 The Justices Clerks’ Society’s choice was for a local co-ordinator to draw together facilities, information and services to provide a “one stop shop” family centre, which could be used for referrals to other services and would be a specialist centre, publicly funded.

3.38 In this context the President of the Family Division raised the question of the section 41 Certificate required as part of the divorce process. The section requires the court to consider whether it should exercise any of its powers under the Children Act 1989 in relation to any children of the family in the light of the arrangements which have been made for them or which are proposed to be made. The court under the section has the power to postpone making the decree nisi absolute in defined circumstances.

3.39 Section 41 has been criticised as lacking “teeth” and has recently been the subject of a report by a working group under HH Judge Allweis, the Designated Family Judge for Greater Manchester, which is being considered by the Lord Chancellor. An amended section 41 procedure could certainly enable additional information to be made available to divorcing couples, although section 41 is, of course, part of the divorce process, and therefore kicks in at quite a late stage. In his response to the Consultation, Judge Allweis stated that in his view the single most helpful action which could be taken was to involve a CAFCASS Officer on a revised section 41 procedure and at first directions hearings for applications for contact made under section 8 of the Children Act.
3.40 Finally on this point, Philip Hoddell, Head of the Family Department at Birkett Long, solicitors, suggested that the single most helpful action would be to replace the “Certificate of Reconciliation” (which a solicitor is required to file when divorce proceeding are commenced and which states that the question has been discussed with the client) by a tighter, more comprehensive certificate which would require (inter alia) certification that relevant information had been given to the client.

3.41 Mr. Stan Hayward proposed as the single most helpful action the automatic grant of shared custody to parents on separation. This is a substantial issue, which we have addressed in Appendix 3

Recommendations

3.42 Our recommendations in relation to questions 3.1 and 3.2 are that the Lord Chancellor’s Department enters into immediate discussions with NFPI and other interested parties in a co-ordinated approach aimed at providing comprehensive information of the kind identified by this consultation on a national basis. That information should be available at the widest possible number of outlets possible, including on video and the internet. It also seems to us that the Pilots being undertaken by the Legal Services Commission for the FAINS project (see Appendix 2) provide an excellent opportunity for the usefulness and effectiveness of the information of the type we have been discussing to be tested. We therefore hope that all the information and service providers who have responded to our consultation will contribute to and, where possible, participate in the Legal Service Commission Pilots.

3.43 As to question 3.3, we urge the Lord Chancellor’s Department to examine the ideas put forward in the Consultation, with particular reference to tightening the procedure under section 41 of the Matrimonial Causes Act and requiring information to be made available to divorcing couples with children.
CHAPTER 4: THE PROVISION OF INFORMATION FOR CHILDREN

THE QUESTIONS WE ASKED:

4.1 Do you agree that children should have access to age-appropriate information? Should they also be given advice about their rights and about how they can make their voices heard in any dispute between their parents?

4.2 If you answered “yes” to either of the questions in 4.1;

   (1) What mechanisms would you propose to make such information readily available?
   (2) What information would you like to see made available?

RESPONSES

4.3 Of the 168 respondents who replied to this question, 161 answered “yes” and 7 answered “no”, although the Law Reform Committee of the General Council of the Bar qualified its negative response by referring to the balance to be struck between children becoming too involved in the separation / court process on the one hand and enabling them, on the other, to be sufficiently informed and to have a voice where appropriate so that their views could be heard.

4.4 A firm of solicitors, Young & Co., whilst agreeing in principle that children should have access to age appropriate information, stated that the information would have to be very carefully scrutinised, as it would be a grave disservice to children if information was given to them with a view to passing on to them adult responsibilities. Whilst we see the force of this point, it was patently clear from the overwhelming majority of the replies that one of the clear messages to be given to children through information was that the separation of their parents is not their responsibility. We will return to this point when we come to consider the question of children participating in proceedings (Chapter 12).
4.5 Professor Walker summed up the majority response well when she wrote in answer to the two parts of the question: -

1. There needs to be a variety of mechanisms: information in libraries, schools, on the Internet, visual, verbal, etc.

2. All the information given for children in the pilots in the revised leaflets. Additionally, children themselves need to know that contact arrangements can be difficult for parents and for children, and they should be encouraged to talk to parents about their own perspectives on contact. Children need telephone numbers and web site addresses of help and information lines.

4.6 We feel there is little we can add to this answer except to suggest that one obvious provider of information to children is CAFCASS, which could provide such information on its website, and which could also offer a telephone help line as well as seeing children who were or who were likely to become the subject of proceedings.

Recommendations

4.7 The Lord Chancellor’s Department should conduct a survey of the information and advice currently available to children whose parents are having relationship difficulties or who have separated in order to ascertain its scope and quality.

4.8 As with our recommendations under questions 3.1 and 3.2, and subject to the nature and quality of the information currently available, the Department should enter into immediate discussions with the National Family and Parenting Institute and other interested parties in a co-ordinated approach aimed at providing age-appropriate information for children on the effects of parental separation and on contact.

4.9 The Department should take specific steps to ensure that access to all age appropriate information is available to children through CAFCASS.
CHAPTER 5: THE NATIONAL FAMILY AND PARENTING INSTITUTE

THE QUESTIONS WE ASKED

5.1 Do you think that the NFPI has a role to play in:

(1) the provision of information relating to separation and contact;
(2) the facilitation of contact arrangements through the provision of information and advice?

5.2 If your answer to either part of question 7 is “yes” what do you think that role should be?

5.3 It was unfortunate, we think, that many of the respondents to the Consultation paper had either not heard of the NFPI or had only a vague idea of its remit. Thus of the 150 respondents who answered the question, 42 fell into that category. However, there were only 4 respondents answering the question who did not think the NFPI had a role.

5.4 Those who responded positively to this question were in no doubt that the NFPI had a role in the provision of information. The Children’s Society thought the NFPI has a “key role” to play in ensuring that the information provided is accurate, of good quality, accessible and widely disseminated. This could, they thought, be linked with their web-site. Dr. Trinder thought it should be the lead organisation. Coram Family saw the NFPI role as “consulting (across governmental departments and professional/agency groups) co-ordinating (across departments/agencies) and then organising and monitoring the rolling-out of agreed “information” strategies and parenting programmes”. The Family Welfare Association thought the NFPI had a number of roles, and concluded:

The best use of the NFPI would be its ability to speak on the need for thought in divorce and separation by means of mass produced booklets widely distributed and for influencing the PCHE curriculum in school. NFPI could then ensure that children were given opportunities to access school resources whilst going through the divorcing process of their parents.
5.5 In its detailed response to the consultation, the NFPI itself stated its concern to see in place services which ensure the safety of parents and children from family violence, support family relationships and reduce family conflict. It gave as its overriding interest ensuring that children and young people take part in the decision making process. It identified areas of information and what it called “Gateways to information and support”.

Conclusion

5.6 As we make clear in the recommendation contained in paragraph 3.42, we have no doubt that the NFPI has a significant role to play in the facilitation of contact arrangements through the provision of information, and that its resources and expertise should be harnessed by Government.
CHAPTER 6:

THE CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE (CAFCASS)

THE QUESTIONS WE ASKED

6.1 What role, if any, do you think CAFCASS should play in the provision of the information to be made available relating to contact?

6.2 What facilities do you think CAFCASS should provide to facilitate contact arrangements between separated parents and their children?

RESPONSES

6.3 Before specifically addressing the responses to question 6.1, we need to place our assessment of them in context. In the Annual Report for the Advisory Board on Family Law for 2000/2001, CASC referred back to the aspirations it held for CAFCASS and which it had expressed in the Annual Report for 1999/20. We referred to the need for a clear vision for the future service; that it needed to be more than an administrative “tidying-up” of existing services; that its objective must be to improve the services to families and children involved in relationship breakdown and family proceedings; that it offered the opportunity, for the first time, to create a coherent and integrated service for such families and children. We went on:

We see CAFCASS … as the opportunity to provide children and their parents with a service offering information and advice; as facilitating access to a range of other relevant services, including Contact Centres, mediation, programmes for victims and perpetrators of domestic violence and abuse, as well as other child and family based services available locally;

6.4 It has been a feature of all our reports and comments on CAFCASS that it is essential for CAFCASS to be properly funded, and we note that the same theme emerged very clearly from the consultation, not least from CAFCASS itself. The majority of our respondents saw CAFCASS as having a “pivotal” role in the facilitation of contact (a phrase which occurred more than once). The need for CAFCASS to be provided with sufficient resources was a recurrent theme, and one which we, of course, endorse.
6.5 We have throughout been kept informed of the difficulties encountered by CAFCASS both in the period leading up to 1 April 2001 and thereafter. We were critical of the wholly inadequate time scale allowed by the Government for CAFCASS to be up and running. Since 1 April 2001 the guardians' successful application for judicial review of the decision not to offer them self-employed contracts is only one problem amongst others which have beset CAFCASS, taking up much time, effort and money, and inevitably distracting minds from the provision of services.

6.6 We strongly support the ideas behind CAFCASS and we have no wish to be negative in this report. To the contrary, we continue to wish CAFCASS well. We address the matter in this way, however, because this is the last opportunity CASC will have to discuss the role of CAFCASS. We wish to re-iterate, fortified as we now are by the responses to this consultation, that as it works through its initial difficulties, CAFCASS must maintain its aspirations, and in due course become a fully coherent and integrated service for families and children in the context of relationship breakdown.

6.7 For this to happen, however, the Government must provide proper funding and support. The amalgamation of the Court Welfare Service, the Guardian panels and the Children Act role of the Official Solicitor into one body, is only one part of CAFCASS’ role. Its advisory and support services are equally important. We see the participation of CAFCASS in the initiatives we are recommending in this report as crucial to their success. This role is an expanding one, but it cannot succeed if CAFCASS is not properly funded. We cannot state this conclusion too often or too strongly.

6.8 We were pleased to see in the response from CAFCASS (that response being itself a result of widespread consultation within CAFCASS) that the thrust of the Consultation Paper was welcomed. We were also pleased to see the clear statement in answer to questions 6.1 and 6.2 that:
The formation of CAFCASS provides the opportunity for a wider range of resources and innovative practice to promote a more proactive role in relation to contact generally. Whilst the Service will remain in the position of reporting where disputes have not previously been resolved, its role from the provision of information right through to the Court process will ensure a consistent message and the greater possibility of affecting some change.

Whilst we do not believe it is vital that CAFCASS should provide the full range of services themselves, they need to have an overview and a co-ordinating role in ensuring the full range of services, be they information giving, be they support or indeed the promotion of Contact Centres or supervised contact

6.9 It is, accordingly, very helpful to see that CAFCASS sees itself as having a role in the provision of information. The Solicitors Family Law Association envisaged children making direct approaches to CAFCASS for advice and information about suitable services. Appropriate advice could also be on the CAFCASS web-site. CAFCASS should be a source of documents, leaflets and other material providing information. This appeared very much to be the general view, and it is one with which we strongly agree. Professor Walker summed it up aptly when she wrote:

CAFCASS officials will inevitably be working with families experiencing contact difficulties and need to have a raft of information at their disposal. Given the rationale for the new CAFCASS, advice and support are key elements in the work. Information provision should be a crucial role.

RESPONSES TO QUESTION 6.2

What facilities do you think CAFCASS should provide to facilitate contact arrangements between separated parents and their children?

6.10 Apart from their traditional roles as in-court conciliators; as investigators, court reporters and guardians (which we will discuss later in the context of the court process) the facilities which respondents thought officers of CAFCASS should provide included supervised contact facilities, parent education, family group conferences and general advice and assistance. Judge Peter de Mille was among many who thought that CAFCASS should be the primary funder and provider of Contact Centres. This is an
issue to which we will return in Chapter 8. Others saw CAFCASS taking over the implementation of a reformed Family Assistance Order (an issue we will discuss in Chapter 11). A suggestion made by Professor Smart and others from the University of Leeds was that the CAFCASS officer advising in a particular case might remain in contact with the particular child over a much longer period of time, rather than simply report to the court once and move on.

6.11 We are attracted by the concept of CAFCASS officers spending more time with the children who are the subject of their reports to the court, and of that involvement continuing in appropriate cases beyond the one court report and appearance. In our view, however, there would in each case need to be careful consideration of the circumstances in which longer-term involvement is appropriate, and an awareness of the risk that some children would find longer-term involvement with the CAFCASS officer oppressive. For these reasons we would want to see the work of the CAFCASS officer being focused on the particular needs of the individual child and carried out under the direction of the court within a specified time-scale.

Recommendations

6.12 The Government should recognise the importance of CAFCASS and the expanding role which it has to play in the Family Justice System. It should ensure that CAFCASS is properly funded to undertake both the role of reporting to the court in children’s cases and the important functions it has to perform in its advisory and support service. These include the provision of information to parents and children involved in relationship breakdown.
CHAPTER 7: MEDIATION

THE QUESTIONS WE ASKED

7.1 Should mediation be considered as the primary mechanism for the resolution of contact disputes in all cases apart from those where domestic violence is an issue?

7.2 (1) What steps should be taken to make mediation processes more widely known to separating couples with children?

(2) What steps should be taken to encourage separating couples to use mediation?

(3) How can legal and mediation services be best made to work together to facilitate successful contact arrangements?

7.3 Should the courts be given a broader power to refer parties to mediation? For example, should the court be given a power to compel the parties to attend a meeting with a mediator similar to that contained in section 13 of the Family Law Act 1996?

7.4. Do you favour the involvement of children in the mediation process? If so, how should they be involved?

THE RESPONSES TO THE QUESTIONS

QUESTION 7.1

Should mediation be considered as the primary mechanism for the resolution of contact disputes in all cases apart from those where domestic violence is an issue?

7.5 Opinion was divided on this question. Of the 156 respondents who answered the question 96 said “yes” and 60 said “no”, although mediation was used by a number of those who answered “yes” in a very broad sense as meaning agreement/negotiation/conciliation as opposed to litigation. Equally, however, most of the minority were in favour of mediation, in its strict sense, being one of the available mechanisms, albeit not the primary.
7.6 In coming to our conclusion on this issue, we are influenced by a number of factors. The first is the research into mediation carried out by Professor Gwynn Davis; the second is the results of the Information Meetings research carried out by Professor Walker, and the third is the response to the consultation put in by the Legal Services Commission. The research demonstrated that mediation was not likely to be the primary mechanism for resolving contact disputes in all cases, although it needed to be seen as one of the options available. The Legal Services Commission believes that it is unrealistic to expect mediation to become the primary mechanism for the resolution of contact disputes – at least for the foreseeable future. The Commission accepts that mediation may be the right route for some people at an appropriate time, but a major difficulty is that the voluntary engagement of both parties in the process is fundamental to the principles of family mediation. Mediation simply cannot occur if only one party is willing to mediate.

7.7 In his response, Judge Richard Jenkins, the designated family judge at Lincoln, and chair of his local family mediation service, pointed out that referrals continued at a low level. In his experience, a broad approach to mediation including work by skilled and compassionate welfare officers had been more frequently successful than the efforts of the mediation service.

7.8 We accept the position stated by the Legal Services Commission and demonstrated by the research by Professors Walker and Davis. This is not to dismiss mediation as a means of resolving contact disputes: it is simply to see it as one of the mechanisms for doing so.
QUESTION 7.2

(1) What steps should be taken to make mediation processes more widely known to separating couples with children?

(2) What steps should be taken to encourage separating couples to make use of mediation?

(3) How can legal and mediation services be best made to work together to facilitate successful contact arrangements?

7.9 The general answer to the first of these questions was that couples should be given information about mediation, and that there should be widespread distribution of information about the agencies which are available to assist, both on a local and a national level. The places where the information should be available were similar to those given in the answers in Chapter 3. There was some support for making mediation compulsory for couples engaged in contact disputes and clear support for widespread efforts to publicise the potential benefits of mediation.

7.10 A number of respondents considered that the NFPI should be involved with the development of information material and in the support of existing agencies. It also seems to us that these questions can be addressed in the FAINS project to be put in place by the Legal Services Commission (see Appendix 2).

7.11 As to the third part of the question, there was a general recognition that an increasing number of solicitors were advising their clients about the value of mediation, and we noted that in section 3 of the Law Society’s Family Law Protocol, which deals with private law applications relating to children, the issue of mediation is dealt with in the following way: -

Solicitors should recognise that alternative methods of dispute resolution such as mediation can be particularly helpful in dealing with disputes over contact and residence, especially where there are no welfare issues and the matter in dispute is the length of contact.
It is recognised that the availability of mediation and alternative dispute resolution varies significantly over the country. Where out of court mediation is readily available solicitors should give consideration to referring clients to such mediation before commencing the issue of an application to the court. It is recognised that in other areas of the country, mediation is only available once proceedings are issued, and that in those circumstances, it may be necessary to issue proceedings early on.

7.12 As solicitors are the first port of call for the majority of separating parents, they have an important role in the provision of information about mediation and in directing clients towards it. We welcome the terms of the Protocol and as many respondents suggested, information about mediation should be available in solicitors’ offices.

**QUESTION 7.3**

Should the courts be given a broader power to refer parties to mediation? For example, should the court be given a power to compel the parties to attend a meeting with a mediator similar to that contained in section 13 of the Family Law Act 1996?

7.13 The responses to these two questions were more evenly divided, perhaps illustrating their difficulty. Of the 141 who responded, 76 answered “yes” and 65 answered “no”. Those who answered “no” pointed to the fact that compulsory mediation was a contradiction in terms, and would also result in delay, already a matter of substantial complaint in family proceedings. Those who answered “yes” saw it as a further opportunity to resolve disputes by agreement rather than through litigation.

7.14 We find the arguments on this point finely balanced. However, our view is that the courts should have the power to refer parties to mediation, and that its use and effect should be carefully monitored. As the President of the Family Division pointed out in her response, to refer is not to compel, and it is to be hoped that judges referring individual cases will be sensitive to the range of options available for resolving the dispute (including, of course going on with the litigation) and will only refer cases which are suitable and where mediation stands some prospect of success.
QUESTION 7.4

Do you favour the involvement of children in the mediation process? If so, how should they be involved?

7.15 This was another question on which opinions were divided. Of the 129 who responded, however, 89 answered “yes” and 40 answered “no”.

7.16 Dr. Sturge, in her response, was cautious. She said that if there were more inter-agency collaboration in mediation work, she would like to see more involvement of children. Professor Walker said there was very little evidence that children were involved in mediation, and that it may be highly appropriate in certain circumstances as a therapeutic and effective intervention. The President of the Family Division also favoured involvement in suitable cases, for example with older children. The Children’s Society pointed to the great skills required to work with children in this context, and the Legal Services Commission said it had worked extensively with the UK College of Family Mediators in regard to the involvement of children and young people in the mediation process and has funded a project to create national policy guidelines on such involvement which has now been published by the College.

7.17 We are of the opinion that the involvement of children in the mediation process needs further careful research and review, and we are therefore re-assured by the existence of the guidelines referred to in the previous paragraphs.
CHAPTER 8: CONTACT CENTRES

THE QUESTIONS WE ASKED

8.1 How do you see the future role of Contact Centres in facilitating contact?

8.2 How do you see the relationship between CAFCASS and local Contact Centres developing?

8.3 What are your views on the funding and management of Contact Centres?

8.4 What additional facilities would you like Contact Centres to provide?

THE RESPONSES

8.1 How do you see the future role of Contact Centres in facilitating contact?

8.5 The role of Contact Centres in the Family Justice System is one of the most important developments of the last ten years, and with the coming into being of CAFCASS, the debate about the purpose and funding of Contact Centres takes on a new dimension.

8.6 It is, we think, important to remember both what Contact Centres are, and what they are not. They are intended, as their primary function, to provide a temporary venue for supported contact in cases where the child’s parents are unable to provide an alternative. They are not intended as places where contact will take place over lengthy periods of time. The object is that the family will move on and make other, more natural arrangements.

8.7 Such a useful facility has, however, been seized upon by courts, lawyers and some family court welfare services to accommodate their difficult contact cases. In addition, the obvious value of the service has led to the suggestion that some premises could be used for professionally supervised contact.
8.8 Funding has always been an issue. The original centres were voluntary and funded by the owners of the premises used (often a church) and money raised locally. Some still function in this way. It is, however, clear that with the growth of Contact Centres and the diverse uses to which it is intended some of them will be put, the question of funding by the State of this very valuable resource needs to be addressed.

8.9 We were extremely fortunate to have a full response to the Consultation Paper from Eunice Halliday, the Chief Executive of the National Association of Child Contact Centres (NACCC). We also had valuable responses from the Coram Family and the Accord Centre, both of which provide specialist facilities to which we will refer later.

8.10 Eunice Halliday answered question 8.1 in this way:

It is the current and future role of Child Contact Centres to put children first in contact disputes by catering for their need to have friction-free quality time with both parents following parental separation. They provide an option for the Court in determining contact applications. There should be a continuum of contact services provided by statutory and non-statutory bodies. Supported Child Contact Centres are a significant part of those services and will continue to be predominantly resourced by trained volunteers in a relaxed child-friendly environment.

Child Contact Centres potentially have a role in indirect contact, assessment of contact, accompanying parents on outside contact, providing or referring parents to related services such as mediation, parenting skills sessions and behaviour management courses. However every development by Child Contact Centres has to be consistent with the centres’ primary role of providing an impartial “space” for children to play with a parent with whom they do not live and many centres will therefore be restricted in the developments they have the capacity to undertake.

8.11 There is no doubt of the considerable pressure to expand the uses to which contact centres are put. The Family Welfare Association, for example, answered this question by stating: -

The role of Contact Centres could be expanded to take in the information-giving role that parents need and to offer familiarisation before contact begins. FWA would like to undertake more therapeutic contact work. By employing a therapist able to work with couples and families we would like to offer a post-order contact service that seeks to improve the parental relationship to a point where, at worst,
some limited co-parenting takes places and, at best, supervised contact is no longer required. We have a huge number of families who, with some additional input, could perhaps be moved on from supervised to supportive contact and some from supported contact to unregulated contact with the option of a quarterly review.

The demand for supervised contact is huge, last week alone 25 new referrals were made to our Peterborough Centre. Some families coming from South Yorkshire, one from Devon and several from Lincolnshire. FWA believes that more Contact Centres are needed and the **CAFCA**SS has a vital role in developing (them).

8.12 At the other end of the spectrum, and currently a very rare resource, are the specialist centres such as **Coram Family** and the **Accord Centre**. Both responded to the Consultation. **Coram Centre** saw the future role of Contact Centres and contact services as pivotal to the facilitation of contact in disputed cases. The courts needed to have access to cost effective “therapeutic” services in the broadest sense of the word in order to move disputes from court based conflicts to child-focused contact. Three developments were necessary: -

(Primary) Developing consistent and coherent **NACCC** Quality Assurance standards that, amongst other things, clearly define benchmarks for best practice, information on what particular centres/services are able to provide and the wide dissemination of information about local resources to courts, solicitors, family mediators, domestic violence projects, etc.

(Secondary) Localised provision of a **NACCC** regulated network of quality assured supported Contact Centres accredited by **NACCC** as “quality assured” and, in particular, local Contact Centres to have close working links with local family mediation services so that access to mediation and a mediatory approach to contact work in such centres is available to families and volunteers. A thrust towards multi-disciplinary work in supported Contact Centres is, we feel, essential…

(Tertiary) The development of a regional network of professionally staffed supervised contact services in all Family Proceedings Care Centres working to establish best practice and quality assurance standards and able to provide first, child protection and second the sort of “therapeutic” intervention referred to by the Court of Appeal in **Re L, V, M and H (Contact: domestic violence)**…
8.13 Attached to the response from the Accord Centre was a letter from a local firm of solicitors praising the work of the centre, and in particular its assessment and supervised contact services. They comment how even parents entrenched in longstanding and vicious court contact disputes have been enabled to move on by being referred to the Centre. They end with this plea: -

This is a vital area of work, and if the Government is serious about its commitment to children and the family, it must underwrite a centre like the Accord, to ensure that it survives to provide its important service.

8.14 The answer given by CAFCASS to this question was that it saw Contact Centres having a limited role in private law cases. They were not a panacea. CAFCASS added: “Perhaps specialist supervised Contact Centres could, if developed nationally, offer more contact opportunities within high risk public law cases”.

8.15 We accept the tri-partite analysis of Contact Centres offered by Coram Family. There is plainly a need for the “supported” Centre, and no doubt many of these will continue to be run by volunteers. We see an increasing need, however, for specialist facilities designed both to provide the facility for supervised contact and also to provide a service to the courts to remove difficult cases from the court arena, so that they can be dealt with “therapeutically”. We are in no doubt that we need more specialist centres like Coram Family and the Accord, and we find the response by CAFCASS to this part of the consultation disappointing. We will look at how such specialist centres are to be funded under question 8.3.

8.16 Before leaving this question we should record that a number of responses from individual men and men’s groups were critical of Contact Centres and doubted their value. Families Need Fathers, whose response to the consultation overall was detailed, clear and for the most part extremely helpful, acknowledged that the idea behind supported Contact Centres was well-intentioned and that many of the volunteers were largely supportive of fathers. However, they expressed the view that a more affirmative approach to the facilitation of children’s relationships with their wider family would to a large degree negate the need for such an artificial compromise. It would be far better to prevent the gap from developing in the first instance. They added:
There is a widespread feeling, including amongst those who work in Contact Centres, that they are a “cop-out” order, designed to appease a recalcitrant mother.

Until the need to protect children’s relationships, rather than focus on one parent’s objections, becomes policy, it seems likely (especially given major extra funding received) that these centres will continue to be a fact of post family breakdown life for the foreseeable future.

8.17 Whilst we acknowledge that contact in a contact centre is, inevitably, artificial, we have to record our disagreement with Families Need Fathers on the usefulness of such centres. The policy both of the courts and of Contact Centres is to try to protect and enhance the relationships which children have with both their parents: the debate is how successfully to implement that policy. Contact in a contact centre, where there is no viable alternative, is a small but valuable step in putting the policy into effect.

**QUESTION 8.2**

**How do you see the relationship between CAFCASS and local Contact Centres developing?**

8.18 We think it important that we should set out the responses from both the NACCC and CAFCASS in full. NACCC’s response was in the following terms: -

- All Contact Centres should have a designated liaison officer who will develop a more proactive role in risk assessment by (1) ensuring that the centre is able to cope with and meet the needs of families being referred to it; and (2) assisting the centre to operate within NACCC’s National Standards regarding the organisation, management and running of Child Contact Centres.

- NACCC is developing a system of clustering centres to maximise efficiency and quality and as part of this process partnerships are being developed with other agencies in these areas and CAFCASS are / will be an important part of these partnerships

- CAFCASS should assist centres to ensure they receive appropriate referrals. Ideally all self-referrals in future should have some contact with a CAFCASS officer before using a centre. It is felt that CAFCASS should have some responsibility for assisting those people who have not commenced proceedings
• Funding which had commenced under the partnership arrangements with the Probation Service should be increased geographically and in amount, take into account the financial needs of the individual centres, be paid in advance i.e. in April each year and be unrestricted. Funding should not restrict a centre so that it can only help families referred by CAFCASS.

• CAFCASS should continue to offer police checking of contact centre workers and fund interpreters’ costs where necessary.

• CAFCASS officers should provide supervised contact before referring a family to a supported Child contact Centre where there is a significant degree of parental conflict or a child or one of the children is resisting contact.

• Project managers/co-ordinators should be able to refer a family to a CAFCASS officer for assistance where contact has broken down irrespective of the source of referral and may also refer children.

• All CAFCASS officers should receive training about Child Contact Centres from NACCC.

8.19 The response added that although it is not appropriate at present for all referrals to come through CAFCASS, it is the most appropriate gatekeeper as CAFCASS officers are usually in a better position to assess risk than solicitors, doctors or other referrers. NACCC added that it is working with the Law Society and the Solicitors Family Law Association to address these problems but acknowledged that some centres would prefer all referrals to come from CAFCASS. There had been a steady decrease in the proportion of referrals coming from the Family Court Welfare Service over the last few years and this should be addressed. CAFCASS should continue to offer Contact Centres the services it does now, including, as set out above, the provision of supervised contact before referring the family to a supported contact centre.

8.20 CAFCASS saw its relationship with Contact Centres developing in terms of “liaison on behalf of the court”; support given to centre staff; the provision of training and evaluation of competence and safety issues (for example, within partnership arrangements).
8.21 There was general agreement amongst Respondents that the work of CAFCASS and Contact Centres should be integrated as part of a comprehensive court service rather than representing a disparate approach to contact problems. However, Contact Centres needed to remain autonomous to protect their independence and their unique position in facilitating contact. Mr. Justice Bodey said that CAFCASS should make it its business to ensure that there are sufficient Contact Centres nation-wide to meet likely demand. Where there were gaps it should agitate for resources, otherwise it was hardly a support service. Judge Richard Jenkins echoed the same theme: he said we needed a situation in which a contact centre becomes regarded as an essential community resource. Only then, he said, could they develop into a “one stop shop for children”.

Question 8.3

What are your views on the funding and management of Contact Centres?

8.22 This, of course, is the critical issue. NACCC addressed the funding issue by saying that Child Contact Centres have developed in ways appropriate to the communities they serve and should be free to reflect some differences in their funding and management structure. However, NACCC is frequently told by its member centres that families seem to be more “difficult” and seem to present with more complex problems. This, combined with an increase in numbers and paperwork has led to more centres paying at least one member of staff and therefore increasing the cost of the service, although it is still one of the most cost effective services and in many towns and cities uses the highest number of volunteers per organisation in hands on work.

8.23 NACCC emphasised that funding is a major issue. Its view was that the core costs of salaries, management and supervision, rents, telephone bills, insurance, postage and stationary should be funded by the statutory services – predominantly CAFCASS, where the centre so desires, leaving the centre to raise money for toys and equipment. It added that the NACCC national standards for its member centres will have the effect of increasing management input into the running of Child Contact Centres.
8.24 The **CAFCA**\$ response to this question was to point out that Contact Centres currently attract funds from a variety of sources, both statutory and voluntary. **CAFCA** had inherited funding arrangements from the Probation Service. The current funding arrangements were both unsatisfactory and piecemeal. If the government is serious about developing a range of Contact Centres as an integral part of their strategy, then specific ongoing revenue funding is necessary. If these funds were not to be diverted to other areas of service by the recipient statutory authority then the funds would have to be hypothecated. Alternatively, as experience suggests these services are better provided by the voluntary sector, specific grants could be provided on an ongoing basis against bids to provide these services. **CAFCA** did not consider it appropriate for it to run contact services as a core function, nor was it funded to provide this service.

8.25 **Coram Family**’s view was that the funding of child contact, whether what it described as “supported Centre contact or supervised Service contact” should be a statutory responsibility of “joined-up” government departments – the Lord Chancellor’s Department, the Department of Health and the Children and Young Persons Unit principally.

8.26 The **Accord Centre** also perceived the funding of Contact Centres as a function of government. It pointed out that other in countries, like Australia, governments fund Contact Centres. It acknowledged, however, that this would require a national strategy for different types of centres across England; clear unambiguous standards to be applied to each centre; clear and unambiguous literature about the services on offer; flexibility on the part of the Centres to meet the changing needs of the family and a proper networking in regions / areas to co-ordinate co-working and ease of referral.

8.27 The overwhelming response to the consultation demonstrated that the volunteer, impartial, absence of officialdom atmosphere of the service provided by many supported Contact Centres was greatly valued. At the same time, it was also generally felt that Contact Centres needed to be more than voluntary agencies with little co-ordination, particularly if a wider range of services was to be offered. In this context greater
professionalism was required, and with it, adequate funding. If, for example, Contact Centres are to provide professional staffed facilities that can provide supervised contact and other services such as family conferencing, education and information facilities, then, plainly, the necessary funding will have to be provided by Government.

8.28 We understand CAFCASS’ view that it does not want to run Contact Centres. We are equally clearly of the view, however, that it should fund them where necessary, and be given the resources by government to do so. The nature and level of the funding would plainly have to vary from area to area and in relation to the facilities provided in each area. If, for example, a contact centre provides a facility for supervised contact and if that facility is required on behalf of a child who is the subject of private law proceedings, it seems to us that CAFCASS should be able to purchase that facility on behalf of the child in order to give effect to an order of the court. Equally, if a centre, like Coram Family offers a therapeutic package for a family which is the subject of private law proceedings, any court referral should be funded by CAFCASS.

QUESTION 8.4

What additional facilities would you like Contact Centres to provide?

8.29 As the answers to the previous questions have illustrated, respondents saw the development of Contact Centres as providing the opportunity to create a range of services, whilst recognizing that these largely required professional input. It was generally agreed that more Contact Centres were required; that they should be open for more days and longer periods, and should be able to offer a range of services to deal with the wide variety of problem families. Specific suggestions were:

- to accompany children and parents on contact outside the centre;
- facilitating indirect contact
- providing supervision of contact where proper assessments had been made;
- providing an information service to parents.

It was also felt that it would be preferable for Contact Centres to be more culturally neutral and not centred so often on church premises.
8.30 Judge Peter de Mille provided a range of facilities he wanted to see. They included the availability of information within the reception area of each centre including books and stories which could be lent; regular contact surgeries taken by a CAFCASS officer and / or a mediator; a telephone “help-line” manned at set hours; proper facilities for supervised contact including video facilities and / or a two way mirror.

8.31 The need for centres which could provide professionally supervised contact was frequently raised. The need for this facility arises usually in two contexts: the first is as part of the court’s investigation and assessment process. Contact is supervised for the purposes of a report to the court on the relationship between the parent and the child. This creates no jurisdictional problem, as the court directs supervised contact by CAFCASS officers as part of their investigations and the preparation of their report. Secondly, however, it arises where, at the conclusion of the hearing, the court takes the view, for whatever reason (for example a perceived risk to the child that the parent exercising contact will do or say something harmful to the child) that contact needs for the time being to be supervised. This is a very difficult issue, and currently the only real vehicle for such orders is a Family Assistance Order under section 16 of the Children Act 1989, the difficulties of which we discuss in Chapter 11. In practice Family Assistance Orders are rarely used, and orders for supervised contact are often made as part of what is described as ongoing contact with built in reviews. This is not, however satisfactory, and the problem would be best resolved, as we make clear in Chapter 11, by reform of the Family Assistance Order.

8.32 A range of other functions was proposed, including opportunities for family group work and therapeutic counselling for parents and children. There was, however, general agreement that supervised centre staff (except where professionally engaged either on a court ordered assessment or supervising contact pursuant to a court order) should not become involved in court proceedings or be required to give evidence, since to do so compromised their neutrality and independence.
8.33 The development of a child-friendly facility in which contact can be supervised by the CAFCASS reporting officer is, in our view, important, and we strongly support the development of such facilities. We anticipate that a centre which has the facilities for supervised contact will also have the facilities for other therapeutic work, which CAFCASS may well wish to access.

8.34 Accordingly, whilst we acknowledge that different Contact Centres will have different facilities, we welcome the advent of centres which are able to afford wider facilities than those associated with the Supported Centre. In our view that they should be used by CAFCASS, and where necessary funded by the Government.

Recommendations

8.35 As we have said before, Contact Centres are a valuable resource, and must be cherished. If and in so far as Contact Centres supplying “supported” contact need or seek outside funding, it should be made available through CAFCASS on a regional basis or by means of an annual grant to NACCC which would then distribute the money according to need. In so far as Contact Centres provide specialist facilities, such as supervised contact,! core funding should be provided by Government, with CAFCASS and others purchasing the use of these facilities as necessary. Apart from supervision of contact, the Department and CAFCASS should encourage Contact Centres to develop additional facilities such as accompanying children and parents on contact outside the centre, facilitating indirect contact and providing an information service to parents. More specialist Contact Centres like Coram Family and the Accord Centre are also very valuable facilities, and should be funded by Government.
CHAPTER 9: LAWYER NEGOTIATED CONTACT

THE QUESTIONS WE ASKED

9.1 Do you agree that all lawyers holding themselves out as competent to advise and act in contact disputes should be accredited as competent by their relevant professional body?

9.2 If the answer to question 18 is “no”, please give your reasons for disagreeing.

9.3 Should there be a statutory code of practice for lawyers negotiating or acting in contact disputes?

THE RESPONSES

9.1 Do you agree that all lawyers holding themselves out as competent to advise and act in contact disputes should be accredited as competent by their relevant professional body?

9.4 Of the 138 people who answered this question, 108 said “yes” and 30 said “no”. Amongst those who answered “yes” were the Family Law Bar Association, the Solicitors Family Law Association and the Law Society, although the point was made that private clients have the right to the lawyers of their choice, and it would be a matter of concern if solicitors could not do particular work which the client wished them to undertake. However, the Law Society’s Family Law Protocol (see paragraphs 9.7 and 9.8 below) applied across the board.

QUESTION 9.2

If the answer to question 18 is “no”, please give your reasons for disagreeing.

9.5 Most of those who answered “no” to this question did so not on the basis that accreditation was wrong in principle, but that the standards for accreditation were too low. For example, Women’s Aid argued that only solicitors trained to deal with domestic violence should be accredited to undertake such cases.
9.6 Young & Co., solicitors of Stoke-on-Trent argued that, as a matter of principle, clients were entitled to instruct the solicitor of their choice and that it was wrong for lawyers to set their instructions against a statutory code. Amongst the lawyers, however, they were a lone voice.

**QUESTION 9.3**

Should there be a statutory code of practice for lawyers negotiating or acting in contact disputes?

9.7 Of the 127 respondents who answered this question, 94 said “yes” and 33 said “no”. However, since the Consultation Paper was published, the Law Society has issued its Family Law Protocol. This is a document on which the Advisory Board was consulted last year, and into which we had input, particularly on the question of domestic violence.

9.8 CASC has throughout its short existence regularly repeated its view that accreditation in children’s cases is extremely important, and we are satisfied that a combination of the Law Society’s Family Law Protocol and the Solicitor’s Family Law Association’s Good Practice Guide make it unnecessary for there to be a statutory code of practice for lawyers negotiating or acting in contact disputes. We feel in particular that the Law Society’s protocol addresses issues relating to domestic violence with particular care and in particular detail.

9.9 We also welcome the Family Law Bar Association’s recognition of the need for accreditation, whilst acknowledging the difficulties involved, including the demoralising effect of graduated fees.
CHAPTER 10: THE COURT PROCESS

THE QUESTIONS WE ASKED

10.1 In general terms do you regard the current court procedures for dealing with contact disputes as satisfactory?

10.2 If the answer to question 10.1 is “no”, please identify your areas of dissatisfaction and the improvements you would wish to see.

10.3 Do you agree with the views of Lord Justice Thorpe in Re L, V, M and H about the limitations of the court process set out in paragraph 3.28 to 3.31 of the Consultation paper?

10.4 If the answer to question 10.3 is “yes”, please identify the areas in which you would wish to see resources concentrated.

10.5 Do you think that in-court conciliation by a court welfare officer or officer of CAFCASS is an appropriate mechanism for facilitating contact?

10.6 If your answer to question 10.5 is “yes” should you like to see such a system operated in every level of court?

10.7 If your answer to question 10.6 is “no”, please explain your reasons.

10.8 Can you suggest ways in which extended families can be encouraged to play a more effective role in helping to resolve contact disputes? In particular, do you believe that family group conferences can be a helpful approach in these matters?

10.9 Do you think there are ways in which the courts can develop a more active case management role to use time constructively whilst preventing damaging delay?
THE RESPONSES

QUESTION 10.1

In general terms do you regard the current court procedures for dealing with contact disputes as satisfactory?

10.10 Of the 148 respondents who answered this question, 47 said “yes” and 101 said “no”. It is, we think, noteworthy that dissatisfaction with the system was not limited to disappointed litigants. A number of judges and legal practitioners, psychiatrists and academics were amongst the majority who answered “no” or qualified their answers.

QUESTION 10.2.

If the answer to question 10.1 is “no”, please identify your areas of dissatisfaction and the improvements you would wish to see.

10.11 A number of litigants (largely men) recounted their unhappy personal experiences with the court system, whilst the Women's Federation of England gave examples of cases in which women and children had suffered from the system. We have not reproduced these, but we hope we have included the thrust behind such complaints in the following list, which identifies the main reasons given for finding the current procedures unsatisfactory: -

1. There is an insufficiency of court time and resources; cases take too long to get to court and often have to be rushed when they are in court.

2. There is no judicial continuity. As a consequence cases are delayed and there are too many judicial fingers in any one case. This leads to an inconsistency of approach on the part of the bench. One respondent cited his experience of 10 different judges in one case.

3. Too much pressure is put upon parents (mothers in particular) to agree to contact – sometimes at non-molestation hearings.

4. Overall, litigation is counter-productive and entrenches positions. It puts particular pressure on the divided loyalties of children. The time-scales are wholly inappropriate for children: from their perspective the cumbersome and pressuring court process is disastrous. Their lives are put in limbo and sometimes their whole development put on hold (or regresses).
5. The problems of enforcement.

6. Delay is exacerbated by the length of time it takes to obtain a CAFCASS report (sometimes up to 20 weeks).

7. Proceedings remain adversarial, stressful for the parties and are often protracted; no professional input from CAFCASS is available at interim hearings.

8. The courts are not well placed to meet the on-going and changing needs of children involved in contact disputes, which should be regularly reviewed.

9. There is a concern that our Guidelines on domestic violence in contact cases are being implemented inconsistently.

10. Poor quality of reporting by court welfare officers.

11. The litigation process and the coercive context of the court are not conducive for sorting out private disputes. There is likely to be an increase in conflict and a further deterioration of communication in these circumstances, which can be damaging for future cooperation over children.

12. There is no filter system prior to litigation to enable appropriate cases to be dealt with by mediation or other means, so that the court would only hear the cases where the parties were being intransigent.

13. There is a need to use experts more creatively in a therapeutic rather than an adversarial sense: the court should be a last resort.

14. There is a lack of swift and robust action on the part of the court to protect the child’s relationship with both parents.

15. There is insufficient representation of the children’s interests, which include but go beyond their wishes and feelings.

10.12 Professor James from the University of Bradford gave a helpful response in the qualified “yes” category:

Within the limits of the legal process, current procedures are reasonably satisfactory. It is generally recognised, however, that the law seldom provides comprehensive and lasting solutions to contact disputes, even though it is important both in principle and in practice for parents to have recourse to law if other methods fail. However, were the infrastructure of support services more fully developed, with the emphasis on flexibility of service provision in response to individual needs, it is not unreasonable to believe that use of legal remedies might be kept to a minimum.
10.13 One judicial perspective took the view that

… there must be a better way than endless applications by parents involving time and huge amounts of public money over matters, which often ought not to be the subject of litigation. The egocentricity of the warring parents with narrow vision and an inability to give an inch in the litigation process is profoundly unhelpful for the child at the supposed centre of the dispute. So often, however, the parents cannot properly separate from each other and the child is the excuse for the continuation of the parental dispute.

10.14 Perhaps the two most recurring themes in the responses dealing with complaints about the system were (1) that of delay and the consequential stress engendered by delay on both parents and their children and (2) the general feeling that proceedings remained adversarial, with the needs of the child often being subsidiary to the issues between the parties. The complaints broke down into two components: those which dealt with the suitability of the legal system to deal with issues of contact at all, and those which dealt with the current practice of the court.

OUR ANALYSIS OF THE RESPONSES TO THE SPECIFIC QUESTIONS POSED IN THE CONSULTATION PAPER

QUESTION 10.3

Do you agree with the views of Lord Justice Thorpe in Re L, V, M and H about the limitations of the court process set out in paragraph 3.28 to 3.31 of the Consultation paper?

10.15 Of the 126 respondents who answered this question, 106 said “yes” and 20 said “no”.
QUESTION 10.4

If the answer to question 10.3 is “yes”, please identify the areas in which you would wish to see resources concentrated.

10.16 Professor Walker put this question neatly in context when she responded that court resources needed to be focused on contact disputes which had exhausted all the support and advice options, so that the court is the forum of last resort. Other resources need to be forthcoming, so that advice and support are available before disputes become intractable. In this context CAFCASS must have a major role to play in the provision of court services – and must be resourced to do so.

10.17 The idea that the court should be the last resort was one which found general acceptance amongst those who agreed with the judgment of Thorpe LJ in Re L, V, M and H (Contact: domestic violence). Dr. Trowell, a consultant psychiatrist from the Tavistock Clinic, who found the legal framework unsatisfactory, said that the legal process was not sensitive enough, and did not provide assistance to parents and children to help them through the rage and hate of the divorce to a more rational, thoughtful position. Parents’ groups or individual consultation and counselling and children’s groups, she added, could help move the parties to a position where the needs and best interests of the children were centre stage.

10.18 The Children’s Society argued that family centres, therapeutic and counselling services, family work and family therapy services all needed greater funding and resources. Supportive counselling services and expert help in understanding the issues and options were likely to be the best way forward. The Equal Parenting Council thought that resources should be concentrated on psychological evaluation, family therapy / counselling and education. Families Need Fathers suggested the development of a specialist, proactive family support service, possibly based within the Family Justice System whose main task would be to work with families before, and possibly as a pre-requisite to, formal court applications.
10.19 **CAFCASS**, in a very helpful response, was in favour of an interdisciplinary approach. It suggested that further progress could be made by (1) extending the family court and Lord Chancellor’s Department dialogue with non-legal specialists in children and family matters; (2) by negotiating a change in the low priority accorded by the National Health Service to making a contribution to family court proceedings; (3) by initiating agreed research projects across the relevant disciplines and (4) encouraging and evaluating innovative work in relation to families stuck in entrenched conflict.

10.20 Dr. Glaser, in her response, suggested the deployment of trained professionals to be available to children and to consider and represent their interests and views. In a more limited number of cases, she envisaged a more specifically trained mental health professional with family therapy skills being involved. There was, however, a significant shortage of these.

10.21 If **CAFCASS** is to be an advisory and support service, it could develop two roles in this context. The first would be as a provider of advice and facilitator to enable parents and children to access therapeutic / counselling services. There is also the possibility that, in time, it could develop its own brand of mediation prior to the institution of any court proceedings, and designed to avoid such proceedings being issued.

10.22 Plainly this is a very large and untested area. Information is the first step, but the services which are available will vary substantially from place to place. We anticipate that the FAINS pilots will throw up a great deal more information. It is, however, very clear that there is dissatisfaction with the legal process, and a substantial feeling that resources should be put into mechanisms other than the court process for resolving contact issues.
QUESTION 10.5

Do you think that in-court conciliation by a court welfare officer or officer of CAFCASS is an appropriate mechanism for facilitating contact?

10.23 Of the 125 respondents who answered this question, 96 said “yes” and 29 said “no”.

QUESTION 10.6

If your answer to question 10.5 is “yes” should you like to see such a system operated in every level of court?

10.24 Those who favoured this form of in court conciliation also favoured its universal application throughout the Family Justice System. Its principal use, of course, is at the first appointment, when the CAFCASS officer has the opportunity to explore with the parties what is at issue between them and whether or not the dispute can be resolved by agreement.

10.25 We were pleased to see that CAFCASS itself favored the early intervention of the CAFCASS Officer. Its response concluded:

CAFCASS believes that where the Officer is able to intervene before the Directions hearing, it is an appropriate mechanism for facilitating contact. If, however, this role were to be extended nationally to provide in-court conciliation as a generally available service, this could not be provided within existing resources.

CAFCASS would require that there were clear guidelines for courts about the most effective ways of using officers at court and that the courts at every level applied those guidelines
QUESTION 10.7

If your answer to question 10.5 is “no”, please explain your reasons.

10.26 The principal reason advanced by those who said “no” was that it put undue pressure on parties to agree within a limited time-span, and that the issues between the parents could not be properly addressed. Furthermore, there was the risk of “role confusion”. The Law Reform Committee of the General Council of the Bar, on the other hand, thought it came too late, after proceedings had been issued.

10.27 We are in no doubt that as part of the overall service offered by the courts and by CAFCASS, a CAFCASS officer should be available at the first appointment in all contact and residence cases to discuss the case with the parties and to effect in court conciliation. We would like to see such a system in operation at every level of court and throughout the country. In our view it is a useful mechanism for agreement to be reached, and in default of agreement for the court to identify the issues and set a timetable for the case.

QUESTION 10.8 THE ROLE OF THE EXTENDED FAMILY

Can you suggest ways in which extended families can be encouraged to play a more effective role in helping to resolve contact disputes? In particular, do you believe that family group conferences can be a helpful approach in these matters?

10.28 As was pointed out in the response (amongst others) from Judge Dale Clarkson and his colleagues in the New Zealand Judiciary, the family group conference was designed for what we would call “public law” proceedings, in which the local authority may be seeking to remove children from the care of their parents, and the family is invited to make acceptable proposals either for the child to be cared for within the wider family, or for contact or any other matter relevant to the child’s welfare.
10.29 As a number of respondents pointed out, there are many contact cases where members of the wider family, including grandparents, are strongly partisan, and where a family group conference might simply exacerbate the hostility between the two sides. On the other hand, there are cases in which such a conference, skillfully conducted, could be productive. The President suggested that in cases where CAFCASS was involved, the CAFCASS officer may be able to explore whether the extended family could be a source of help. Family Group conferences could be very helpful in cases where there is a supportive and not too partisan wider family.

10.30 We note that in the New Zealand response it was reported that mediation conferences rarely involve the extended family. We therefore think it unlikely that this resource will have a substantial role to play in conduct disputes, but it should always be borne in mind as a mechanism for engaging the positive energies of the extended family in meeting the needs of children caught up in contact disputes, and for challenging the negative role of some family members. Family Conferences can thus be seen as a mechanism for testing effective strategies in resolving contact disputes. It may, therefore, be that, in due course, CAFCASS may wish to run a carefully designed, supervised and evaluated pilot scheme to test the place of a good practice framework for family conferences.

QUESTION 10.9

Do you think there are ways in which the courts can develop a more active case management role to use time constructively whilst preventing damaging delay?

10.31 One point made strongly by several members of the judiciary, amongst others, was that judges ought to make more strenuous efforts to achieve judicial continuity. A case passing through numerous judicial hands, with perhaps different judicial views being expressed about it, is a recipe for confusion for the litigant and delay for the case overall.
10.32 A number of responses re-iterated the need for tight case management; the early identification of issues, and for evidence to be directed to those issues; and time-tabling which resulted in the earliest possible final hearing date. A number of responses referred to the suggestion of a tightly managed maximum period of six months for the hearing of a case, with regular directions appointments to ensure that everything is on track.

10.33 There is, we think, no substitute for hands-on judicial control starting at the first appointment (if the initial in-court mediation fails). It is, we think very disappointing that, 10 years after the introduction of the Children Act 1989 there are still complaints of delay and incompetent court practice.

10.34 We also strongly support the plea for greater judicial continuity. This may matter less in the Family Proceedings Court, where the directions are often given by the justices’ clerk. We also appreciate that circuit judges and district judges sit in different jurisdictions, and that High Court judges have various commitments, which include going on circuit. However, it should be possible for the judiciary and those administering the courts to ensure that once a case is allocated to a judge at the directions stage, it should either stay with that judge until it is heard or, at the very least, is handled at most by one other judge before it is heard. It is also, in our view, extremely important that if a case has to come back after the substantive hearing, it should come back to the judge who took the substantive hearing.
CONCLUSIONS ON THE COURT PROCESS

10.35 There is widespread dissatisfaction with the current court procedures for dealing with contact disputes. That dissatisfaction must be addressed.

10.36 Whilst there is plainly a role for the court in resolving contact disputes, there is a widespread perception that such disputes are better addressed outside the court system by negotiation, mediation and conciliation. These facilities need, accordingly, to be expanded and funded. There is a widespread feeling that an application to the court should be the last resort.

10.37 The current procedures are too slow. There is insufficient court time and a lack of resources: cases take too long to come to court. There are substantial delays which are detrimental to children and their parents.

10.38 There is no judicial continuity. Too many judges handle the same case. This is a waste of judicial time. It also leads to inconsistency of approach and adds to the delay in the case being heard.

10.39 The litigation process is adversarial and counter-productive. It entrenches attitudes rather than encouraging them to modify. It tends of focus on the arguments of the parents, not the needs of the child. It puts particular pressure on the divided loyalties of children.

10.40 The delays are exacerbated by the time it takes of obtain reports from CAFCASS (sometimes as much as 20 weeks). There remains the perception, amongst some, that the quality of CAFCASS reports is poor.

10.41 There was widespread support for an in court conciliation system to be operated by CAFCASS at the first appointment in contact cases. Such a system should be operated throughout the country and at every level of court.
10.42 There is room to explore more creative ways in which the extended family can be assisted to play a positive role in meeting the needs of children subject to private law disputes, or in which their negative impact can be challenged. There may be a role for family conferencing and this is a matter for CAFCASS to explore in due course.

10.43 We need to make it very clear that none of the criticisms of the system which we make as a result of the responses to the consultation are in any way to be taken as a reflection on the dedicated and hard working practitioners from every discipline who attempt to keep the system in operation. We have in mind in particular officers of CAFCASS, who have gone through an extraordinarily anxious time, as, of course, have the guardians, and whose dedication to their difficult work is not in issue. CAFCASS reporting officer do not take 20 weeks to prepare a report out of choice, nor do they see a child only once or twice because they think that this is professionally satisfactory in every case. They do so because of the extreme pressures placed on their time. CAFCASS officers need to be able to develop a fully child centred approach, which enables them to spend a sufficient amount of time with each child as the needs of that child require, and to undertake more extensive direct work with children who need it. This point will need to be grasped if, as we recommend, the duties of CAFCASS officers are widely expanded in order to enable the service to live up to its acronym.
CHAPTER 11: FAMILY ASSISTANCE ORDERS

THE QUESTIONS WE ASKED

11.1 Do you regard the Family Assistance Order in its current form as having any use in facilitating contact?

11.2 How could family assistance orders be used more effectively?

11.3 If your answer to question 11.1 is “no” would you favour its abolition, or would you favour an amendment to the Children Act to make it more effective? If the latter, what amendments would you wish to see?

QUESTION 11.1

Do you regard the Family Assistance Order in its current form as having any use in facilitating contact?

11.4 The responses to this question were surprisingly evenly balanced. There were 100 responses, of which 49 were “yes” and 51 “no”.

QUESTION 11.2

How could family assistance orders be used more effectively?

11.5 A number of responses pointed out that the Home Office has never allocated funds for the operation of Family Assistance Orders, and accordingly they received a very low priority. Furthermore, the local authority, as the Statute was currently framed, could simply refuse to implement the order. There was a general feeling that these orders were better operated by CAFCASS, as part of a specific programme of planned intervention. However, they needed to be more open-ended (i.e. should last more than six months) and should not require the consent of the parties. Inevitably, these improvements meant altering the statute, and this was worth doing, since the concept was a sound one.
11.6 We were fortunate to have the benefit of responses from a number of people and organisations who had undertaken research into Family Assistance Orders. The findings of the *Joseph Rowntree Foundation* pointed to an absence of accurate statistics as to the number of orders made; an absence of proper funding; inconsistency in the approach to the formulation of policy documents about Family Assistance Orders; a lack of consensus as their use; a lack of agreement over the definition of “exceptional circumstances”, and a lack of agreement as to how involved children should be. They concluded: -

… the usage of Family Assistance Orders is confused and contradictory. Much time and effort is involved in working with these orders and yet the process is fraught with difficulty, from orders being recorded incorrectly through to policy and practice issues. These would seem to require some careful thought if courts and service providers are to operate with a shared perception of the FAO. The many issues raised by this study have potentially far-reaching implications for the review of support services for the family courts which is currently being undertaken.

11.7 Dr. Trinder had made a small study of Family Assistance Orders and concluded that they could work. She did not favour abolition, but argued that it would be helpful if the “exceptional circumstances” condition were removed and if the court could compel participation. It would be extremely helpful, she said, to issue more explicit guidance on the framework for a therapeutic service (preferably under the auspices of *CAFCASS*), in which case it would be essential for *CAFCASS* to develop standards and a protocol for the service.

**QUESTION 11.3**

If your answer to question 31 is “no” would you favour its abolition, or would you favour an amendment to the Children Act to make it more effective? If the latter, what amendments would you wish to see?

11.8 For the reasons given in the responses to the previous question, the majority favoured amendment to the Act, to include the matters mentioned in the previous answer. The revised order should form part of the court’s plan for the family and the child, and should be operated by *CAFCASS*. 
CONCLUSIONS

11.9 These are conclusions with which we agree. We see Family Assistance Orders as potentially a very useful facility, if operated by CAFCASS and as part of a planned and specific programme of intervention. In our view a number of changes are required in order to make Family Assistance Orders effective. They should cease to be directed to Local Authorities, but should be directed to CAFCASS. The time limit of 6 months should be removed, and should be replaced by a time-frame identified by the court as being required for the particular task being undertaken and the needs of the particular case. We do not think such orders should be open-ended. The phrase “exceptional circumstances”, which has little meaning, should be repealed, as should the ability to refuse to consent to the making of an order.

11.10 We also recommend that CAFCASS be asked to prepare proposals in relation to specific programmes which could be operated under an Family Assistance Order, including “educational” programmes for parents, packages of support in monitoring the implementation of contact agreements, support for indirect contact, and direct assistance to children.

11.11 The scope for the use of such orders is, we think, substantial. They could, appropriately operated, provide the focus for necessary work with the family concerned by CAFCASS after a contact order has been made; they could also provide a basis for intervention to implement court orders in intractable cases, as an alternative to other, more draconian, methods of enforcement.

11.12 These proposals will, of course, require a change in the Children Act 1989. However, much of the work to clarify the potential of a revitalised Family Assistance Order can be achieved without waiting for legislative change – for example, the work recommended in paragraph 11.10.
CHAPTER 12: THE INVOLVEMENT OF CHILDREN IN THE COURT PROCESS

THE QUESTIONS WE ASKED

12.1 Do you agree with the restrictive approach which the High Court has taken to the grant of permission to children to take proceedings for residence or contact?

12.2 If the answer to question 12.1 is “no” please explain why you take the view you do.

12.3 How do you feel that the wishes and feelings of children in relation to contact with their non-residential parent are best ascertained and placed before the court?

THE RESPONSES

QUESTION 12.1

Do you agree with the restrictive approach which the High Court has taken to the grant of permission to children to take proceedings for residence or contact?

12.4 Of the 118 respondents who answered this question, 98 answered “yes” and 20 answered “no”.

QUESTION 12.2.

If the answer to question 12.1 is “no” please explain why you take the view you do.

12.5 Most of those who answered “no” to this question did so because they felt children had the right, under the Children Act 1989, the Human Rights Act 1998 and under the United Nations Declaration of the Rights of the Child to be involved in proceedings which decided their futures.
12.6 Although the President of the Family Division did not answer “no”, she expressed the view that the time was ripe to reconsider the court’s approach to the involvement of children, although this should be approached cautiously. In a powerful response, Dame Margaret Booth DBE, a former High Court Judge, expressed her disagreement with the restrictive approach. Furthermore, she saw no good reason for applications by children for permission to commence proceedings being retained in the High Court, a process which both caused delay and greater difficulty for the child. Dame Margaret also argued strongly that children of broken families should be much more involved in the decisions made by their parents or the courts relating to contact, and cited research by the *Thomas Coram Research Unit* into children who had been adopted, as well as the work of the *Joseph Rowntree Foundation* and *National Youth Advocacy Service*.

**QUESTION 12.3.**

How do you feel that the wishes and feelings of children in relation to contact with their non-residential parent are best ascertained and placed before the court?

12.7 The majority view remained that in most cases the wishes and feelings of children in relation to contact could be ascertained by an officer of *CAFCASS*. However, there was a strong feeling that in difficult cases, children ought to be separately represented more often. One possibility canvassed was that the child should be represented by an officer of *CAFCASS* who would be able to seek legal advice and representation on behalf of the child (as in public law proceedings) and could apply to the court, for example, for expert evidence to be obtained for the child.

12.8 There is plainly substantial scope here for further discussion and debate. We were very impressed by the response from New Zealand, and by the fact that in every disputed residence or contact case, independent counsel is appointed for the child. Whilst that may not be practical or affordable in England and Wales, we do take the view that the creation of *CAFCASS* offers the court a much greater degree of flexibility when considering the question of a child’s representation. For example, rules 4.11B(5) and (6) of the Family Proceedings Rules (introduced with effect from 1 April 2001) require the Children and Family Reporter to consider whether it is in the best interests of the child for the child to
be made a party to the proceedings, and if so, he/she must notify the court of his opinion together with the reasons for that opinion. Further, under rule FPR rule 9.5, if the court takes the view that it is in the interests of the child to be made a party to the proceedings, the court may appoint an Officer of **CAFCASS** or “if he consents some other person” as the child’s guardian with authority to take part in the proceedings in the child’s behalf.

12.9 These provisions seem to us to be sufficiently flexible to ensure that the child’s interests can be protected by representation if need be. As we have already made clear in Chapter 11 (Family Assistance Orders) we think that the structure of the Children Act and the Family Proceedings Rules ought to enable **CAFCASS**, in appropriate cases, to ensure that their involvement with individual children and their families extends beyond the preparation of a report for the contact proceedings.

12.10 There was very little support for the judge speaking to the child direct. However, we noted with interest the New Zealand approach: -

> At times the presiding Judge will speak with the affected children directly. This will normally occur in the presence of the lawyer who has been appointed for the children and will be a private consultation with the children in the Judge’s chambers. Some Judges have a practice of showing the children the courtroom where the hearing is being held. Most Judges take the opportunity of reassuring the children that they are not being asked to make a choice and that the decision-making responsibility lies with the Judge.

> It has to be said that while some valuable insights can be obtained by speaking with the children, the process has its risks in terms of its dependence upon the communication skills of the Judge him or herself and the care which has been taken in assessing children’s responses to such an authority figure.

12.11 This seems to us a carefully balanced view. Where the child is represented and is of an age and understanding to wish to speak directly to the judge, there may well be a case for doing so. However, to the New Zealand reservations we would add others, perhaps the most important of which is the impossibility in an adversarial system of promising confidentiality to children about anything they may tell the judge.
12.12 CASC has addressed the question of the representation of children in proceedings under the Children Act on several occasions. There seems to us a difficult balance to be struck between the rights of children to be heard in the proceedings between their parents and the need to protect them from exposure to the corrosive court process, so clearly described by many respondents in answer to question 10.2. Being heard does not necessarily mean being represented: what it means is giving children the confidence that their wishes and feelings have been fully made known to the court and that the court has taken them fully into account.

12.13 One of the principal criticisms of the Court Welfare Service was that its officers were only able to see the children concerned in a case at the most twice – and often only once. That did not give them time to get to know the children, or gain their confidence. The ensuing welfare report was seen as inadequate, and was criticised by the party whom it did not favour as failing to represent the true feelings of the children.

12.14 In our view, the advent of CAFCASS and the consequential changes in the Family Proceedings Rules gives a much greater scope both for a greater involvement with children by CAFCASS officers, and a greater opportunity for children to be represented in court by CAFCASS officers with, if necessary, legal support. This is not, of course, to suggest that in every case the children should be represented: what we think it should mean is that in cases where a straightforward investigation followed by a report is not sufficient to meet the interests of the children, the framework for future involvement exists, and would be further strengthened if our proposals for the reform of Family Assistance Orders are implemented.
12.15 These provisions will only work, however, if CAFCASS has the resources to operate them, and if CAFCASS officers have the skills to operate them. We think it will be in the interests of children if the new rules are operated positively and imaginatively: if they are, the manner in which the wishes and feelings of children are presented to the court will be greatly enhanced.

Recommendation

12.16 Our recommendation on this aspect of the consultation is, accordingly, that the Courts and CAFCASS take a positive and proactive view of the new Family Proceedings Rules, and give active consideration in all appropriate cases to the need of the child to be represented either by the CAFCASS officer or by a Children’s Guardian.
CHAPTER 13: PARTICULAR FORMS OF COURT ORDERS

THE QUESTIONS WE ASKED

13.1 Do you think the Children Act 1989 provides a satisfactory framework for the making of orders for contact? If no, what changes in it would you like to see?

13.2 Do you think the courts make sufficient use of orders for indirect contact? How useful do you think such orders are?

13.3 What scope do you believe there is for the use of professionally supervised contact, and how should such services be targeted at those most in need of them?

13.4 Do you think that most orders for contact meet the needs of the children concerned or is there a tendency for orders to be made which cater more for the needs of the adults?

13.5 Is there any particular form or structure of order which you believe is more likely to meet the needs of children than any other?

THE RESPONSES

QUESTION 13.1.

Do you think the Children Act 1989 provides a satisfactory framework for the making of orders for contact? If no, what changes in it would you like to see?

13.6 Of the 116 respondents who answered this question, 90 said “yes” and 26 said “no”. The general feeling was that the statutory framework gave the court sufficient flexibility to make contact orders, although a number of respondents pointed out that, by their very nature, orders defining contact tended to be precise, and identified specific times and places. A number of judges suggested that contact orders should always contain wording which enabled the parties to agree variations and extensions.
13.7 Professor James added that what was less satisfactory was the framework of support services which are available to support the orders which might be made, a point reinforced strongly by Dr. Liz Trinder. Audrey Damazer, Justices’ Clerk at the Inner London Family Proceedings Court thought the courts should make more use of the power to impose conditions on contact orders under section 11 of the Children Act, and said that Family Proceedings Courts would welcome guidance on this point.

QUESTIONS 13.2.

Do you think the courts make sufficient use of orders for indirect contact? How useful do you think such orders are?

13.8 A number of respondents considered that more use could be made of indirect contact. There was a general feeling that indirect contact was useful, and could lead on to direct contact being re-established. Parents often under-estimated how important some contact, even indirect contact, was for children. There was some concern that indirect contact could be frustrated by the resident parent, and that it was difficult to monitor and maintain.

13.9 We think it worth pointing out that indirect contact can take a very wide variety of forms. Apart from letters, cards and presents, contact by Email and video, to take only two examples, should be considered where, for whatever reason, it is not in the child’s interest to meet the non-resident parent face to face. Dr. Sturge, in her response, said that children can often be persuaded to “view” an estranged parent through a one-way screen, so that the child remains “in control” and can decide whether or not to meet the parent face to face. The parent can also be interviewed about concerns the child had, whilst the child watches and communicates through an ear piece with the interviewer. This, said Dr. Sturge, does at the minimum give the child a sight of the parent and at best can lead to a face to face meeting.
QUESTION 13.3

What scope to you believe there is for the use of professionally supervised contact, and how should such services be targeted at those most in need of them?

13.10 The difficulty at present with supervised contact is that apart from cases where CAFCASS officers are investigating a case and arrange contact which they supervise as part of the investigation (including contact post order if, for example, there is going to be a review), the only ways in which supervised contact can be ordered by the court are (1) under a Family Assistance order and (2) as a condition imposed under section 11(7) of the Children Act 1989. The latter can only be effective, however, if the proposed supervisor agrees. It is very unusual in these circumstances for such a supervisor to be a professional person, except in the rare case in which contact is supervised by a psychiatrist or psychologist who has become involved in the case, or as part of a therapeutic process.

13.11 Under a Family Assistance Order the supervisor can be the CAFCASS officer or a social worker. For the reasons given in Chapter 11, Family Assistance Orders in their current form are highly unsatisfactory. There are also exceptional facilities, such as those offered by The Children’s Society, who offer the facility of supervising contact for six months.

13.12 A number of respondents expressed the view that supervised contact is very useful in appropriate cases, notably those where there have been findings of abuse or violence, but the court nonetheless takes the view that it is in the interests of the child for contact to take place. The obvious person to supervise contact would be the CAFCASS officer, although there are difficulties in any such order being of lengthy duration. There is, we think, a widespread need for facilities for supervised contact, and a powerful case for the court to have the power to order contact to be supervised by a CAFCASS officer. One obvious solution is the development of Contact Centres which offer the facilities for supervised contact.
QUESTION 13.4.

Do you think that most orders for contact meet the needs of the children concerned or is there a tendency for orders to be made which cater more for the needs of the adults?

13.13 CAFCASS described this question as a central question for further debate. The view expressed by a number of professionals responding to the paper was that orders tended to reflect the needs and desires of the parents and the professionals involved in the family justice system rather than the needs of children, although one of two respondents argued that as the adults had to make the arrangements, an element of this was inevitable. A number of respondents found it impossible to generalise. However, some examples were given of orders which were not child-focused, of which the following are a sample:

(a) very small children cannot generally sustain three hours of activity with a parent;
(b) it is unrealistic for a toddler, early on in contact arrangements, to be separated from a resident parent when parents do not want to meet;
(c) school-aged children often have regular activities on Saturdays when contact is ordered.

13.14 A particular difficulty to which some respondents referred was that the flexibility which is required in the interests of children is often not something of which the adults are capable. We thought Judge Peter de Mille encapsulated this well when he said that ideally the best interests of the child were met by good quality, flexible contact. However, flexibility required a measure of trust and co-operation. Where that was present, a court order was seldom necessary. Where it was absent, the court would have to be prescriptive. Any order was therefore a compromise.

13.15 A number of respondents identified the difficulty that contact orders needed to evolve to reflect the changing needs and aspirations of children as they grow older. The formal way in which this can be addressed is a return to court to vary the order. This, however, obviously involves time, money and uncertainty, even if the variation is agreed. Equally, however, it must tend to bring the system into disrepute if an order is effectively allowed to lapse and become a dead letter, even though it remains technically in force.
13.16 These are not matters easily addressed within the legal context. If there is agreement, it is best for the order to be discharged; alternatively, the order when first drawn should contain provision for it to be varied by agreement – a matter to which we refer again in paragraphs 13.19 and 13.21.

13.17 More than one respondent commented that the contact which worked best was where the parents operated a shared-care arrangement. In such cases, however, there was likely to be agreement between the parents.

QUESTION 13.5

Is there any particular form or structure of order which you believe is more likely to meet the needs of children than any other?

13.18 The Family Law Bar Association encapsulated the views of a number of respondents when it said “no” and went on to make the point that each case was different and each order had to be carefully drafted to meet the particular needs of the individual case. Families need Fathers made the point that whatever the form of the order, it needed to be carefully explained to the children concerned, and that this should be an integral part of the process. The Solicitors Family Law Association said that contact orders should recognise the rights of children and not refer to collection and delivery times as though they were a consignment of fish. Some reference to the rights of the children in the order might help the parents to remember that this is not just a battle between them but a constructive way of accommodating the needs of the whole family and particularly or providing some benefit to the children.

13.19 A number of respondents considered that it was necessary for orders to be clear and explicit so as to avoid confusion over the arrangements in them. Judge Hedley favoured clear definition, given the circumstances in which an order is needed. However, he made it clear to the parties and in the order that their agreement could override the provisions of the order. He believed that to reflect the general spirit of the Children Act. He usually added a clause – “such further or other contact as the parents (or where there were older children, the family) may agree.”
Recommendations

13.20 The responses to this part of the consultation aptly demonstrated two of the major difficulties about making contact orders – namely (1) the infinite variety of family circumstances, and the difficulty of trying to encompass them within the narrow framework of a court order, and (2) the tension between the need for flexibility in the arrangements to meet the needs of the children on the one hand and the fact that if an order is required the capacity to achieve that flexibility is often lacking in the adults.

13.21 In these circumstances, recommendations are difficult and, perhaps, unnecessary. The responses seem to indicate that, on the whole, judges and magistrates were doing their best to meet the needs of individual children and families in the orders they were making. However, we do recommend imaginative and creative use of orders for indirect contact where that is appropriate: we repeat the recommendations we made under Chapter 8 in relation to facilities for supervised contact, and we commend Judge Hedley’s practice of including in an order a clause which allows the parents (and older children) to renegotiate the arrangements.
CHAPTER 14: ENFORCEMENT

THE QUESTIONS WE ASKED

14.1 Do you think that the court should retain its power either to fine or to commit a residential parent to prison for breach of a contact order?

14.2 If the answer to question 14.1 is “no” please explain why you take that view?

14.3 If you take the view that committal to prison for contempt should be retained as a means of enforcing contact orders, what criteria do you think should guide the courts in making such an order? In particular, should the welfare of the child be paramount in an application to commit the residential parent to prison for breach of a contact order?

14.4 What alternatives to committal to prison do you think there should be in a case where the court finds that contact is in the best interests of the child but is being irrationally frustrated by the residential parent? Should the court be given broader powers to deal with recalcitrant residential parents – for example to require them to attend parenting classes?

14.5 Should it remain a requirement that an application to commit for breach of a contact order has to be initiated by one of the parties to the proceedings or should committal proceedings only be instituted on the direction of the court?

14.6 What view do you take of Judge Fricker’s proposal (paragraph 4.51 – 4.54 for the use of section 34 of the Family Law Act 1986 as a means of implementing contact orders?

14.7 What do you see as the relevance of the Human Rights Act 1998 to the enforcement of contact orders?

14.8 Do you have any comments on Section 5 and Appendix 1 of this Paper and the manner in which enforcement is dealt with in any of the jurisdictions described?

14.9 Please give your views on any aspect of the enforcement of contact orders not covered by any of the previous questions.
THE RESPONSES TO OUR QUESTIONS

QUESTION 14.1

Do you think that the court should retain its power either to fine or to commit a residential parent to prison for breach of a contact order?

14.10 179 respondents answered this question. Of those 135 said “yes” and 43 said “no”. The majority view was that as long as contact remained the subject of court proceedings, the rule of law and the proper administration of justice both required that lawful orders made by the court had to be obeyed by those to whom they were addressed. It followed that the ultimate power of the court to punish for disobedience of its orders had to be retained, although imprisonment should only be used as a last resort and in the most extreme circumstances, i.e. cases of flagrant, blatant and inexcusable breaches of a court order. In practice, it was recognised that the power to imprison was very rarely used.

14.11 **Families Need Fathers** centred their discussion of this point around the concept of shared parenting. In this context their view was that:

Sanctions are needed to send a clear message that non-facilitation of child’s relationship with family is unacceptable. There should be no room for manoeuvre: sharing care should not be seen as an option, but a necessity for children. It should be made clear that non-compliance could eventually lead to imprisonment.

14.12 There was also a general view that if imprisonment was an option then it needed to be made clear that it was an option, and not an empty threat. There was, for example, no point in the court directing that a penal notice be inserted into an order (that is a specific reference in the court order to the fact that disobedience of the order could lead to committal proceedings and a fine or imprisonment) if the court had no intention of putting it into effect.
QUESTION 14.2

If the answer to question 14.1 is “no” please explain why you take that view?

14.13 Not surprisingly, the most vehement opposition to the use of fines or imprisonment came from women’s groups. This was WAFE’s response: -

It is a travesty of justice that an abused woman can be threatened with imprisonment, fined, or warned that residence may be granted to her abusive ex-partner because she has failed to comply with a contact order which could put her or her children in danger.

Women have a duty to protect their children and some have been sent to prison for failing to do this. In our view it is senseless and contradictory for the family courts to make orders which will put children in danger and then threaten the mother with imprisonment for failing to comply with such an order.

However, Women’s Aid also recognises that many women who have left the family home without taking their children, have immense difficulties in obtaining residence or contact because they are thought to have abandoned their children. For this reason, we do not oppose enforcement in all circumstances, but we emphasise the need to ensure that any arrangements are safe.

14.14 Many of those who said that the power should not be retained specifically agreed with the approach taken by Ormrod LJ in Churchard v Churchard [1984] FLR 635. Many doubted whether punishing the parent would ever be in the best interests of the child, who would blame the parent seeking the order for putting the residential parent in prison. Dr. Trinder encapsulated a number of responses when she said:

In most cases, the threat of imprisonment is an empty threat. If the option is taken up, it is difficult to see how it will help to resolve a dispute and would seem much more likely to further entrench conflict, to threaten the welfare of children, and to damage non-residential parent-child relationships.

14.15 A large number of respondents, including those who supported retention of the power, favoured using alternatives to imprisonment, discussed under question 14.4.
QUESTION 14.3

If you take the view that committal to prison for contempt should be retained as a means of enforcing contact orders, what criteria do you think should guide the courts in making such an order? In particular, should the welfare of the child be paramount in an application to commit the residential parent to prison for breach of a contact order?

14.16 Opinion was sharply divided on this question. Many respondents agreed that the welfare of the child should be the paramount consideration, since the order for contact had been made on the basis that contact was in the child’s interests, and it followed that it must be in the child’s interests for the order to be enforced. Others argued that if the child’s welfare was to be the paramount consideration in a committal application, it was unlikely that many orders would be made, since it would rarely be in the best interests of the child for that child’s carer to be committed to prison.

14.17 The Family Law Bar Association sought to bridge the gap. It said in its response:

The first consideration in committal proceedings must always be whether the order has been breached. If the court has, with the child’s welfare as its paramount consideration, decided that there should be contact then it should follow that it is in the child’s interests for that order to be enforced. The court must always consider the effect on the child of the resident parent being committed to prison, but this should not be the paramount consideration, rather it should be weighed in the balance with the great importance of orders being enforced.

14.18 The difficulty with this argument in our view is that section 1(1)(a) of the Children Act 1989 provides that “the child’s welfare shall be the court’s paramount consideration when a court determines any question with respect to the upbringing of a child”. A committal application falls into two parts. There is firstly the question: has the order been breached? This is an issue of fact, decided, because of the seriousness of the consequences, on the criminal burden of proof (beyond reasonable doubt): there is then the court’s decision about punishment for the breach. It seems to us difficult to argue that determination of the question whether or not a defaulting parent should be fined or sent to prison is a question with respect to the upbringing of a child. This means that, whilst the effect on the child of such an order is plainly very important, it is not the paramount consideration.
14.19 This was the approach of the Court of Appeal in A v N (Committal: Refusal of Contact) [1997] 1 FLR 533. WAFE and other women’s groups were highly critical of this decision. Arguing that the Children Act itself became meaningless if the paramountcy principle did not apply, WAFE stated: -

It is extremely worrying that the Appeal Court overlooked this principle when they decided to send the mother to prison “to preserve the due administration of justice”, especially as this was a case of domestic violence.

14.20 WAFE also pointed out the in A v N the father of the child concerned had been violent, and that we had omitted this fact from our summary of the case. This is true. It is equally clear, however, that this was a factor which had been taken into account by the judge when making his order for contact to be supervised by the paternal grandmother, and his most important finding was that the child would be safe in her grandmother’s company. We deal with WAFE’s arguments on A v N in more detail in Appendix 4. It is, however, perhaps worth pointing out that in Churchard v Churchard, the mother of the children had inflicted a number of stab wounds on the father with a carving knife in a violent altercation shortly before the father left. The Court of Appeal plainly did not consider that fact to be relevant when considering the committal order made against the mother.

**QUESTION 14.4**

What alternatives to committal to prison do you think there should be in a case where the court finds that contact is in the best interests of the child but is being irrationally frustrated by the residential parent? Should the court be given broader powers to deal with recalcitrant residential parents – for example to require them to attend parenting classes?

14.21 This is, we think, the most important question is this part of the Consultation Paper, and it was the question which produced a substantial number of suggestions. There was widespread support for the proposition that the Court should be given the power to impose a range of alternative options.
14.22 In our view the most constructive suggestions were those which proposed either community penalties, or the attendance by the person in contempt at parenting classes or meetings designed to persuade that person that the order should be obeyed. Professor Walker summed up a number of responses here when she said:

Parenting education would be an obvious option here. Yes- courts should be given broader powers to refer parents to such classes. The general rule ought to be to find ‘therapeutic’ approaches to the problem and to support parents to work through difficulties, hostilities, etc. The more rigid and punitive the responses / court orders, the more likely that contact will fail.

14.23 In this respect, many respondents were attracted, as were we by the thinking behind the Australian model, in which a three stage process is proposed as follows:

The first stage is preventative. It requires the court to include in its orders a clause which sets out the obligations the order creates and the consequences which follow should the order not be observed. The Court is also required to provide the parties with information about parenting programmes to assist the parties in meeting their new parenting responsibilities as well as information about the use of location and recovery orders. These measures are intended to improve the knowledge and understanding of parents leading to an increased rate of compliance.

The second stage provides the court with a range of powers where a breach of the order first occurs. The court will have the power to order one or both parties to a programme termed a “post separation parenting programme”. The aim of such referral is to enable the parties to explore the real or underlying reason for the breach so that as the parties come to terms with their new parenting responsibilities after separation, they are able to obtain professional assistance. Some of the parenting programmes are anger management programmes. In addition, the court will be able to order compensatory contact.

The third stage arises where there has been a second or subsequent breach of the order. This stage provides the court with a range of sanctions extending from community service order, bond or fine, but in the most serious case, imprisonment. This third stage provides the court with discretion to return to stage 2 where further parenting program attendance may be warranted, such as where the first and second breaches were of a trivial nature and the more punitive sanctions are not warranted.
14.24 We were also very attracted by response on this point by CAFCASS, which summed up its approach by saying: -

What is proposed is an approach that gives practitioners more time to work with parents and children within a vision of a range of services such as supervised Contact Centres, child counselling, perpetrator programmes, information giving meetings, conciliation meetings prior to initial directions and psychological assessments. There will be cases where even this level of intervention will fail to bring about change in a situation. In such cases attempting to facilitate some form of indirect contact is more appropriate than resorting to fines or imprisonment.

14.25 For courts in England and Wales to be given these powers would require legislation. Equally, there would be no point in giving the courts wider powers, if programmes of the type envisaged were not to be available. We are, however, convinced that this is the way forward.

Transfer of residence to the other parent

14.26 This was discussed in a number of responses. It was, however, clear that such a transfer would have to be in the interests of the children concerned, since such a course clearly fell within section 1 of the Children Act and when determining that question the welfare of the children concerned was paramount. In the large majority of cases, therefore, a transfer of residence is unlikely to be the appropriate response to a committal summons without a substantial degree of further investigation. Judge Richard Jenkins, we thought, described the dilemma well: -

The dilemma is increased because a transfer of residence will very rarely be appropriate. On the advice of the Official Solicitor and a consultant psychiatrist I have had success in ordering a transfer of residence where contact was unreasonably being refused. An extensive investigation and lengthy evidence persuaded me that a change of residence would have been appropriate in any event. The mother of a seven-year-old boy had placed herself in a socially isolated position with the child and was thoroughly over-protective of him. He was sensible enough to realise as soon as transfer had taken place where his best interests lay. That was an isolated case and I disparage the use of a residence application as a tactical weapon.
14.27 We wholly endorse Judge Jenkins’ disapproval of the use or threat of a residence application as a means of achieving contact. It is a legitimate complaint by Women’s Groups that abused women are sometimes induced to agree to unsuitable and unsafe contact with violent fathers by their belief in unfounded threats that their children will either be transferred to the father or taken into care. At the same time there will be cases in which a refusal of contact will be sufficiently damaging to a child as to outweigh the trauma caused by removing the child from the care of the residential parent. Judge Jenkins gives one example. Others are where children are being brought up in the false belief that they have been sexually abused by the absent parent, or where children of mixed race are being brought up in the belief that the race to which the absent parent belongs consists of people who are dangerous and / or bad.

QUESTION 14.5

Should it remain a requirement that an application to commit for breach of a contact order has to be initiated by one of the parties to the proceedings or should committal proceedings only be instituted on the direction of the court?

14.28 There was some support for the court being the initiator of the committal proceedings, because it was the court’s order which had been disobeyed. Thus if the court initiated the process it might reduce some of the bitterness and avoid the accusation that the parent seeking to enforce the order was responsible for the process and its consequences. However, other respondents pointed to the difficulty of the judge initiating the process and then hearing it, and took the view that the current position should remain.

14.29 A suggestion made by a number of respondents, which we find attractive, is that the application should be initiated by one of the parties, but should only go forward after an appearance before the judge by the applicant, without notice to the respondent, with the judge considering at that point where the complaint was sufficiently serious for it to proceed to a committal hearing. This approach would not, however, be necessary if the court had much wider powers on committal summonses, and was not limited to imposing a fine or a sentence of imprisonment.
QUESTION 14.6

What view do you take of Judge Fricker’s proposal (paragraph 4.51 – 4.54 of the Consultation Paper) for the use of section 34 of the Family Law Act 1986 as a means of implementing contact orders?

14.30 Although there was some support for this proposal, the majority view was that section 34 was not an appropriate mechanism for implementing contact orders. Concern was expressed both for those who would have to carry out the implementation (which they would find professionally very difficult if the child was obviously distressed) and that such a form of implementation could be very traumatic for the child.

14.31 We share the reservations expressed by the majority, and whilst we understand the thinking behind the proposals, we cannot support it.

QUESTION 14.7.

What do you see as the relevance of the Human Rights Act 1998 to the enforcement of contact orders?

14.32 The principal issue addressed by respondents in this question was whether or not imprisonment for contempt in relation to breach of an order for contact was a disproportionate response. On this, opinion was fairly evenly divided. There was a response from the AIRE Centre (Advice on Individual Rights in Europe), which did not specifically address this issue, but reviewed the European jurisprudence on the enforcement of residence and contact orders. The most recent decision of the ECHR, *Glaser v. UK* [2001] 1 FLR 153, in which a father’s complaints of violations of his rights under Articles 6, 8 and 9 were rejected, appears to place the obligation to initiate steps towards enforcement of contact orders on the applicant rather than on the State. The Court in Glaser stated at paragraph 70: -
Nor can the court accept the applicant’s argument that the initiative in pursuing enforcement should lie with the domestic courts once he had presented them with evidence of the mother’s flagrant refusal to comply with the court order. It is the widespread practice throughout Council of Europe States for the plaintiffs or claimants in civil proceedings to bear substantial responsibility for their conduct and direction. It is, after all, their own rights and obligations which are at stake in the proceedings and their active participation can hardly be dispensed with in the normal course of events.

14.33 Although *Glaser v UK* appears to depart from earlier ECHR jurisprudence, we do not think it will have any effect on English practice and procedure. The case reflected the general feeling from respondents to the consultation that the way the English courts dealt with the enforcement of contact disputes was Human Rights compatible and in line with the requirements of the ECHR. Whilst the non-resident parent plainly has a right to respect for family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, some respondents argued that men were denied this right, and that the ECHR cases could lead to the abandonment of the policy that the child’s welfare was paramount. This is not a view we share.

**QUESTION 14.8**

Do you have any comments on Section 5 and Appendix 1 of this Paper and the manner in which enforcement is dealt with in any of the jurisdictions described?

14.34 The general feeling was that the experiences of other countries highlighted the difficulties of making contact work successfully, as well as how to enforce contact orders. The problems we face are plainly very similar in all the countries surveyed.

14.35 The positions which attracted most interest were those of Australia (to which we have already adverted in paragraph 14.23) and New Zealand, particularly the fact that in New Zealand all children were represented in family proceedings.
14.36 Professor Walker’s response to this question was characteristically thorough and helpful. She wrote: -

It is very clear that imprisonment is used as a last resort in other jurisdictions, with increasing emphasis on therapeutic approaches including counselling and mediation. The growing use of parenting classes should also be noted.

Having described the Australian reforms set out above, Professor Walker continues: -

Research in Australia has shown that most applications to enforce contact refer to consent orders, indicating that disputes are not usually the result of the flouting of court orders, but the failure of parents to make consent orders work. The conclusion drawn is that the reasons for the breakdown of contact arrangements are much more complex than had been presumed. Furthermore, enforcement orders rarely succeed in resolving contact disputes. The arrangements made at the time of divorce may not be workable in the months and years following. Rethinking contact arrangements may be more helpful than enforcement of orders. There is a suggestion that greater scrutiny of private arrangements is needed.

14.37 Judge Richard Jenkins was attracted to the education provisions of the Alberta Domestic Relations Act, as amended. This provides that an access enforcement order may contain a provision requiring the parties (including the child) to attend such education seminar, parenting course, counselling or other similar type of session as may be directed. The order may contain provision for a mediator to be appointed. The Act also requires the court to apportion payment for any expenses incurred. An enforcement order is only made if the other methods of facilitating contact have failed.

14.38 For future reference, section 5 of, and Appendix A to the Consultation Paper, which deal with the enforcement of contact orders in other jurisdictions, are on the Lord Chancellor’s website (ref: www.lcd.gov.uk).
QUESTION 14.9

Please give your views on any aspect of the enforcement of contact orders not covered by any of the previous questions.

14.39 Jim Lawson, Chair of the Association of Former Court Welfare Officers (AFCWO) raised an important issue also raised by others in different contexts, namely the relationship between contact and money. Mr. Lawson raised it in two contexts: the first was the public funding of one party to the dispute (not always the mother) whilst the other is not publicly funded. This, he argued, often fuelled the emotions within a dispute and added to the sense of injustice.

14.40 The second context was where maintenance for children was being paid. Mr. Lawson put it this way: -

Maintenance and the Child Support Agency. Although the need to separate contact and maintenance is the accepted maxim, nonetheless the two issues do have a relationship for many parties. The issue of maintenance has never been very well integrated within family justice thinking on children matters.

14.41 We agree. We also noted that a number of men and men’s groups made the point that they felt a sense of injustice when they are paying maintenance and being unreasonably denied contact. They contrasted the vigour with which any default in payment was pursued by the Child Support Agency with the failure, as they saw it, of the Family Justice System to pursue the enforcement of orders for contact. There is also an injustice the other way, since resident parents who are generous with contact lose maintenance if they allow the children to stay overnight with the non-resident parent more than a given number of nights in a year.
14.42 The assessment of maintenance for children is now, of course, an administrative and not a judicial process. The conventional approach hitherto has been that maintenance and contact are separate issues: contact should not be bargained over. However, we do see that there is a genuine sense of injustice on this question, which can cut both ways. The resident parent sees the non-paying, or defaulting non-resident parent being awarded contact: on the other side the non-resident but paying parent is unable to enforce a contact order.

14.43 We do not think we have enough material to make any recommendations on this topic. Non resident parents should support their children: resident parents should not frustrate orders for contact. We can, however, we think, properly put the issue on record, and invite the Government in any further assessment of maintenance and the Child Support Agency to consider the desirability and practicability of legislating for an inter-relationship between maintenance and contact.

**Other issues**

14.44 Judge Gareth Edwards QC made the point that the enforcement problem was felt most acutely not in the case of defiant refusal, but where the opposition to contact is more subtle and covert. Such cases can rarely be proved to the criminal standard. It follows that most cases of interference cannot be dealt with penally.

14.45. Her Honour Judge Steel favoured the use of section 37 reports in appropriate cases. The risk of significant harm to the child and the prospect of statutory involvement through social services can bring a sense of realism, as can (in the appropriate) case consideration of a change of residence. Mr. Jim Lawson, chair of AFCWO, said that what mattered was that any decisions were underpinned by high quality assessment of the family and, in particular, of the child’s needs.
14.46. Dr Trinder, from the University of East Anglia School of Social Work stated that:

In highly entrenched cases where therapeutic intervention has been tried and exhausted then there comes a point where enforcement should cease on child welfare grounds, at least for a defined period. At this point it might be helpful to have on record the desire of the non-residential parent to have had contact. In all disputed contact cases there should be a requirement that schools should provide copies of school photographs and school reports to both parents unless contraindicated on child protection grounds.

Conclusions and recommendations

14.47 We agree with the majority view that where a contact dispute is part of a court process and results in a court order, the court needs to retain its powers to compel obedience to its orders, and that fines and imprisonment are part of that process. We also agree with the widespread view that the imposition of a sentence of imprisonment should be a matter of last resort, to be used only where there have been flagrant and intentional breaches of court orders without any genuine excuse. There may also be cases in which a fine is appropriate, but such cases are likely to be rare.

14.48 However, we also agree with the overwhelming majority of respondents that fines and committal are not only crude methods of enforcement; they are wholly inadequate as a means of addressing the problem of contact orders which have not been implemented. The result is that the current system is seriously deficient in the means available to it to enforce it orders, and, in our judgment, the system needs swift and radical change.

14.49 The most obvious change required, in our view, is for the courts to be given much wider powers to ensure that its orders are obeyed, or otherwise to facilitate their implementation. This means in turn that there must be legislation widening the powers of the courts to enable them, in addition to imposing fines or ordering imprisonment, to make a whole range of orders designed to meet the circumstances of the individual case.
14.50 Numerous ideas emerged during the course of the consultation, as the preceding paragraphs of this chapter of the report demonstrate. We are particularly attracted by the suggestion put forward by CAFCASS that what is required is an approach which gives practitioners more time to work with parents and children within a framework of services. CAFCASS identifies a number of those services, not all of which relate directly to the enforcement of an existing order, such as “supervised Contact Centres, child counselling, perpetrator programmes, information giving meetings, conciliation meetings prior to initial directions and psychological assessments”.

14.51 In our view what is required is a range of options to be available to the court on the application of one of the parties (or CAFCASS, or the court of its own motion) designed to assist the implementation of an order which is not being obeyed. The range of options needs to be sufficiently flexible to address the problem, and the options themselves need to be available. There is no point, for example, directing a parent to attend a parenting class if the facility is not available.

14.52 There needs, accordingly to be a two pronged approach. Firstly, the range of powers which the courts are likely to need should be defined. Secondly, in so far as they are not available, the facilities required to implement the requisite court order must be put in place.

14.53 The should also, in our view, be two different options, or two stages in each case. The first will be essentially non-punitive. The resident parent could, for example, be directed to attend an information meeting, or a parenting programme designed to address intractable contact disputes or required to seek psychiatric advice. If that did not work, and the contact order remained unobeyed, the court could impose an order with a penal sanction, such as community service or regular attendance at parenting classes. Any question of fines or imprisonment for any further breach would then genuinely be an issue of last resort.
14.54 As we have already said, it will be necessary for the resources to which parents will be referred under these proposals to exist. CAFCASS is the obvious source, as they themselves indicate. But resources outside CAFCASS will also be required, and it is for that reason that we recommend the two pronged approach. Some programmes already exist within the Criminal Justice System, but in our view programmes designed to require estranged parents to address the issue of contact need to be specifically devised for that purpose.

14.55 The powers which the courts need, therefore, are, we think, essentially the following:

(1) the power to refer a defaulting parent to a variety of resources including information meetings, meetings with a counsellor, parenting programmes / classes designed to deal with contact disputes

(2) the power to refer to a psychiatrist or psychologist, (publicly funded in the first instance)

(3) the power to refer a non-resident parent who is violent or in breach of an order to an education programme or a perpetrator programme;

(4) the power to place on probation with a condition of treatment or attendance at a given class or programme

(5) the power to impose a community service order, with programmes specifically designed to address the default in contact;

(6) the power to award financial compensation from one parent to another (for example where the cost of a holiday has been lost).
14.56 We also very much agree with the Australian approach that at each stage in the process the obligations of the resident parent are carefully spelled out and the consequences which are to follow if the order is not obeyed. Whilst, as we have made clear, we are attracted to the Australian model it is, as yet, in its infancy; we do not know how it will work in practice, and we do not think it appropriate to recommend following it exactly. In any event, whilst a clear structure is required, the essence of the approach, in our judgment, is to provide the court with a substantial degree of flexibility, which our proposals would do.

14.57 In paragraph 14.29 we said we were attracted by the suggestion that a committal application relating to the breach of a contact order should in the first instance be made without notice to the proposed respondent, and should only go forward if the court took the view that the alleged breach of the order was sufficiently serious for it to warrant committal proceedings going to a full hearing. We also commented that this procedure would not be necessary if the court was given the much wider powers we are recommending. Whilst we therefore do not put forward the proposal canvassed in paragraph 14.29 as a formal recommendation, we nonetheless suggest that it should be considered as a measure for the short term pending a more fundamental change in the law.
CHAPTER 15: RESEARCH

THE QUESTIONS WE ASKED

15.1 Do you agree with the areas identified as requiring further research set out in paragraph 1.12 of the Consultation Paper? If not, do you take the view that no further research is required?

15.2 Are there any further topics which you think should form the subject of research?

RESPONSES

15.3 134 respondents answered this question, and a substantial number of topics for research were proposed. The majority of those who responded agreed with the areas proposed for further research in paragraph 1.12 in the consultation paper. This paragraph identified three main areas of interest which should be the subject of further study as follows:

1. Understanding the dynamics of contact disputes; the profiles of the parents concerned and their perceptions of what they are arguing about and why they are arguing.

2. Learning from the experience of professionals in the Family Justice System in respect of the various processes that are employed to resolve contact disputes (including negotiation through solicitors; assistance from family court welfare officers; family mediation; and, the court process).

3. Monitoring the effects and impacts of the different dispute resolution processes on the durability of contact arrangements outlined in court orders, and in respect of their enforcement.

15.4 A number of respondents made more specific suggestions for further research and these are dealt with under Question 15.2. Many of these were refinements of the areas identified above. However it became clear, in addition to the study of the effects of various interventions proposed above, that there was general support for a wider study of the outcomes of contact disputes, particularly the medium and longer term outcomes for children.
15.5 Dr Liz Trinder in addition to identifying specific subjects, argued that it would be helpful to have more longitudinal research in this area examining how contact arrangements develop over time. It was also vital, in her view, to have more “whole family” rather than single respondent” research. Dr Trinder also pointed to one of the greatest difficulties in this area, that of gaining access to research participants. She added:

Research in this country lags behind research in the US and Australia because it is seldom possible to gain access to court files and consequently to representative samples. This has become even more problematic with the implementation of the Human Rights Act. This issue does need to be addressed, however, if researchers are to be able to provide high quality research to inform policy makers and practitioners.

We consider this to be a particularly important point.

QUESTION 15.2

Are there any further topics which you think should form the subject of research?

15.6 101 respondents suggested further areas of study in reply to this question. The main areas of study suggested were as follows and can be described under a number of different headings.
15.7 **General issues concerning contact**

(a) The benefits of contact;
(b) non-disputed contact; and what makes contact work, in particular the profiles of couples who manage to agree contact;
(c) the relative distribution of different types of contact (non-contested contact, ceased contact and disputed contact).
(d) An exploration of the “wants” and “expectations” of parents and children from contact.

15.8 HH Judge Elly, on behalf of the Berkshire Family Court Business Committee and Janet Selden, Lecturer in Health and Social Welfare at the Open University, both suggested that there should be a larger-scale longitudinal study of a number of children to ascertain the effects of divorce and contact on them throughout their childhood and adolescence. Study of the effects on children, particularly the longer-term effects on them as adults, was also recommended by Her Honour Judge Sander.

**The effects of contact disputes and contact orders**

15.9 Dr Roger Kennedy suggested that there should be both short term research on the results of various arrangements dealing with contact disputes, and long term research focusing on the effects on the children and their own subsequent relationships, about which insufficient is known. This suggestion was echoed by Anna Webster, legal adviser to the Blackpool & Fylde Justices, who proposed that research should look at the experiences of young adults who have been through contact disputes.

15.10 Deirdre M Young of Young & Co (solicitors) also suggested that the effects should be studied among adults who experienced parental contact disputes as children. Professors Smart, Neale and Wade from the Centre for Research on Family, Kinship and Childhood at the University of Leeds put forward a number of suggestions, including a need to bring together all the existing research findings in the field of family conflict; a study of how ‘successful’ families manage contact; the impact of court orders on all family members (for which there also needed to be a ‘feedback’ loop to judges who were otherwise operating in a vacuum); and longitudinal studies over time as to how families manage arrangements and the effects of parental conflict on their children.
15.11 Other respondents favouring a study into the outcomes of contact disputes include HH Judge Mark Hedley, District Judge Martyn Royall, Vicky Leach and Caroline Abrahams of NCH, Professor Janet Walker and Mary Macleod of NFPI.

15.12 Other suggestions within the same area included a suggestion from Dr. Claire Sturge, also mentioned by the Family Proceedings Committee of the Magistrates’ Association, that there should be a study of comparative outcomes for children when parents make their own arrangements and when arrangements are put in place by the court as a result of litigation.

15.13 Dr. Sturge also put forward a number of other suggestions, which we think worth recording in full: -

1. Why do so many fathers drop out of the picture?
2. What are the effects of the litigation on children? Can the length of litigation be titrated against the size of the effect on the child? Are there other ways of managing the proceedings or the child that would be less stressful e.g. early Scottish type hearing?
3. In how many ‘implacable’ cases is meaningful contact achieved through court proceedings (or alongside them)? If very small, what are the implications?
4. How many contact orders are followed? For how long?
5. In how many cases does an increase / improvement in contact follow the original order? What do follow up studies tell us?
6. What are children’s feelings about court ordered contact? Is the tendency for these to improve their view / relationship with the other parent or the opposite?
7. What is the success rate of Family Assistance Orders / Court Welfare intervention?

15.14 Dr. Sturge comments that there are many more questions, but that we urgently need the answers to numbers 3 and 4. The research, she says, would be relatively straightforward, as ‘implacable hostility’ could be given a concrete definition such as the failure of contact arrangements for over a year, a resistance to direct contact and court proceedings coming before the court more than once.
15.15 A number of respondents stressed the need for research on the longer-term effects of contact orders, particularly the effects of contact orders on the development of children. These included the Assistant Chief Constable of the South Wales Police and the Equal Parenting Council.

15.16 Several respondents were concerned, like Dr. Sturge, with children’s feelings about court-ordered contact and their attitudes to their parents as a result of parental conflict. These included the Law Society, and the Children’s Society, who were also concerned about the inter-relationship between the role of the Child Support Agency and the number of disappearing fathers. The Children’s Society argued that further research into the relationship between parental contact with children and the social security system could be very useful in identifying how best to meet the needs of children.

15.17 National Family Mediation thought there was a real need for research which analysed children’s attitudes to the effectiveness of different types of interventions. A group of Sussex CAFCASS Reporters, Children’s Guardians and Team Managers, on the same issue, said made the point that such a study should consider children from different ethnic backgrounds.

15.18 Child Concern pointed to the differences in approach to contact between public and private law practitioners and thought that research on the effects of different types of interventions and the difference in the approaches between the two would be helpful. The Head of Children’s Services from Essex County Council suggested that there should be a cross-referenced research on contact in cases where children are placed in foster care or put up for adoption.
15.19 Child Concern took the view that the progress of CAFCASS and any differences it achieved should be carefully monitored and analysed. Clare Furniss from the Law Department of Leeds University made the same point. Mr. Philip Hoddell, head of the Family Department at Birkett Long, solicitors of Halstead in Essex took the view that the courts should conduct some degree of study into the effects of the orders they make. It would not be difficult, he said, for cases where contact orders are made to be noted forward and then a questionnaire sent to both parties. The focus should be on whether or not orders are working, whether orders are varied by agreement or whether people are so put off by the whole court experience that even though the order broke down nobody took any steps to draw that fact to the court’s attention. There should also be research about what parents and children think about the court system for handling contact disputes.

15.20 The National Association of Probation Officers was concerned about the effectiveness of commitments to tackle institutional racism within the Family Justice System.

15.21 The Association for Shared Parenting, and Families Need Fathers, together with a number of individual respondents were concerned about Parental Alienation Syndrome, and the effect on adults who, as children, were denied contact with one of their parents.

15.22 A recurring theme was the need to understand why non-resident parents gave up seeking contact. Was it, as one respondent suggested, because the courts would not enforce contact orders? Did we know many contact orders are followed and for how long and how contact develops following an order? Dr. Liz Trinder identified four specific areas which she said needed to be addressed: -
• Non-disputed contact (what makes contact work)
• The reasons why non-resident parents drop out of contact and what can be done to restore it
• The relative distribution of different types of contact in the population (non-contested, ceased contact and disputed contact)
• Evaluation of the effectiveness of therapeutic interventions in high conflict cases.

15.23 Dr. Lorraine Radford, reader in Social Policy at the University of Surrey, Roehampton also stated that there needed to be more research into the reasons why contact is not maintained or supported by a parent; there needed to be research monitoring the outcome of contact orders made by the courts and how these effect children; there was also a great need for research into contact services, especially how parents and children make the transition from supervised or supported contact to contact that is self-managed.

15.24 A number of respondents raised the question of domestic violence. The topics put forward included the incidence of applicants for contact having committed acts of domestic violence and the number of parents and children who have been subject to further domestic violence as a result of a contact order; the safety of children on contact visits; the effects of domestic violence and violence management programmes on the safety of children and parents involved in contact; the experience of the residential parent in cases where there has been domestic violence; the value of contact to children in cases of domestic violence; the effects of the recent guidelines on domestic violence and contact; the longer term effects of domestic violence between parents on their children. It was also suggested that the incidence of murders resulting from contact should also be studied.

15.25 Whilst we recognise the importance of all these issues, we did attempt to address the question of domestic violence in our Report to the Lord Chancellor on Contact between Children and Violent Parents. We made recommendations in relation to research
in that Report which we understand are in the process of being put into effect by the Department. We also understand that steps to monitor the implementation of the Guidelines are also being taken. In these circumstances, we do not propose to comment further on the suggestions for further research summarised in paragraph 15.24.

**Other issues**

15.26 Professor James of the University of Bradford suggested that, in addition to the areas proposed, research will need to be conducted into the effectiveness of CAFCASS, given that it is likely to be a key element in any infrastructure of support services that is developed. This was supported by The Children’s Society and Professor Janet Walker.

15.27 Professor Walker’s additional topics for research included the need for longitudinal research which tracks contact arrangements and disputes over time, the piloting of parent education programmes both for parents facing separation and for parents engaged in contact disputes or finding it difficult to make contact work. She also recommended more focused research involving Contact Centres, experimenting with different kinds of facilities and resources. The uses of Contact Centres need to be tracked over time.

**Research into the Enforcement of contact**

15.28 The Leeds Inter-Agency Project suggested, amongst other proposals a study of the circumstances in which contact is enforced; an examination of anecdotal evidence of racism in such cases and an exploration of the extent to which domestic violence is evidenced in court compared with women’s experience of it. Judge Meston QC thought it would be valuable to discover the longer-term outcomes of reported and unreported cases where committal orders have been made.
15.29 Judge Linda Davies wanted to see research into the consequences of lack of resources for the implementation of contact orders.

15.30 A number of respondents suggested the study of the use of specific types of intervention. Both Judge Audrey Sander on behalf of the Plymouth Family Court Business Committee and the Solicitors Family Law Association wanted research on the impact on the prevention of contact disputes by the provision of information at an early stage of relationship breakdown with the aim of focusing efforts on how to intervene in this area. National Family Mediation wanted to see research consider the direct involvement of children in mediation. Veronica Swenson of NAGALRO was particularly interested in pilot projects and research programmes that dealt with different ways of involving children in decision making following divorce or separation.

15.31 A number of respondents were concerned to see research into supervised contact. The Leeds Inter-Agency Project, for example, suggested an assessment of supervised contact - how available it was and its effectiveness in developing contact.

15.32 Other respondents proposed research into the benefits and success of orders for indirect contact. The Grandparents’ Federation asked whether it led to direct contact, or fell away, and if the latter, whether this has been because it is not enforced and if so how indirect contact could be monitored and enforced more effectively.

15.33 Clair Dudley of Bexley Women’s Aid proposed that there should be a study of the impact on children of using different types of contact. The Salvation Army wanted research on the effectiveness of the intervention and support of faith organisations as opposed to other organisations. Dr. Furniss wanted to know what impact extended family members had on contact disputes and how their support could best be mobilised. How effective were family group conferences?
Conclusions and Recommendations

15.34 It is very easy, when dealing with any problem, to say that we need research (unspecified) about it, as though simply uttering the word will somehow solve the problem. We have deliberately set out the details of numerous responses to demonstrate the multi-faceted nature of the subject, the breadth of the proposals put forward, and their direct relevance to the questions of the facilitation and enforcement of contact.

15.35 Making recommendations for research from the mass of material provided is not easy. We start, however, from the advice about areas of necessary research which we received from Professor Bailey-Harris and Professor Walker and which is set out at paragraph 15.3 above. This, we think, deals in with key areas: in crude summary, they are firstly, who are the people involved? What are they arguing about? Why are they arguing? Secondly, what processes within the Family Justice system are applied to the problem? Thirdly, what works best in terms of the durability of the contact arrangements?

15.36 To this, we think can be added the points made by Dr. Sturge at paragraph 15.13, which includes are question at paragraph 15.12: How do outcomes differ for children whose parents divorce / separate between those whose parents make arrangements between themselves and those who turn to the courts?

15.37 It seems to us that if research is commissioned along the lines proposed by Dr Bailey-Harris, Professor Walker and Dr. Sturge, a large amount of information will emerge which will greatly inform the approach of the Family Justice System on the validity and effect of different mechanisms.
15.38 It also seems to us that an amalgamation of the proposals for research put forward by Professor-Bailey Harris, Professor Walker and Dr. Sturge cover most of the objective put forward by respondents, apart from the longer term studies proposed by Professor Walker and others. Whilst we do not doubt the value of these, we are, of course, particularly concerned to improve the system as quickly as possible, and longer term studies cannot have an immediate impact. That said, we strongly support the suggestion that there should be research into enforcement of contact, including the piloting of parental education programmes as proposed by Professor Walker in paragraph 15.27.
CHAPTER 16: RECOMMENDATIONS

16.1 In this chapter, we set out our recommendations. We have not, however, repeated all the conclusions on which they are based and which are set out in the text of each of the chapters in the report.

16.2 In making our recommendations, we are conscious that some of the actions we propose cannot be implemented immediately, either because they require primary legislation or because they require the allocation of additional resources not currently included in Departmental plans. Indeed, in some areas our recommendation is for further study, because we do not consider that there is sufficient evidence on which to base a definitive recommendation. In the case of other recommendations, however, we believe that immediate action could be taken.

16.3 Our recommendations in the first part of this chapter are listed under headings which follow the order in which they arise in the text of the Report. However, following the thinking in paragraph 16.2 we have identified in each case the category into which each recommendation falls, and the agency to which it is addressed.

16.4 In part 2 of this chapter we group the recommendations under the different headings to provide a cross-check.

16.5 The recommendations fall into the following four categories: -

1. Those which can be implemented immediately;

2. Those which can be implemented by Government or its agents, but which require significant additional funding;

3. Those which require legislation;

4. Those which require further study before a specific recommendation can be made;
PART 1

RECOMMENDATIONS

CHAPTER 3: THE PROVISION AND DISTRIBUTION OF INFORMATION TO SEPARATING AND DIVORCING PARENTS

1. We recommend that the Lord Chancellor’s Department either prepares or commissions a leaflet setting out the approach of the courts to issues of contact. This should summarise the Sturge / Glaser report. It should also contain references to the decision of the Court of Appeal in Re L, V, M and H (Contact: domestic violence) and the approach of the court to cases where domestic violence is an issue. It should be designed to be made available to couples with children who have separated or who are contemplating separation.

2. We recommend that the Lord Chancellor’s Department enters into immediate discussions with NFPI, CAFCASS and other interested parties in a co-ordinated approach aimed at providing comprehensive information of the kind identified by this consultation on a national basis. That information should be available at the widest possible number of outlets possible, including on video and the internet.

3. In relation specifically to divorce proceedings, we recommend a review of the procedure under section 41 of the Matrimonial Causes Act with the particular aim of requiring information to be made available to divorcing couples with children.

(The recommendations in this Chapter are all within Category 1, and are addressed to the Lord Chancellor’s Department.)
CHAPTER 4: THE PROVISION OF INFORMATION TO CHILDREN

4. The Lord Chancellor’s Department should conduct a survey of the information and advice currently available to children whose parents are having relationship difficulties or who have separated in order to ascertain its scope and quality.

5. As with our recommendation numbered 2, and subject to the nature and quality of the information currently available, the Department should enter into immediate discussions with the NFPI, CAFCASS and other interested parties in a co-ordinated approach aimed at providing age-appropriate information for children on the effects of parental separation and on contact.

6. The Department should take specific steps to ensure that access to all age appropriate information is available to children through CAFCASS in both paper and electronic form and that wherever possible children should have access to officers of CAFCASS by telephone.

(The recommendations in this Chapter are also all within Category 1, and are addressed to the Lord Chancellor’s Department.)

CHAPTER 6: CAFCASS

7. In recognition of the importance of CAFCASS and of the vital role which it has to play in the Family Justice System, the Lord Chancellor’s Department should ensure that CAFCASS is properly funded to undertake both the role of reporting to the court in children’s cases and the important functions it has to perform in its advisory and support service. These include the provision of information to parents and children involved in relationship breakdown.

(Category 2: Agency – the Lord Chancellor’s Department)
CHAPTER 7: MEDIATION

8. We recommend that judges and magistrates should be given the power to refer parties to mediation, although the involvement of children in the mediation process must be a matter for the individual mediator and the family concerned.

(Category 3: Agency – the Lord Chancellor’s Department)

CHAPTER 8: CONTACT CENTRES

9. If and in so far as Contact Centres supplying “supported” contact need or seek outside funding, it should be made available through CAFCASS on a regional basis or by means of an annual grant to NACCC which would then distribute the money according to need.

(Category 2: Agency – the Lord Chancellor’s Department)

10. In so far as Contact Centres provide specialist facilities such as supervised contact, core funding should be provided by Government, with CAFCASS and others purchasing the use of these facilities as necessary.

(Category 2: Agency – the Lord Chancellor’s Department)

11. Apart from supervision of contact, the Lord Chancellor’s Department and CAFCASS should encourage Contact Centres to develop additional facilities such as accompanying children and parents on contact outside the centre, facilitating indirect contact and providing an information service to parents.

(Category 2: Agencies - the Lord Chancellor’s Department, the National Association of Child Contact Centres and CAFCASS)
12. The Lord Chancellor’s Department should fund more specialist Contact Centres like Coram Family and the Accord Centre.

(Category 2: Agency – the Lord Chancellor’s Department)

CHAPTER 9: LAWYER NEGOTIATED CONTRACT

13. All lawyers undertaking children cases which are publicly funded should be accredited as competent to do so by the Law Society, the Solicitors Family Law Association or the Family Law Bar Association.

(Category 1: - Agency – the Legal Services Commission.)

CHAPTER 10: THE COURT PROCESS

14. The Lord Chancellor’s Department should fund additional facilities for resolving contact disputes by negotiation, conciliation and mediation. Whilst there is plainly a role for the court in resolving contact disputes, there is a widespread perception that such disputes are better addressed outside the court system. There is a wide-spread feeling that an application to the court should be the last resort.

(Category 2: Agency – the Lord Chancellor’s Department)

15. The Judiciary and the Court Service need to promote a culture of judicial continuity, avoiding time-wasting and inconsistency, by a more proactive management of judges’ calendars and itineraries.

(Category 1: Agencies – the Judiciary and the Court Service)
16. We welcome the widespread support for an in court conciliation system to be operated by CAFCASS at the first appointment in contact cases. Such a system should be operated throughout the country and at every level of court.

(Category 2: Agencies – the Court Service and CAFCASS)

17. There may be a role for family conferencing, but this is a matter for CAFCASS to explore in due course.

(Category 4: Agency – CAFCASS)

CHAPTER 11: FAMILY ASSISTANCE ORDERS

18. The Government should legislate to make the changes required in order to make Family Assistance Orders effective. We support Family Assistance Order as potentially a very useful facility, if operated by CAFCASS and as part of a planned and specific programme of court led intervention. They should cease to be directed to Local Authorities, but should be directed to CAFCASS. The time limit of 6 months should be removed. The phrase “exceptional circumstances”, which has little meaning, should be repealed, as should the ability to refuse to consent to the making of an order.

(Category 3: Agency – the Lord Chancellor’s Department)

19. We also recommend that CAFCASS be asked to prepare proposals in relation to specific programmes which could be operated under an Family Assistance Order, including “educational” programmes for parents, packages of support in monitoring the implementation of contact agreements, support for indirect contact, and direct assistance to children.

(Category 1: Agency – CAFCASS)
CHAPTER 12: THE INVOLVEMENT OF CHILDREN IN THE COURT PROCESS

20. In the light of the advent of CAFCASS, the Lord Chancellor’s Department, in consultation with the President, should review the restrictive view of children making applications to the court, which currently require the permission of a High Court Judge.

(Categories 1: Agencies – the Lord Chancellor’s Department and the President)

21. Steps need to be taken to make use of the much greater degree of flexibility which the creation of CAFCASS offers the court when considering the question of a child’s representation. The provisions now contained in the Family Proceedings Rules seem to us to be sufficiently flexible to ensure that the child’s interests can be protected by appropriate representation wherever necessary. Specific consideration should therefore be given to the question of how the child’s interests can be best represented in every case.

(Category 2: Agencies -, CAFCASS and the Judiciary)

22. CAFCASS and the Judiciary should make use of the changes in the Family Proceedings Rules also give a much greater scope for CAFCASS officers to be more closely involved with the children on whom they are reporting, and a greater opportunity for children to be represented in court by CAFCASS officers with, if necessary, legal support. This is not, of course, to suggest that in every case the children should be represented: what we think it should mean is that in cases where a straightforward investigation followed by a report is not sufficient to meet the interests of the children, the framework for the continuing involvement of CAFCASS exists and should be used. This prospect would be further strengthened if our proposals for the reform of Family Assistance Orders are implemented.

(Category 2: Agencies – CAFCASS and the Judiciary.)
CHAPTER 13. PARTICULAR FORMS OF COURT ORDERS

23. It is sensible in our view to include in a court order where appropriate a clause which enables the parties to agree further or different contact from that ordered. This frees the parties to make further agreements and can avoid an unnecessary return to court.

(Category 1: Agency – the Judiciary)

24. We also recommend imaginative and creative use of orders for indirect contact where that is appropriate.

(Category 1: Agency – the Judiciary)

CHAPTER 14: ENFORCEMENT

Wider powers for the courts

25. The courts should be given much wider powers to ensure that its orders are obeyed, or otherwise to facilitate their implementation. This means in turn that there must be legislation widening the powers to the courts to enable them, in addition to imposing fines or ordering imprisonment, to make a whole range of orders designed to address the problem posed by circumstances of the individual case. Numerous ideas emerged during the course of the consultation. We are particularly attracted by the suggestion put forward by CAFCASS that what is required is an approach which gives practitioners more time to work with parents and children within a framework of services.
Orders designed to engage available services

26. The courts need to be given the powers to make orders to engage a number of those services identified by CAFCASS, not all of which relate directly to the enforcement of an existing order, such as “supervised Contact Centres, child counselling, perpetrator programmes, information giving meetings, conciliation meetings prior to initial directions and psychological assessments”. We strongly support and recommend the court being given the powers to make orders which enable these resources to be engaged.

27. In our view what is required is a range of options to be available to the court on the application of one of the parties (or CAFCASS, or the court of its own motion) designed to assist the implementation of an order which is not being obeyed. The range of options needs to be sufficiently flexible to address the problem, and that options themselves need to be available. There is no point, for example, directing a parent to attend a parenting class if the facility is not available.

The non-punitive approach

28. Legislation needs to provide powers that allow for two different approaches. There should, in our view, be two different options, or two stages. The first will be essentially non-punitive. The resident parent will, for example, be directed to attend an information meeting, or a parenting programme designed to address intractable contact disputes; or required to seek psychiatric advice. If that does not work, and the contact order has still not been obeyed, the court would reconsider and could impose an order with a penal sanction, such as community service or probation with conditions of treatment or regular attendance at parenting classes. Any question of fines or imprisonment would then genuinely be an issue of last resort.
The powers which the courts need

29. Legislation must provide the powers which the courts need. These are, we think, essentially the following: -

(1) the power to refer a parent who disobedys an order for contact to a variety of resources including information meetings, meetings with a counsellor, parenting programmes / classes designed to deal with contact disputes;

(2) the power to refer to a psychiatrist or psychologist, (publicly funded in the first instance);

(3) the power to refer a non-resident parent who was violent or in breach of an order to an education programme or a perpetrator programme;

(4) the power to place on probation with a condition of treatment or attendance at a given class or programme;

(5) the power to impose a community service order, with programmes specifically designed to address the default in contact;

(6) the power to award financial compensation from one parent to another (for example where the cost of a holiday has been lost).

These recommendations under Chapter 14 all require legislation (category 3) and are directed to the Lord Chancellor’s Department.
CHAPTER 15: RESEARCH AND FURTHER STUDY

30. For the reasons discussed in Chapter 15 of this report we recommend that the Lord Chancellor commissions research to address the issues identified in paragraph 15.3 together with the issues identified by Dr. Clare Sturge and set out at paragraph 15.13. As stated in paragraphs 15.35 and 15.36, we recommend research into the enforcement of contact, including the piloting of parental education programmes both for parents engaged in contact disputes or finding it difficult to make contact work.

31. The role of family conferences is a matter for CAFCASS to explore in due course (see paragraph 10.30).

32. Whilst, as we made clear in paragraph 14.23, we are attracted to the Australian model for the enforcement of court orders, it is, as yet, in its infancy; we do not know how it will work in practice, and we do not think it appropriate to recommend following it exactly. In any event, whilst a clear structure is required, the essence of the approach, in our judgment, is to provide the court with a substantial degree of flexibility, which our proposals would do.

33. We discuss in Appendix 3 the concept of joint parenting orders and the greater use of joint residence orders. We make no recommendation on this subject, but if the Government thinks the concept of shared parenting or the greater use of shared residence orders worth pursuing, it might consider setting up a pilot scheme based on a small number of courts to test the effect of such orders in practice.

34 For the reasons discussed in paragraphs 14.39 to 14.42 we invite the Government in any further assessment of maintenance and the Child Support Agency to consider the desirability and practicability of legislating for an inter-relationship between child maintenance and contact.
35. We also very much agree with the Australian approach that at each stage in the process the obligations of the resident parent are carefully spelled out and the consequences which are to follow if the order is not obeyed.

36. We also suggest that the Rules committee may wish to look at the proposal found which found favour with a number of respondents and is canvassed in paragraph 14.29, namely that committal proceedings in relation to breaches of contact orders should only be permitted after a hearing without notice to the respondent in which the court considers the application and decides whether or not it should proceed to a full hearing.

(The items under this heading all fall within category 4. Some emerge from other parts of the consultation, but are conveniently addressed at this point.)
PART 2

BREAKDOWN OF THE RECOMMENDATIONS

CATEGORY 1: THOSE WHICH CAN BE IMPLEMENTED IMMEDIATELY

We recommend the following immediate actions for the Lord Chancellor’s Department:

1. The preparation or commissioning of a leaflet for parents on post separation contact based on Sturge / Glaser

2. The organisation of a co-ordinated approach to the preparation and distribution of information to parents

3. A review of the procedure under section 41 of the Matrimonial Causes Act 1973

4. A survey of information available to the children of parents who have separated or who are have difficulties

5. The organisation and provision of age-appropriate information for children on the effects of parental separation and contact

6. To ensure access to age appropriate information by children through CAFCASS

20. To reconsider with the President of the Family Division the current restrictive policy of requiring the permission of the High Court before a child can make an application.
We recommend that the Judiciary and the Court Service take immediate steps:

15 To promote a culture of judicial continuity in children’s cases

23 To include in court orders where appropriate a clause which enables the parties to agree further or different contact to that which has been ordered

24 To make more imaginative use of orders for indirect contact.

We recommend the following immediate action for the Legal Services Commission:

13 All lawyers undertaking publicly funded cases involving children should be accredited to do so by their relevant professional body

We recommend the following immediate actions for CAFCASS

19 To prepare proposals for specific programmes designed to be operated under Family Assistance orders

CATEGORY 2: THOSE WHICH CAN BE IMPLEMENTED BY GOVERNMENT OR ITS AGENTS, BUT WHICH REQUIRE SIGNIFICANT ADDITIONAL FUNDING;

We recommend the following actions for the Lord Chancellor’s Department:

7 To ensure that CAFCASS is properly funded in order to enable it to address all the roles identified for it in the Report

9 To supply necessary outside funding for Contact Centres offering supported contact

10 To provide core funding for specialist Centres provided by contact services

11 To encourage Contact Centres to develop additional facilities

12 To fund more specialist centres like Coram Family and the Accord Centre

14 To fund additional facilities for resolving contact disputes by negotiation, conciliation and mediation

21 To encourage and facilitate an expanded role for CAFCASS in the representation of children in family proceedings
We recommend the following actions for CAFCASS:

11. To encourage Contact Centres to develop additional facilities.

16. With increased resources, to provide an in-court conciliation system at the first appoint in contact cases. Such a scheme should be operated throughout the country at every level of court.

21. To co-operate and facilitate the wider use of the representation of children by officers of CAFCASS in family proceedings.

22. To make use of the changes in the Family Proceedings Rules in order to be more closely involved with the children on whom they are reporting, including a greater opportunity for the children to be represented in court by a CAFCASS officer.

CATEGORY 3: RECOMMENDATIONS REQUIRING LEGISLATION

We recommend that the Lord Chancellors Department brings forward legislation:

8. To give judges and magistrates the power to refer parties to mediation;

18. To make the changes required in order to render Family Assistance Orders effective. They should cease to be directed to Local Authorities, but should be directed to CAFCASS. The time limit of 6 months should be removed. The phrase “exceptional circumstances” as should the ability to refuse to consent to the making of an order;

25. To give the courts much wider powers to make a whole range of orders designed to give practitioners time to work with parents and children within a framework of services;

26. To give the courts the powers to make orders to engage parents with a range of services such as “supervised Contact Centres, child counselling, perpetrator programmes, information giving meetings, conciliation meetings prior to initial directions and psychological assessments;

27. To ensure that the range of options is sufficiently flexible to address the problem, and that the options themselves are available;

28. To provide powers that allow for two stages, (1) non-punitive and (2) punitive. In (1) the resident parent will, for example, be directed to attend an information meeting, or a parenting programme designed to address intractable contact disputes. If that is ineffective, the court in (2) could impose a penal order. Any question of fines or imprisonment would then genuinely be an issue of last resort;
29. To provide the following powers needed by the courts: -

(1) the power to refer a defaulting parent in a contact to a variety of resources including information meetings, meetings with a counsellor, parenting programmes / classes designed to deal with contact disputes;

(2) the power to refer to a psychiatrist or psychologist, (publicly funded in the first instance);

(3) the power to refer a non-resident parent who was violent or in breach of an order to an education / a perpetrator programme;

(4) the power to place on probation with a condition of treatment or attendance at a given class or programme;

(5) the power to impose a community service order, with programmes specifically designed to address the default in contact;

(6) the power to award financial compensation from one parent to another (for example where the cost of a holiday has been lost).

CATEGORY 4: THOSE WHICH REQUIRE FURTHER STUDY BEFORE A SPECIFIC RECOMMENDATION CAN BE MADE;

These are, we think, already collected together under recommendations numbered 30 to 34 above, and we do not feel that any purpose would be served in repeating them here.
APPENDIX 1 LIST OF RESPONSES SORTED BY CATEGORY

1. Responses from Individuals (excluding 4 respondents who wished their contributions to be treated as confidential).

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<thead>
<tr>
<th>Name</th>
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<tr>
<td>T H Aldridge</td>
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<td>Elaine Barlow</td>
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<td>Joyce Bell</td>
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<td>Lynne Bowers</td>
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<td>Ms P Briggs</td>
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<td>Mr A Y Brodie</td>
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<td>David Edwards</td>
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<td>Pauline Gooderson</td>
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<td>Mrs G M Grattage</td>
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<td>Suzanne Gyorkey</td>
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<td>Mark Harris</td>
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<td>Pauline Hay</td>
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<td>Stan Hayward</td>
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<td>Martin R Hensman</td>
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<td>Tony Hobbs</td>
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<td>Marion Jayawardene</td>
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<td>Mr &amp; Mrs B Laverick</td>
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<td>Jonathan Little</td>
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<td>Margaret T McLaren</td>
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<td>K Miller</td>
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<td>R Noble</td>
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<td>Catherine Parry</td>
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<td>Jeff Richardson</td>
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<td>George Sheldrick</td>
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<td>Sue Walton</td>
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<td>Frances Williams</td>
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<td>Glynis J Williams</td>
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<td>James Williamson</td>
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<td>Mr J M Keeney-Wilson</td>
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<td>Arthur and Pamela Wright</td>
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<td>David Yarwood</td>
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2. Responses from Groups predominantly representing Men’s Interests

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<tr>
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<tbody>
<tr>
<td>Tony Coe</td>
<td>Equal Parenting Council</td>
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<td>Oliver Cyriax</td>
<td>INPOWw</td>
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<td>Stephen Fitzgerald</td>
<td>MANKIND</td>
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<td>Estella A Nobles</td>
<td>‘A’ PAGES</td>
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<td>The Separation Organisation</td>
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<tr>
<td>Sue Stecker</td>
<td>Families Need Fathers</td>
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<td>Robert Whiston</td>
<td>UK Men’s Movement</td>
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<tr>
<td>Barry Worrall</td>
<td>The Cheltenham Group</td>
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3. Responses from Groups predominantly representing Women’s Interests

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<tr>
<td>Emma Aynsley</td>
<td>Advance</td>
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<td>Jean Bossy</td>
<td>Surrey Domestic Violence Project</td>
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<tr>
<td>Sheila Brookes</td>
<td>Stonham Housing Association</td>
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<td>Jean Calder</td>
<td>Women’s Refuge Project Brighton</td>
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<td>DIVA</td>
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<td>Domestic Violence Intervention Project</td>
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<td>Clair Dudley Bexley</td>
<td>Women’s Aid</td>
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<td>Pauline Fogg</td>
<td>Gateshead Domestic Violence Forum</td>
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<td>Dee Golder</td>
<td>Welwyn Hatfield Women’s Refuge</td>
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<td>Clare Jennings</td>
<td>REFUGE</td>
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<td>Sharon Kane</td>
<td>City of Sunderland</td>
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<td>Rachel Loise</td>
<td>Support and Survival Health Programme</td>
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<td>Anita J Lord</td>
<td>Wearside Domestic Violence Forum</td>
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<td>Ali Merchant</td>
<td>South Devon Women’s Aid Outreach Project</td>
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<td>Nicola Pearce</td>
<td>Nottingham Open Door</td>
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<td>Rights of Women</td>
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<td>Women’s Aid</td>
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<tr>
<td>Penny Thornton</td>
<td>Crawley Women’s Aid</td>
</tr>
<tr>
<td>Sarah Gravina-Young</td>
<td>Ipswich Women’s Aid</td>
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4. Responses from Academics and Voluntary Organisations

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Liz Atkins</td>
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<tr>
<td>Steve Bagnall</td>
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<tr>
<td>John Bell</td>
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<tr>
<td>Sue Burridge</td>
<td>Churches Together for Families</td>
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<tr>
<td>Child &amp; Woman Abuse Studies Unit</td>
<td>University of North London</td>
</tr>
<tr>
<td>Colonel Derek Elvin</td>
<td>The Salvation Army</td>
</tr>
<tr>
<td>Clare Furniss</td>
<td>University of Leeds</td>
</tr>
<tr>
<td>Liz Garrett Barnardo’s</td>
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<tr>
<td>Revd Canon David Grimwood</td>
<td>FLAME</td>
</tr>
<tr>
<td>Lynne Harne</td>
<td>University of Sunderland</td>
</tr>
<tr>
<td>June Houghton</td>
<td>The Mothers’ Union/Union of Catholic Mothers</td>
</tr>
<tr>
<td>Name</td>
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<tr>
<td>Professor Adrian L James</td>
<td>University of Bradford</td>
</tr>
<tr>
<td>Jennifer Jenkins</td>
<td>The Grandparents' Federation</td>
</tr>
<tr>
<td>Susan Taylor</td>
<td>Joseph Rowntree Foundation</td>
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<tr>
<td>Vicky Leach &amp; Caroline Abrahams</td>
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<tr>
<td>The Revd N Lear</td>
<td>The Baptist Union of Great Britain</td>
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<tr>
<td>Mary Macleod</td>
<td>NFPI</td>
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<tr>
<td>Nuala Mole</td>
<td>The Aire Centre</td>
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<tr>
<td>Professor Audrey Mullender</td>
<td>University of Warwick</td>
</tr>
<tr>
<td>National Council for One Parent Families</td>
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<tr>
<td>Graham Porter</td>
<td>The Association for Shared Parenting</td>
</tr>
<tr>
<td>Dr Lorraine Radford</td>
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</tr>
<tr>
<td>Honor Rhodes</td>
<td>Family Welfare Association</td>
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<tr>
<td>Janet Seden</td>
<td>The Open University</td>
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<tr>
<td>Professor C Smart, Dr B Neale and Dr Wade</td>
<td>University of Leeds</td>
</tr>
<tr>
<td>Judy Tomlinson</td>
<td>Child Concern</td>
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<tr>
<td>Dr Liz Trinder</td>
<td>University of East Anglia</td>
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<tr>
<td>Angela Underdown</td>
<td>The Children’s Society</td>
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<tr>
<td>Professor Janet Walker</td>
<td>University of Newcastle</td>
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5. Responses from the Judiciary, Retired Judiciary and Family Law Professionals

a. Individual Judges, former Judges and Judicial Associations

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>HH Judge Allweis</td>
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<tr>
<td>Senior District Judge Gerald Angel</td>
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<tr>
<td>The Hon Mr Justice Bodey</td>
</tr>
<tr>
<td>Dame Margaret Booth DBE</td>
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<tr>
<td>The Hon Mrs Justice Bracewell</td>
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<tr>
<td>Judge Dale Clarkson New Zealand Family Court</td>
</tr>
<tr>
<td>The Hon Mr Justice Coleridge</td>
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<tr>
<td>The Hon Mr Justice Connell</td>
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<tr>
<td>District Judge Nicholas Crichton</td>
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<tr>
<td>HH Judge Philip Curl</td>
</tr>
<tr>
<td>HH Judge Linda Davies</td>
</tr>
<tr>
<td>HH Judge Peter de Mille</td>
</tr>
<tr>
<td>HH Judge G O Edwards QC</td>
</tr>
<tr>
<td>HH Judge Fricker QC</td>
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<tr>
<td>HH Judge Mark Hedley</td>
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<tr>
<td>HH Judge Richard Jenkins</td>
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<tr>
<td>HH Judge Caroline Ludlow</td>
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<td>HH Judge Meier</td>
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<tr>
<td>District Judge John Merrick</td>
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<tr>
<td>HH Judge Meston QC</td>
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<tr>
<td>District Judge John Mitchell</td>
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<tr>
<td>HH Judge Elystan Morgan</td>
</tr>
<tr>
<td>David Price (former District Judge)</td>
</tr>
<tr>
<td>District Judge Martyn Royall</td>
</tr>
<tr>
<td>The Rt Hon Dame Elizabeth Butler-Sloss DBE President of the Family Division</td>
</tr>
<tr>
<td>HH Judge Susan Darwall-Smith</td>
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<tr>
<td>HH Judge Steel DL</td>
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<tr>
<td>The Hon Mr Justice Sumner</td>
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<tr>
<td>HH Judge Tyrer</td>
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<td>District Judge Williams</td>
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**b. Legal Practitioners and Practitioner Organisations**

<table>
<thead>
<tr>
<th>Yvonne Brown Association of Lawyers for Children</th>
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<tbody>
<tr>
<td>Patricia Gore Davies Gore Lomax</td>
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<tr>
<td>Deidre Gough Young &amp; Co</td>
</tr>
<tr>
<td>Philip Hoddell Birkett Long Solicitors</td>
</tr>
<tr>
<td>The Law Society</td>
</tr>
<tr>
<td>John Horne General Council of the Bar</td>
</tr>
<tr>
<td>The Institute of Legal Executives</td>
</tr>
<tr>
<td>Jacqui Jackson SFLA</td>
</tr>
<tr>
<td>Pamela Scriven Family Law Bar Association</td>
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**c. Family Court Business Committees**

<table>
<thead>
<tr>
<th>HH Judge Elly Berkshire Family Court Business Committee</th>
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<tr>
<td>Midland &amp; Oxford Circuit Family Court Business Committee</td>
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<tr>
<td>HH Judge Sander Plymouth Family Court Business Committee</td>
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**d. Medical and Mental Health Professionals**

<table>
<thead>
<tr>
<th>Mrs Jill Curtis</th>
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<tbody>
<tr>
<td>Dr T Fundudis Northern Training Centre for Child Protection</td>
</tr>
<tr>
<td>Dr Danya Glaser</td>
</tr>
<tr>
<td>Dr Patricia Hamilton Royal College of Paediatrics and Child Health</td>
</tr>
<tr>
<td>Dr Roger Kennedy</td>
</tr>
<tr>
<td>Dr C Sturge</td>
</tr>
<tr>
<td>Dr Judith Trowell Tavistock &amp; Portman NHS Trust</td>
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**e. Mediators and Mediation Organisations**

<table>
<thead>
<tr>
<th>Angela Graham Sunderland and South Tyneside Mediation Service and Child Contact Centre</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Family Mediation</td>
</tr>
<tr>
<td>Bob Richardson UK College of Family Mediators</td>
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**f. Child Contact Centre Representatives**

<table>
<thead>
<tr>
<th>Amanda Checkley &amp; Una Cottingham</th>
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<tbody>
<tr>
<td>Coram Family Child Contact Service</td>
</tr>
<tr>
<td>Mary Crampnhor</td>
</tr>
<tr>
<td>Eleanor GrantWelcare</td>
</tr>
<tr>
<td>Eunice Halliday NACCC</td>
</tr>
<tr>
<td>Pamela Harper Voluntary Contact Centre Worker</td>
</tr>
<tr>
<td>Name</td>
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</tr>
<tr>
<td>Maggie Harrison</td>
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<tr>
<td>Teresa Hartley</td>
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<tr>
<td>Joan Hedges</td>
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<tr>
<td>Heather Hotston Moore</td>
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<td>Sally Jarvie</td>
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<td>Keith H Lomas</td>
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<td>Honor Rhodes</td>
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<tr>
<td>Brian Riley</td>
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<tr>
<td>Julia Wise-St Leger</td>
</tr>
<tr>
<td>Sue Tringham</td>
</tr>
<tr>
<td>Grizelda Tyler</td>
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**g. CAFCASS Officers (Probation, Family Court Welfare Service, GALRO etc)**

<table>
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<tr>
<th>Name</th>
<th>CAFCASS Details</th>
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</thead>
<tbody>
<tr>
<td>Teresa Clark</td>
<td>Teresa Clark CAFCASS Nottingham</td>
</tr>
<tr>
<td>Peter Jones &amp; Anne Flynn</td>
<td>Peter Jones &amp; Anne Flynn CAFCASS Sussex</td>
</tr>
<tr>
<td>Andrew Gamble</td>
<td>Andrew Gamble CAFCASS South Yorkshire</td>
</tr>
<tr>
<td>Elizabeth Hall</td>
<td>Elizabeth Hall CAFCASS South Tyneside</td>
</tr>
<tr>
<td>Gordon Hastings</td>
<td>Gordon Hastings CAFCASS Sheffield</td>
</tr>
<tr>
<td>Mike Hinchcliffe</td>
<td>Mike Hinchcliffe CAFCASS Legal Team</td>
</tr>
<tr>
<td>Allan Horsefield</td>
<td>Allan Horsefield CAFCASS Chester</td>
</tr>
<tr>
<td>Ann Jolley</td>
<td>Ann Jolley CAFCASS Chichester</td>
</tr>
<tr>
<td>Miriam Jones</td>
<td>Miriam Jones CAFCASS Bristol</td>
</tr>
<tr>
<td>James Lawson</td>
<td>James Lawson AFCWO</td>
</tr>
<tr>
<td>Anne Loughlin</td>
<td>Anne Loughlin CAFCASS Bristol</td>
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<tr>
<td>Barry Meteyard</td>
<td>Barry Meteyard CAFCASS Torquay</td>
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<tr>
<td>Sheila Mosley</td>
<td>Sheila Mosley CAFCASS Leicester</td>
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<tr>
<td>Harold Mozley</td>
<td>Harold Mozley CAFCASS Yorkshire and Humberside</td>
</tr>
<tr>
<td>NAGALRO</td>
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</tr>
<tr>
<td>Debra Pearlman</td>
<td>Debra Pearlman CAFCASS Leeds</td>
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<tr>
<td>Cordell Pillay</td>
<td>Cordell Pillay NAPO</td>
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<tr>
<td>Mrs J M Pugsley</td>
<td>Mrs J M Pugsley CAFCASS Stoke -on-Trent</td>
</tr>
<tr>
<td>Valerie Quinn</td>
<td>Valerie Quinn Children and Family Reporter</td>
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<tr>
<td>M R Rouse</td>
<td>M R Rouse CAFCASS Luton</td>
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<tr>
<td>Alan Sealey</td>
<td>Alan Sealey Family Courts Consortium</td>
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<tr>
<td>Diane Shepherd</td>
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<tr>
<td>Peter Sorrell</td>
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<tr>
<td>CAFCASS St Austell</td>
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</tr>
<tr>
<td>Mike Taylor</td>
<td>Mike Taylor CAFCASS Runcorn</td>
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**h. Police Services**

<table>
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<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Assistant Chief Constable</td>
<td>Police Superintendent John Dransfield Superintendents’ Association</td>
</tr>
<tr>
<td>D I Joyce Green</td>
<td>Police Superintendent John Dransfield Superintendents’ Association</td>
</tr>
<tr>
<td>DS Francis</td>
<td>Assistant Chief Constable DS Francis South Wales Police</td>
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132
### i. Chairs of Family Panels and other Magistrates’ Associations

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<tr>
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<tr>
<td>AMO (Magistrates’ Courts Staff)</td>
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<tr>
<td>M Andrews</td>
<td>Halton family Proceedings Panel</td>
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<tr>
<td>Sid Brighton</td>
<td>The Justices’ Clerks’ Society</td>
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<tr>
<td>Dipika Chapaneri</td>
<td>West Hertfordshire Family Proceedings Panel</td>
</tr>
<tr>
<td>Children Law UK (formerly BJFCS)</td>
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<tr>
<td>S L Cummings</td>
<td>Gateshead Magistrates’ Court</td>
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<tr>
<td>Audrey Damazer</td>
<td>Inner London Family Proceedings Court</td>
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<tr>
<td>Margaret Dunne</td>
<td>Burnley, Pendle &amp; Rossendale Family Proceedings Court</td>
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<tr>
<td>J M H Gammon</td>
<td>Greater London Magistrates’ Courts Authority</td>
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<tr>
<td>Standing Conference of Hampshire &amp; Isle of Wight Family Panel</td>
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<tr>
<td>Michael Heap</td>
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<tr>
<td>North and East Herts Family Panel</td>
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<tr>
<td>Graham Hooper</td>
<td>Nottingham and North Nottingham Family Panels</td>
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<tr>
<td>Dr R J E Horton</td>
<td>Preston Family Proceedings Court</td>
</tr>
<tr>
<td>Edward Ledger JP</td>
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<td>Marilyn Mason and Peggy John</td>
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<td>Gill Smith</td>
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<td>Gladys Walkden</td>
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<tr>
<td>A Webster</td>
<td>Lancashire Magistrates’ Courts Service</td>
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### j. Government Departments and other agencies

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Dorothy Blatcher</td>
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<td>Essex Social Services</td>
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<tr>
<td>Lindsay Harper</td>
<td>Swansea Social Services</td>
</tr>
<tr>
<td>Sheri Holland</td>
<td>Leicestershire County Council</td>
</tr>
<tr>
<td>Claire Johnson</td>
<td>Official Solicitor’s Office</td>
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</tbody>
</table>
1 In its response to the consultation, the Legal Services Commission described the Family Advice and Information Networks (FAINS) project in these terms:

The aim of the FAINS project is to facilitate the dissolution of broken relationships in ways which minimise distress to parents and children and which promote ongoing family relationships and co-operative parenting. FAINS will also provide tailored information and access to services that may assist in resolving disputes and / or assist those who may wish to consider saving or reconciling their relationship.

Those suppliers taking part in the pre- and full pilots will: -

- provided tailored information to those seeking help and advice;
- help to identify issues requiring legal advice and action;
- encourage the use of relationship counselling for those who want it;
- encourage the use of mediation services where appropriate;
- offer support to parents in talking to children;
- offer support to children who need it through referral to expert children’s services.

These suppliers will therefore provide a single access “gateway” for clients to the fullest range of support and advice services in local areas in a cohesive and co-ordinated way. It is obvious that FAINS provide an important opportunity for joint planning, particularly in relation to the provision of information about the effects of separation on children, how to avoid them, what help is available in this regard and the promotion of mediation.
A three-month period of consultation with key bodies and interested parties was underway. The pre-pilot phase of the project was scheduled for the Autumn of 2001 with the full pilot scheduled to start in the late Spring or early Summer of 2002.

The **FAINS** Consultation Paper made it clear that the Pilots will be subject to detailed evaluation by researchers whose remit will address many of the issues raised in the Consultation Paper – and certainly those relating to the provision of information and different services for families and children. Specifically in relation to children, the particular areas identified by the **Legal Services Commission** are:

- The provision of and access to information for children and young people
- The provision of and access to direct support services for children and young people
- The provision of and access to specialist advice services (including access to legal advice) for “competent” children and young people
- The provision of and access to specialist services for children, young people and their parents
- The provision of and access to services for children and young people in step-families
- The provision of preventative information/support and advice services for families, emphasising the importance of supporting children and young people where there is potential for relationship breakdown between the adults/parents/stepparents within the family structure
- The provision of and access to information and support services to other family members – grandparents and other significant family members – aimed at promoting the welfare of the children of the family.
We welcome the FAINS initiative. We hope that the information provided by our report and the recommendations we make in it will both be of value to it. We welcome in particular the concept that the FAINS pilots will be co-ordinated by Commission. As the National Family and Parenting Institute has stated, it is a feature of the family justice system that individuals and small groups, often with very good ideas, are unaware of similar individuals and groups undertaking the same type of activity. It seems to us that when it comes, in particular, to the provision of information it is important both to avoid duplication of effort and to attempt to ensure consistency of message. This is not, of course, to say that individual organisations and services should not produce their own literature; simply that every effort should be made to ensure that different organisations know what each is doing, and that the information they produce is consistent and not needlessly or confusingly duplicated.
Appendix 3

Shared residence orders: shared or equal parenting: the responses by Families Need Fathers, the Equal Parenting Council, and the Association for Shared Parenting

1. We have, in the Report, addressed the issue of contact, by regular use of the terms ‘resident’ and non-resident’ parent. Families need Fathers, The Equal Parenting Council and the Association for Shared Parenting all put in well-argued responses in which a crucial argument was that the concept of the ‘resident’ and the ‘non-resident parent was part of a fundamentally flawed approach. The objective, they argued, is to achieve the full involvement of both parents in the care and upbringing of a child post-parental separation. Families Need Fathers put it succinctly when they said: -

   If we have one key objective, it is to counter the idea that ‘winner takes all’ is the best principle guiding the lives of children whose parents live apart. We wish to see the best combination of involvement of both parents, achieved by the least adversarial methods possible.

2. The Association of Shared Parenting made the same point: -

   ASP suggests that the only order that should emerged from the court is a “Shared Parenting Order”. The detail of how parenting can be shared can be worked into the detail of the order. The benefit to the child is that he carries on with two parents rather than a mummy and an uncle or a daddy and an aunt.

3. The Equal Parenting Council argued that, currently, “the system denigrates, disrespects and demeans that parent who no longer has ‘possession’ of the children. This is damaging for the children and parents concerned”. The remedy proposed was the introduction and expectation of shared care of children, which would set the tone for future arrangements and send a clear message to children that their relationship with both parents is respected and protected. There needed to be equal, independent parental responsibility; a presumption of shared parenting irrespective of the parents’ ability or willingness to work with each other; a division of time with each parent (a separate issue)
based on children having equal access to both parents, and substantial time living with each parent. Time living with each parent to be as equal as can be achieved, but this had to be based on practical considerations, not the willingness of either parent to ‘allow’ the other ‘contact’ time. On any application to the court, shared residence orders (perhaps re-named as shared parenting orders) should be automatic, based on the above principles; residence and contact orders should be used only in exceptional circumstances; and the terminology ‘resident’ or ‘contact’ parent should be replaced by ‘mother’ and ‘father’.

4. The responses stressed that ‘shared parenting’ did not mean that the time spent with each parent should be equal; what it meant was that the court order for shared resident was a recognition that both parents had important parts to play in the child’s life. It was also argued that if such orders were the norm, this would set the tone for the negotiation of the division of time between households, and remove obstacles currently placed in the way of contact.

5. There is much in these three detailed and thoughtful responses to the Consultation with which we agree, and nobody, we think, could disagree with the Families Need Fathers’ overriding objective set out in paragraph 1 above. The question is how it can be achieved, and, in particular, whether it would be achieved through the medium of shared residence or share parenting orders.

6. Section 8 (1) of the Children Act 1989 defines a residence order as an order “settling the arrangements to be made as to the person with whom a child is to live”. Section 11(4) of the Children Act 1989 provides that

Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the difference households concerned
7. The mechanism to make shared residence orders is, accordingly, already contained in the Children Act. It is clearly the case, however, that shared residence orders are unusual. One of the reasons for this may be that the Children Act 1989 is a non-interventionist Statute. Under section 1(5) the court cannot make an order unless it is considers that doing so would be better for the child than making no order at all. Parents who are able to agree a regime of shared care are unlikely to need an order for residence or contact. However, this point does not address the philosophical argument and the message which a shared residence order would convey.

8. The Court of Appeal has recently re-visited the question of “joint” or “shared” residence orders. In a pre-Children Act case, *Riley v Riley* [1986] 2 FLR 429, the Court of Appeal set aside a joint custody order under which a girl of nine was spending alternate weeks with each parent, even though the arrangement had worked well for five years. It made an order for custody in favour of the mother, with reasonable contact to the father.

9. In *A. v. A (Minors) (Shared Residence Order)* [1994] 1 FLR 669, the Court of Appeal recognised that with the implementation of the Children Act 1989, *Riley v Riley* could no longer be good law. The court upheld a father’s application for a joint residence order, in a case where the children’s out of school time was shared equally between their parents.

10. Most recently, in *D v D (Shared Residence Order)* [2001] 1 FLR 495, a shared residence order was made by the judge and upheld by the Court of Appeal, which held that if it was planned or had turned out that children were spending substantial amounts of time with each of their parents then a shared residence order was an appropriate one to make. There was no need to show exceptional circumstances or a positive benefit to the children as previously held by the Court of Appeal, nor was there any need to add any gloss to the legislative provisions of s 8(1) and 11(4) of the Children Act 1989, which were always subject to the paramount consideration of what was best for the children.
the present case the children had substantial contact with the father and were, in effect, living with both parents. There would be a positive benefit to the children through recognition of their living arrangements by the court.

11 Like *Families Need Fathers* we see *D v D (Shared Residence Order)* as an important and welcome development. As our views in relation to information make clear, we support an ethos which encourages the sharing of parental responsibility post separation, and the maintenance of maximum contact by children with the parent who is no longer living at home.

12 We do not, however, think it appropriate to make any form of recommendation as to “shared residence” or “shared parenting” orders. The principal reason for this is that it was not the focus of our consultation, and we do not feel we have sufficient information about it. Furthermore, whilst we appreciate the principle, we can see a number of practical objections.

13 In many cases, parental separation between parents of limited means involves substantial distances, which make it very difficult, particularly where young children are concerned, to make shared parenting meaningful. The financial strains imposed by the separation usually mean that most parents cannot afford two homes, let alone two homes with suitable child facilities and within easy travelling distance of each other.

14 Furthermore, parents do not always behave rationally and reasonably in the context of parental separation. One parent may need protection from the other: the children may need the same protection. Whilst we understand the argument that an expectation of shared parenting as the norm should restrict the scope for acrimonious disagreement, we doubt its efficacy in practice.
We entirely agree, however, that wherever possible, the parent with whom the child is not living should play as full a part in that child’s life as possible, and should exercise shared parental responsibility for the child’s upbringing. We do not think that anything in the Children Act contradicts these propositions: indeed, it reinforces them.

Accordingly, whilst we question the practical application of the principle of shared parenting, we would certainly wish to encourage it. If the Government thinks the concept of joint or shared residence orders worth pursuing, it might consider setting up a pilot scheme based on a small number of courts to test the effect of such orders in practice.

1. The Women’s Aid Federation of England (WAFE) pointed out that in A v N the father of the child concerned had been violent. That is true. He had been imprisoned for a serious assault on his former wife, and had been violent to the mother of the child in the case. The report also states that the mother’s objections to contact were based on his lack of commitment and particularly his violence; but substantially, they were based on her assertion that he was not the father of the child. Although this latter assertion was disproved by DNA testing, the mother persisted in it, to the extent of bringing the child up in the belief that another man was her father.

2. The mother had also permitted substantial contact after her separation from the father, and the child had stayed with him overnight. The mother also had had a good relationship with the paternal grandmother. The welfare officer confirmed that the father had parented the child well whilst the parties lived together.

3. It was clear that the judge took all these factors into account when making his order. Given the mother’s fears of the father’s violent behaviour, the welfare officer recommended that contact be initially supervised by the grandmother. The judge accepted that the father had a history of violence, and that his mental stability was questionable. He also found that the mother was not entirely honest and reliable. She, too, had been in trouble with the police. Both mother and father had used drugs.

4. The most important finding made by the judge was that the child would be safe in her grandmother’s company. That was plainly a critical finding in the context of his decision to permit contact.
5. The report therefore makes it clear that whilst violence was a factor in the case, the judge had addressed it, and decided that contact supervised by the grandmother was in the child’s interests and safe. It does not seem to us, therefore, that domestic violence is a relevant factor when considering the nature of the mother’s disobedience to the court order and the consequences which should flow from the disobedience.

6. Similar considerations apply in *Churchard v Churchard*, where the mother of the children had inflicted a number of stab wounds on the father with a carving knife in a violent altercation shortly before the father left.
Appendix 5  Members of the Children Act Sub-Committee

THE HONOURABLE MR JUSTICE WALL (Chairman) was appointed to the Family Division of the High Court in 1993.

SIR THOMAS BOYD-CARPENTER (Chairman of the Advisory Board) spent his career in the army serving latterly as Deputy Chief of the Defence Staff responsible for strategic planning, resource allocation and personnel policy. Since his retirement he has been working in the NHS, initially as Chairman of the Kensington, Chelsea and Westminster Health Authority and subsequently as Chairman of Moorfields Eye Hospital. He has also been serving as Chairman of the Social Security Advisory Committee as well as working as a consultant with ‘People in Business’.

NAOMI ANGELL is a partner with Goodman Ray Solicitors where she specialises in children’s law and heads the adoption team. She recently stood down from the Law Society’s Family Law Committee, and is a member of the Society of Labour Lawyers.

DR CAROLE KAPLAN is a senior lecturer and consultant in child and adolescent psychiatry in the Department of Child Health, Newcastle University and City Health Trust. She is a Fellow of the Royal College of Psychiatrists. She is a non-executive director of the NHS Litigation Authority and is a past member of the Council on Tribunals.

ARRAN POYSER is a senior inspector with HM Magistrates’ Courts Service Inspectorate with responsibility for inspecting CAFCASS. He is on secondment from the Department of Health Social Services Inspectorate which he joined in 1985. In that role, he had policy lead for the Guardian ad Litem and Reporting Officer Service.

JANE SIMPSON is a partner with Manches Solicitors where she heads the Family Law Department. She is a former Chair of The Solicitors Family Law Association and has been a member of the Board of the Family Mediators’ Association and the Lord Chancellor’s Ancillary Relief Advisory Group. She is a non-executive director of the Tavistock Portman NHS Trust.

DAVID SKIDMORE is an Assistant Chief Probation Officer in the West Midlands. He has had responsibility for the Family Court Welfare Service in that area and has served on the Guardian ad Litem Panel Committees in Birmingham and Coventry and was secretary to the Association of Chief Officers of Probation Network for Family Court Welfare work.

ANTHONY WELLS is the former Director of the National Council for Family Proceedings. Prior to that he worked as the regional staff development officer for the Probation Service in the South West Region with a particular interest in divorce court welfare.
Further copies of this report are available free from:

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The report is also on the Lord Chancellor’s Department website as follows:

www.lcd.gov.uk