

# **Residence and Contact Disputes in Court: Volume 1**

**by**  
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## **Executive Summary**

### **Background**

There is currently much concern over why the issue of contact with children after divorce or separation is so difficult for parents and for the legal system, and why disputes over contact seem so hard to resolve. There are also questions over whether court orders are effective as there is a lack of information on, and understanding of, the management of these conflicts. There has been a particular concern that disputes over contact have not diminished, notwithstanding the aim of the [Children Act 1989](#) to reduce conflict between parents. The fact that this has not happened has led to questions about whether there is something more fundamental about these disputes between parents. The aim of this study was to bring some clarity into this picture so that as new policies develop they are based on a better understanding of the cases that come to court. The current Volume of the Report is based on the first two stages of the study, examining the cases that are brought to court and how these are processed by the courts. The second Volume will examine how well the outcomes of these court cases 'work' for the families involved.

### **The methodology of the study**

For this study, we examined a random sample of court files that began with a section 8 application in the year 2000. We selected three County Courts (which we have called Northay, Minster and London) in different parts of England and with very different catchment areas. Our sampling procedure produced 430 'cases' which form the basis of our analysis. Throughout this report we have referred to 'cases' rather than individual applications because it makes more sense to count the actual families involved in disputes rather than the numbers of applications that each family member might make.

### **Findings**

- Over half (60 per cent) of the cases brought to court began with an application for a residence order, and were hence classified as Residence Cases. This may appear surprising given the public concern over the issue of contact, and reminds us that it is important to keep in mind that the daily work of the courts is not solely concerned with disputes over contact.
- It is important to be aware of the different populations and their different relationship histories in relation to each other and their children when interpreting outcomes. Similarly, we suggest that it is always important to understand statistical data on outcomes in context because the same 'order' or 'outcome' will have very different *meanings* for different families.
- In both the Residence and Contact cases, approximately half of the applicants were granted the orders they applied for. Under ten per cent of cases were dismissed. Approximately one in five Residence Cases and one in three Contact Cases ended in withdrawal or in an order for 'no order'.
- Mothers applied more for residence orders, while fathers tended to apply for contact orders. The fear that a non-residential father would remove the children seemed to be of particular concern to the residential mothers. For fathers, the main reasons applying for contact were either that contact was not working satisfactorily or was being refused completely by the mother.

- The principle that seems to guide the courts when deciding on residence is that of the *status quo*. The courts appeared unwilling to disturb the stability of the lives of the children unless grave concerns were expressed over their well-being.
- A clear majority of both Residence and Contact Cases were resolved within a year. Cases that were resolved quickly in court tended to be Residence Cases. Disputes that became protracted tended to be Contact Cases and were characterised by a high degree of hostility that drove the dispute.
- The parents often appeared to initiate the court process out of a sense of insecurity or to have clear boundaries imposed on a problem they could no longer handle themselves. This runs counter to the general view that it is harmful for disputes to go to court because it can delay a resolution or because it increases hostility.
- It is not clear whether speedy legal solutions are available in the thorniest of disputes. These disputes invariably require numerous reports by professionals (if they are not withdrawn or settled before the case gets to that stage) and therefore take a long time to conclude.
- Almost one in four of the cases in our study included allegations of domestic violence. The key to whether allegations of domestic violence led to further investigation was whether or not the children had been witnesses to or subjected to abuse.
- One in two of the cases involving allegations of domestic violence resulted in an order for direct contact and only nine cases out of 98 resulted in a final order for indirect contact. This should be understood in the light of recent research findings that indicate that a significant minority of mothers and children are put at risk of violence during contact.
- As the cases unfolded, it became clear that underlying the disputes over children were complex issues often involving matters that are no longer considered relevant by the courts. Thus issues to do with financial support, housing, and the quality of the past relationship which were not seen as relevant by the courts to deciding matters of residence and contact would appear to have been important to the parents.
- Our data suggest that it may be difficult for people to understand why the law does not take into consideration issues that they themselves view as highly relevant to the question of who should be allowed to have contact or residence.
- The welfare of the children is the court's paramount consideration when coming to a decision in all cases relating to residence or contact. However in a subset of cases particular concerns were raised over children's welfare. When specific concerns were raised over children's welfare they tended to be of a more serious and complex nature in the Residence Cases than in the Contact Cases.
- Our data suggest that there are families who fall between available provision because their problems go beyond the remit of the family courts but fail to be serious enough to warrant proceedings under public law. There is little in place to offer long-term support to these families if Social Services decline to become involved.
- Children's voices were heard but only if they were old enough and only if the cases were complex enough to warrant a report. The courts did seem to be interested in finding out whether the children had a 'preference' with regards to contact or with whom they should live.
- Court welfare officers (now children and family reporters) often seemed to point out to the parents that they needed to be more flexible and to listen to their children's wishes and feelings.

## **Conclusion**

Overall we found a very complex picture in which the concerns of parents did not always match with the priorities of the courts. But we found that there are genuine moves towards hearing the voices of children and that whilst the welfare of children is the courts' main priority there may be institutional reasons why these concerns do not result in specific orders from the courts. We also found that the courts could deal efficiently and quickly with some issues and that these appeared to provide the applicant parent with a degree of security. It may therefore not be advisable to seek to divert all cases from the courts. The closer one looks at disputes over contact and residence, the more one realises that this is not a simple matter of the courts issuing orders and parents complying. Not only do we find parents who are at odds with one another, but also a complex picture of competing values and ideas about child rearing, families with multiple problems, courts with limited resources, children who have clear feelings about their parents, extended families who have strong views, and of course much distress.