

# Parental Separation: Children's Needs and Parents' Responsibilities





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**Presented to Parliament by:  
the Secretary of State for Constitutional Affairs  
the Secretary of State for Education and Skills  
the Secretary of State for Trade and Industry  
by Command of Her Majesty**

**July 2004**

This consultation document is published by the Department for Constitutional Affairs (DCA), the Department for Education and Skills (DfES) and the Department for Trade and Industry (DTI). The DCA is responsible for the courts and dispute resolution in both England and Wales, the DfES is responsible for CAFCASS and DTI is responsible for Women and Equalities policy.

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## Ministerial Foreword



Parental separation affects many children and their families. Some three million of the twelve million children in this country have experienced the separation of their parents. Each year between 150,000 and 200,000 parental couples separate. Where the process of separation is handled well, the adverse impact on children is minimised. Where separation goes badly and, in particular, where children are drawn into parental conflict, then the effects can be profoundly damaging for children. Evidence shows that children in this situation are likely to do less well in life. They are more likely to do less well at school, to truant or to run away from home. But these risks can be reduced if parents can resolve parenting issues in an amicable fashion.

Society has changed. Relationship breakdown is much more common than it was 30 years ago, with both married couples divorcing and unmarried couples also separating. As a consequence, many more children now experience the separation of their parents. This is, of course, painful for both parents and children, and can be permanently damaging, though any adverse effects can be significantly reduced if arrangements for the separation are handled well. In addition, fathers are generally more actively involved in caring for and helping to raise their children than previously. Parents who are splitting up have many reasons to be upset and angry, such as the ending of the relationship itself, and disputes over the home, property and money. These disputes often affect the difficult process of deciding how to care for the children of the relationship.

Currently, only 10 percent of separating couples with children have had their contact arrangements ordered by the courts. However, an increasing number of disputes between parents are going to court. Last year, the courts in England and Wales made 67,000 contact orders. The non-resident parent initiates most contact cases. Most children continue to live with their mothers after separation of their parents. Hence most court applications for contact are initiated by fathers, 60 percent according to recent court file analysis conducted on behalf of the Department for Constitutional Affairs (DCA).

The current way in which the courts intervene in disputed contact cases does not work well. This is the opinion of both Government and members of the senior judiciary. Some fathers' groups have come to believe that the courts and the law are biased against them. We do not accept this view. However, both the Government and the judiciary consider that major changes are needed so that where it is necessary for the state and the courts to intervene, they are much more effective in helping to secure effective resolutions which are in the interests of the child. We believe that in most cases it is very much in the

interests of the child to have an on-going relationship with both parents and so we hope that through improving the system, more non-resident parents will enjoy meaningful ongoing relationships with their children.

After separation, both parents should have responsibility for, and a meaningful relationship with, their children, so long as it is safe. This is the view of most people in our society. And it is the current legal position. We have considered whether new legislation would be helpful to clarify the current legal position but we have decided not to pursue this course since it would have no practical effect. The Government believes that the position under current law – that both parents are equal and both should continue to have a meaningful relationship with their children after adult separation, so long as it is safe – is the right position. We believe that we need to make changes to the current system, and to support parents in settling their disputes, by providing more effective help for them to do so. We consider that no change is needed to the core principles set out in the Children Act 1989.

The law has as its central focus the needs of the child and this has to be the state's prime interest. It is in the interests of the child to have a meaningful ongoing relationship with both parents and so the system needs to be much better at securing this outcome. This aim is central to this consultation document. If achieved, more parents will experience an ongoing relationship with their child.

This consultation document therefore puts forward proposals, which are intended to help those undergoing parental separation better to resolve disputes so that children's needs are better met. These are based on the recognition that the primary responsibility for caring for children rests with parents rather than with the state. The proposals focus strongly on what children need and how parents can be assisted better to meet those needs during and after relationship breakdown. They are aimed at:

- minimising conflict and supporting good outcomes both for children and their parents, preferably without recourse to the courts;
- improving parental access to those services which will enable them to reach agreements; and
- improving legal processes and service delivery for those who do go to court.

Most of our proposals are focused on the 10 percent of parents who, for whatever reason, turn to the courts.

Nevertheless, these proposals are designed to be of relevance to all parents who separate, and are intended to help all parents to reach the best possible arrangements and outcomes for their children.

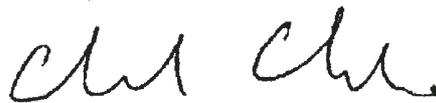
In developing these proposals, we have listened to what parents and children have said. The DCA Consumer Strategy work involved drawing together evidence from research, and conducting workshops and focus groups with parents. The key message from the parents was that they wanted help and support to navigate the emotional and practical issues they faced during the breakdown of their relationship. These proposals seek to respond to this.

We have also consulted widely with the key stakeholders, including parents' groups, academics and voluntary organisations, and those involved in providing current services, such as the judiciary, legal professionals and the Children and Family Court Advisory and Support Service (CAFCASS). These consultations were led at Ministerial level and involved written evidence and a wide range of meetings. The senior judiciary and CAFCASS have been closely involved in the development of these proposals and fully support them.

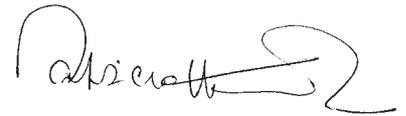
We welcome comments and discussion on our proposals. We will then move rapidly to implement them.



Lord Falconer



Charles Clarke



Patricia Hewitt



# Executive Summary



1. Parental separation often has a traumatic effect on children. Where there is deep conflict between parents, the effect will usually be very damaging. The Government's proposals are intended to improve outcomes for those children whose parents' relationships are ending.
2. The Government firmly believes that both parents should continue to have a meaningful relationship with their child after separation, as long as it is safe. We believe that the child's welfare must be the paramount concern and that this will usually be best secured through them having a continuing relationship with both parents. These proposals aim to help parents to resolve the issues associated with parental separation.

## The Proposals

3. Many parents want information and advice about how to deal with the consequences for their children of relationship breakdown and want these to be more accessible. The Government will work in partnership with existing information and advice providers to improve services so that helpful information and support is more widely available and accessible.
4. We will produce practical tools – Parenting Plans – giving guidance about parenting arrangements that are known to work for children, and their parents, in a range of circumstances. These will also illustrate how the courts are likely to deal with disputes that may be put before them.
5. The Government will improve access to legal advice and practical/emotional advice on how to handle and resolve disputes, by providing it over the telephone and via websites. The aim of these services will be to help parents themselves to agree arrangements that are likely to work well.
6. Where lawyers are involved, it is important that they promote resolution rather than conflict. The Government will restructure legal aid in order to incentivise early dispute resolution in cases where a solicitor is consulted. We will support solicitors in using the first consultation as a resolution process rather than as a step towards court. The Government plans a new accreditation scheme for expert family lawyers to ensure that the best possible advice is provided to potential clients and thus promote better outcomes. The Government will continue to develop

these early resolution methods through its Family Advice & Information Service (FAInS) pilot. Mediation will continue to be supported. The Government will also explore further a "Collaborative Law" system to facilitate agreements and will extend the use of this system if it is shown to work.

- 7.** For those cases that nonetheless go to court, the Government will develop an in-court conciliation system and implement this nation-wide as resources permit. This approach puts the focus of the courts on problem solving as an alternative, wherever possible, to full contested court hearings. Such an approach is known to work where it is currently used and is expected to help more parents to reach agreements without recourse to a full contested hearing. The Government is also piloting a more intensive supportive intervention model called the Family Resolutions Pilot Project. This will go live from September 2004 and will be rolled out nationally if it works well.
- 8.** The Government will work with the judiciary, CAFCASS and others significantly to improve the way cases are handled in the courts. The judiciary plans to develop guidance on case management for use in all courts with the aim of achieving quicker, better outcomes. This will be put in place as quickly as possible and kept under active review and management to deliver further improvements. This will include promoting "judicial continuity" in which the judge, who is familiar with the case, is used throughout the court proceedings. Given the timespans of some family disputes, this will be challenging to achieve in all cases and active steps will be taken to deliver it.
- 9.** The Government will act to ensure that the terms of agreements and court orders are followed. We will legislate, as soon as Parliamentary time allows, to promote new measures for the enforcement of court orders.
- 10.** Some of the proposals will require new ways of working by those involved. We plan to effect these important changes to working practices and philosophy – in particular shifting the emphasis of CAFCASS from writing court reports towards active problem-solving and supporting agreements – as quickly as possible.
- 11.** These steps will help parents to achieve better outcomes for their children by enabling them to reach agreements that are child-focused and by improving the delivery of relevant services. This will enable more children to experience meaningful and ongoing relationships with both of their parents. For those that turn to the courts for help, these proposals will improve the experience and outcomes of the legal process.
- 12.** Alongside the publication of this consultation document, the President of the Family Division and the Chief Executives of the Court Service (HMCS) and of CAFCASS have respectively written to all judges, court service staff and CAFCASS officers to begin the process of change.
- 13.** The Government plans to implement many of these proposals quickly and robustly and to pursue the legislation that is needed as soon as possible. The Government invites views on the proposals during the consultation period which runs until 1 November 2004.

# Chapter 1

## Outcomes and Principles



1. The Government firmly believes that all children should have the opportunity to fulfil their potential and to grow up in loving and secure families. The Green Paper *Every Child Matters*<sup>1</sup> set out the five key outcomes that matter for every child:
  - Being healthy
  - Staying safe
  - Enjoying and achieving
  - Making a positive contribution
  - Economic well-being
2. Supporting parents to deliver these outcomes for their children is at the heart of the Government's approach to improving children's lives. The bond between children and their parents is the most critical influence on a child's life, and parenting strongly influences educational attainment, behaviour and mental health. There is a continuing shift in social attitudes, with more parents, both fathers and mothers, wanting to play active roles in their children's upbringing. More fathers wish to have active, close relationships with their children. At the same time some mothers wish that their former partners would be more actively involved. Both mothers and fathers have responsibility for their children and the fact that they may no longer be partners should not reduce this. Parents do not stop being parents just because they are no longer partners.
3. The key principle, set out in the core primary legislation, the Children Act 1989, is that in a court decision concerning a child's upbringing, the child's welfare must be the paramount consideration. Among other things, the child's wishes and feelings should be ascertained and taken into account, depending on the child's age and level of understanding.
4. The Government firmly believes that, in the event of parental separation, a child's welfare is best promoted by a continuing relationship with *both* parents, as long as it is safe to do so. This approach has been confirmed by a series of court decisions and is widely supported amongst all those who work with parents and children within the current system.

<sup>1</sup> Crown Copyright 2003, The Stationery Office.

5. The Children Act 1989 also places a duty on local authorities, together with other statutory services, to promote the upbringing of children by their families. They should safeguard and promote children's welfare by providing support where they can and should intervene in private family life only where they have to.
6. The Government believes that both parents have a responsibility to ensure their child has meaningful contact with the other parent. The non-resident parent has a responsibility to sustain their relationship with their child, while the resident parent has a responsibility to enable this to happen. In most families currently- though this is changing- the resident parent will be the mother and the non-resident parent will be the father. Both are equally important to their child.
7. Of course, it is necessary to be flexible in responding to difficulties about contact and residence<sup>2</sup>. For most, a resolution that will secure the welfare of the child and an ongoing meaningful relationship with both parents can best be achieved through informal dialogue. For a small minority, especially where there is an issue about the need to safeguard children from harm, the active involvement of the courts may be essential. In all cases, the nature and level of intrusiveness of any intervention should relate to how best to safeguard and promote the welfare of the children involved.
8. Finally, family disputes arising from parental separation can rarely be resolved through a single intervention. They are part of a continuing *process* that will raise different needs and issues to address across time. This consultation document addresses this issue by making proposals in relation to continuing support following a relationship breakdown.

2 This document occasionally uses the familiar language of the current system, referring to "resident" and "non-resident" parents, "private law cases" and issues about "contact" or "residence". These terms reflect the language of the Children Act 1989. "Contact" and "residence" mean "parenting time" and "who the child lives with most of the time" respectively.

## Chapter 2

# The Problems



9. The breakdown of a relationship between parents usually happens over time. When they split parents will attempt, often successfully, to resolve parenting arrangements between themselves. They may, perhaps, only later look for help if things go wrong; from friends, relatives, advice organisations, solicitors or the courts

### Parents who make post-separation parenting arrangements for themselves

10. We know from survey work conducted by the Office of National Statistics (ONS) of parents who have made contact arrangements for children following relationship breakdown that satisfaction with these arrangements varies between those going to court and those able to reach informal agreement. In general, perhaps unsurprisingly given their ability to reach an agreed plan for future parenting, satisfaction with arrangements based on informal agreement is significantly higher than when arrangements are ordered by the courts. Specifically, resident parents are satisfied or very satisfied with informal agreements in 82 percent of the cases involved. Non-resident parents, who are usually fathers, are satisfied or very satisfied in 88 percent of the cases involved. When court orders are involved the picture is very different. Resident parents, who are usually mothers, are satisfied or very satisfied in 61 percent of the cases. But non-resident parents are only satisfied or very satisfied with the outcome of the court process in 35 percent of the cases. Of course, there is a likelihood that the cases resolved by the courts are those in which there is a higher level of conflict between the parents which must be resolved in the interests of the child but the evidence suggests that court solutions are less satisfactory than informal agreement. Thus, a policy aim is to increase the proportion of parents making arrangements for themselves.
11. It should also be noted that within the 90 percent of arrangements that are not subject to a court order, there are a significant number where the children are cared for by one parent (usually, though not always, the mother), with the other parent having no meaningful contact with the child. This may arise through tacit or explicit agreement between the parents – and possibly the children – or this may occur as a consequence of conflict among family members. Many children suffer a sense of loss or grief as a result of losing contact with one of their parents. Many resident

parents report that there is, in their view, insufficient contact between their children and the other parent.

12. Parenting arrangements usually need to evolve and change over time, as the children get older, and as new partners and siblings enter the lives of the children. Going to court each time is not a sensible approach.
13. Many parents, who wish to resolve issues for themselves, may feel that they lack the skills, information and support to do so. It may be difficult to find external sources of help. Those who look to solicitors may feel that they do not secure the help that they are seeking. It can lead too quickly towards court, or it may be costly, while not meeting the need for emotional and practical help.

## Parents who turn to the courts for help

14. The ONS Omnibus survey revealed that approximately 10 percent of contact arrangements are underpinned by court orders. The DCA conducted an analysis of 300 court files to gain a more detailed understanding of the issues typically in dispute. This analysis of court cases revealed that in 35 percent of cases in the courts one parent was concerned about the safety of the child in the hands of the other parent. Concerns about the resident parent's safety were also present in a number of these cases.
15. In the other cases, however, the causes of the dispute did not concern child safety. Communications between the parents might have broken down or there may be disputes about money or housing but when they approach the court they are often angry and distressed. Clearly, the interests of the child are unlikely to be well-served in these circumstances.
16. The ONS Omnibus Survey shows that court-resolved disputes produce the least satisfactory outcomes both for parents and children. The court process has been criticised for being too slow, backward-looking and adversarial in nature – when what children and their parents want is help to meet their complex emotional and practical needs and to produce a forward looking plan for their child's upbringing. Parents might not like the idea of outsiders writing reports about them or be comfortable with strangers taking decisions about their family lives. In addition, of course, legal action can be very costly and slow.
17. As circumstances change while the children grow up, the original court judgment might prove unsuitable in the new situation. This means that the court process may need to be repeated, if differences between the parents remain deep-rooted. However, very many parents would prefer to avoid court if they could reach satisfactory outcomes by any other route. Some come to view the court process as pointless, especially where it appears that the other parent can ignore the court's decision, apparently without fear of consequence.
18. Some of the key concerns about the current arrangements which have been put to us are as follows:
  - Some claim that the current law, or its interpretation in practice, does not give non-resident parents, usually fathers, the relationship with their child that they should have;

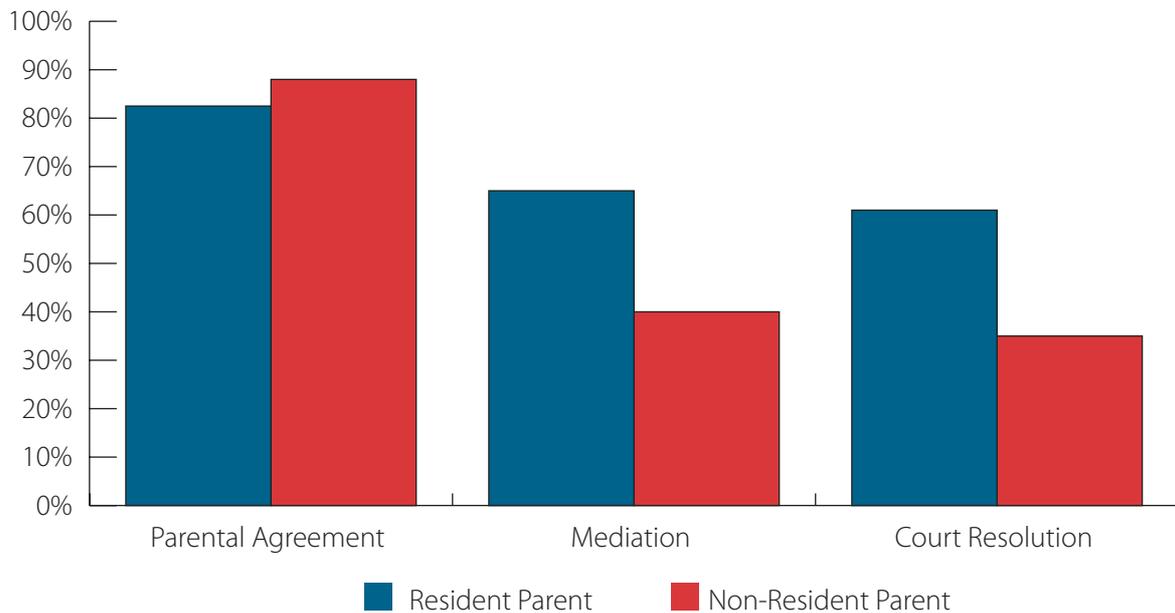
- The process for identifying and verifying safety issues is ineffective and slow;
  - The current legal aid structure rewards litigation rather than settlement;
  - The lengthy and adversarial nature of court proceedings can exacerbate acrimony between separating couples, making things worse rather than better;
  - Court decisions are often backward looking rather than focused on reaching workable solutions for the future;
  - Some resident parents (usually mothers), feel frustrated that the other parent makes insufficient effort to keep in touch with their child;
  - Some non-resident parents (usually fathers), feel they have not been given adequate contact when they have been fully involved in their child's care before separation;
  - Some non-resident parents (usually fathers) feel the courts are biased toward the status quo and favour the resident parent (most often mothers) and that delays in arriving at decisions worsens this tendency;
  - Relatives in the wider family (particularly grandparents) lose contact following separation, in particular where their contact is linked to the non-resident parent's;
  - Some resident parents (mostly mothers) feel that the courts allow contact in a way that puts their or their child's safety or wellbeing at risk;
  - Judges and others have said that there is insufficient provision of supervised contact centres;
  - Resolution is treated as a one-off event rather than an on-going process at which parents need to work over the long term;
  - Court ordered contact is poorly enforced and some cases go back to court repeatedly, with the courts being unable to resolve them.
- 19.** The Government intends, through the proposals set out in this consultation document, to address those criticisms that are matters for the Government. Other concerns must remain issues for separated parents themselves to resolve, as they are beyond the reach of Government.

## Current Parental Perspectives

- 20.** To accompany this consultation document, the Government has published (on the Internet at [www.dfes.gsi.gov.uk/childrensneeds](http://www.dfes.gsi.gov.uk/childrensneeds)) evidence from research about parental separation, in both this country and internationally, and research conducted in developing the DCA Consumer Strategy. This provides insights into parental separation, the needs of children, the perspectives of parents and some of the outcomes that are currently experienced. We have previously published the ONS Omnibus Survey on this topic: <http://www.dfes.gov.uk/childcontactsurvey/>
- 21.** We know from the ONS Omnibus Survey that the vast majority of parents, some 90 percent, do not make court applications for orders relating to their children. Approximately 5 percent of these parents make use of mediation services.

- 22.** A significant minority of court applications concerning contact contain allegations of domestic violence or abuse or neglect involving the children.
- 23.** While the experiences of and outcomes for all parents are unique to them, we know that those that resolve the issues for themselves produce more durable agreements with which they are more satisfied. Court-based resolutions produce the least satisfactory experiences for parents, perhaps unsurprisingly since these parents are likely to be in greater dispute or conflict. This is particularly the case for non-resident parents as the chart below illustrates.

### Parental satisfaction with contact arrangements

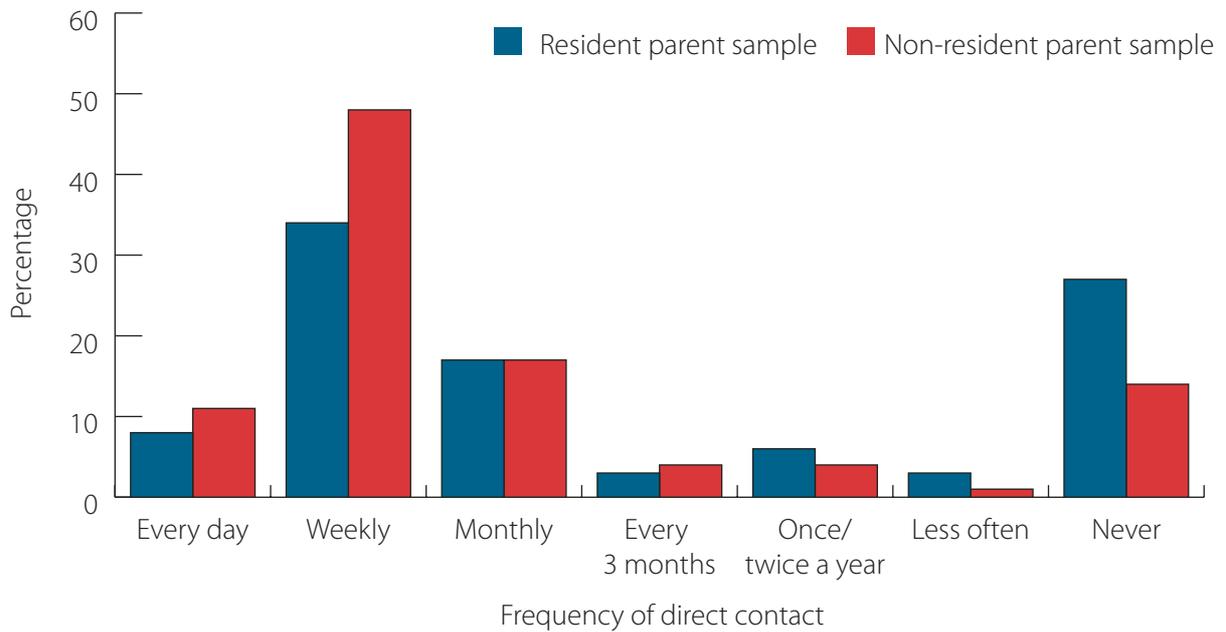


Source: ONS Omnibus Survey<sup>3</sup>

- 24.** The survey did illustrate that the majority of non-resident parents do maintain face-to-face contact with their children, though there is substantial variation in the frequency of that contact. Most parents have weekly (or more frequent) contact, with the vast majority seeing their children at least monthly. Many include regular overnight stays. It is noteworthy that, in this survey, non-resident parents consistently estimated a higher rate of contact than resident parents.

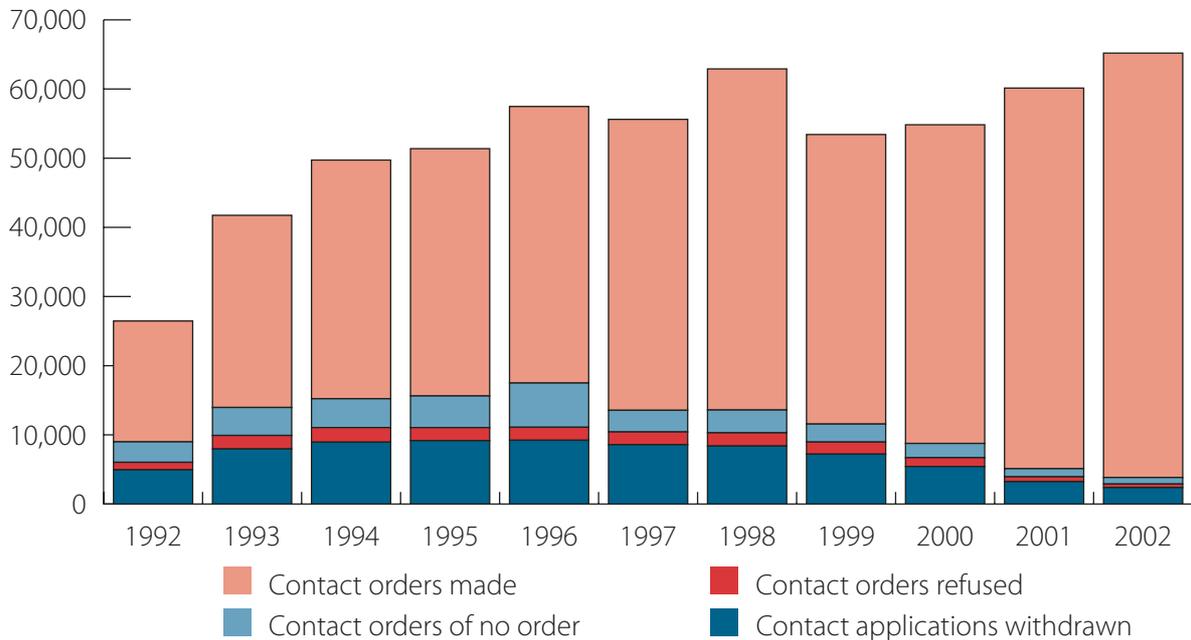
3 1) the sample comprises 1498 cases  
 2) only 26 children had arrangements agreed by mediation reported by non-resident parents, so caution should be exercised in interpreting this number

## Frequency of direct contact of child with the non-resident parent



Source: ONS Omnibus Survey

## Disposal of Contact Applications

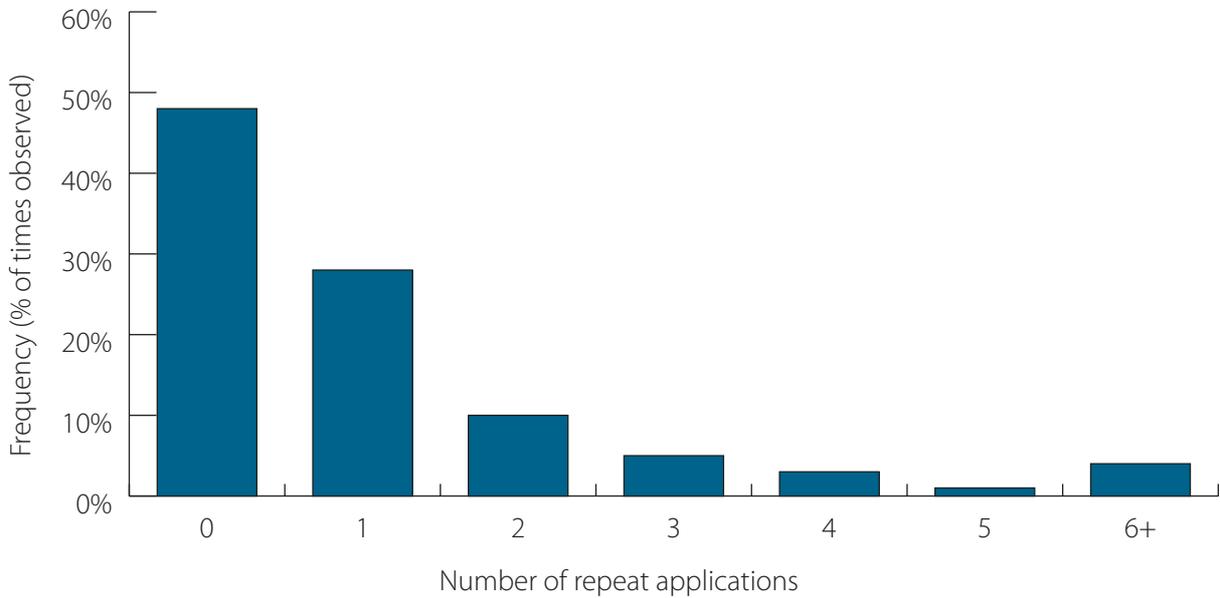


Source: Judicial statistics

**25.** Most parents who turn to courts for contact with their children are given it. The chart above makes clear that less than 1 percent of applications for contact are rejected. Various types of contact are ordered by the courts, including those which specify the timing and duration of contact (which often include arrangements for holidays as well as routine contact) and those which order indirect contact, which may involve telephone and written contact. The latter might

be ordered owing to concerns about risks to the child, linked to direct contact. In suitable cases, contact will be facilitated through contact centres. In some cases, applications may later be made to vary the contact arrangements, from one type to the other.

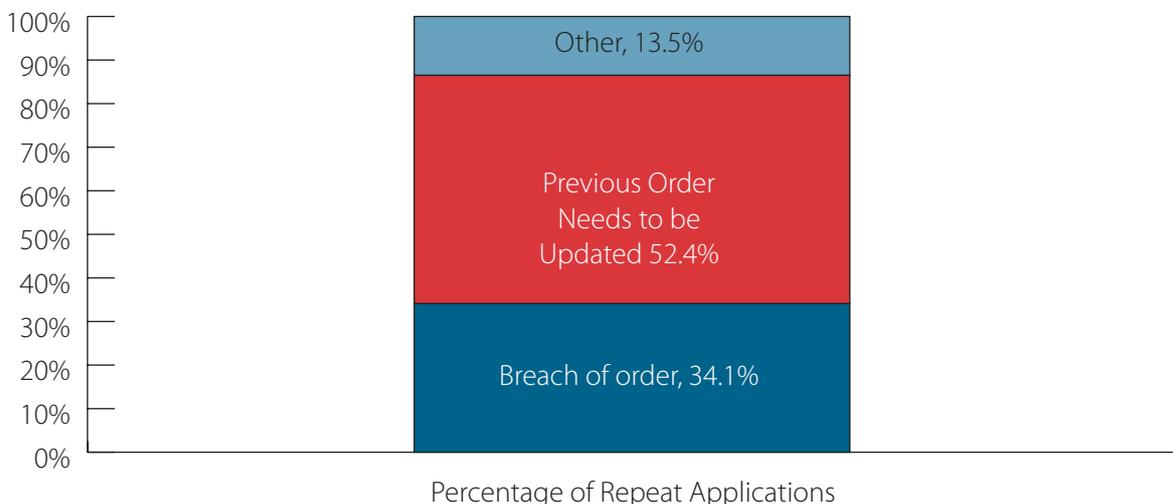
### Number of repeat applications



Source: Court File Analysis

**26.** The analysis of court files also provided an insight into the reasons why these repeat applications occur. A number of cases are returned to court, some repeatedly, where one or more parties to the case are dissatisfied. In just over half of the 300 cases surveyed as part of the DCA Consumer Strategy work, there was at least one repeat application. Half of these related to a need to update the order, while one third of these repeat applications (i.e. one sixth of the total) were made because of the alleged breach of the court-ordered arrangements.

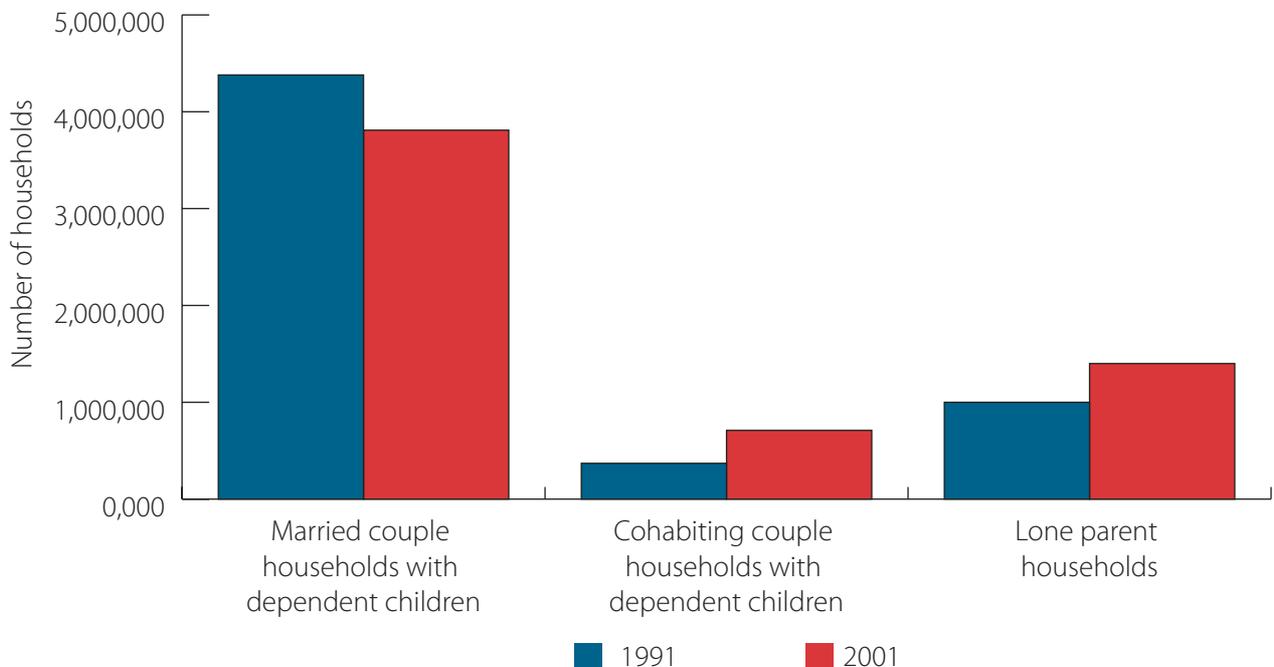
### Drivers of repeat applications



Source: Court File Analysis

- 27.** The shape of the family, in England and Wales, is a complex one. The UK census found that, in 2001, 6.4 million (30 percent) of the 21.6 million households in England and Wales contained dependent children. Of the households with dependent children, 3.8 million (58 percent) were married couple households, 0.7 million (11 percent) were cohabiting couple households, 1.4 million (22 percent) were lone parent households and 0.5 million (8 percent) were 'other households' (those with more than one family, where grandparents, lodgers etc. would be counted as additional to the main family).
- 28.** Some of the married couple households contain children from previous marriages (15 percent of married people have previously been married and 10 percent of children in a married couple family have a step parent). Cohabiting couples with dependent children may have children from previous relationships, and may either be established cohabitantes or intending to get married. Most lone parent households are headed by women but one in ten is headed by a man. The 'other household' group is the most diverse and would include couples with an extra member of the household as well as lone parents living with their parents.
- 29.** Between 1991 and 2001, there was a fall in married couple households and a rise in cohabiting couple households. These changes were particularly marked for households containing dependent children; married couple households with dependent children fell by 13 percent while cohabiting couple households with dependent children rose by 102 percent. The number of lone parent households rose by 21 percent. The graph below illustrates these changes.

### Households with dependent children: comparing 1991 and 2001 census data



- 30.** In summary, then, the trend is for more children to be brought up with cohabiting parents or with just one parent. However it should be borne in mind that the majority – some 60 percent of dependent children were living in married couple households in 2001.

- 31.** The bonds between children and both their parents, however, remain as important as ever. Children experience a number of transitions, such as when parents separate, when the parents find new partners or when new children are brought into the home or are born. They do not seek these changes, and sometimes struggle to cope with them, particularly if their own birth parents find it difficult to work together.<sup>4</sup> The Government's wider social policies need to reflect these changing patterns of family life, even though only a small minority of separating families may seek to resolve contact and residence issues in the courts.

## The impact of parental separation

- 32.** If parental separation is handled well, any adverse impact on the child can be minimised. If it is handled badly, in particular if conflict is played out around or through children, it can have very damaging effects. Children need the support of their parents to thrive. They want and need a safe and secure environment, preferably involving both parents. Where this does not happen, the impact on the children can be severe.
- 33.** Research shows that:
- The likelihood of adverse outcomes for children from separated families is roughly twice that for other children, and the Social Exclusion Unit's PAT 12 report highlighted poor family relationships and parenting as key risks to children's chances of success in later life.
  - Up to half of young offenders come from separated families.<sup>5</sup>
  - Young people with a lone parent are twice as likely, and those living with a parent and step-parent are three times as likely to run away as young people living with two birth parents.<sup>6</sup>
  - Girls from separated families are at greater risk of teenage pregnancy, and the daughter of a teenage mother is one and a half times more likely to become one herself, than the daughter of an older mother<sup>7</sup>.
  - By the time they were 33, those who had experienced parental divorce as children (16 and under) were almost twice as likely to lack formal qualifications as others: 20 percent compared to 11 percent.<sup>8</sup>
  - At age 33, men who experienced divorce when aged 0-16 were twice as likely to be unemployed as those who experienced no parental separation: 14 percent compared to 7 percent.<sup>9</sup> (Post-separation parental conflict can lead to emotional and behavioural difficulties for the child (*Buchanan et al 2001*) and the weight of evidence suggests conflict has a negative impact on the child's development and adjustment (*Hunt 2004*).

4 Pryor and Rogers, 2001

5 *The Cost of Family Breakdown, A report by the Family Matters Institute*

6 *Young Runaways Report, Social Exclusion Unit 2002*

7 *Teenage Pregnancy Report, Social Exclusion Unit 1999*

8 *The Legacy of Parental Divorce, CASE Paper 1*

9 *The Legacy of Parental Divorce, CASE Paper 1*

- 34.** By contrast, effective parenting enables children to fulfil their potential. And children whose fathers have been actively involved in their lives experience better outcomes:
- Higher educational achievements
  - More satisfactory relationships in adult life
  - Protection from mental health problems
  - Less likelihood of being in trouble with the police
- 35.** Attitudes towards parenting are also changing rapidly. For example, many more women want to combine their child rearing work with paid employment, whether part-time or full-time, while fathers' active involvement in child care tasks has increased rapidly over the past generation.

## Changing Attitudes to Parenting

- 36.** While mothers, particularly in relation to younger children, continue to take responsibility for providing the majority of child care, things are beginning to change:
- Fathers are spending more time with their children: in the late 1990s, fathers of children under 5 were spending an average two hours a day on child-related activities, compared to less than a quarter of an hour per day in the mid 1970s
  - Fathers' time spent with their children accounts, on average, for one third of total parental childcare time.
  - Where mothers work, one third cite fathers as the main child carer while they are at work.<sup>10</sup>

10 O'Brien, M & Shemitt, I (2003) Working fathers: earning and caring

## Chapter 3

# The Proposals



- 37.** The proposals in this consultation document seek to achieve significant progress towards securing better outcomes for children by improving the help and support available to parents who separate and in responding to difficulties arising from the current operation of the family justice system and related services. There is, of course, a broader range of services that have a bearing on parental separation and family breakdown, the development of which will be addressed through the delivery of the *Every Child Matters* agenda, particularly in relation to wider family support. In addition, of course, parental separation can lead to wider difficulties, such as homelessness and changes of school, both of which can be contributory factors in longer-term social exclusion.
- 38.** As has been said, most problems arising from separation do not get to court, but in order to provide structure to the proposals, they are set out below in a sequence which moves towards court disposal.

### Contact – the legal position

- 39.** The law, as set out in the Children Act 1989, makes clear that the welfare of the child is the paramount consideration in any court decision concerning a child's upbringing. The Government believes that this principle should be sustained, without qualification, in order that there continues to be the clearest possible focus on the needs of children.
- 40.** The Government firmly believes that both parents should have responsibility for and a meaningful relationship with their children after parental separation – with the important proviso that this is safe. This is the Government's policy position and it is the view of most people in our society.
- 41.** This stance closely reflects the current legal position, as expressed in statute and case law. The broad effect of the current case law is that the general principle to be applied by the courts is that both parents have equal status as parents and that the court's expectation is that both parents should continue to have a meaningful relationship with their children following separation, as long as it is safe and in the child's best interests. The law is gender neutral in intent. It provides that where a court has to determine any question with respect to the upbringing of a child the child's interests are paramount. We have reflected carefully on this and considered the

arrangements of other jurisdictions. We have concluded that this is the right focus. The challenge is to find the most effective ways to ensure these principles are fully applied and reflected in the actual outcomes for individual children.

- 42.** Some have proposed that legislative change is needed to introduce “presumptions of contact”, to give parents equal rights to equal time with their child after parental separation. Where such arrangements are best for the child, and are agreed between the parents or determined by a court, such arrangements can and should be put in place. The Government does not, however, believe that an automatic 50:50 division of the child’s time between the two parents would be in the best interests of most children. In many separated families, such arrangements would not work in practical terms, owing to living arrangements or work commitments. Enforcing this type of arrangement through legislation would not be what many children want and could have a damaging impact on some of them. Children are not a commodity to be apportioned equally after separation. The best arrangements for them will depend on a variety of issues particular to their circumstances: a one-size-fits-all formula will not work. The assumption that both parents have equal status and value as parents is enshrined in current law. The actual arrangements made by courts start from that position.
- 43.** The Government has examined whether new legislation would be helpful to clarify the current legal position, perhaps by drawing together the full effect of current law and case law into a single statutory provision. This might help in providing a clear and comprehensive single point of reference, but it would have no practical legal effect. The Government has decided, therefore, not to pursue this course. The Government believes that the position under current law – that both parents are equal and both should continue to have a worthwhile relationship with their children after adult separation, so long as it is safe and in the child’s best interest – is the right position. No change in the law is needed. What is needed is changes in adult behaviour in settling their disputes and significant changes to the system to provide more effective help to enable them to do so. This document discusses how this can be done.
- 44.** We do however think it is important that the Government’s position and the legal position is fully and more widely understood. We will ensure this is clear in all relevant literature, as it is important that parents recognise their responsibilities to promote the welfare of their child and, for their child, a meaningful relationship with both parents.
- 45.** The Human Rights Act 1998 also requires the courts to interpret the law, (including the Children Act 1989), in a way that is consistent with the European Convention on Human Rights. Article 8 of the Convention requires respect for private and family life. This includes respect for the rights of both parents who enjoy family life with their children to have contact with those children, provided this is consistent with the welfare of the children, and also the rights of children to have beneficial relationships with their parents. The proposals in this consultation document reflect the Government’s commitment to its Convention responsibilities to families.

## Safeguarding from harm

46. As we have seen, 30 percent of applications to the courts have safety allegations associated with them. These include allegations of domestic violence between parents. It is vital – particularly if we are to provide for better enforcement of contact orders – that issues of domestic violence are fully and properly dealt with by the courts. Contact arrangements which put the safety of the child or the resident parent at risk should not be put in place. All contact must be safe for all involved. The courts must have regard to the impact of domestic violence on the welfare of the child. That is not to say domestic violence should automatically determine that a child should have no contact but it does mean arrangements need to be put in place which ensure that contact is safe for everyone.
47. Following careful consideration of this issue, the Children Act Sub-Committee (CASC) developed guidelines for courts on dealing with domestic violence and child contact. These guidelines have already been generally approved by the Court of Appeal to ensure that where domestic violence is alleged the courts must make a finding of fact as to whether or not the alleged violence has occurred and, if it has, what impact it has had on the child. Any harm to the child as a result of the violence must be taken into account in the decision on contact and what kind of arrangements should be put in place to ensure that it is safe.
48. Evaluation has shown that the implementation of these guidelines has been patchy. To support their universal implementation – and to improve the framework for handling contact cases where domestic violence or child abuse concerns are present – the Government is making two important changes. From January 2005, Section 120 of the Adoption and Children Act 2002 will be implemented. This clarifies the existing definition of harm, to include “impairment suffered from seeing or hearing the ill-treatment of another”. In future, courts will be required to consider at the earliest stage in proceedings whether any incidents of harm (as defined), have had an adverse impact on the child or might affect the child in the future. Concerns about harm will be set out by parents who apply for court orders, or who respond to court applications by the other parent, on revised court forms known as ‘Gateway Forms’.
49. Establishing whether these changes do lead to the expected improvements will be important to future decisions on reform in this area. The Government will therefore put in place robust monitoring arrangements and will commission evaluation of the material impact the changes have had on the handling of cases where domestic violence or child abuse is an issue.
50. It will be important, where domestic violence is at issue, that cases are managed in such a way that orders of the family courts take account of, and are consistent with, the findings and orders of other courts, for example the existence of a non-molestation order. Inconsistency between rulings can make life extremely difficult for both parents, for obvious reasons.

**The Government is working closely with the judiciary to address issues of information-sharing between courts. We are also working to establish the country's first integrated domestic violence court where civil and criminal matters in one case would be dealt with in one place by one judge.**

**The Government will implement, in January 2005, the amendment made by the Adoption and Children Act 2002 to the definition of harm, together with improved identification and handling measures for cases where harm issues are raised. The Government will commission independent evaluation of these changes.**

51. These steps mean that cases where domestic violence is an issue will be identified and handled effectively through the courts. The Government's view is that many of the diversionary services described below will not be appropriate in cases involving harm to children, including that arising from child abuse or domestic violence. In such cases, formal intervention by relevant statutory services will be required.

## Access to quality information and advice

52. Access to good information and advice is important to all stages of relationship breakdown. Well-informed parents are better placed to make soundly-based decisions. The Government is keen to ensure that both parents and children have access to sources of advice and information that are sensitive to the needs of people who are experiencing relationship breakdown, while recognising that the Government itself is not best placed to be the direct provider of such services. Such services should aim to help parents resolve issues without recourse to the courts.

**In developing a more strategic approach to family and parenting information, the Government will ensure that the needs of parents, following relationship breakdown, are better addressed by working in partnership with existing information and advice providers such as Parentline Plus, Sure Start, Relate (and other Marriage And Relationship Support grant-recipients) to improve existing provision of information, advice and help. Currently available advice and information will be enhanced, better to focus on the needs of separating parents.**

53. One specific form of existing information that has been well-received is the Government's 'Parenting Plan', which is designed to help parents to reach agreement about parenting arrangements. This information is intended for use by parents themselves, sometimes with the assistance of solicitors or mediators. We will develop these and will provide specific examples of contact arrangements which are known to work well for parents in a range of situations. This will show what sort of arrangements might best suit a range of family circumstances. We will include an example featuring domestic violence.
54. The Parenting Plans will provide templates which parents can use to enable them to reach the best possible arrangements for their child. They will also illustrate to parents how the courts are likely to approach their case if considering an application. Mediators and solicitors will also be able to use this additional information as a guide when advising their clients. It will also help to ensure the child's views are properly considered as arrangements are agreed between the parents.

- 55.** Co-operative parenting arrangements are what is needed in order to promote the interests of the child. This approach is likely to result in children feeling comfortable in both parents' homes. A typical arrangement might be for a child to live at one parent's home and to spend alternate weekends, a mid-week visit, alternate special or festive occasions and extended time during the school holidays with the other parent. This arrangement may, however, be unsuitable for very young children, teenagers and for parents who live some distance from one another. Our revised Parenting Plan will provide guidance for families about a range of co-operative parenting arrangements appropriate for families in differing circumstances.

**The Government will revise the existing Parenting Plan material to include clear examples of good contact arrangements. This will be published and promoted widely, by April 2005, to promote earlier resolution. They will seek to capture what the courts might decide in their circumstances. The Government will also encourage and promote the use of online diaries, currently available through web mail providers, as a means of families communicating and making arrangements following relationship breakdown.**

## Access to specialist legal advice

- 56.** It is vital for those undergoing separation to be able to obtain sound legal advice about how the courts are likely to view the needs of children and wherever possible, to resolve differences.

**The Government proposes to make available access to general legal advice on relationship breakdown through a telephone helpline service, using an existing helpline run by the Legal Services Commission (LSC). This service is currently being piloted and full roll out will follow after evaluation, if it is shown to be useful.**

- 57.** This service, which will also operate outside normal office hours, will be sensitive to the emotional and practical issues flowing from relationship breakdown and will link to other services providing advice and support services.
- 58.** On average, parents who are eligible for public funding through legal aid use courts more often and for longer periods than those parents who fund their own legal representation. There may sometimes be good reason for this. However, the availability of legal aid should not provide an incentive to go to court or to defy court orders.

**The Government proposes to redefine and redistribute family legal aid to promote earlier, more consensual resolutions of private law family disputes.**

- 59.** The LSC's Consultation document on Civil Legal Aid Reform outlining these proposals will be published following this document. This will be implemented quickly once consultation has concluded.
- 60.** The Family Advice and Information Service (FAInS) initiative, funded by the LSC, seeks to provide parents with tailored information and advice, and to focus on the early identification of the range of problems arising from family relationship difficulties. Family solicitors spend time at the beginning of the case exploring the issues that need to be addressed and facilitating access to services that could support and assist their clients. This approach to the early resolution of family disputes is expected to assist in diverting families away from adversarial, prolonged court proceedings.

**The new family legal aid scheme will be tested via the existing FAInS solicitors for a period of approximately 12 months in the first instance and findings from the pilot will inform new contracting arrangements to be introduced for all suppliers.**

- 61.** Skilled family solicitors who are committed to resolving disputes in the interest of the child can help settle some problems without going to court. The legal aid system needs to promote and reward such behaviour.

**The Government proposes to introduce a system of accreditation for solicitors who provide advice on family matters concerning children, building on those already in operation in line with any relevant findings of the on-going Clementi Review.**

**We will work with representatives of relevant professional bodies to develop an effective system. The Government will facilitate any consequent new training needs.**

## Collaborative Law

- 62.** The Government wants to use legal aid to promote resolution and agreement, rather than to promote disputes to go to court. Collaborative law is a system in which both parents' lawyers are committed to promoting settlements: they cannot take the case into court if this fails. Instead, another solicitor would have to be instructed. If necessary, settlements can be underpinned by the court being asked for a consent order to be made.
- 63.** The LSC is currently developing a model for using the principles of collaborative law with publicly funded clients.

**The Government proposes to pilot the collaborative law approach with groups of solicitors and, if it works well, to roll it out widely as a better way for the state to fund legal intervention. This preparatory work will conclude in April 2006 and roll-out will follow as soon as possible thereafter, if evaluation proves to be positive.**

## Mediation

- 64.** Family mediation involves couples sitting down together with a mediator with a view to reaching agreement. The parties to mediation are encouraged to seek independent legal advice on any agreement reached. As with collaborative law, agreements may be underpinned by a consent order from the courts. The Government recognises that in some cases, mediation can play an important role in family dispute resolution. The number of publicly funded mediation cases has risen from 300 a year to over 13,000 a year, over the last ten years. It assists approximately 5 percent of separating couples to reach agreements.
- 65.** The Government intends to continue to promote mediation. Privately funded parents can currently opt for these services as an alternative to a court-based resolution, while publicly funded parents must show they have at least explored the option as an alternative before turning to litigation, in order to be able to access continued funding.

**The Government, in conjunction with the senior judiciary and rule committees, proposes to review relevant rules and Practice Directions so that the strongest possible encouragement is given to parties to agree to mediation or other forms of dispute resolution, in order to ensure that all alternative means of resolving family disputes, short of contested court hearings, are fully utilised. For those eligible for public funding, this mediation would be funded through legal aid.**

## In-Court conciliation

- 66.** Although the Government aims to reduce the number of parents who feel the need to apply to court, some will still do so. It is essential that such cases do not quickly move into formal adversarial proceedings without first exploring informal resolutions. A number of courts, for example in Essex, already provide in-court conciliation services, which are successful in achieving resolution of the majority of cases without a contested court hearing. Typically, this involves the parents being diverted from the court hearing in order to attend one or more problem-solving sessions, conducted by a facilitator. This service is usually provided by a family court advisor from CAF/CASS, with legal representatives often also in attendance. The facilitator assists the parents to address and resolve the issues in dispute.

**The Government proposes actively to promote the extension of in-court conciliation services so that they are routinely used for all families in dispute before a formal court hearing, except in cases involving allegations of harm. We intend to roll this out nationwide, on a progressive area by area basis, as rapidly as possible. The speed of this depends on the capacity of CAFCASS, the judiciary and the Court Service. We anticipate that several areas will introduce this system within 2004 and others will follow as quickly as they are able. The Government will also make available, to those undertaking in-court conciliation, improved information, Parenting Plans and the video and other materials used in the Family Resolutions Pilot Project (see below), if they prove useful.**

67. In-court conciliation appears able to help many parents to establish meaningful relationships between the child and both parents.

## Family Resolutions Pilot Project

68. Though in-court conciliation has much to offer, there are some cases where parents will need additional support to enable them to reach agreement. In March 2004, in its response to the CASC report *Making Contact Work*,<sup>11</sup> the Government announced the Family Resolutions Pilot Project (FRPP). The development of the FRPP has been informed by the earlier work of an ad hoc group which presented its early intervention project proposals to the Government in Autumn 2003.
69. The pilot will be based on the key principle, as set out earlier in this paper, that the children's welfare is paramount, and that this is best promoted by a continuing relationship with both parents, as long as any safety issues are properly addressed. Cases in which concerns about harm have been raised will need to be determined by the courts, perhaps later being referred to the Pilot if safe to do so. All other parents will be expected to participate, as directed.
70. The pilot, which starts from September 2004, will test the effectiveness of a range of measures, set out below, intended to raise parents awareness of children's needs following separation and to help them agree parenting arrangements appropriate for their own situation.
71. The detail of the pilot is currently being developed and is expected to involve a three-stage process. This will start with parents being sent an information pack, which will include guidance on how the court operates and how it views contact cases. This will make clear to parents the court's expectation that it intends that there should be a meaningful ongoing relationship with both parents. Following this, parents will be directed to attend, separately, two facilitated group sessions to discuss how difficult separation and disputes about contact can be for the children and how these might be lessened. The final stage will involve one or more parent planning sessions for both parents, with a CAFCASS Family Court Advisor, and involving the child as

11 CASC report is available at [www.dca.gov.uk/majrepfr.htm](http://www.dca.gov.uk/majrepfr.htm) the government's response is available at [www.dca.gov.uk/family/abfla.casresponse.pdf](http://www.dca.gov.uk/family/abfla.casresponse.pdf)

appropriate. The revised Parenting Plans will be used as a basis for the discussion in these sessions, as soon as they are available.

- 72.** Any agreement reached may be put to the court, with a view to seeking an order, made with the consent of both parents. Alternatively, a CAFCASS report may need to be prepared for the court, identifying areas of agreement and issues that still require court resolution.

**The Family Resolutions Pilot Project will be evaluated in order to ascertain its impact. Outcomes are expected to be known by March 2006, at the latest, which will inform the decision about any national extension of the approach.**

**The new Parenting Plan materials, which set out examples of contact arrangements that are known to work in different circumstances, will be used in both the extended in-court conciliation services and Family Resolution Pilot Project as soon as they are available.**

## A changing role for CAFCASS and the courts

- 73.** A number of the proposals in this consultation document, such as in-court conciliation, will require major changes to the role of CAFCASS, towards a more active problem-solving approach. To create the capacity for CAFCASS to undertake this work, the judiciary will need substantially to reduce the frequency with which CAFCASS is commissioned to write reports. These will, of course continue to be needed in a number of cases, particularly where safety concerns feature. However, CAFCASS is currently asked to provide over 30,000 reports in these kind of cases each year. The preparation of these reports contributes to delay, during which time existing arrangements may become unhelpfully entrenched and parental attitudes hardened. Fewer, and better focused, reports will enable CAFCASS resources to be applied to the facilitation of contact for children. The Court Service and the judiciary are committed to working with CAFCASS to deliver this aim.

**The Government supports the plans of CAFCASS and the judiciary to reduce the proportion of CAFCASS resources that are devoted to report writing, in order to create the capacity to deliver conciliation and support services. This change will be introduced on an area by area basis, as the commissioning of reports diminishes.**

## Improving case management by the courts

- 74.** For cases that come to court, the judiciary is keen to promote better case management practices in order that cases are managed as effectively as possible to deliver best outcomes. The Government strongly supports this aim. Cases should not be allowed to drift, as this is often how they become intractable.

**The Government strongly supports the declared intention of the judiciary, working with the Court Service, to develop guidance setting out how best to manage private law cases and thereby actively manage them, with the support of the Court Service to ensure appropriate listings.**

**75.** This will involve:

- **Earlier listing of cases**
- **Cases to be heard as quickly and effectively as possible**
- **Greater judicial continuity, the aim being that wherever possible the same judge is used throughout a case (including if it later returns to court)**
- **Rapid return to court when needed**

**76.** The President of the Family Division intends this guidance to be in place by the end of 2004.

**77.** A key aim of this initiative will be to reduce delay. Cases currently take 36 weeks to complete on average. The aim will be to reduce this as much as possible. While it is intended to reduce case durations, it is not sensible to place an absolute completion target on all these cases since they vary so much in complexity.

**Target times will be developed by 2005 for key stages such as first hearing conciliation appointments and enforcement hearings.**

## Helping to ensure that agreements work

**78.** Pre-court mediation, in-court conciliation and court orders are of limited value if the contact that has been agreed or ordered does not take place. It is inevitable that some agreements will not endure, because of factors such as changes in family circumstances or the changing wishes of children as they grow older. However, the Government wishes to develop several new ways to promote compliance with court orders. CAFCASS and the courts will ensure the early and prompt return of relevant cases to the courts. Other interventions will address those factors that are impeding the contact that has been determined. The Government aims to facilitate this in several ways.

## Post-Order follow-up

79. This is the first way by which agreements will be made to work.

**The Government will provide effective follow-up of court orders by ensuring that families are contacted by a CAFCASS Officer soon after an order has been made, to check that it is being implemented in practice. This service will be initiated in those areas operating conciliation services and extended, as capacity to deliver is developed, to all areas.**

80. Problematic cases will be rapidly returned to court, either on the basis of CAFCASS' report back to the court or, as is already the case, on the application of one of the parties to the original case whenever possible, they will be heard by the original judge.

## Family Assistance Orders

81. A further means of facilitating contact is through the use of Family Assistance Orders (FAOs). These Orders provide for children and parents to be advised and assisted for up to six months. FAOs, which may be directed to CAFCASS or to local authorities, are not used extensively, with fewer than 700 having been taken on by CAFCASS in 2003/04. The Government is currently considering whether these Orders might usefully provide more formalised and wider follow-up support to children where contact or residence orders have been made. It may be helpful to remove the current requirement that the orders may only be made in exceptional circumstances or for there to be more flexibility about their duration.

**We will legislate, as needed, to revise the arrangements for the use of FAOs. Any such legislation will be informed by responses to this document during consultation.**

## Extending and using current powers

82. Currently, Section 11(7) of the Children Act 1989 makes clear that a contact order may contain conditions about how it is to be carried into effect. The court may impose conditions on the parties which must be complied with and the section also permits the court to make such incidental, supplemental or consequential provision as it thinks fit. It is expressed in very wide terms and we think it important that these powers are used vigorously and creatively. At present, a common use of this power is to attach a supervised or supported contact condition to contact orders, requiring that it take place at a contact centre, or in the presence of an identified person. The Government wishes to seek views about whether further legislative measures are needed to clarify or widen these powers.

**The Government seeks views on the need to legislate to expand or clarify the conditions courts may apply to orders made.**

## Contact Centres

- 83.** Contact Centres play a vital role in facilitating contact, in particular in those cases where safeguarding a child from harm is an issue. Child contact centre services have developed rapidly in recent years, benefiting in particular from the £3.5m additional DfES/Sure Start investment for the period April 2003 to March 2006. This funding has enabled the development of 14 new supervised contact centres, specifically aimed at filling the gaps in provision identified in 2002 by a mapping exercise. It is clear that both supported and supervised contact centres, operating on an accredited basis to explicit service standards, contribute to supporting contact between children and their parents.

**The Government is currently considering how best to continue supporting this key part of the voluntary sector after April 2006. Discussions about funding will continue as part of the DfES Spending Review allocation process and will be announced as part of that.**

## Better enforcement

- 84.** Finally, for those cases where there is a failure to comply with the terms of the order, more diverse enforcement mechanisms are needed by the courts, despite the range of improvements described above. Courts have powerful provisions available to them to enforce court orders, including fines and the power to imprison those who have disregarded orders or they can reverse residence so that a parent, perhaps one whose contact is being frustrated, instead becomes the resident parent. A small number of recently reported case judgments have shown that the judiciary can and will reverse residence orders, in favour of the non-resident parent, where contact has been persistently obstructed. However, this is not always possible or appropriate.
- 85.** The senior judiciary and others are clear that reform in this area is needed and have proposed legislation to provide a fuller range of enforcement provisions, along the lines of those recommended by the CASC report *Making Contact Work*. The report's authors were clear that new methods of enforcement were needed and that legislation was required in order to effect the recommended changes. The Government accepts this recommendation.

**The Government proposes to legislate at the earliest possible opportunity to provide additional enforcement powers.**

**These new powers will allow:**

- **referral of a defaulting parent in a contact/residence case to a variety of resources including information meetings, meetings with a counsellor, or parenting programmes/classes designed to deal with contact disputes;**
- **referral of a non-resident parent who has been violent or who has breached an order to a relevant programme;**
- **attachment of conditions to orders which may require attendance at a given class or programme;**
- **imposition of community-based orders, with programmes specifically designed to address the default in contact;**
- **the award of financial compensation from one parent to another (for example where the cost of a holiday has been lost).**

## Consultation and Implementation

- 86.** The Government wants to move as rapidly as possible act on this agenda in conjunction with the judiciary, the legal and mediation professions, the Court Service, CAFCASS and the voluntary sector.
- 87.** We welcome views and ideas, both about the individual proposals and the overall package of measures. In particular:
- a) Whether the information, advice and the proposed improvements in provision will provide the practical help intended; and which aspects are most useful;
  - b) Whether the improved pre-court interventions and the extension of in-court conciliation are likely to deliver the help parents and children need in a better way than contested court hearings;
  - c) Whether the steps to improve the court processes will help parents; and
  - d) Whether the proposed new post-order support and enforcement measures will improve compliance.
- 88.** Views are invited on the proposals set out in this document. Consultation responses are invited until 1 November 2004. Comments should be sent to:

Parental Relationship Breakdown Consultation Team  
 Department for Constitutional Affairs  
 4th Floor  
 Selborne House  
 54 Victoria Street  
 London  
 SW1E 6QW

Email: [consult.childrensneeds@dca.gsi.gov.uk](mailto:consult.childrensneeds@dca.gsi.gov.uk)

The policies and proposals in the consultation paper apply to England, and to Wales where they relate to reserved responsibilities. A Regulatory Impact Assessment (RIA) to accompany the proposals contained in this consultation paper has been prepared and is available on the DfES website at [www.dfes.gov.uk/childrensneeds](http://www.dfes.gov.uk/childrensneeds). In addition to commenting on the consultation paper proposals, you may wish to comment on the contents of the RIA.

In addition to the formal response process the Government will be promoting a range of discussions with interested parties about these proposals over the autumn, with active Ministerial involvement.

Respondents to this document should be aware that their comments may be published, perhaps on an attributed basis, in the Government's response to the consultation exercise. If anonymity is desired, respondents should make that clear in their response.







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