

**THE GOVERNMENT'S RESPONSE TO THE CHILDREN ACT SUB-COMMITTEE
(CASC) REPORT: '*Making Contact Work*'
March 2004**

Joint Ministerial Foreword by Margaret Hodge and Lord Filkin

Since the launch of *Every Child Matters*, last September, a substantial and wide-ranging debate has taken place about the future of services for children. A related debate that was already underway was that revolving around how best to improve outcomes for children caught up in private law disputes between parents in the family courts.

The 2002 Children Act Sub-Committee Report *Making Contact Work* set out thought provoking and constructive proposals for change. We are grateful to those who contributed to the original report, in particular its principal author, the Rt Hon Lord Justice Wall, and also to the many people who participated in the work of the stakeholder groups that were subsequently set up to consider the recommendations. Following the Machinery of Government changes in June 2003, the responsibility for developing and finalising the Government's response to *Making Contact Work* has fallen within the remit of the new post of Minister for Children. DCA Ministers retain a direct interest in these issues and the two Departments will continue to work closely together.

While it is essential that the welfare of children remains the courts' paramount consideration, the Government also recognises that children benefit from co-operative and constructive parenting from both parents, even where they have separated.

This response to *Making Contact Work* focuses on how best to help those families whose cases have been brought to the attention of the courts through contact and other applications. However, we are currently looking more widely at issues affecting children whose parents' relationship has broken down to see how we can better support parents to resolve contact arrangements with their children. This response, therefore, represents one strand among wider ongoing work to help children and families who are involved in the family justice system, alongside related initiatives to reduce delay in public law Children Act cases and additional safeguards for children affected by domestic violence.

The Government is committed to continuing to work positively with all those who wish to improve the lives of vulnerable children.

MARGARET HODGE

GEOFFREY FILKIN

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Chapter 1 – Introduction

The Children Act Sub-Committee (CASC) of the Lord Chancellor’s Advisory Board on Family Law was asked to consider alternative solutions to help in the minority of cases where the court had determined that contact was in the best interests of the child but this failed to take place. CASC, with the Rt Hon Lord Justice Wall as Chair, published its report “*Making Contact Work*” in February 2002. The Lord Chancellor’s Department published an interim response in August 2002. This is the Government’s full response. This is part of a wider programme of work looking at how arrangements for children whose parents’ relationship is breaking down can be improved. The DCA, through its Consumer Strategy work programme, is testing various options with consumers, to identify improvements that might be made to services for children whose parents’ relationship is in difficulty. The Government plans to publish specific proposals from this wider review later this summer. Those proposals will build on those set out in this response but go much further and wider.

Background

In 2001 nearly 150,000¹ children in England and Wales experienced parental divorce. Many other children whose parents are not married, will also experience parental separation. Current estimates suggest that 28%² of children will be affected by divorce before the age of sixteen. Over 80% of children of separated parents live exclusively or mainly with their mother³.

Most children want and benefit from contact with both parents following divorce or separation⁴. The Government’s clear aim is to increase contact between children and absent parents where it is in the best interests of the child and safe for all family members to do so. Most families work out their own arrangements for parents and children to spend time together. But for some this is difficult, and in a small minority of cases the parents may seek legal help in reaching a decision about how contact should be managed. Maintaining relationships with children following divorce or separation can be difficult, and can put both resident and non-resident parents under pressure.

¹ Joan Hunt – Child Contact with non-resident parents (University of Oxford, Department of Social Policy and Social Work 2003)

² Ibid

³ Ibid

⁴ Ibid

The evidence suggests that where parents reach agreement about contact arrangements, sometimes with the help of mediators, both resident and non-resident parents are generally more satisfied than where the matter is decided by the courts. The recent Office of National Statistics⁵ (ONS) survey suggested that where contact arrangements did not involve the courts nearly **90% of non - resident parents and over 80% of resident parents** were satisfied with the arrangements.

For a range of reasons, including experience of domestic violence, a complete breakdown of parental relationships sometimes occurs. This sometimes means that such parents may be unable to focus on the needs of the children and are, therefore, unable to reach agreements about contact arrangements. In such cases one or both parents may seek the intervention of the courts. The ONS survey indicated that about 1 in 10 parents had court orders. Where cases do come before the courts, the Children Act 1989 makes the welfare of the child the court's paramount concern.

The evidence suggests that parents are increasingly seeking the intervention of the courts to determine contact disputes. The number of Contact Orders granted by the courts increased from 42,000 in 1997 to over 61,000 in 2002⁶. Although no additional data are available, extrapolation from research suggests that just over half of applications are from previously married couples and that about four fifths applications will be from fathers. A substantial minority will be repeat applications, with some families locked in litigation for many years. Over the same period, 1997 to 2002, the number of Contact Orders refused by the courts fell from 1,850 to 500, less than 1% of the total⁷. Given the importance of this issue, more research is needed into the incidence of and reasons for contact obstruction and the broader issues of contact difficulties.

In contrast to the large number of parents who are satisfied with mutually agreed contact arrangements (see above), where the courts have decided contact, the ONS survey indicated that **nearly 50% of both resident and non-resident parents were dissatisfied with the**

⁵ Non-resident parent contact: Preliminary Report on the National Statistics Omnibus Survey for the Lord Chancellor's Department (ONS 2004)

⁶ Judicial Statistics (Lord Chancellor's Department 2002)

⁷ Ibid

arrangements. The lower satisfaction level following court ordered contact is not surprising given that these are usually among the most difficult and intractable cases.

Data from the ONS survey, which covered all types of divorced or separated families, also indicated that 14% of non-resident parents said that they never saw their children. However, when resident parents were asked about the frequency of contact, 27% said the non-resident parent never saw the child. In other words, nearly twice as many resident parents reported that the non-resident parent never saw their children than non-resident parents reported to be the case.

The ONS survey figures highlight the sometimes different perceptions and approaches to contact issues of resident and non-resident parents. No doubt, some of the difference in reports of face-to-face contact between children and non-resident parents can be attributed to factual reasons, such as the resident parent not necessarily knowing that the non-resident parent is seeing the children, particularly where the children are older and have more independence. Other reasons might be that non-resident parents do not want to admit to never seeing their children, or they are reporting what they should be doing rather than what is actually happening. There may also be an element of under-reporting by resident parents because they view the non-resident parent as being unreliable or uncaring.

A separate report, The Home Office Citizen Survey⁸, reported that 9% of non-resident parents said they never saw their children. This report also indicated that where the non-resident parents had remarried 18% never saw their children.

Increasing contact between children and non-resident parents

Government Departments agree Public Service Agreements with the Treasury about what will be achieved by each Department. In April 2001 the Lord Chancellor's Department agreed a Public Service Agreement (PSA8) target

'To increase continued contact between children and the non-resident parent after family breakdown, where it is in the best interests of the child'.

⁸ Attwood C, Singh G, Prime D, Creasey R and others – Home Office Citizenship Survey: people, families and communities (Home Office 2003)

PSA8 thus provided a strategic target for the Lord Chancellor's Department, underpinning its aspiration to increase contact between children and non-resident parents.

The issue of facilitating and enforcing contact between children and an absent parent is extremely sensitive and challenging. This is especially the case where the courts have ordered contact but the resident parent fails to comply. The Children Act Sub-Committee of the Lord Chancellor's Advisory Board on Family Law (CASC) was asked to consider alternative solutions to help in that minority of cases where the court had determined that contact was in the children's best interests, but where it failed to take place. CASC published its report, *'Making Contact Work'* in February 2002. The report made 36 recommendations for improving contact between children and absent parents. A list of the members of CASC is at Annex A.

In August 2002, the LCD published its interim response to *'Making Contact Work'*. The interim report welcomed the CASC report and detailed how the Government would respond to the report in the longer term. The interim response noted that CASC had conducted a wide-ranging consultation and, in keeping with its earlier work on domestic violence, had made carefully considered recommendations. The CASC report recognised that implementation of some of its recommendations would require significant additional funding and/or changes to the legislative framework.

Since the CASC report the Government, led by DCA and with DfES' full participation, has started a review of policy concerning the children whose parents might be or are separating. This is looking at how arrangements, in the widest sense, could be changed to improve the outcomes for these children. This review is looking at how we might help prevent parental separation from adversely affecting their children and how we might better help those who separate to agree the best arrangements for their children. The Government's proposals from that review will be published before this summer's recess. The proposals in this response are confined to the narrower aspects on which CASC reported. The Government's wider proposals will build from those set out in this response and will address the issue of what measures may be needed to improve the mechanisms for the enforcement of court orders.

The Government's approach to responding to 'Making Contact Work'

In order to respond to the requirements of PSA8 and to consider the issues identified in the CASC report, the LCD established four stakeholder groups to address the key theme of:

- Safety
- Child Contact Centres
- Communication and Information
- Facilitation and Enforcement

The membership of each group incorporated a wide range of expertise and perspectives. The membership of each group are attached at Annex B. Despite the diversity, all those involved in the process had the common aim of improving the lives of children and their families during and beyond the extremely difficult period of separation.

This final Government response builds on the interim response published by the Lord Chancellor's Department in August 2002 and is informed by the advice of the four stakeholder groups. For ease of reference, we have grouped this response under the four themes considered by the stakeholder groups. This report serves as an update on the progress since the publication of the CASC report. As mentioned earlier, this will be followed by publication of further proposals covering the wider issues around parental relationship breakdown..

Green Paper: Every Child Matters

In September 2003 the Government Green Paper '*Every Child Matters*' was published. This consultation paper addressed the issue of services for **all** children. This response to Making Contact Work needs to be set within the context of the work being taken forward by the Green Paper.

'Every Child Matters' placed supporting parents and carers at the heart of its approach to improving children's lives. The bond between a child and its parents can be the most critical influence on a child's life. Parenting in the home has the greatest impact on a child's educational development as well as on their behaviour and mental health. The Green Paper consulted on a range of proposals to improve parenting and family support. The proposals included:

- Universal services such as schools, health services and childcare providing information and advice and engaging parents in supporting their child's development;
- Targeted and specialist support to parents of children requiring additional support, including support programmes for fathers as well as mothers so that all children, but especially those living apart from their fathers, develop positive relationships with both parents;
- Compulsory action through Parenting Orders as a last resort where parents are condoning a child's anti-social behaviour such as truancy or offending.
- The Green Paper proposals will help all children, including those who are vulnerable following the separation of their parents.

The Green Paper proposals will help all children, including those who are vulnerable following the separation of their parents. We have now published a response and summary of that consultation and a report of the work we have done since publication of the Green Paper itself in "Every Child Matters: Next Steps". The Family Justice system is an important forum in which decisions are made about children's lives when the parent's relationship has broken down and they cannot agree about future arrangements for the child's residence and contact. The courts also provide an important means for parents to seek protection when there are issues of domestic violence.

As part of the overall Government strategy, the Department of Constitutional Affairs is working to assist victims of domestic violence with children to identify the potential risk to their children as early as possible in any applications for residence or contact where the court need to consider issues of safety before making decisions about the children's future. It is also aiming to improve arrangements and delivery of services to children, whose parents' relationship breaks down, through improved information, education and support for these families.

We have also published our Children Bill to take the new powers needed to deliver the improved arrangements we have developed. This will need practical changes underpinned by clearer accountability and greater and more effective partnerships to focus on developing and helping children

Chapter 2: Safety

Interim Response

There were no recommendations in the CASC report which addressed specifically the subject of child safety. However, the theme of many of the recommendations and, indeed, of the whole report was to increase contact between children and non-resident parents where it was safe to do so. The stakeholder group that had been established to consider safety issues considered the CASC report as a whole.

Background

The Children Act Sub-Committee (CASC) of the Lord Chancellor's Advisory Board on Family Law issued a consultation paper in June 1999, entitled "Contact Between Children and Violent Parents" on the question of how the courts should approach child contact issues in cases where there is alleged to be domestic violence between the adults involved in their care.

After considering the responses to the paper, CASC formally reported to the then Lord Chancellor in March 2000. The report concluded that legislation was not required and opposed a presumption of no contact in domestic violence cases. Instead, the report proposed '*Guidelines for Good Practice on Parental Contact in Cases where there is Domestic Violence*'. These guidelines were to be used by the courts when dealing with cases where domestic violence is alleged as a reason for refusing or limiting contact between a child and a non-resident parent.

The report was made available in draft to the Court of Appeal so that it could consider the proposed guidelines in four appeals on this subject and on which judgment was handed down in June 2000. The Guidelines have therefore now been partially incorporated into law.

The Government announced on 6 March 2001 that it endorsed CASC's report on contact in domestic violence cases (including the new Guidelines) and would work in partnership with the President of the Family Division to ensure the widest possible distribution of the Guidelines. A commitment was also made to monitor the effectiveness of the Guidelines. An

analysis of a survey of the impact of the Guidelines was laid in the libraries of both Houses of Parliament in March 2002. Generally, the survey indicated that the Guidelines were well received; for example, 64% of respondents believing that they had a positive effect on the handling of contact cases where there was domestic violence. The survey indicated that where the Guidelines were being used they were making a positive impact. However, the use of the Guidelines had not been consistent. The judiciary was generally aware of Guidelines and was making use of them. Other legal practitioners were less aware and, consequently, used them less.

The LCD subsequently worked in partnership with the President of the Family Division, the Judicial Studies Board, the Law Society and other bodies to raise awareness of the Guidelines. One example of this was the incorporation of the Guidelines into the Law Society's Family Law Protocol, launched on 7 March 2002. A second survey has been undertaken and is being analysed. The results will be available later in the year.

In the latter stages of the passage of the Adoption and Children Bill in autumn 2002, the Government brought forward an amendment, which had the effect of amending Section 1 of the Children Act 1989. The amendment made clear that children might suffer harm as a result of witnessing violence and abuse and that such harm should be taken into account when decisions were made in Children Act proceedings about a child's future.

Section 120 of the Adoption and Children Act 2002 expands the existing definition of harm, as set out in the Children Act 1989. The amendment makes it clear that the legal definition of "harm" can include:

"for example, impairment suffered from seeing or hearing the ill-treatment of another".

The amendment responded to concerns raised by a number of MPs, in particular those with concerns about the issues surrounding domestic violence. It recognised that children who were not the direct victims of violence could, nonetheless, be significantly adversely affected by witnessing it within their family environment.

The effect of the amendment on contact applications made under Section 8 of the Children Act 1989 is that the courts will be required to consider whether any incidents of domestic violence – not just from direct violence but also from witnessing violence toward another - has had an adverse impact on the child, or might affect the child in the future.

This amendment was deliberately cast in broad terms. Some circumstances of violence within the home environment are almost certain to have a negative impact on a child – for example, where one parent is assaulted by the other in front of the child. The intention of the amendment was to provide courts with sufficient interpretative scope to take account of the widest possible range of different domestic circumstances, and the individual reactions of each child in question.

However, in creating such a potentially open-ended provision, it is also important to ensure that the resulting statutory power is put to effective use – so that it improves the circumstances of vulnerable children who are subject of Section 8 contact applications. The Safety Stakeholder Group (discussed further below) was asked to consider the best means of securing practical benefits from the amendment of this new provision.

The Government recently announced that s120 of the Adoption and Children Act 2002 will be commenced in January 2005.

Taking Forward the Work

The Safety Stakeholder Group concentrated on amending the forms used by applicants when they apply to the courts for Section 8 Orders (those relating to issues of contact and/or residence, prohibited steps etc). These are commonly known as the ‘Gateway forms’.

The group proposed that requirements to provide the following information should be added to the Gateway form:

- Whether there have been any instances of violence or abuse by one of the parties, aimed at a child – not necessarily the child who is the subject of the Order in question – but where the violence or abuse had not resulted in court action. This could include action

resulting in the involvement of social services, the police, mental health services, or other family support services.

- Whether there have been instances of violence or abuse, but aimed at other adults - particularly either parent of the child, or both – but, again, where no court action had been taken as a result.
- Whether any person who lives at the same address as one of the parties to the Order has been violent or abusive to the child who is subject of the Order, or any other child.
- Whether any third party with whom the child may have domestic contact – for example, the partner or lodger of an applicant for contact - has been involved in a court case involving a child.

The Stakeholder Group agreed that the standard form should include a trigger question on domestic violence. Where relevant, this would lead to the completion of a supplementary form, setting out the history and detail of any alleged violence or abuse. The respondent would then be given the opportunity to respond to the allegations that had been set out.

These changes would enable judges to be made aware at the earliest opportunity of any history of alleged domestic violence or abuse that might be relevant to the contact decisions to be made about the child from the outset of proceedings. This provision for full and early disclosure would enable the judge to make a finding of fact on the allegation of domestic violence, before any decisions about contact or residence are made. The judge would then be able to decide what – if any – contact arrangements would be in the best interests of the child, in the light of the specific circumstances of each case.

Chapter 3: Child Contact Centres

At present it is estimated that over 20,000 children use centres affiliated to the National Association of Child Contact Centres (NACCC) every year (approximately 100,000 sessions). Around 30-40% of referrals to child contact centres are from the courts, though CAFCASS is involved in processing referrals in a larger percentage of the total. Supervised contact is nearly always court referred. Many existing centres have waiting lists and there are areas where there is currently no contact centre provision. We have, however, recently made significant additional resources available to expand the contact system network and these are described in more detail below.

Recommendation 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.

Recommendation 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.

CAFCASS has increased and improved its funding and contracting arrangements with child contact centres (now in excess of 150) and a protocol has been agreed with the National Association of Child Contact Centres (NACCC) to ensure good liaison, mutual co-operation and encourage development of best practice. CAFCASS is a major purchaser of services from child contact centres via contracts and grant making arrangements and it is acknowledged that it has an increasingly important role in representing user interests and ensuring best value through its use of government funds.

Recommendation 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.

Recommendation 12

The Lord Chancellor's Department should fund more specialist Contact Centres like Coram Family and Accord Centre.

The Interim Response

The interim response acknowledged the clear need to develop a national strategy for child contact centres. Such a strategy would facilitate the establishment of a national network of child contact centres, operating to national standards and offering a variety of general and specialist services that are accessible to all children and parents.

Background

The positive role and potential of child contact centres had been recognised prior to publication of the CASC Report. In summer 2001, the Lord Chancellor's Department established the Child Contact Centre Working Group. The aim was to improve general understanding and to investigate the avenues for collaborative national working between Government and the key child contact agencies. The Working Group included representatives from the National Association of Child Contact Centres (NACCC), NCH, Welcare Accord and Coram Family, as well as the Children and Family Court Advisory and Support Service (CAFCASS), legal practitioners and members of the judiciary.

In 2002, the Working Group conducted a six-month public consultation exercise about the mechanics of contact, including definitions of the activities involved and methods of referral. It found that there was universal agreement about the need for national definitions of child contact services and for standard referral procedures (in order to ensure that effective risk assessments could be carried out). It was decided that there should be only two categories of contact for contact centres: supported contact and supervised contact. A supported contact centre is suitable for families where no significant risk to the child has been identified. A supervised contact centre should be used when it has been determined that a child has suffered or is at risk of suffering harm during contact. Referrals will usually be made by a

court, CAFCASS officer, local authority or another child contact centre but, in exceptional circumstances, a child contact centre may accept self-referrals.

Responses to the consultation also highlighted the need to recognise, and build on, the voluntary and local community-based strengths of child contact centres whilst also endorsing the proposal that there should be a national framework of standards.

Building on this work, at the NACCC Annual Conference in May 2003, the Working Group launched national definitions of supported and supervised contact. These definitions help families, and those who refer families to such services, to have a better understanding of what to expect from child contact centres, especially in terms of risk assessment.

The Working Group has also devised minimum standards for what was required for supervised contact and a referral process to ensure families can be directed to contact centres offering the most appropriate level of contact support. Both types of centre contribute to a system that provides an effective method for screening families who plan to use child contact centre services. It will, for example, assess whether there may be a risk of violence or abduction. Both NACCC and NCH are taking this forward.

In the autumn of 2002, the Working Group conducted a comprehensive mapping exercise of child contact centre services. This exercise identified approximately 520 volunteer child contact centres/services in England and Wales. Most of these centres were affiliated to NACCC or were NCH services. The latter often providing contact services in public law cases (where the state is a party in proceedings, such as in care proceedings) and based around Sure Start partnerships. There were, however, very significant gaps in service provision across England and Wales as a whole, especially in respect of supervised contact (as only 39 NACCC member child contact centres were providing supervised contact). One particular area of concern was the lack of consistent financial support for child contact centres by local authorities.

Taking Forward the Recommendations

There is now significantly more information and data available as a result of the further research and investigation since publication of the CASC Report. This has given us a better understanding of the pattern of service provision in child contact – including the levels of need for such services and this has considerably sharpened and brought more clearly into focus specific areas of need.

Since 2000, the Government has paid or committed £5.35m to child contact centres and organisations. This includes: -

- £0.8m in grants from LCD to NACCC and to individual contact centres (via NACCC).
- £0.9m from The Children's Fund to several national organisations, in 2001, to help them to develop models of supervised contact e.g. Coram launched, in September 2002, its Supervised Contact Consultancy Service:
- £0.15m in autumn 2003 as a joint *Invest To Save* bid, backed by DCA/DfES/HMT, to develop and evaluate child contact centre partnership initiatives, in Inner London, the West Midlands and Greater Manchester. The nine-month initiatives commenced in October 2003. The purpose of this programme is to initiate contact centre partnerships in big cities, using existing resources.

Over the three year period April 2003 to March 2006 a further £3.5m will be made available from a DfES (£2.5m) and Sure Start (£1m) Joint Investment Fund for developing child contact services. This funding will pay for 14 new supervised child contact centres/services in England, specifically aimed at filling the gaps in provision identified by the 2002 mapping exercise. Coram Family will also be funded to make its Supervised Contact Consultancy Service free to the new NACCC member supervised child contact centres. This will ensure that the new supervised child contact centres are supported to provide high quality services from the outset.

Applications from potential supervised contact service providers were invited in May 2003. A key aim was to increase services in areas of greatest need. Forty two applications were

received and assessed during the autumn 2003 by a sub-group of the Working Group. Ministers considered and agreed the recommendations in January 2004. New contact services will be operating from spring 2004 in the following areas: Merseyside, Bristol, West London, South London, Wiltshire, Cambridgeshire, Northamptonshire, Herefordshire, Nottinghamshire, Leeds, Scunthorpe, York, Blackburn and North Staffordshire.

The Joint Investment Fund will also fund NACCC's three-year 'Change Programme' as it moves from an affiliated to an accredited organisation. This will benefit all NACCC's 300 member centres.

A 'sustainability fund' of £430,000 is also being created (from the Joint Investment Fund) to provide financial assistance over the next two years (April 2004-March 2006) to NACCC member child contact centres in England (supported and supervised). The Fund will be administered by NACCC.

The CASC Report recommended a number of improvements to both the breadth and variety of child contact centre provision. The Government has responded by ensuring the availability of significant additional funds. Since the publication of the CASC report, improvements in our understanding of the overall pattern of child contact have focused concern on three key areas:

- Improving the provision of basic services across the country – specifically, to support service provision in those locations where child contact centres and support for families are most scarce;
- Ensuring that more specialised services – such as supervised child contact – are improved and expanded; and
- Working with the key national organisations, to improve understanding of common services and processes, and to implement basic national standards of service provision and good practice in child contact centres around the country.

Addressing these concerns is an ongoing process. It will be particularly important to assess how the work of the local child contact centre partnerships, and the new supervised child contact services, develops in practice over the coming months. Information from these new developments will inform the future use and deployment of Government resources.

Chapter 4: Communication & Information

Recommendation 1

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.

Recommendation 2

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.

Recommendation 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.

Recommendation 5

As with recommendation 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.

Recommendation 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 Interim Response

The Government accepted the recommendations in principle. The Communication & Information Stakeholder Group was involved in assisting the Lord Chancellor's Department in identifying what were the key messages that needed to be delivered. Both the National Family & Parenting Institute and CAFCASS were represented on the group.

Background

The Family Law Act 1996 aims to support marriage wherever possible, and to ensure that people considering divorce have full information on the options and services available to them. The principles laid out in Part I of the Act place emphasis on saving marriages, promoting a conciliatory approach to divorce, reinforcing the importance of continuity in parenting, and providing protection from domestic violence and child abuse. Part II of the Act acknowledged divorce as a process rather than a discrete event. The Act removed the concept of fault as evidence of irretrievable breakdown in the marriage and introduced a period of time for reflection and consideration. The proposal was that that all arrangements for the future, including matters of finance and property, would be made before the divorce could be granted.

Under Part II Section 8(2) a party making a statement of marital breakdown would (except in prescribed circumstances) have attended an information meeting not less than three months previously. Furthermore, the Act made provision for those attending an information meeting to be encouraged to go to a meeting with a marriage counsellor. If Part II of the Act had been implemented, attendance at an information meeting would have been mandatory.

Before implementing Part II, it was decided to establish voluntary pilots to assess the most effective way of taking forward these proposed new provisions. The purpose was to test the 'who, what, where, when and how' of providing information and to find a suitable format for the meeting with a marriage counsellor. The findings from the pilots⁹ were that:

⁹ Janet Walker – Information Meetings and Associated Provisions within the Family Law Act 1996 (Lord Chancellor's Department 2001)

- People wanted an individual meeting to be sensitive to their personal situation and the stage they had reached in the process of marriage breakdown, and to be flexible enough to focus on providing information which is relevant to their needs at that time. Relevance and timing were key factors in the provision of information.
- Attending an information meeting helped a small number of people to save their marriage, but that information about marriage support made little difference to the majority, primarily because it came too late.
- A ‘one size fits all’ approach to conciliation would not work.
- Information was likely to be given to only one spouse. Encouraging both spouses to be willing to use mediation remained a key challenge.
- Information about children was well received, but many parents found it difficult to bridge the gap between knowing what to do to help their children and actually doing it.

After considering the pilot for Part II of the Act it was concluded that statutory information meetings were not appropriate. It was decided, therefore, that it would be more useful to direct parents to mediation and information earlier in the process, for instance when a parent first went to see a solicitor. It was for this reason that the Family Advice & Information Service (FAInS) was set up (see below).

Following the decision not to implement Part II of the Act, the Government developed proposals for the provision of information to those going through separation or divorce. Information for those experiencing relationship breakdown forms part of the Department for Constitutional Affairs’ (DCA) overall objective of encouraging increased safe contact between children and their non-resident parents.

To take this work forward, the Communications and Information Stakeholder Group has developed a strategy for improving the information and support available to parents and

children. This strategy was approved by the DCA Public Service Agreement 8 Programme Board. The strategy consists of two key elements:

- improving the distribution of the Parenting Plan (discussed below) and the four current leaflets for parents and children; and
- support for a media campaign, organised by Parentline Plus, to make parents more aware of the benefits of contact and of negotiating contact arrangements constructively and also to raise parents' awareness of the available information on, and support for, negotiating workable contact arrangements.

Taking Forward the Recommendations

As indicated above, the information strategy is being taken forward under two key strands:

1. Improving the distribution of the Parenting Plan and the four leaflets for parents and children

The Parenting Plan was launched at the "Doing the Best We Can" seminar organised by Parentline Plus on 19 March 2002. It had been revised for the Government by the National Council of Voluntary Child Care Organisations (NCVCCO). An earlier version of the Parenting Plan was tested as part of the evaluation of the information meetings pilot exercises to test the provision of information required under Part II of the Family Law Act 1996.

The Parenting Plan was designed to help parents make arrangements for their children following divorce or separation. It contains information, guidance and ideas on issues that parents will need to consider, and includes sections which parents can complete themselves, if they wish, to record decisions made. The Parenting Plan also contains details of organisations that can provide assistance to divorcing or separating parents and their children.

The evidence from the research evaluation indicated that people found the Parenting Plan helpful, although many preferred to use it as a means of checking what decisions they had to make regarding their children's future rather than using all of its contents. Although

relatively few parents actually complete a plan formally, parents still found it useful as a guide to the decisions they had to make.

The Lord Chancellor's Department launched four leaflets for children and parents affected by divorce or separation on 19 July 2001. Three of the leaflets were aimed directly at children and young people of different ages:

'Me and My Family' for children aged 5-8,

'My Family's Changing' for children and young people aged 8-13,

'My Family's Splitting Up' for young people aged 13-18

The fourth leaflet 'Parents and Children' offers information and guidance to parents on how to discuss what is happening with their children, to minimise the distress and uncertainty that can arise from the family breakdown.

The leaflets for parents and children were developed for the Government by the National Council of Voluntary Child Care Organisations (NCVCCO) in conjunction with an advisory group including academics, representatives of major children's charities and the National Family and Parenting Institute. The leaflets evolved from earlier versions which were used in the piloting of information meetings under Part II of the Family Law Act 1996. The leaflets provide general information and reassurance to help children and young people to understand and cope with the effects of the breakdown of their parents' relationship, and assistance to parents in discussing matters with them.

Approximately 200,000 copies of the Parenting Plan and each of the four leaflets have been distributed to CAFCASS offices, courts, solicitors and organisations working with children and parents. They are also accessible through the DCA website. Copies of the Parenting Plan and the leaflet for parents are available in English, Welsh, Hindi, Urdu, Punjabi, Bengali, Gujarati and Chinese.

Steps are also being taken to make the Parenting Plan and the leaflets more widely available to the general public. Discussions are taking place between Departments across Government with a view to distributing the Plan and the leaflets using other networks, in particular health and educational outlets.

Early in 2003, additional supplies of the Parenting Plan and the four leaflets were provided to county courts and to Citizens' Advice Bureaux. In July 2003 a substantial mailing was made to RELATE services, health visitors, Directors of Social Services, educational welfare services and providers of services to families and lone parents.

The Parenting Plan and the leaflets for parents and children have also been taken into account by a wider Government project to identify all Government information services to parents being led by the DfES. It is intended that all Government information for parents will be accessible from a parenting internet site in 2004. This site will further promote the Parenting Plan and the leaflets, as well as information available from the Court Service on the legal processes in family proceedings and information from the Legal Services Commission and CAFCASS. It will also pull together all the information available for parents from other Government departments.

2. The Parentline Plus campaign to support the PSA objective of increasing safe contact between children and their non-resident parents

The Government is supporting a two-year media and public relations campaign organised by Parentline Plus supporting families and parents following divorce or separation. The campaign is intended to convince parents that, where it is safe, continued contact between the child and the family members who are no longer living with them is important to the child's well being.

The project will build on Parentline Plus's experience of information provision and relationship breakdown problems from its helpline and will be overseen by a group comprising key partners from other agencies and national charities, representatives from DCA and parents.

The campaign was launched in Summer 2003 by Margaret Hodge in her role as Minister for Children, Young People and Families in the House of Commons. The campaign has its own generic branding, 'Contact Counts' and will continue until March 2005.

Parentline Plus is placing stories and features in the media to stimulate consideration of the issues of contact. Material has already been placed with a large number of local and national press outlets. Highlights reported in September 2003 included numerous articles for “agony aunts”, which were repeated in a number of different regional publications, and national press coverage including The Sun, The Voice, Woman magazine, the Daily Star, One Plus One Bulletin, 19, Pregnancy & Birth and the Solicitors Family Law Association magazine. Material has also been broadcast on local radio stations.

Campaign Aims

The campaign ‘Contact Counts’ aims to help parents reduce the potential harm of disputes over contact by offering practical suggestions and information about where they can get help. A key aim is to encourage parents to negotiate contact arrangements constructively with each other, turning to legal procedures only as a last resort. Parentline Plus provides a 24-hour telephone helpline, which is supporting the campaign.

The campaign is intended:

- To stress the benefits to children of safe contact with their non-resident parent
- To provide comprehensive information on sources of help, including mediation facilities, to resolve contact disputes in appropriate cases.
- To encourage parents to negotiate contact arrangements constructively with each other and to turn to the courts only as a last resort.
- To emphasise that contact is about the child’s needs and best interests and parents should put these first.

As part of the campaign, Parentline Plus will reprint a number of its own information leaflets and also use the Parenting Plan and the leaflets for parents and children. Parentline Plus launched ‘Contact Counts’, a new leaflet on contact in July 2003 for use in the campaign.

Other Initiatives

In addition to the two key strands described above, the CASC recommendations are being taken forward in other ways:

itsnotyourfault.com

Evidence shows that children are receptive to web based information, provided that it is not seen as government information. To seek to reach certain target groups – particularly teenage boys, the DCA has funded the website <http://www.itsnotyourfault.com>. Developed in conjunction with the children's charity NCH, it is an innovative website specifically designed to help children and young people, whose parents are separating or divorcing, cope with the emotional problems this situation causes. Featured on national television, radio and press, the site currently attracts approximately 70,000 hits a year. In 2003-4, a grant of £18,500 was provided to support the operation of the website.

Providing Information for Opposite Sex Cohabitees

A civil partnership scheme for same sex couples was proposed in a consultation document '*Civil Partnerships: A framework for the legal recognition of same sex couples*' published on 30 June 2003. Opposite sex couples were excluded from the scheme on the grounds that they were already able to have their relationship legally recognised through marriage, an option not available to same sex couples. The Government also recognises that there are concerns about the potential vulnerability of opposite sex cohabitees and the children of these relationships, particularly in light of the high level of misunderstanding about the perceived benefits of 'common law marriage' for unmarried couples. According to the British Social Attitudes Survey 2000, 56 per cent of all respondents thought 'common law marriage' was recognised by the law and giving cohabitees the same legal rights as those enjoyed by married couples.

The DCA is now leading a cross government working group to explore how best to dispel the myths around 'common law marriage'. We are also currently working with a voluntary sector partner on a national campaign to raise public awareness about the legal position of cohabitants.

Family Advice & Information Service (FAInS)

On 23 March 2001, the Government announced its intention to pilot Family Advice and Information Service (FAInS). A pilot phase to test the arrangements commenced in late April 2002. The initial pilot stage involved approximately thirty individual solicitors in firms in five areas (Exeter, Milton Keynes, Newcastle-upon-Tyne, Nottingham and Cardiff). Pilots are based in the offices of solicitors with franchises for family work and who have trained as solicitor mediators or who have attended a mediation awareness training course, located in areas where a full range of family support services are available.

The Family Advice and Information Service (FAInS) aims to:

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

Services will be accessed through providers who have contracts with the Legal Services Commission and provided either directly or through links with other local providers. Where appropriate, people are also referred to other services better placed to deal with the identified problems.

The existing pilots in Cardiff and Exeter were extended from the end of April 2003, and the pilot in Nottingham was extended and joined with Mansfield and Lincoln. In the first phase of the full pilot, three new pilot areas were added in Basingstoke, Leeds and Hartlepool and Stockton. Around 50-60 firms are involved and 200-300 individual fee earners will take part in this next phase of the pilot.

Funding for the FAInS pilots (approximately £650,000 in 2003-2004) is provided from the Community Legal Service (CLS), which is administered by the Legal Services Commission (LSC). The FAInS pilots are subject to a comprehensive evaluation by a research team led by the University of Newcastle-upon-Tyne, which will produce an interim report in Summer 2004 and a final report in 2005.

The Family Advice & Information Service is working closely with family services in the pilot regions, to maximise opportunities for co-operative working and to minimise duplication of effort. Around 5,000 families each year are expected to be helped by FAInS in its pilot phase.

The number of publicly funded mediations supported by the Community Legal Aid Partnerships has increased from 400 in 1997/1998 to over 12,000 in 2001/2002. Just over half of the mediations commenced in 2001/2002 involved dealing both with financial issues and disputes about children. Approximately 60 % of mediations undertaken resulted in full agreement on the issues in dispute.

CAFCASS Communications

CAFCASS redesigned its website in 2003 to make it more user friendly. The website content can now be accessed through graphics depicting children, young people and parents and the text is drafted in age appropriate language. This website won the Plain English Campaign Website Award and a New Media Age award, both during 2003.

CAFCASS is developing a range of children's leaflets to be distributed in April to explain the role of the CAFCASS practitioner for children and young people in different age groups. The leaflets include tear-off feedback sheets. Child friendly office cards for children are also being introduced for CAFCASS practitioners which provide telephone and address details for children to encourage them should they wish to speak or write to a practitioner.

A dedicated Children's Participation Officer post has been created to develop the involvement of children in consultation, feedback and planning for services. A children's resource pack is being produced providing information and guidance on child participation initiatives used by other organisations and suggestions for CAFCASS

While better overall co-ordination of information is desirable, different strands of information are needed as some of the information provided by voluntary bodies and specific campaigns should be viewed as independent of CAFCASS and the statutory sector. The Government will be planning better linkage of information between the different websites offering child focused services and information.

Chapter 5: Facilitation & Enforcement

Each of the CASC recommendations concerning facilitation and enforcement issues is set out below with a report of what has and is being done to carry them forward. All of these will be further developed in the Government's on-going wider review of policy regarding parental relationship breakdown referred to earlier. Many of the ideas put forward by CASC, alongside others, are being considered in that review and these are being tested with consumers. The Family Resolution Pilot Project [discussed on pages 41 & 42] is a part of that process and will serve as a vehicle for further development.

Recommendation 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.

This work is being carried as part of the 'Contact Counts' information campaign and will also form part of the Family Resolution Pilot Project.

Recommendation 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.

CAFCASS has been provided with additional funding. Its budget has risen from £73 million to £95m over less than two years. Provision of information is discussed above and will also be covered in the Family Resolutions Pilot Project and the Government's wider review.

Recommendation 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.

The Government is actively studying the potential benefits of greater use of mediation in these cases and the possibility of taking the powers suggested. Our conclusions about this issue will be published, before the summer recess, as part of the further work being undertaken at present by the DCA. The issue will also be addressed in the planned Family Resolutions Pilot Project.

Recommendation 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 widespread feeling that an application to the court should be the last resort.

These issues are being addressed within the Government's wider review and as part of the Family Resolutions Pilot Project. The wider review is looking at how parents who might be able to resolve issues of continued parenting for themselves could be better helped to do so, outside the court system. The courts certainly have a role in cases where safety is an issue and in those high conflict cases which cannot be resolved in any other way. The review is looking at how the other cases might be handled differently in order to deliver better outcomes. These ideas are being developed and tested with users of the services and the Government's proposals will be published in late Spring.

Recommendation 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.

The Government is working with the judiciary and through the court service to promote greater continuity in case management, initially focusing in particular on public law cases.

Recommendation 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.

This recommendation is being addressed as part of the Family Resolutions Pilot Project.

Recommendation 17

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

This method of intervention will be explored by CAFCASS.

Recommendation 18

The Government should legislate to make the changes required in order to make Family Assistance Orders effective. We support Family Assistance Orders as potentially a very useful facility, if operated by CAFCASS and as part of a planned 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.

The Government is considering this as part of its wider review. The current priority of CAFCASS is, of course, to provide its core services but it continues to consider how best it might develop.

Recommendation 19

We also recommend that CAFCASS be asked to prepare proposals in relation to specific programmes which could be operated under a 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.

The Government is considering this as part of its wider review. The current priority of CAFCASS is, of course, to provide its core services but it continues to consider how best it might develop.

Recommendation 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.

Recommendation 21

Steps need to be taken to make use of the much greater degree of flexibility that 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.

The President of the Family Division has issued a draft Practice Direction on the separate representation of children in private law Children Act cases which is currently subject of consultation.

Recommendation 22

CAFCASS and the judiciary should make use of the changes in the Family Proceedings Rules, which 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.

While new opportunities are possible there needs to be full consideration of the implications of appointing more frequently Children's Guardians in private law cases. We are not

proposing to extend the scope of CAFCASS's activities in this way at this time, though this will be kept under review. We want to ensure that CAFCASS can handle its current workload effectively before expanding its remit further.

Recommendation 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.

Recommendation 24

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

These recommendations will be included in the work of the Family Resolutions Pilot Project.

Recommendation 25

We recommend that courts have much wider powers to make a range of orders designed to give practitioners time to work with parents and children within a framework of services.

This is being considered as part of the wider review of whether and how the court's powers should be extended.

Recommendation 26

To give the courts powers to make orders to engage 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.

In part, we have already responded to this recommendation through the additional funding of supervised contact centres. The provision of other types of services will be addressed in the Family Resolutions Pilot Project.

Recommendation 27

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

This recommendation will be addressed in the Family Resolutions Pilot Project.

Recommendation 28

To provide powers to the court 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 be last resort.

This recommendation will be addressed in part through the Family Resolutions Pilot Project. Further consideration will be given to this issue through the wider work being led by the DCA, in particular in relation to the extension of the courts' powers in enforcement, which will be published before the summer recess.

Recommendation 29

Legislation must provide the powers the courts need. These are, we think, essentially the following: the power to refer a parent who disobeys an order for contact to variety of resources including information meetings, meetings with a counsellor, parenting programmes/classes designed to deal with contact disputes; the power to refer to a psychiatrist or psychologist (publicly funded in the first instance); 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; the power to place on probation with a condition of treatment or attendance at a given class or programme; the power to impose a community service order, with programmes specifically designed to address the default in contact; the power to award financial compensation from one parent to another (for example where the cost of a holiday has been lost).

This recommendation will be addressed in the Family Resolutions Pilot Project and a future legislative change to provide courts with further powers (see page 43).

Recommendation 31

The role of family conferences is a matter for CAFCASS to explore in due course.

This method of intervention will be explored by CAFCASS.

Recommendation 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 judgement, is to provide the court with a substantial degree of flexibility, which our proposals would do.

We are looking at the lessons that can be learned from other jurisdictions as part of the wider review of policy. This experience has also informed the work underpinning the Family Resolutions Pilot Project.

Recommendation 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.

We have studied the Australian model, alongside those of other jurisdictions, and are now considering evaluation reports about its effects.

Recommendation 36

We also suggest that Rules committee may wish to look at the proposal which found favour with a number of respondents, 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.

This is being considered as part of the wider review of the court's powers in contact cases and as part of the DCA Customer Review Strategy

Interim Response

The issue of facilitation and enforcement generated the largest number of recommendations from CASC. The emphasis was on facilitating rather than enforcing contact and on encouraging parents to make arrangements outside the court process, where it is appropriate and safe to do so. The facilitation and enforcement focus also looked at the role of CAFCASS, particularly in the early stages of cases, when there is often less acrimony and the position of each parent has not hardened. The interim response broadly welcomed CASC's recommendations but recognised that they would require additional resources and legislative change.

Background

The facilitation and enforcement of contact between non-resident parents and children generates much debate and figures prominently in the media. As well as pressure groups representing victims of domestic violence and those supporting non-resident fathers, this issue has also been the focus for proposals for reform from sections of the judiciary, lawyers and other professionals.

The Government recognises that divorced or separated parents who are not living with their children sometimes have difficulty in maintaining contact with them, and in some cases this is because of the obstructive behaviour of the parent with whom the children reside.

The Government believes that it is usually more fruitful to focus on facilitating rather than enforcing contact and that parents should, as far as possible, be supported in agreeing arrangements outside the court process. However, we must not dissuade parents who are concerned about their safety or the safety of their children from seeking the protection of the court. Nor must we allow there to be no effective remedy when court decisions about contact are ignored.

The enforcement of contact orders is a sensitive area. Deliberate refusal to obey a court order is a contempt of court, which can be punished with a fine or imprisonment. The court has powers to impose a penalty proportionate to the seriousness of the contempt to reflect the

court's disapproval and in an effort to ensure compliance in the future. The High Court and County Court can impose a fixed term prison sentence of up to two years (two months in the Magistrates Court). The maximum fine is £2,500.

However, as is widely accepted, such penalties may often not be appropriate in a child contact case because of the effect it would have on the children at the centre of the dispute. The court can also decide to transfer residence to the other (non-resident) parent, if this were considered to be in the child's best interests. However, the court would have to consider the best interests of the child before making any such change in residence. Further, it may be the case that the non-resident parent cannot, or does not want, to have full-time care of the child but does want adequate contact.

When the court has decided that contact with the non-resident parent is in the child's interest, it cannot be acceptable for contact orders to be flouted with impunity and for children to be denied contact with one of their parents because of the actions of the other. To assist the LCD in examining the range of recommendations set out in the CASC report, a Facilitation & Enforcement Stakeholder Group was established. It comprised representatives from the judiciary, legal professionals, CAF/CASS, other government departments and the voluntary sector. The group looked carefully at how best parents can be supported to reach workable contact agreements. The Group's report, which can be viewed on the DCA website at <http://www.dca.gov.uk/pubs/reports/contact.pdf> was influential in informing the development of this report.

The implementation of the provisions of the Adoption and Children Act 2002 in relation to parental responsibility for unmarried fathers

With effect from 1 December 2003, the Government commenced the provisions of Section 111 of the Adoption and Children Act 2002, which enables unmarried fathers automatically to obtain parental responsibility for their children if they register or re-register the birth jointly with the child's mother.

Previously, unmarried fathers acquired parental responsibility by subsequently marrying the mother of the child, by applying to the court for an order or by entering into a parental responsibility agreement with the mother of their child. These new provisions allow

unmarried fathers to obtain parental responsibility automatically by joint registration or re-registration.

The Government is now taking steps to ensure that parents are aware of these provisions through the use of the Bounty Pack and through registrars.

Taking Forward the Recommendations

In considering how best to respond to the original recommendations of the CASC report and the range of further work undertaken by the stakeholder group, it is important to remember the circumstances in which courts face the need to facilitate or enforce contact. Research illustrates clearly that the numbers and proportions of parents who remain in conflict about contact with their children are small, though the level of disagreement may be high and the problems intractable.

The role of CAFCASS

CAFCASS has a key role to play in securing better outcomes for the children who are the subject of applications for contact, residence and other s8 Children Act 1989 Orders. While its thousands of sensitive and effective interventions on behalf of children each year make a substantial positive contribution to children's well being there is, of course, scope for CAFCASS further to improve the range and quality of its services. Such expansion is constrained both by financial and human resource considerations. While significant additional funding has been provided to CAFCASS since its inception, the scale of demand for its services, both in the public and private law, has also risen sharply. CAFCASS is also ensuring the delivery of improved services for children through its relationships with the voluntary sector and the Legal Services Commission. It is important for CAFCASS to develop and improve its services in line with its capacities; though it must respond to the demands of its current workload and activities as its current priority. What follows needs to be viewed in that context.

The experience of the judiciary and researchers¹⁰ suggests that resources should be focused more on helping parents find resolutions to their parenting difficulties rather than have courts

¹⁰ Trinder L et al, 2002, 'Making Contact: How parents and children negotiate and experience contact after divorce

impose solutions. CAFCASS is well placed to undertake this work and in its corporate plan has set out a strategic approach to supporting those families experiencing divorce and separation whose disputes currently lead to proceedings. This involves CAFCASS in utilising a range of approaches to assist families to resolve their differences.

CAFCASS already does a significant amount of dispute resolution work with parents at directions appointments in private law, making 42,000 interventions in the year to March 2003. Insufficient research is available on outcomes, but small studies have shown¹¹ that agreement rates can compare favourably with out-of-court mediation provision. However dispute resolution is not universally available and there are wide variations in approach across the country, which pre-date CAFCASS. The recent Magistrates Courts Services Inspectorate (MCSI) Thematic Report¹² confirmed the current situation and highlighted areas that may need attention. CAFCASS and DfES will look to see if there is scope for extending availability of this work. CAFCASS is exploring the best ways this might be done with the assistance of MCSI, national bodies and the voluntary sector.

Improvements to the court system

Too often, however, the court process can be perceived to be a way of punishing one of the partners in a relationship that has broken down rather than as a way of promoting the best interests of the child. Also, deficiencies or delays in the court process can exacerbate difficulties between parents and entrench arrangements in a way that makes it difficult to re-establish positive relationships between children and their non-resident parent.

Such difficulties do not help children to thrive and flourish may leave parents feeling embittered and thwarted by a process which they had hoped would assist them to a better outcome. The CASC report suggested a range of practical provisions designed to improve outcomes for children and their parents and to make improvements in the process by which they arrive there. The Department for Constitutional Affairs is looking at these detailed proposals within the wider context of its overall consumer strategy.

¹¹ Mantle 2002, 'A Consumer Survey of Agreements Reached in County Court Dispute Resolution (Mediation)'

¹² 'Seeking Agreement' (December 2003)

DCA and DfES will work together to improve support for all parents so that problems with relationships can be picked up as early as possible and parents pointed in the right direction quickly to find the help they need, before different viewpoints become polarised. Many parents have said how much they would value information on how other parents and families have sorted out similar problems and the government will be working with children's organisations, parents' organisations and other family experts to build on the success of the Parenting Plan.

We know from the ONS survey that many parents manage to resolve contact issues themselves and that those who do are happier with these arrangements. But we also know that there is probably scope to improve the support available to those parents who sort things out themselves and to help more parents to do this. It is particularly important to recognise that parents need support throughout their continuing shared responsibility for parenting, not just at the point when relationship breakdown occurs. Children's lives and needs change as they grow up, move school, acquire new friends, and branch out into the world. It is important that the way in which their parents share their parental responsibility adapts to meet the child's changing needs. DCA and DfES are therefore looking at ways in which parents can be supported on a continuing basis, not just at the point of relationship breakdown when arrangements for continuing parental responsibility by both parents are first sorted out.

More could also be done to make it simpler for parents to access the help they need. Both the DCA and the DfES will be developing a strategy for improving the ease with which parents can access information, advice, and self-help toolkits.

At the same time, the DCA will be working with the Legal Services Commission to ensure that the basis of Legal Aid funding responds to parents' needs for an expert early diagnosis of the key issues, for support in helping them to work things out themselves if possible or support for mediation if they need that assistance, rather than relying on the court to resolve problems. This move towards early diagnosis, support and mediation is already practised by many family solicitors and it is important that public funding supports this approach.

Where parents are unable to reach agreement, there is scope for courts to work in new ways to overcome the difficulties of long waits for a court appearance, which allows the position to become further entrenched and solutions more difficult to agree.

Drawing on international experience

Much attention has been paid by both researchers and campaigners to the ways in which contact and residence issues are addressed in other countries. This has led to a number of proposals for the adoption of features drawn from other countries. In considering such steps, it is important to understand not only the legal systems as a whole in each country, but also their wider culture. For example, in the USA it appears that parents have been successfully involved in participating in the resolution of contact disputes outside the courts. This may well be a reflection not only of the regard with which US citizens regard their legal system, but also with the fact that they are obliged to fund their own legal expenses.

Recent work carried out by an ad hoc group of judges, legal professionals and other interested parties has resulted in the submission of a proposal for a pilot project which seeks to test alternative means of resolving contact disputes. The proposal is informed by the experience of Florida and other US state jurisdictions and proposes the following:

- diversion of parents to the scheme on a voluntary basis at court application stage, providing information about the pilot and an immediate referral;
- screening for domestic violence/abuse at the initial stage, with judicial consideration and risk assessment taking place as relevant;
- parental attendance at information and support sessions focusing on co-parenting and the child's needs; and
- family resolution sessions which aim to help the parents produce an agreed timetabled plan which sets out how they will co-operate about the future parenting of their children.

The success of this approach depends on close partnership working between the courts and other relevant statutory and voluntary organisations. External monitoring is needed in order to identify the effectiveness of the approach. We plan to act to develop and deliver this pilot project, under the leadership of the Department for Education and Skills, which is funding its development and delivery, but with active DCA involvement. We will work closely with

CAFCASS, the judiciary, legal practitioners and others in delivering the project. The project, now entitled the Family Resolutions Pilot Project, will operate in three areas over the course of the next year.

Experience from the Family Resolution Pilot will add to our understanding of ways in which parents can be helped to take forward their responsibility for parenting after relationship breakdown. Other approaches to mediation offered to those who make an application to court are being explored in a research study funded by DCA and lessons from those experiences will also contribute to continuing to develop new and better ways of resolving issues about contact when parents do turn to the courts.

The facilitation/enforcement spectrum

Facilitation and enforcement are not properly viewed as alternatives, but rather as points on a spectrum, with enforcement being an option which must, where necessary, be available for courts to use when faced with non-compliance with its orders. While cases may need to move along the spectrum towards enforcement, it remains important for judges to be able to determine what approach should be taken in each individual case.

While fines and imprisonment must remain part of the range of powers that are available to judges, the case has been made by both the CASC report and the stakeholder group that applicants and respondents should be able to be required to be involved in other, more positive, non-court based activities. These proposals are based on the assumption that parents in conflict may not, at times of particular stress, always be able to recognise and respond to the needs of their children when they are in adult conflict with the other parent. The Government is, therefore, committed further to consider the extension of the powers of judges to enforce/facilitate compliance with court ordered contact and will make clear the outcome of this consideration later this year. This aspect is also being explored in greater detail in the on-going DCA Consumer Strategy work, including consideration of how post-order arrangements might be improved.

Conclusion

This report has set out the key actions taken by the Government since the publication of 'Making Contact Work' in February 2002. It also sets out the range of on-going and future actions in the areas of safety, child contact services, communication/information, and facilitation and enforcement, as follows:

Safety

- Commencement of s120 of the Adoption and Children Act 2002, to expand the definition of harm, as set out in the Children Act 1989, to make clear that harm can, for example, include seeing or hearing the ill-treatment of another. This will be implemented from January 2005; and
- Amending forms used by applicants when they apply to the courts for s8 Orders (those relating to contact and /or residence, prohibited steps etc) to enable judges to be made aware of any alleged history of domestic violence at the outset of proceedings. This will also be implemented from January 2005.

Child Contact Centres

- An additional £3.5 million over the period 2003 to 2006 to support 15 new supervised Child Contact Centres in England;
- Improving the provision of basic child contact services across the country – specifically, to support service provision in those locations where child contact centres and support for families are most scarce;
- Ensuring that more specialised services – such as supervised child contact – are improved and expanded; and

- Working with the key national organisations, to improve understanding of common services and processes, and to implement basic national standards of service provision and good practice in child contact centres.

Communication and Information

- Improving the distribution of the Parenting Plan and the four leaflets for parents and children;
- Support for a media campaign, organised by Parentline Plus, to make parents more aware of the benefits of contact and of negotiating contact arrangements constructively and also to raise parents' awareness of the available information on, and support for, negotiating workable contact arrangements;
- CAFCASS
- Pursuing other options for getting more and better information to parents and children through the Internet and Family Advice and Information Services (FAInS) pilot; and
- Exploring how best to raise public awareness about the rights and responsibilities of opposite sex cohabitants.

Facilitation and Enforcement

- With effect from 1 December 2003, commencing the provisions of S111 of the Adoption and Children Act 2002 enabling unmarried fathers automatically to obtain parental responsibility for their children if they register or reregister the birth jointly with their partner;
- A DfES-sponsored Family Resolutions Project, supported by the Department for Constitutional Affairs, delivered through CAFCASS and others to encourage and

support parents to make contact arrangements without involving themselves in contact disputes that might otherwise be decided in court; and

- Through legislation and other means, to extend the powers of judges to enforce/facilitate compliance with court ordered contact.

Next Steps

This response is final only in the sense that it concludes one chapter of the work in following up the specific recommendations of the CASC report. The CASC remit was, however, narrowly focussed and, as set out in this response, the Government, through the DCA Consumer Strategy with DfES' full participation, is looking at how the outcomes for children whose parents' relationship has broken down can be improved. This work is looking, across the board, at how support for parents can help to support the development of the best arrangements for their children. A wide range of options is being considered, looking at all aspects of parental relationship difficulties from a consumer perspective. The Government plans to publish specific proposals from this fundamental review this summer and then consult on those.

MEMBERS OF THE CHILDREN ACT SUB COMMITTEE

Name	Organisation
WALL The Honourable Mr Justice	Family Division of the High Court
BOYD-CARPENTER Sir Thomas	Chairman of the Advisory Board
ANGELL Naomi	Goodman Ray Solicitors
KAPLAN Dr Carole	Newcastle University and City Health Trust
POYSER Arran	HM Magistrates' Court Service Inspectorate
SIMPSON Jane	Manches Solicitors
SKIDMORE David	Probation West Midlands
WELLS Anthony	National Council for Family Proceedings

COMMUNICATION AND INFORMATION STAKEHOLDER GROUP

Name	Organisation
ADAM Sheena	CAFCASS
BAGNALL Steve	Relate
BENENSON Natasha	The National Council for One Parent Families
BRAUN Dorit	Parentline Plus
BUCHANAN Anne	University of Oxford
BYRNE Cathy	CAFCASS
CLARK Bruce	Department of Health
COBLEY Cathy	University of Cardiff Law School
COULTARD Sandra	Department for Work and Pensions
CROWLEY Mary MBE	Parenting Education and Support Forum
DOW Catherine	CAFCASS
DUFFIELD Paul	Coalition of Equal Parenting
EASTON Carole	Childline
FRANK Elizabeth	Childrens Legal Centre
GREEN Kate	The National Council for One Parent Families
HENRICSON Clem	National Family Parenting Institute
HOPKINSON Matthew	Connexions
HUBBARD John	Department for Education and Skills
KIRKUP Paul	Department for Constitutional Affairs
LEACH Vicky	NCH
McLEOD Mary	National Family Parenting Institute
MILLS Nicky	Home Office
MURCH Mervyn Professor	University of Cardiff Law School
NAVIDI Ute Dr	Childline
RANDHAWA Kulbir	Asian Family Counselling Service
TOOKE Matthew	Home Office
TRINDER Liz Dr	University of East Anglia
WITHERSPOON Sharon	Nuffield Foundation

Child Contact Implementation Group

Name	Organisation
BRAY Pru	National Association of Child Contact Centres
BROOKS Beverley	National Association of Child Contact Centres
CHRISTIE Andrew	Association of Directors of Social Services
FURNESS His Honour Judge Mark Furnes	Swansea County Court
GOODMAN Suzie	CAFCASS
GORE Duncan	National Association of Child Contact Centres
HANSEN Nina	Solicitors Family Law Association
HARTLEY Teresa	National Association of Child Contact Centres
IWI Kate	Domestic Violence Intervention Project
KIRBY Brian	CAFCASS
LEACH Vicky	NCH
ROGERS Rachel	Law Society
SLADE Alan	Coram Family
TESTER Mike	Department for Education and Skills
TYLER Grizelda	Welcare Accord
VALLENDER Ian	NCVCCO
WARD Salli	Pro-Contact Manchester

FACILITATION & ENFORCEMENT STAKEHOLDER GROUP

Name	Organisation
ANANDAN Saila	Department for Constitutional Affairs
BAKER John	Families Need Fathers
BLACK DJ Helen	PRFD
BONEHILL Chelsey	CAFCASS
BROOKS Beverley	National Association of Child Contact Centres
CHRISTIE Andrew	Association of Directors of Social Services
COVER Martha	Solicitors Family Law Association
CROSS Penny	Coalition of Equal Parenting
DAMAZER Audrey	Justice Clerk's Society
DAVIS Warren	Department for Education and Skills
DEVLIN Matthew	National Family Mediation
DOWDING Sally	Law Society
GRAHAM Lynn	Legal Services Commission
HORBURY Rosemary	CAFCASS
HUNT Joan	Oxford University
KIRBY Brian	CAFCASS
KIRKHAM Lee	Child Support Agency
LEACH Vicky	NCH
LOWRY Lady Barbara	Grandparents Association
MOFFAT Fiona	National Association of Child Contact Centres
NEARY Yvonne	Department for Constitutional Affairs
NEWTON HHJ Leslie	Manchester
NORRIS Barbara	CAFCASS
PARTON Jim	Families Need Fathers
PIGOTT Dr Jean	Monro Family Centre
REES Maggie	CAFCASS
ROBERTS Marion	UK College of Family Mediators
SAUNDERS Hilary	Womens Aid Federation of England
SILVER Maggie	Justice Clerk's Society
THOMAS Liam	Child Support Agency
TIBAWI Ria	NYAS
TIMMS Judith	NYAS
WHITE Valerie	Department for Education and Skills
WILLBOURNE Caroline	Family Law Bar Association

Safety Stakeholder Group

Name	Organisation
BARRETT Fay	Court Service
BLACKLAWS Christina	Law Society
CALDER Avril	Magistrates Association
DAVIS WARREN	Department for Education and Skills
DONAGHEY Adrian	Court Service
HAMILTON Judge Iain	Manchester County Court
HARRISON Chrsitne	University of Warwick
HORWELL Amy	Domestic Violence Intervention Project
HUMPHREYS Cathy	University of Warwick
KIRBY Brian	CAFCASS
LEACH Vicky	NCH
MANN Christine	Mansfield PCT
MCGRATH Maureen	Barnados
MILLWARD DJ Elizabeth	Maidstone Family Proceedings Court
PARSONS Sarah	Foreign and Commonwealth Office
PIPE Colin	Department for Constitutional Affairs
POPE Ruth	Home Office
RADFORD Lorraine	Surrey Womens Aid
ROGERS Rachel	Law Society
SAUNDERS Hilary	Womens Aid Federation of England
VALLENDER Ian	NCVCCO
WADE Amanda	Leeds University
WHISTON Robert	Mankind
WYATT Alex	Solicitors Family Law Association