

# **Residence and Contact Disputes in Court**

## **Volume 2**

**Carol Smart, Vanessa May, Amanda Wade and Clare Furniss**  
**University of Leeds**

**with Kaveri Sharma and Jason Strelitz**

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## **Disclaimer**

The views expressed are those of the authors and are not necessarily shared by the Department for Constitutional Affairs.



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## Executive Summary

This Report is the second volume to be published from the study on Residence and Contact Disputes in Court funded by the Department for Constitutional Affairs and carried out at the University of Leeds. The first volume<sup>1</sup> was based on a survey of 430 court cases in three different County Courts in England<sup>2</sup> and focused on disputes between parents over residence and contact filed in 2000. This second volume is based on the outcomes of qualitative, in-depth interviews with 61 parents who had taken their dispute to court in one of our three areas. We interviewed 34 mothers and 27 fathers, with equal numbers of residential parents and contact parents (although the fathers were mainly the contact parents). *The data are skewed towards the high-conflict end of court cases, and are therefore not necessarily representative of what goes on in the majority of cases that go to court.*

### Aims

The main aims were to establish why parents go to court, what their expectations were, whether these were met, whether they were satisfied with the outcomes (and if not why not), how the arrangements for children were working, and what the effect of going to court was on them and their children.

### What takes parents to court?

- The apparent answer to this is that parents had disputes over who could care best for their children, or over who was harming the best interests of their children by their behaviour.
- But we found that issues of child welfare – although real – were not necessarily the driving force behind the conflict.
- Parents were often angry about having been mistreated, deceived, or abandoned. Alternatively they were angry about the way in which their former partner behaved following the separation; so issues of failing to pay child support or starting to live with a new partner could ignite or fuel the dispute.
- We found that because the courts would not listen to these complaints, that parents channelled their hostility into the one issue they could take before a judge, namely disputes over the children's residence and the time they spent with the other parent.
- We are not suggesting that parents' concerns for their children were fabricated or that they were used cynically, rather we suggest that parents are

now channelled into what we call a **parenting contest** in which it becomes paramount to 'prove' that the other parent is inadequate or unworthy.

- We found that the **parenting contest** was played for very high stakes with people's sense of self as a good or decent mother or father being threatened and even damaged.

### **What do parents complain about in relation to their court case?**

- **The decision of the court:** Not surprisingly where a parent felt that the decision had gone against them (or against their ideals of justice or child welfare) they blamed the judge and/or CAFCASS for bias, stupidity, or lack of insight.
- **The legal process:** Regardless of the outcome, some parents were unhappy with the process they experienced. They felt they had too little time in court, that CAFCASS spent too little time with them or their children, that no one was interested in the things that mattered to them, that the court order was based on a formula rather than an individualised programme designed to fit their family's needs.
- **Lack of enforcement:** Contact fathers could be highly critical of the court's failure to enforce their order for contact and felt that, having gone through the system successfully, it was a mockery that the order was worthless. Residential mothers could be highly critical of fathers who, having taken them to court, then failed to exercise the contact they were awarded.

### **What do parents find helpful?**

- **Certainty:** Some parents found that a court order reduced the opportunity for subsequent conflict because it was laid down clearly (by a higher authority) on which days of the week, and for how long, contact should take place. This removed the need for communication and disagreements.
- **Safety:** In cases where there had been violence, or threats to remove a child, a court order was seen as a way of achieving safety and security.

### **What are the consequences of going to court?**

- **Children:** In these high conflict cases we found that parents spoke of children mostly in terms of 'recruits' for their side of the argument. Although some parents spoke of their children's stress and unhappiness, this was seen as being the fault of the other parent.

- **High conflict:** In 60% of the cases, there was a continuing high degree of conflict that the courts had not been able to resolve (i.e. little or no communication between the parents, ongoing hostility that made contact arrangements difficult or unpleasant).
- **Reduced conflict:** Conflict had abated in 30% of the cases (i.e. improved ability to communicate, the parents could even share a joke) and in 10% of the cases the level of conflict had never been high (i.e. the parent we interviewed thought there was never any reason for going to court because there was no real disagreement between the parents, the parents were said to be on relatively amicable terms).
- Our data cannot answer the question of whether going to court resolves or exacerbates conflict for parents in general. It is impossible to isolate 'going to court' as a sole causal factor in what is a complex process of human relationships.

### **What do parents want from the courts?**

- **A fault-based family law system:** Some parents wanted a more detailed and forensic investigation into the behaviour of their former spouse or partner and for this to influence the outcome of decisions on residence and contact.
- **A day in court:** Some parents wanted a more substantial opportunity to be heard in court. They felt that family issues were too important to be dealt with as quickly as they were.
- **Individualised solutions:** It was a common complaint that, having gone through the whole system and having appeared before a judge, the court order that was handed down was a 'standard' or formulaic one (for example alternate weekends and Wednesday nights). Parents felt they had earned a more tailored order that would fit better with their children's specific needs.
- **More support:** Parents felt that after the hearing (and regardless of how devastating the outcome for them) they were left to get on with it alone. This meant that they could become depressed or remain angry. If the order they received was then not adhered to they felt their only recourse was to return to their solicitor and/or to court, thus re-engaging with a cycle of hostility.
- **Recognising the significance of child support:** The mothers we interviewed could not understand why it was treated as immaterial by the courts that fathers did not pay (enough) child support. This was experienced as a wilful disregard of the problems they were having to deal with.



## **Chapter 1. Introduction to the Study**

In the first volume of our report on this study (Smart *et al*, 2003) we presented the results from the first stages of our enquiry which were based on an analysis of court files on residence and contact disputes that had been heard in three English county courts in the year 2000. We found that the files presented a very complex picture and that the concerns of the parents in conflict did not always reflect the priorities of the courts. We concluded that the complex tapestry of these family disputes could not be reduced to a simple solution of courts issuing orders and requiring parents to comply. These disputes often involved families with multiple problems who came before courts with limited resources and few options when it came to conflict management and resolution.

In the present Volume, we present the findings of the final stages of the study. The court files examined initially provided valuable information on the types of dispute that parents took to court and on how these were handled. However, what the court files could not convey was how the parents (and children) involved in the disputes experienced the court process, nor whether going to court had helped them resolve their conflicts once they returned to everyday life. These issues are addressed here, based on questionnaire and interview data that we have collected from parents who had taken their conflicts through the same three courts (which we have called Northay, Minster and London) in the years 2000-2001.

### **The aims of the Children Act 1989**

Prior to the introduction of the Children Act 1989 there was a great deal of concern over the extent to which legal procedures and legal terminology contributed to hostility and promoted an adversarial attitude amongst parents at the time of divorce or separation. One of the key reasons why the terms 'custody' and 'access' were removed from English divorce law was because it was felt that these very terms suggested that one parent 'won' the children and the other 'lost' them (Hayes & Williams, 1999). It was also hoped that, in changing the law such that it was no longer a legal requirement for the custody of a child to be awarded to one parent on divorce, there would be less for parents to argue over.

The architects of the Children Act hoped that by affirming the paramountcy of the welfare principle and promoting a policy of negotiation between parents coupled with

non-intervention by the courts, the legislation would go some way to defuse conflict between divorcing parents. Parents were to be encouraged to recognise that they had a joint, on-going responsibility for their children, and to focus on what would be best for them. This new ethos was framed as offering parents a 'win-win' scenario in which both would be reassured of their continued significance to their children (Hayes & Williams, 1999). The Government has recently reiterated the importance of shared parenting in its Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*: 'A child's welfare is best promoted by a continuing relationship with *both* parents, as long as it is safe to do so' (p. 7; emphasis in original).

But the Children Act was also a call to parents to rise above whatever distress or anger they were experiencing at the breakdown of their relationship, and to put their children's interests above their own feelings. So here we examine what happens when the hurt, anger and other difficult emotions connected with divorce (Day Sclater, 1999) meet with the ethos that underpins the Children Act 1989 and guides the family courts. Others before us have already noted that the hopes enshrined in the Children Act of giving parents 'equal' status and thus encouraging them both to be responsible for their children and reduce conflict and litigation were too optimistic (Day Sclater & Kaganas, 2003: 155-156; Simpson *et al*, 1995; Smart & Neale, 1999). The legislation has not succeeded in providing highly conflicted parents with the means of changing their behaviour; it only exhorts them to do things differently. This does not necessarily mean that the Act has failed however. It may be that the majority of divorcing and separating parents do adhere to the new ethos, but because we do not research these families we have little understanding of why and how they manage things differently. A recent ONS survey found that only 10% of divorced/separated parents go to court because they cannot agree on arrangements for their children (Blackwell & Dawe, 2003). This suggests that 90% are able to resolve their problems themselves<sup>3</sup>. It is thus important to keep in mind that the results presented below pertain to only a small minority of parents who represent the high-conflict portion of post-divorce/separation parenting. What is more, this sample alone cannot prove or disprove the success of the Children Act. To do that we would need comparison groups of parents who do not go to court.

## **The data**

In the final stages of this study we sought out the views of parents who had been through the court process. We contacted the parents through the same three county courts that we had used in the first stages of this study. We have called these Northay, Minster and London court. We selected these courts as the focus of the study on the basis of their different catchment areas. One court, referred to as Northay Court, serves a large conurbation with considerable class and ethnic diversity in the North of England. Minster Court has a rural catchment area and serves the whole county in which it is situated. This means that it serves families from market towns and small rural communities. It is also located in the Midlands. Finally we included a court in London (simply referred to as London Court) because it is in the South of England and also because it is the capital city where there may be special factors that make it unique in terms of how courts operate. In this way we have achieved a reasonable geographical spread as well as a variety of different cultural localities from which divorced and separated parents will be selected.

To gain a relatively broad view of what parents felt about their court experiences, we devised a questionnaire (see Appendix D) that covered 'basic' information on the process and outcome of the court case and the respondent's satisfaction with these. Questionnaire data however provides only a relatively one-dimensional picture of these parents' experiences and does not offer much information on the process that these cases went through. In order to gain a more in-depth understanding of what parents felt about their experiences, we invited parents to take part in face-to-face in-depth interviews.

### The questionnaire data

We sent out questionnaires with a covering letter to 1260 parents (see Appendix B) involved in contact and residence disputes in the year 2000 (though we augmented these with some cases from 2001 when the response rate was found to be disappointing). The questionnaire asked basic questions about the dispute, the outcome, whether a court welfare officer had been involved, and what the respondent thought about the court process and subsequent arrangements.

In order to protect the anonymity of the parents, the questionnaire was sent by the court, with a covering letter explaining the nature of our research and our relationship to the court (see Appendix A for the letter template). We could not send reminders to individuals who failed to respond to our invitation to take part in this study. This meant that we were reliant on individuals responding to the first and only letter the



courts sent out. This perhaps explains the relatively low response rate – only 9% of the questionnaires were returned. The courts which had the capacity to track the volume of returned letters estimated that about one fifth of our questionnaires were returned to the court with the addressee having moved house. Thus we estimate that only 945 questionnaires reached the intended addressee, providing a response rate of approximately 12%. This is an extremely low response rate that can probably largely be explained by the fact that this was a court-based sample. It is perhaps understandable that parents who have been through the courts are apprehensive about taking part in a study such as this, not least because of the unhappy memories that this may bring to the surface. In addition, the fact that we could not follow up our initial letter with a phone call or a second letter probably also contributed to the low response rate. The questionnaire sample is therefore not statistically representative; an issue that we discuss in greater depth below.

Of the total 112 questionnaires that were returned, almost half came from Northay court (see Table 1.1). This may be because we sent out proportionately more letters from Northay court, as it was the largest of the three courts.

**Table 1.1** The returned questionnaires from each court area, frequency and per cent.

<b>Court</b>	<b>n</b>	<b>%</b>
Northay	55	49
Minster	32	29
London	25	22
Total	112	100

Just over half (52%) of the questionnaires were returned by residential parents, 42% by contact parents and 5% by parents who indicated they had shared residence (one respondent did not indicate whether they were the residential or contact parent). Just over half (54%) of the respondents were mothers. A crosstabulation of parental status and gender shows that 86% of the residential parents were mothers and 83% of the contact parents were fathers (see Table 1.2). This reflects the fact that most children reside with their mothers.

**Table 1.2** The questionnaire respondents according to parental status and gender, per cent.

	<b>Residential parents (n=58)</b>	<b>Contact parents (n=47)</b>	<b>Shared residence (n=6)</b>	<b>Total (n=111)</b>
<b>Mother</b>	86	17	33	54
<b>Father</b>	14	83	67	46
<b>Total</b>	100	100	100	100

A clear majority of the cases (71%) were defined by the respondents as disputes over contact. This is in contrast to our findings in the Stage 1 of this study where we defined 40% of the cases as contact cases. The overrepresentation of contact cases in this sample may reflect the current popular concern over contact issues. The frequent media attention to this issue may have encouraged parents who had experienced a contact dispute to take part in this study. A further explanation could be that the parents remembered the overall characteristics of their case and thus, a case that had begun as a residence dispute but evolved into a contact dispute, may be remembered by the parties as a dispute mainly over contact.

The mean age of the questionnaire respondents was 38 years, with a standard deviation of 8 years. The youngest respondent was 21 years of age and the oldest 64. The mean age of the children involved was 9 years (hence aged 6 years in 2000 at the time of the hearing).

#### The interview data

Of the 1260 parents who were sent a questionnaire, 1012 also received a letter inviting them to take part in an in-depth interview about their experiences at court (see Appendix C). Seventy agreed to be interviewed and sent us their contact details. Of these, we succeeded in contacting and interviewing 61 (see Table 1.3). We also interviewed 10 new partners. Seven of the partners were interviewed together with the mother/father, while the remaining three partners were interviewed separately. The interviews were conducted between June 2003 and April 2004.

**Table 1.3** The number of parents interviewed in each court area.

<b>Court</b>	<b>n</b>
Northay	18
Minster	25
London	18
Total	61

Table 1.4 shows that slightly more than half of the interviews were conducted with mothers, and that most of the mothers who were interviewed were residential parents, while the majority of the fathers were contact parents. Many of the parents lived complex family lives, which could mean that they had children from different relationships and could be the residential parent for some of these children and the contact parent for others. We have termed this category as 'mixed' in Table 1.4. Consequently, some parents appear in the following chapters both as contact and residential parents.

**Table 1.4** The interviewees by parental status and gender, n=61.

<b>Parental status</b>	<b>Mother</b>	<b>Father</b>	<b>Total</b>
<b>Residential parent</b>	25	3	28
<b>Contact parent</b>	4	22	26
<b>Mixed</b>	5	2	7
<b>Total</b>	34	27	61

Below, we provide basic demographic information on the interviewees:

- Age: The mean age of the interviewees was 39 years, with a standard deviation of 8 years. The youngest interviewee was 24 years of age and the oldest 63.
- Relationship status: 25% of the 61 interviewees had re-married, 13% were cohabiting and 5% were in a relationship but not cohabiting (living-apart-together). The rest (57%) defined themselves as single, divorced or separated.

- Ethnicity: By ethnic background, the majority (75%) of the interviewees identified themselves as white English/British, the remainder defined themselves as South Asian (Pakistani, Indian), Black, and other.
- Household income: The three largest income groups were £5,000-£14,999 (44%), £15,000-25,999 (20%) and over £36,000 (13%).

### *Representativeness*

The interviewees do not comprise a statistically representative sample. However, by comparing the characteristics of the court cases the interviewees provided with the data from the survey of court files conducted in Stage 1 of this study, we can gain an idea of who responded in relation to the whole population of parents who have been to court. Thus:

- Contact disputes are overrepresented in the interview sample.
- Of the 63<sup>4</sup> disputes that the 61 interviewees had been involved in, 89% had involved meeting a court welfare officer.
- In 68% of the disputes there had been a court welfare or social services report prepared. These figures are considerable higher than those found in our random sample of court files where in only 47% of the cases was a report filed.
- Furthermore, 21% of the parents we interviewed indicated that the court had made an order for indirect contact or no contact, compared to only 10% of the cases in the court records.

The high proportion of cases with court welfare officers' reports and orders for indirect or no contact leads us to the conclusion that the parents we interviewed represented the high-conflict end of the court sample, which was already a fairly conflictual group. The overrepresentation of high-conflict contact disputes in the interview sample is not surprising given the media attention that this sort of case has recently gained. In addition, it is probably those most dissatisfied with their court experience who are likely to volunteer to be interviewed. They are the ones more likely to want to change the way courts handle and contact residence disputes, and perhaps believe that taking part in a study might be a way of affecting change.

### *Interview content*

Although we did devise an interview schedule (see Appendix E), each interviewee came to the interview with his or her own agenda. Because we were mainly interested in each parent's individual experiences at court, we allowed the

interviewees to tell their stories in a relatively unstructured way. Each interview began with the question 'Could you tell me a bit about the background to the dispute and what led to it being taken to court?' This usually elicited a (condensed) narrative covering the whole dispute from the beginning to the present time. Taking our cue from the issues raised in this opening narrative, we unpacked these by asking detailed questions about the dispute, the court experience and events since the court case ended. Consequently, each interview had its own character, although we did cover similar questions with most interviewees, such as their opinions on solicitors, court welfare officers and judges.

#### A note on analysis

The data generated by the questionnaires have been analysed with the help of SPSS. Because the questionnaire data are not based on a random sample, but are rather the result of self-selection, we do not feel that the data from the questionnaires 'stand on their own'. Rather, they need to be interpreted in conjunction with the interview data, which provide an in-depth understanding of some of the issues raised by the questionnaire data. It must also be kept in mind that the questionnaire and interview data are skewed towards the high-conflict end of court cases, and are therefore not necessarily representative of what goes on in the majority of cases that go to court.

The interviews were transcribed and anonymised. The transcripts were analysed using NVIVO software. The analysis was approached in two ways: first, a content analysis along particular themes, and second, a holistic narrative analysis of each interview as a whole. For the thematic analysis, each interview was coded under rough categories such as 'court welfare officers' and 'parenting'. These categories were then analysed for content, looking for groupings among the interviews. For the holistic narrative analysis, we condensed the content of each interview into a memo, which noted the subject matters that the interviewees covered. These memos were then grouped together according to the prevailing characteristics of the interviews. The most fruitful groupings were based on dividing the interviews into those conducted with residential and with contact parents.

In the following chapters, we provide verbatim quotes from a number of the interviews. All names and place names have been changed in order to protect the anonymity of the people involved. We have also changed small details such as occupations in order to ensure confidentiality.

## Chapter 2. Putting the children first?

The Children Act 1989 section 1(1) states that:

When a court determines any question with respect to—

- (a) the upbringing of a child; or
- (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration.

In putting children's welfare as the first and paramount consideration, the Children Act confirmed a trend which had been started with the Divorce Reform Act 1969, namely that the courts were no longer interested in pursuing a forensic enquiry into wrongdoing of spouses during a marriage. Issues such as the past behaviour of spouses are now rarely considered to be relevant when deciding over children's residence and contact, except when they can be shown to directly affect the children's welfare. The Children Act does not give a clear definition of what constitutes children's welfare or their best interest (Pearce *et al*, 1999; Wallbank, 1998), and there are different ways in which the courts have dealt with the welfare principle (Herring, 1999). Section 1(3) of the Children Act does however outline the 'welfare checklist', which includes the following issues that a court must take into consideration:

- a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.

Unfortunately it appears that parents are less ready or able to separate events that have occurred during a marriage or relationship from the issue of what should happen to the children. Notwithstanding the importance of creating a clear-cut distinction between adults' issues and children's issues, parents' emotions and feeling rarely followed this legal logic (Brown & Day Sclater, 1999). In the first stages of this study we found that parents do bring to law issues that the courts do not wish to adjudicate. We also found that the disputes were rarely about one single issue but

rather the result of a constellation of complex issues which stubbornly refused to be disaggregated (Smart *et al*, 2003). The interview data reported on here provide further insight into this complexity and whether issues to do with the children were the primary cause of the conflict.

In this chapter, we examine first the variety of issues under dispute that focused on children's welfare and second we explore the underlying issues that seemed to fuel these conflicts. It appeared that it was difficult, if not impossible, for highly conflicted parents to separate issues to do with their children from issues to do with their spousal relationships.

### **Disputes over children**

The parents in this study frequently used the language and terminology of the Children Act, but this does not necessarily mean that they were 'applying' the spirit of the Act to their particular situation. Their adoption of the 'correct' terminology can perhaps be explained by the fact that they had been through the court system and had probably been advised and/or informed by their solicitors, the court welfare officers/CAFCASS officers or the judges on the paramountcy principle (cf. James, 2003: 143; Day Sclater & Kaganas, 2003; Neale & Smart, 1997). So the parents spoke a common language and all the interviewees professed that they wanted what was best for their children.

**Nadeem:** *I don't see those children as a trophy. I don't see those children as a kind of bargaining chip if you like. I just want to do what is best for them. (Contact father, contact dispute)*

**Mark:** *At the end of the day whatever happens has got to be in the best interest for Michelle. Whether it is living with us or staying with Eric. It has got to be in her best interest and it has got to be where she is going to be happiest. (Partner of contact mother, residence dispute)*

The interviewees tended not to elaborate on how they would define 'children's best interests' or 'children's welfare'. They seemed to assume that it was understood that their side in the dispute represented what was best for their children, while the other parent's demands were incongruous with the children's welfare. This should not necessarily surprise us since 'children's welfare' is not a simple or clearly defined concept and therefore its precise definition varies from case to case. Indeed, if each child is understood to be a unique individual within a unique family situation, then it is hard to see how a universally applicable definition of 'children's welfare' could be agreed upon by everyone involved. Each individual case involves a high degree of

interpretation when defining what constitutes a particular child's welfare, and often there is no one 'correct' solution. So parents in conflict do not necessarily represent 'good' versus 'bad' parenting, but possibly two adequate but different parents and parenting styles. Unfortunately these highly conflicted parents do not see the issues in terms of nuances of parenting style, rather they see the other parent as damaging their child (and of course in some cases this can be an accurate assessment).

A wide range of issues was raised by our sample of parents when discussing their concerns over children's welfare and how these had led to the court dispute. The most salient ones were:

- A poor standard of care by the other parent;
- The lack of stability provided by the other parent;
- The risk of harm from the other parent; and
- The children's wishes.

We shall deal with each of these in turn, although it is important to recognise that these were rarely discrete issues. Rather they tended to combine in complex ways, with different elements being stressed as stories of conflict unfolded.

#### ***i. Poor standard of care***

These were disputes over each parent's ability to provide for the children both materially and emotionally. For example, issues over schooling often caused problems. On the issue of material provision the parents might focus on the problem of overcrowding or poor housing:

***Ellen:*** *The other point was he [the father] had moved fifty yards away into his mum and dad's three bedroomed house. There was his mum and dad him and his girlfriend, their three children and a baby and he wanted overnight contact with my two. Where the heck was he going to put them, in the stable? You know overcrowding does not come into it. And it did concern me. (Residential mother, contact dispute)*

Other issues leading to disputes over the standard of physical care were nutrition, hygiene and health:

***Adrienne:*** *But you know they take him to McDonald's and buy him burgers and buy him fast food. I have had a solicitor's letter about the fast food because all they are giving him all weekend is fast food. (Residential mother, contact dispute)*

***Michael:*** *[The reasons for going to court] were in fact generally to do with the children. I mean she attempted to use things against me; I was not looking after them hygiene-wise and things like that, so I obviously got taken to court over how many times a week I gave them a bath. Which seemed a bit ridiculous, but that was actually one of the reasons why we went to court.*



*You can't believe you can go to court over that. (Contact father, contact dispute)*

**Russell:** *He needed reading glasses and we had bought the glasses for him. [Russell's partner interjects] And then she refused to let him wear them and she wanted to know why we had taken him to the optician's. (Contact father, contact dispute)*

Other concerns had to do with whether the children's lives were following a child-friendly schedule or with the children being taken to inappropriate places:

**Uday:** *She takes her to school [at] nine o'clock and when she finishes school she picks her up and leaves her [at the] mother-in-law's which is very far from school [...]. A good half an hour/ twenty minutes' drive and that is really a hassle from Monday to Friday and my daughter is always like tired [...]. Like Monday to Friday she is just tied up from seven o'clock in the morning till my wife picks her up in the afternoon and after six o'clock she comes to [her] mother's home to pick her up and take her to home and that is too much for my child. (Contact father, residence dispute)*

The concerns expressed here are not, of course, necessarily unreasonable; in fact they are the stuff of everyday life when it comes to parenting. The problem here is that these parents want the courts to adjudicate over them because they have no other means of coming to a compromise or agreement.

## **ii. Stability**

It is perhaps a shared view that children require a degree of stability and continuity in their lives in order to thrive. Thus it is not surprising that conflicts could ensue over a parent's perceived inability to secure such stability for their children:

**Stepmother:** *He [the son] has not got any stability has he?*

**Russell:** *No*

**Stepmother:** *He is just moved from pillar to post, new boyfriend to new boyfriend, it's...*

**Russell:** *He has had seven addresses. I lived in that house and I have lived here and that is it. (Contact father, contact dispute)*

Stability emerged also in relation to contact issues. Joseph was embroiled in a long-standing conflict with his ex-wife over the amount of contact he was getting. He wanted a shared care arrangement because he thought this would ensure stability in his son's life:

**Joseph:** *But I suppose absence also creates instability. Him not having regular contact with dad creates instability, creates upset and turmoil and anxiety. And I think change then, you know, it does become stable. Other parents do it and do it quite successfully. (Contact father, contact dispute)*

But, this was not a view shared by his ex-wife, who had put forward the argument that a shared care arrangement would lead to instability because their son would be constantly moving between the two homes and 'living out of a suitcase':

**Interviewer:** *So what reasons has she given for not wanting you to have increased contact?*

**Joseph:** *That Christopher does not live out of a suitcase. (Contact father, contact dispute)*

Stability was also clearly linked to the age of the child concerned. Some parents felt that for young children a lot of contact was automatically destabilising:

**Helena:** *But it was just too much at those ages, too much contact too much time away from home when they weren't getting really solid parenting. It was, in their case, too much. (Residential mother, contact dispute)*

This concept of solid parenting is perhaps a central issue. Although only one parent actually uses this term, it does capture the essence of what many parents think is essential. Solid means stability, certainty, reliability and few changes. It also implies consistency in terms of discipline and routines. For some parents, being solid, becomes even more important after divorce than it was before, and hence there is an apparent resistance to trying anything that looks potentially 'risky', such as shared parenting.

### **iii. Risk of harm**

In 28 of the 63 disputes discussed, the risk of physical or mental harm to the children was raised as a central issue in the dispute. Some parents reported concerns that their children had been physically abused by the other parent or while in the other parent's care:

**Lily:** *Yes he was violent to my son and he was violent to my daughter in front of them [the children]. They [the children] always saw the violence going off. (Residential mother, residence dispute followed by a dispute over contact)*

Elizabeth was more concerned over the contact father's ability to protect their children from harm than she was worried that he would deliberately cause harm. She believed that the father used cannabis which, coupled with the fact that the children had had a series of accidents whilst in his care, meant that she was wary of allowing contact:

**Elizabeth:** *The children had lots of trips to casualty, once they were kept in overnight because he decided to run back along [street] with them in a double buggy and tipped them out of the pram and they both got head injuries. Another time he just left them in the room with a jug of boiling water with a bottle in it and one of them poured it all down themselves and ended*

*up in casualty. Another time one of them fell the full length of the stairs, because he just left him wrapped in a towel at the top of the stairs when he was only a toddler. You know, need I go on? So it was not surprising what with that and adding the drugs element and I was very reluctant for him to have them on his own. (Residential mother, contact dispute)*

Three of the residential mothers had raised concerns over child sexual abuse. One father was a Schedule One offender who wanted to see his children on release from prison; the other two were less clear cut and Kate's story shows how difficult the situation can be when children are very young:

**Kate:** *And I noticed that when she used to get back she had she had really bad behaviour, you know she used to scream and she would not get in the bath and eventually she told me that he had been abusing her. You know she told me that he had been touching her. So obviously I informed the health visitor and she informed the police and the social workers so then the contact was stopped and he took me back to court for. [ . . . ] I suppose it was for about a year or more he had to see her supervised contact, the police interviewed her and everything and they said there is not enough evidence because of her age, she was only three I think at the time, to take him to court but obviously I did not want her to see him unsupervised. (Residential mother, contact dispute)*

The amendments to the Children Act which are included in s120 of the Adoption and Children Act 2002, to be implemented in 2005, include in the definition of harm 'impairment suffered from seeing or hearing the ill-treatment of another'. There is now a body of research that supports this definition and maintains that children can be harmed not only through direct violence, but also through witnessing violence between, for example, their parents (see Cleaver, Unell & Aldgate, 1999; Moffitt & Caspi, 1998 for overviews of the research literature). This was a concern that was also to be found in some of our interviews:

**Jasminder:** *So you know this man he was sweet one minute and the next minute he would erupt and she lived in a lot of fear. Every other night she would not even eat properly, both of us because he put so much fear in both of us you know, eat like this put your tissue here put your spoon there. And I think she used to sleep with a nervous stomach and then she remembers. (Residential mother, contact dispute)*

However, ranged against these mothers' concerns were the accounts of some of the contact fathers who complained that the residential mother's allegations of violence or abuse had been fabricated and that any 'evidence' the mothers had presented had been false or staged:

**Interviewer:** *Were there any accusations of mistreatment at all?*

**Philip:** *What on the child or?*

**Interviewer:** *Or you partner?*

**Philip:** *Not really, only abuse, but I mean anyone is going to give abuse, anyone is going to give abuse in those circumstances. So yes I mean to be honest she staged all that anyway. What she had done, I mean it was an old trick, she put her answer phone on the phone and then I would ring up and the phone gets slammed down and I would ring up and then maybe the third time you would give her a mouthful and it is all on tape so she was producing it for the court. (Contact father, contact dispute)*

These allegations of misrepresentation, and the tendency to minimise the harm caused by violence, were sometimes hard to credit, especially where we had evidence which corroborated the levels of violence inflicted in some cases. We were not in possession of all of the details of all of these cases so we could not be certain exactly when parents were ‘glossing’ over their own bad behaviour. However, in our survey of cases taken to court we found that the proportion of complaints about domestic violence matched closely the national average, and therefore there was little evidence from statistical sources that parents in high conflict cases actually inflate claims of violence (Smart *et al*, 2003; Buchanan *et al*, 2001; see also Brown, 2001). Nonetheless, this was a common theme amongst the fathers.

#### **iv. The children’s wishes**

The issue of children’s wishes could also act as a catalyst for disputes. There were conflicts that were fuelled by a belief that the children did not want contact, that they wanted (more) contact, or that they wished for a change in residence. Some residential parents said they had objected to contact because the children had clearly stated that they did not want contact:

**Gina:** *At that point particularly not only did the boys not want to see my ex husband they certainly did not want to see the woman who he was with and I can understand that. (Residential mother, contact dispute)*

**Adrienne:** *And Jay was coming back saying “I don’t want to go, I don’t want to go,” hiding his shoes and everything so by the time Jay was five I said “Right I am going to stop contact.” So I said to Tony “Right you are not having contact anymore, you are ruining Jay’s life.” (Residential mother, contact dispute)*

Contact parents, on the other hand, reported having commenced court proceedings after their children had expressed a wish to have more contact:

**Nathan:** *And then this year we basically - it was two and a half years on since we got the result. We decided that we were going to go back to court again because Tessa is now eight; she wants to see more of us really. I cannot understand why she can’t see more of us. So we thought well she cannot talk out loud, so we will have to go to court and sort of speak for her. (Contact father, contact dispute)*

Some interviewees indicated that their residence disputes had been started as a result of their children's wish to live with them:

**Jeffrey:** *Basically I got a taxi on the 2<sup>nd</sup> January and we packed as much as we could into it including the children, who demanded that they come with me. To quote the words of one child "I cannot spend another night under the same roof as that woman." That woman being her mother. She wrote me a poem at the same time in which referred to her mother as my wife, that convinced me that the children were pretty desperate and had to come with me. (Contact father, residence dispute)*

What the children wished for did, in some cases, become the focus of a bitter conflict between the parents. Some interviewees were concerned that their children had been manipulated by the other parent and were therefore convinced that their children had not expressed their 'true' wishes:

**Darrell:** *The court said when she stopped the contact and they said right ok it now goes to a contact centre. They have to go every Saturday at one o'clock. She took them a few times, but in the mean time, the children were saying things, you know they just came with "Oh mummy said you're not our dad anymore, because you weren't married and you were only mummy's boyfriend". And things like that. Then it got to the point where she would just turn up at the contact centre and say the children don't want to see him. (Contact father, contact dispute)*

**Lorraine:** *And he was constantly chipping away and sort of monitoring what went on and eventually - he was that type of dad - when he'd got Ricky on his weekends, the access sort of thing, he would buy him everything that was going and just sort of made life much more pleasant than it was for me with two older brothers and sisters and not a lot of money. Which goes on quite a lot I believe. And then eventually he said that Ricky had said he wanted to go and live with him. It wasn't really the case. I think Ricky didn't really know what to do and was torn between lots of other things. I mean he was only 10 at the time. (Contact mother, residence dispute)*

We have quoted these cases quite extensively because they reveal how problematic parents' assertions that they are speaking for their children can be. We do not suggest that parents wilfully misrepresent their children, but some of these examples do show how children's expressed views can be taken up and used against the other parent. Because of the conflict between the parents, such issues cannot be discussed openly and it does seem as if some of these children become used as pawns, even though the parents are quite convinced that they are acting in the best interests of their children by going into battle against the other parent.

## **‘Spousal’ disputes**

The story of the conflict between the parents was rarely solely about the children’s welfare however, as embedded within the child-focused conflict were a variety of ‘adult’ issues. In the first stages of this study (Smart *et al*, 2003), we found that the disputes brought to court were as much to do with money, ‘bad’ behaviour, and new relationships as with children’s welfare. Pearce *et al* (1999) also found that residence and contact disputes, which tend to be taken to court soon after a parental separation when emotions are still raw, are often as much about ‘adult’ issues as they are about the children. These disputes, however, need to be reframed in terms of child welfare for the courts to consider them. These same issues arose in our interview data. We therefore conclude that these disputes are often multi-faceted and derive largely from the conflict-laden or hostile relationships between the parents rather than simply as a result of individual parents putting their children’s interests first. Here we explore how these three issues (money, bad behaviour and new partners) are entwined with conflicts over children.

### ***i. The problem of property and financial matters***

Many residence and contact disputes occur at a time of both personal pain caused by the breakdown of a relationship, but also at times of considerable uncertainty and worry. This is a time when the parents have to re-organize their lives and settle financial arrangements. It is therefore understandable that in many cases, the various issues that the parents have to decide on will be interlinked, and that any dispute over one aspect of the relationship breakdown will lead to, or be connected with, a dispute over other issues. One important connection that was made in many of the disputes we learned of was that between money and the children. Previous studies have found similar findings of how parents do not disaggregate between children and financial issues (e.g., Simpson *et al*, 1995; Lewis *et al*, 2002; Bradshaw *et al*, 1999). For example residence disputes could be tied in with a dispute over a divorce settlement or over who should stay living in the matrimonial home.

**Marvin:** *I think it became obvious all the way through that she only wanted custody because it meant she got the house. And I think we all felt that if that was the outcome, as soon as she got the house and moved back in she would have dumped the kids on me. (Residential father, residence dispute)*

**Interviewer:** *So you decided to go to court? So what was the process?*

**Tariq:** *What was the process? Sitting there thinking to myself “What do you do?” She is obviously having nothing, she is continuously abusive towards me and having affairs whatever it was, so I actually got talking to a friend and my friend said to me “It is possible to get her out of the house”. Now I did not even believe that because all in my head was that stereotype that women get*

*everything and you are out and you lose everything. [. . .] After talking to him I actually saw a solicitor and my solicitor said ... "Yes, you have got a good chance and anything goes when it comes to a divorce." And that included tape recordings, video cameras; you name it, whatever it takes. And that was fine and she gave me some advice on what I needed to do, what I needed to prepare for and how I should carry on looking after the children in the house. And not move out. (Residential father, residence dispute)*

This linking of residence disputes with disputes over finances was not surprising given that the parent who has residence of the children may be awarded the family home in a divorce settlement (if the family home is owned by the couple). Eleanor believed that the father's application for shared residence was motivated by financial reasons rather than a wish to have the children live with him half the time. This she felt was evident from how the current arrangements (where their children lived with her and had contact with the father one night a week) had been amicably reached as soon as the father had been granted half the financial settlement:

***Eleanor:*** *I think he was applying for shared care, I cannot remember now but, the thing is that we had property, we had two houses. And the solicitor said whoever has the children would get most of the property. Although the two cases were separate he knew that, so by Gabe's behaviour being particularly bad it did him a favour because that way I could not cope. And because of the acrimonious nature of the divorce emotionally he was abusing Gabe; so Gabe would, his behaviour would get worse and worse so that I could not cope. So that in court I agreed so that he got his half of the property if you see what I mean. So then of course once the court case was over and he got his money, his acrimonious nature subsided and Gabe got better almost immediately, he started to improve and Gabe is with me most of the time. (Residential mother, residence dispute)*

Other studies have already shown that parents tend to link child support and contact (Maclean & Eekelaar, 1997; Lewis *et al*, 2002: 29, 39-40; Bradshaw *et al*, 1999; Trinder *et al*, 2002: 33; Herring, 2003: 95-96; Davis, Wikeley & Young, 1998; Barton, 1998). This is perhaps not surprising given that there are links between these issues both in law and in practice (Herring, 2003: 109). Some academics argue that the payment of child support should indeed be an element of the 'right' to see a child (e.g., Bainham, 2003a: 75; Herring, 2003: 111). The parents in our study also found that child support and contact were interconnected issues, and thus disputes over contact were often intertwined with a dispute over child support. On one side residential parents (most often mothers) claimed that the contact parent (most often fathers) showed their lack of commitment to the children by failing to pay child support, and thus forfeited their right to contact.

**Ellen:** *When Wes left me I was penniless, I feel very disgruntled that the court would not in any way pick up any maintenance issues, "Oh we will just leave that to the CSA". I am still waiting for the CSA to sort it out and it is four years down the line. I feel very disgruntled about that because my ex-husband has a three hundred acre farm in [X]shire, he has a 4x4 Shogun, she has a Nissan Patrol, they have race horses, they have just bought a brand new tractor. [. . .] I cannot get a penny and I feel that that is another issue that really the court should pick up and sort out. Leaving it to CSA. [. . .] You know so the CSA can say, "Well all we can say to you is that somebody that is on unemployment benefit of fifty pounds a week will have to pay five pounds, so your husband is telling us that his income is less than that", which is absolutely laughable. And I feel most disgruntled that time and time again the issue of maintenance was brought up very, very vaguely and just wiped under the carpet. (Residential mother, residence dispute)*

In the interviews, Susan's was the clearest case of a residential mother admitting that she had initially stopped contact because she felt the father was paying less child support than she believed he could afford:

**Susan:** *Yes, basically he went from paying two hundred and eighty odd pounds a month maintenance to twenty two pounds something a month maintenance and then he did not have to pay any maintenance at all after that. After about two or else three months and I thought well if he is not paying maintenance, when I know that he has got money, [. . .] I thought well right he won't have the pleasure of seeing his son. (Residential mother, contact dispute)*

Susan, as many others in her situation, was subsequently advised by her solicitor that her reason for withholding contact was not legitimate. She agreed to reinstate contact, but at this point the father had already made an application to court.

In some cases, the interviewees believed that in their case, the court disputes had been triggered by them contacting the Child Support Agency (CSA).

**Joanna:** *I don't think I was getting maintenance payments off him I think it was how it all started that I was not getting the maintenance payments off him and I think I had a couple of months where I had had no money. So I got in touch with the CSA and once I got in touch with the CSA and I had already filed for a divorce as well. So once I got in touch with the CSA and I put in for my divorce, the grounds that I had put in for my divorce and the fact that I had got the CSA involved just sent everything pear shaped really and that is when he went to court. (Residential mother, residence dispute followed by a dispute over contact)*

Contact parents could also argue that paying child support was evidence of their commitment to their children and should thus be used as a criterion when deciding contact. Stuart, who had gone to court after the residential mother had stopped contact, argued that he had proved that he had 'earned' the right to contact by paying



for the mother's bills through her pregnancy and by providing financial support for their son:

**Stuart:** *But I still kept in contact, paid bills and still had contact with my little boy. Well I did not know he was a little boy then, I was paying some phone bills and things like that right up until the birth. And then we started something with more structure but I cannot remember what the payments were, every week, something along those lines. And it went that was working ok I got to see my little boy more or less whenever I wanted. (Contact father, contact dispute)*

The other side of the coin was contact parents claiming that the residential parent had used contact as a way to pressure them to pay more child support.

**Brian:** *And my ex-wife who had custody of Matthew and we will say informal arrangements for visitation, when he used to come round, which was...*

**Stepmother:** *As and when it suited her.*

**Brian:** *Yes, as and when it suited my ex-wife, if she wanted to be awkward and if she wanted money and things like that, it was always "He is not coming until I have got [money]". Which was the way it was. (Contact father, residence dispute)*

These quotations reveal the extent to which, for parents, child support and contact are not separate matters. They may be out of step with current family law, yet they hold fast to a moral code in which it is the father's obligation to support his children and, through this economic support, to demonstrate both love and responsibility. The contact fathers we interviewed also believed that contact and child support were linked, arguing that it was the mother's obligation to facilitate the father-child bond or relationship as long as he behaved as fathers 'should'.

The belief that paying child support is a moral duty appears to receive wide support in England and Wales. In 2004 an Omnibus Survey of 1,751 randomly selected men and women collected information on attitudes towards child support. The survey reported that 81% of these respondents thought that fathers should pay child support (Peacey & Rainford, 2004: 14). Sixty-seven percent of the respondents went further and asserted that a father should pay the same amount of support to his first family regardless of whether he had subsequent children (Peacey & Rainford, 2004, 15). In other words a commitment to the duty that fathers should provide economic support for their (first) children runs deep. This finding is relevant to our smaller qualitative study because it puts in context the strength of feeling that parents express when a father fails to support his children, or when a father is supporting his children – yet cannot have contact. We found that the bureaucratic disaggregation of financial support from emotional support was not something that many parents could readily

grasp because it simply ran counter to their ethical code. For the parents it was a combined moral obligation, not a disaggregated bureaucratic one<sup>5</sup>.

**ii. The problem of broken trust and 'bad' behaviour**

The other set of issues that could be uppermost in parents' minds was to do with broken trust, broken vows, and how to come to terms with what was perceived to be really bad behaviour on the part of a former spouse. This meant that although parents 'should' be focusing on children, they were also preoccupied with blame and recrimination. Trinder *et al* (2002: 38) also found that the way in which the emotions connected with a relationship breakdown were managed by parents affected the quality and quantity of contact. The parents in our sample, for example, could use details of past infidelity against the other parent. In these cases, it seemed as though the dispute was actually about the failed relationship between the parents, and this acrimony spilled over into matters of contact and residence. Thus some parents might have agreed contact, but the arrangements kept breaking down because of their continued bitterness rather than for reasons to do with child welfare.

In the interviews some parents went further and would make a link between 'immoral' behaviour and suitability to parent. This is perhaps part of what Day Sclater (1999: 172) has identified as a part of the divorce process – looking back at the past to make sense of and reinterpret events – and James (2003: 136-137) argues that it is perhaps even too much to expect parents not to do so. In our sample, such revisiting of the past could mean that the parent who had left the marriage was seen as having less of a claim to the children.

**Jeffrey:** *She should have been held guilty of breaking a marriage up; there was not a no fault divorce it was her fault. Totally she had no good reason for divorce and she should have therefore kept her vows and the children should have come to the parent best able to look after them - myself. Simply because I was physically able to look after them and because I had the money coming in, if you like, I had the chance of an income and also because I was not the one who destroyed the damn family and therefore morally they should have come to the person who was not guilty if the court had been involved at all. (Contact father, residence dispute)*

**Udai:** *I used to be very bitter I found. I have never been in a court in my life and you know I have to fight for my own daughter to go to court you know. And wife made all this trouble in our family I mean we are a grown up family over twenty three years marriage now, twenty six years. And obviously she found somebody else and left me in a mess with my children. (Contact father, residence dispute)*

These fathers expressed a simple view that the party who was, in their eyes, morally culpable should not benefit from their behaviour. Such views are not supported by the Children Act 1989, but interestingly they would not have been incongruous with legal policy before the Divorce Reform Act 1969. The fathers who held these views were quite clear that they were the innocent parties and that justice lay in punishing the guilty. They also expressed the view that matrimonial fault on the part of wives should absolve husbands of any financial responsibilities and property sharing. They held that women gain undue financial advantage from divorce and that modern wives leave their husbands for the slightest reason. 'The system' in turn is seen to punish men by taking away their money, but allowing them no defence even though they are the 'innocent' parties in such cases.

**Richard:** *[The house] was all mine if you get what I mean, and I had to give her half. And she don't feel guilty about it. I couldn't do that, if it had been me I couldn't have had anything, to be honest even though I bought this house, if I had left her for somebody else I would have said "No that is yours. I left. It is my fault". But people don't seem to have a conscience do they? You know [ . . . ] now she has got a better job than me and earns probably fifteen thousand a year more than me. And that is another thing the court didn't say, "Well she has got a better job she should be giving you the difference between wages". But if I had been earning more than her they would have said that. You know that should have come into it. But it didn't really. (Contact father, residence dispute)*

**Jeffrey:** *I told her that she had lied at the altar and she denied it, and but she denied it so vehemently that I now look back on it and realise that exactly. I mean I was caught; I was caught hook, line and sinker. I mean I was a ready mark for a woman who was going to use the system right from day one. She told the children she intended to divorce me when they were two years old. Why two? Well you know what the court system does, she would have got the house and half my income or at least half my income probably three quarters of it because the children were two [years old], they were too young for her to go out to work. I would have to support her whether I liked it or not. (Contact father, residence dispute)*

These contact fathers expressed the same feelings of loss, powerlessness and victimisation as articulated by the fathers in the study by Bradshaw *et al* (1999). They were also either unwilling to pay child support or did so grudgingly – what Bradshaw *et al* (1999) have termed 'enforced payers'. They believed that the money they paid towards their children was actually spent by the mother on herself (cf. Arendell, 1995; Bradshaw *et al*, 1999: 199-200).

**Nadeem:** *Their mother wants to have the custody so that she can claim all the benefits that come with it, having to care for three children, three more. And also obviously then the Child Support Agency will say well Mr Malik you have got these resources these assets you know, will you make a contribution to the children? If that contribution was used for total care of those children I would have no problem. I know that money going to her she would not use*

*for the children's benefit, so I would be reluctant to make contributions under those circumstances. (Contact father, contact dispute)*

The ethic that fathers should pay support to demonstrate love and commitment was therefore undermined by an equally strong ethic which stated that where mothers were guilty, they should be punished. Some fathers did not feel they were doing anything wrong by not paying child support because they reasoned that if their wives would only return to the matrimonial home they would support them and the children. But they felt they had no duty to support an errant wife even indirectly by maintaining their children. They also thought that the issue of non-payment of child support could be easily resolved by giving them the residence of the children.

### **iii. The problem of new partners**

The third issue raised by many of the parents as central to the conflict was that of new partners. The fragile arrangements that exist between divorced parents can be disrupted when one of them re-partners (Simpson *et al*, 1995: 17, 30-31; Trinder *et al*, 2002: 32; Bradshaw *et al*, 1999: 110-111; Smart & Neale, 1999). This theme of new partners igniting or being the root cause of a dispute also emerged from our interview data. One got the impression from many of the accounts that things had been running relatively smoothly until one of the parents repartnered, which then caused problems in arrangements for the children. For example, Kenneth believed that the residential mother had become jealous of his new relationship:

**Kenneth:** *Initially when the marriage broke there was not too much [of a] problem with contact, in fact at one stage I felt I was being, I could not cope with the amount of contact I was having. I was on my own and come to terms with that, the problem started when I met someone else within quite a short time I was getting phone calls virtually ten minutes before I was due to pick them up saying the children are not coming. [. . .] In the end it got to the stage where contact was severed entirely, no real explanation given, other than silly explanations i.e. you are feeding the children vegetarian food and your girlfriend is too young. (Contact father, contact dispute)*

Contact parents often saw this behaviour as unjustified, spiteful, and against the interests of the children. Residential parents however spoke of their worry about their children being 'brought up by' or being 'taken over' by a rival parent (cf. Trinder *et al*, 2002: 32). In some of the interviews we conducted it was clear that the arrival of a new partner could signal problems as, for example, in the case of a father who married an alcoholic. In this case, once he split up with his new wife, staying contact was resumed.

In other cases, contact parents described how the residential parent's new partner caused problems in contact:

**Norman:** *Then I heard that Ashley had been hit. I was walking past the school and Ashley said "Dad, dad, dad." And of course I got over to her "What is up darling?" "Lee hit me." Well it's like rocket fuel that is someone has hit your kid.*

**Interviewer:** *That is your ex-wife's boyfriend?*

**Norman:** *Yes, so I calmed down, "Fine, Ashley, leave it with me." I got in the car straight down to Social Services, told them, [X], "Right" he said, "I will look into it". (Contact father, residence dispute)*

In some of the interviews with new partners it became clear that a dispute over residence or contact could become a joint enterprise for the couple, into which both invest a huge amount of energy. The often huge costs (both personal and financial) of these disputes could in turn affect the quality of life of the stepparent's own children or new children born to the couple. The dispute could become a joint project which could entail the stepmother (for it usually was the father's new partner who became so closely involved in the dispute) meeting with a court welfare officer, with solicitors, or even going to court to show solidarity against the former spouse. Exactly how helpful this strategy might be is perhaps open to doubt as the ex-spouse might feel intimidated or overpowered by such appearances. Indeed, we interviewed residential mothers who expressed concerns over the presence of new partners in the court building. Such tactics could in fact increase the hostilities between the parents.

However, whether or not parents' worries and emotions are 'justified', it seems that parents do need help with these major transitions, and in policy terms it becomes important to recognize that the 'divorce' is not necessarily the final crisis in a long-term parenting relationship.

## **Discussion**

In this chapter, we have explored the causes of the dispute as described by the parents we interviewed. We found that the disputes were about a variety of issues to do with children's welfare, safety and upbringing. However, underlying these 'legitimate' concerns were a range of issues to do with the financial and emotional aspects of relationship breakdown, some of which can go on for years. These are no longer seen as 'legitimate' concerns even though they loom very large in post-divorce parenting relationships (cf. Bainham, 2003b: 535-536). Many of the disputes originated from the issues that had to do with the reasons for the relationship

breakdown, and often occurred at a time when the parents were recovering from a painful break-up. It was therefore understandable that they could not always agree with the Children Act's paramountcy principle because, from their point of view, a person's worth as a parent was not simply measured in terms of ability to provide care for the children, but also in terms of whether they were a 'moral' or 'decent' person (cf. Brown & Day Sclater, 1999). In the following chapter, we examine what happened when these disputes were taken to court.

## Chapter 3. The court process and its outcome

In the previous chapter, we showed how complex the disputes over residence and contact tended to be, and how they were often interwoven with a range of issues not necessarily directly related to children. In this chapter, we examine how these complex disputes were handled by the courts, and what the interviewees thought about going to court. In the first section we shall deal with parents' views of the court process and in the second we concentrate on their feelings about the decisions made by the courts. We refer to the latter as court outcomes.

### The court process

In this section we explore the levels of satisfaction with the court process felt by the sample of parents who responded to our questionnaire and those who were interviewed on a one to one basis. The questionnaire data show that in all aspects, residential parents were more satisfied with how the courts handled their cases than contact parents. Moreover a recent ONS omnibus survey also found that residential parents are more satisfied overall with courts and with the court outcome than are contact parents (Blackwell & Dawe, 2003).

#### Indications from the questionnaire sample

Of the 112 questionnaire responses, 71% were from parents who had been involved in a contact dispute, 21% in a residence dispute, 1% a mixture of both, and in 6% it was not clear what the dispute was about. This means that our data are heavily weighted towards those parents involved in contact disputes even though we know that slightly less than half of the section 8 cases that go to court are primarily about contact issues (Smart *et al*, 2003). In a majority of the cases (64%) parents came away from court with an order and we found that applications for contact orders were just as likely to be granted as applications for residence orders. Sixteen percent of the cases were withdrawn.

Of the questionnaire respondents, residential parents were more positive about the outcome of their case than contact parents, with 55% believing that the order was the right one for them and for their children, while only 21% of the contact parents believed this was the case. In the section dealing with satisfaction with the outcome of the case (see below), we examine more closely whether the differences in satisfaction between contact and residential parents depend on the kind of order that

is made, or whether it is related to how people feel about the process they have to go through. We found that dissatisfaction might be caused by such things as delay or it might be that a parent felt the wrong decision had been made. Obviously it is important to understand what it is that is making contact parents so critical of the current system.

#### Indications from the interview sample

There was, among the parents we interviewed, a general sense of discontent with both the court process and the court outcome. We also found that residential parents were discontented too; it was not only the contact parents who felt unhappy. The interview data therefore provides us with a slightly different perspective compared with the information gleaned from survey methods and questionnaires. We shall explore this further below.

##### ***i. “The courts are not looking at the relevant facts”***

We have in the previous chapter discussed how issues to do with the relationship between the parents often fuel disputes over children. The paramountcy principle of the Children Act 1989 means that courts must make their decisions relating to children’s residence and contact based on what is best for the children’s welfare. What tends to happen as a result is that the issues brought to court by parents are not the ones that courts wish to adjudicate (Smart & May, 2004). The courts are not, for example, interested in issues to do with ‘the past’ or personal disagreements between the parents (Davis & Pearce, 1999a; Pearce *et al*, 1999), whereas parents themselves view these issues as highly relevant to decisions about who should be allowed to look after the children. This mismatch between what the courts take into consideration and what the parents believe to be crucial issues led to a general feeling of having been let down by a court that had based its decision on the ‘wrong’ facts:

***Interviewer:** Is there anything you would want the system to change or do you think it can be in any manner better to deal with custody and residence and contact issues?*

***Katrina:** Well I think things could be taken into account of behaviour and previous things that have happened with contact, because I really don’t think that it is fair that he can just come in and out of their lives when he feels like it. (Residential mother, residence dispute)*



**ii. “The courts work to a formula”**

The parents' disappointment with the courts was compounded by a feeling that the courts work to formulas when it comes to residence and contact (cf. Sawyer, 2000; Cantwell *et al*, 1999; Davis & Pearce, 1999a; Davis & Pearce, 1999b). This made many parents feel that their individual case had not been carefully enough considered and that the fate of their children was given scant consideration. A complaint put by contact fathers was that contact was granted according to a strict formula.

**Steven:** *And the court will not give you any more than basically what the mother asks or generally which is the average, which is contact every second weekend for two days and contact during the holidays and that is the norm. And they won't change from it; they do not look at individual circumstances, for each case they work to a formula from what I have seen. (Contact father, contact dispute)*

The formula that the courts seem to use for contact is fortnightly staying contact plus half the holidays and alternating Christmases, Easters and birthdays. Some contact parents were also granted contact over half term holidays. This formula caused consternation among the contact fathers who wanted more frequent contact than every other weekend. They felt that they were not being listened to properly and that court officials were old-fashioned in not understanding that a father may want to be a part of his children's daily life.

These parents resented being made to feel as though they had been fitted into a formula. They felt they might as well have been on a conveyor belt because the end result for all contact disputes (as they saw it) was the same package, regardless of the merits of individual cases or the needs of individual children. We gained the impression that these parents felt cheated because the 'system' gave the impression that it would produce individually tailored outcomes or orders yet in the end every parent got the same as everyone else. It may be that their expectations of what the court could do were far too high. Certainly many expected a kind of forensic examination of facts and feelings; they wanted lies to be exposed, witnesses called and for the resultant order finely to reflect the issues examined. It is of course unlikely that family courts will ever be able to provide the kind of system envisaged by these parents and so these dissatisfactions will not be resolved as long as the courts are expected by parents to offer a solution to these kinds of problems.

**iii. “The courts are biased”**

The parents complained that in addition to being formulaic, the court's decisions were based on court welfare officers' and judges' *subjective* views, which they believed to contain a strong element of gender bias. Arendell (1995) found that particularly the fathers who felt they had 'lost' at court believed that the courts were biased against men. But here both the mothers and fathers believed that the courts were biased against them (cf. Trinder *et al*, 2002: 19-20). Some residential mothers thought that the courts were too keen to promote fathers' rights to the detriment of child welfare. It would appear that these mothers felt that they had met with a 'pro-contact' ethos.

*Helena: It seemed very, very much looking for good things about the absent father. It just seemed that way you know that the mother is presumed to be what they are, but anything extra than, you know, anything the father could do was highlighted as if that was great or something. Do you know what I mean? I think the courts were at that time and it was just the beginning of the Children [Act], I actually think, they were falling over themselves to give fathers a chance, you know, and extra contact. It was new then and you know you could feel it, but like whatever the father did “Oh that's great” you know, stuff like that. That is the impression I got it was very much, they wanted to lean that way. Which I suppose, fair enough for all those who did not get any contact but it was unfortunate in my case; it was not the best thing for the children. (Residential mother, contact dispute)*

Some studies have indicated that the courts have tended to work to a presumption of contact, (now referred to as an assumption of contact), which means that the courts tend to be willing to promote contact even when faced with considerable opposition from the residential parent, usually the mother, or the children (Sawyer, 2000). Residential mothers who resist contact without 'compelling' justification have been labelled 'implacably hostile' and meet with considerable disapproval from the court (Wallbank, 1998; Kaganas & Day Sclater, 2000). Moreover, at times even gross domestic violence has not been seen as a sufficient reason to deny contact – although the courts are now more aware of the harm caused by violence. The residential mothers we interviewed reported feeling powerless and pressured into 'agreeing' to contact arrangements that they felt were unwise or unworkable. Their experience of going to court was one of being overlooked in favour of fathers and that fathers could get whatever they wanted, even if they had never shown an interest in the children before the separation. They also felt there was no means of complaining about this because the 'pro-contact' ethos was so strong.

Fathers on the other hand criticized the courts for 'automatically' granting residence to mothers.

**Joseph:** *You know the type of training that people undertake, the type of personal beliefs they have, judges in one way or another indicated their own personal beliefs. The last judge was "In my experience children are better with mum, mum is more able to look after them" and that was, you know, it was like, you don't - you should not disclose personal information like that. (Contact father, residence dispute)*

The contact fathers who had unsuccessfully tried to get residence, or shared residence, or more than the usual fortnightly contact, believed that their lack of success was the result of systematic bias against fathers:

**Michael:** *Well I think, well it would be nice if you knew that there was no differentiation on sex; that father and mother would be treated exactly the same. I mean there is no doubt that at the moment it is expected that the mother will get residence. And I think these days a lot more fathers have a lot more input with the kids than they used to do. And to be excluded as a second class citizen I think is that is the one thing that I would like to see change. (Contact father, contact dispute)*

In stage one of this study we found that about half of residence cases were initiated by mothers and a third by fathers (Smart *et al*, 2003: 10.). This perhaps reflects social 'reality', as over 80% of children whose parents have separated live with their mothers. It is still usual for mothers to be their children's main carers, both before and after separation. However, our earlier analysis also shows that in contested cases mothers are only marginally more successful in their residence applications, with 42% of mothers granted a residence order compared to 36% of fathers (Smart *et al*, 2003: 16). This would indicate that at least on the issue of residence, the courts are perhaps not as biased as many of our interviewee fathers believed.

This belief in court bias perhaps reflects the parents' disappointment at not 'winning' the case outright or at their arguments not being fully legitimised by the court.

**Karl:** *And I think to be honest with you I think the welfare officer was biased and I think the court was prepared to take his word without really looking at it. Which I did not think was very fair. But of course I lost so I would not do. (Residential father, lost first residence dispute, but was granted residence the second time round)*

But even some fathers who had 'won' their cases still held to the view that courts are biased against men:

**Marvin:** *My only concern was that this nonsense that fathers are considered unsuitable to be given custody. And I suppose until the judge actually gave out his decision I was nervous and concerned, because they [mothers] always seem to end up with custody. (Residential father, residence dispute)*

An additional element of bias that was raised by fathers from minority ethnic groups was the issue of racism. They believed that the court welfare officers and judges involved in their cases had held stereotypical views of, for example, 'Asian families', which had had an effect on the court process and/or the court outcome:

**Interviewer:** *Do you think that religion came into it in anyway?*

**Sadiq:** *I think it did come into it, I think it all started when I went round to see the court welfare officer [ . . . ] I mean let's be perfectly honest about one thing there is domestic violence there is no doubt about it, but then to turn round and say there is a lot more domestic violence in Asian families or black families I think you are really trying to start to stereotype people. And if you are starting to stereotype people which I feel is what has happened with me. [ . . . ] So I think the court welfare officer was very biased, biased from two points firstly I feel that she was 1) sexually biased, because she was a woman. And I also feel that maybe she was slightly racially biased because she slightly stereotyped you know Asian people. Because I think quite recently over the last four or five years Asian domestic violence has been in the limelight quite a lot and I think maybe she thought ok this is the time we want to use this thing. So I feel yes I have been dealt a negative blow on that side yes. (Contact father, contact dispute, indirect contact)*

Also other minority ethnic fathers expressed their dismay at how easily those involved with the courts had believed allegations of violence against them, and attributed this to prejudiced and racist views:

**Interviewer:** *And did this contact at the contact centre ever happen?*

**Henry:** *No she went to the contact centre and basically explained her situation and the woman that ran the contact centre wrote to my solicitor and said she cannot have contact here because her of her situation, she did not feel it was appropriate should take place between the father and the children at the contact centre.*

**Interviewer:** *Because she was saying that violence [had occurred]?*

**Henry:** *[Pause] Look at me: big fuck-off black bloke mate. [Laughs] You know someone said he is violent I mean we have a reputation for being violent. You look on the television at boxers and all these sort of blokes they are big and black and as soon as someone sees us "Oh he is a violent black man." Everyone is gasping. (Contact father, contact dispute: application withdrawn, no contact)*

#### **iv. "I didn't have enough time to put my case"**

A further criticism of the courts put forward by many of the interviewees was that they had experienced the court welfare officer's investigation as too brief and superficial. The parents evinced disbelief that a court welfare officer could 'really' know what was going on in a family based on just one or two short meetings with members of the family.

**Lorraine:** *They need people that specialise and they can't possibly just assess something in an hour tops before they go into a court room and make such a monumental decision, because that's what they are doing. (Contact mother, residence dispute)*

Thus many parents believed that the outcome of their case had been based on insufficient grounds because the judge had not known the details of their case, but had rather relied too much on the court welfare officer's recommendations, which in turn were based on only a cursory knowledge of the family.

**Kenneth:** *Difficult one isn't it really to get it right, because each case is different. [...]. For one person to sit back and be able to go to the judge, because the judge listens to that court welfare officer you know, they are experienced people. You know you're maybe in that room with him for ten minutes, but he's, you know, whatever he decides he is putting a lot of what he is saying on whatever that court welfare officer says. And if she gets it wrong then you know the consequences are pretty grave aren't they? For such an important issue, I don't think it should be down to one person. (Contact father, contact dispute)*

All of these complaints led to a general feeling of not having been listened to during the court process. The parents seem to have gone to court with an expectation that all their grievances would be heard and properly investigated, and that their arguments would in the end win the case. When this turned out to not be the case, they were left with a lingering feeling of disappointment and of not having been taken seriously (cf. James, 2003).

**Joseph:** *The final judge was you know "You have had your say, you have got it off your chest now, you know, let's call it a day." And that was it really. There was not well, "Let's think about what is best for Christopher, let's think about the evidence that is presented." You know I presented research, Lisa presented her statement, I presented mine. There was no thinking about what had been said and what had been argued, it was like let's just get it over and done with and leave it at that, you know "I don't want you back in court" basically. Because he said "If you do come back in court there could be a possibility that you will have to pay her costs, you know we don't want [that]." And the message was that they did not want cases like this back in court because it is wasting court time. (Contact father, residence dispute)*

An additional obstacle to feeling as though they had been heard was the fact that most of the parents had not been allowed to speak for themselves during the hearings:

**Sandra:** *They didn't listen anyway, they wouldn't listen to me. But the only thing that sticks in my mind really, is me sat there in that room with them judges lined up and in across the table from me, it was a massive table, him there, me there and our solicitors going and talking with them and I just felt, why am I here? And saying things, I can remember them saying things I can't exactly remember what they were saying, but it made me mad inside, I wanted to say something, but they don't let you do they? They don't let you*

*say anything. But I was furious and I felt an idiot and I thought, when I come out of there I thought, well what was the point of all this? (Residential mother, contact dispute)*

Only a handful of interviewees said that they had been allowed to voice their feelings to a satisfactory degree, and that they had been listened to by the court.

**v. “There isn’t any support”**

An important issue that was raised by one of the parents was the lack of support offered at court before, during and after hearings. Lorraine had lost the residence of her son, and was shocked to find that once this monumental decision had been taken, the court had no more to do with the people involved in the case.

***Lorraine:** And then it was just, he [the judge] felt that [my son] would go and live with his father. And that was it! And everybody stands up and sort of bows to this guy. But he walks off, leaves it, wrecks your life and no sort of formal discussion, no. [. . .] Then the barrister came over. She burst into tears. Great. And the court welfare officer went out of the other door and that was it. [. . .] And that was it, that was sort of “Bye bye, sorry we lost this case, we didn’t think it was going to go that way”, and he left. And I had to leave the court by myself and get home by myself. I mean, they don’t realise what they do. And I had, there was nothing after that. [. . .] You definitely need some sort of counselling afterwards or support for the person afterwards. [...] You can’t just do, make that decision, and then say “Right, bye bye, the bus is there and off you go.” You can’t do that. Well they did and they do. (Contact mother, residence dispute)*

**vi. “There’s no justice”**

The mismatch between what parents expect of the court process and what the courts do meant that some parents had lost all faith in, or respect for, the justice system. In their mind, the outcome of their case did not represent ‘justice’ at all:

***Jeffrey:** I certainly could not tell them [daughters] to follow the law of the land because the courts are honest and upright and straightforward and justice will be seen and you know it may be hard and justice will always be done in the end. It won’t be done, there is no justice. (Contact father, residence dispute)*

***Lily:** But there is no justice, there has never been any justice with their dad no matter what he did, beat me up or the kids, he was never punished for it. So that made me angry. (Residential mother, residence dispute followed by a dispute over contact)*

The problem, of course, is that family courts do not actually seek to dispense ‘justice’, rather they are concerned with the welfare of children, and also with finding a ‘workable’ solution based on two sides compromising and ‘putting up’ with the imperfections of the other side. Dewar (1998: 471) argues that these two ways of conceptualising children and their needs, the ‘rights’ and the ‘utility’ approach, are

incompatible. Furthermore, because the aim of family law is not the vindication of rights, this leaves more room for individual judges' discretion, another aspect of their court experience that the parents found unsatisfactory (Dewar, 2000: 66). Our interviews revealed a major chasm between people's expectations and what the system is actually designed to do. This situation is described by King:

As many judges will admit, the need to find definitively right answers to questions concerning children's welfare is one of the most taxing of all tasks that they have to undertake. It is made even more difficult when it is accompanied by the mutual, and often fierce, hostility of the parties towards each other and by vehement accusations and equally vehement denials and counter-accusations over past events concerning their lives together and their past, present and future behaviour towards the children. Observers – whether seekers after justice, protectors of women or children or promoters of children's rights – of these attempts of judges to reach a 'right answer' have not been slow to take them to task for what these observers see as blatant failings in the decision-making itself and in the process by which these decisions are made. The overriding assumption of these observers lies in the belief that there are indeed right answers, or at least qualitatively better or worse answers to issues concerning children's welfare in divorce and separation disputes, whereas the courts, whether through ignorance of 'the whole truth', failures in procedural safeguards, bias, perversity or trepidation, are getting them wrong, or, if you would prefer, making qualitatively poorer decisions than would be the case if they set about their business in other ways. (King, 2000: 524-525)

The Government Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities* does partly address this issue with the proposed implementation of 'Parenting Plans' which would include information to parents on how the courts would be likely to deal with their dispute. Of course, points about the need for support for parents who 'lose residence', or criticisms of system in which barristers speak over their clients' heads, are well-founded and admit of a remedy. But whether courts could or should be remodelled more closely with a 'justice' and 'rights' approach is more problematic.

### **The court outcomes**

In the following section we examine the extent to which the parents were either satisfied or dissatisfied with the outcomes of their court case. As we note above, it is important to distinguish between criticisms of decisions made by the courts and criticisms of the processes that parents have to go through. It may be possible to improve on the latter and yet have no significant impact on the former.

#### Indications from the questionnaire sample

The responses to the questionnaires showed that there were differences in levels of satisfaction with the court outcome, depending on whether the case had ended in

withdrawal or in an order. Of the parents whose cases were withdrawn<sup>6</sup>, 77% felt this was the right outcome for them personally, and 71% believed this was the right outcome for the children. It is interesting to note that neither of the two contact parents whose cases were withdrawn agreed with this statement, whereas a majority of the residential parents did feel this way. Because of the small numbers involved, however, these figures should be interpreted as merely indicative and need to be looked at in conjunction with the interview data. In the interviews, the contact parents who had withdrawn their applications for contact did so not because they had reached an agreement with the residential parent, but because they felt they had hit a brick wall and were not likely to get a positive outcome from the court. These parents had in effect given up their application as hopeless, and felt bitter about being let down by the legal system. The residential parents we interviewed who had been involved in cases that had ended in withdrawal felt that this was the correct outcome either because the parents had reached an acceptable agreement or because the contact parent had realised that because of concerns over the children's safety during contact, their application was not going to be successful.

Of the cases that resulted in a court order in the questionnaire responses, the parents were more evenly split among those who did and those who did not feel this was the right outcome. Once more, however, the residential parents were more positive about the outcome, with 46% saying that the outcome was the right one for them and 51% believing it was the right outcome for their children. Only 30% of the contact parents said that the outcome had been the right one for them or their children. When asked specifically about their satisfaction with the order, almost half (49%) of the contact parents were very dissatisfied with the order, whereas the corresponding proportion of residential parents (46%) were satisfied or very satisfied with the order.

A similar proportion of residential and contact parents (27% and 26% respectively) believed that the outcome was working very well or well. Residential parents were more inclined to believe that the outcome was working with mixed success (34.5%), whereas a larger proportion of contact parents indicated that the outcome was working badly or very badly (43%).

Previous studies have found that a majority of non-residential parents remain in contact with their children after parental separation and divorce (e.g., Bradshaw *et al*, 1999: 81, 82, 91-92). A recent ONS Omnibus Survey found that 11% of contact



parents said they had daily contact, 48% weekly, and 18% monthly (Blackwell & Dawe, 2003: 19-20; cf. Heide Ottosen, 2004 for almost identical figures in Denmark). Only 14% reported that they had no contact with their children – a much lower figure than the 40% that is commonly cited.

When we examine how often the 47 contact parents in our questionnaire sample said they saw their children, we see that the three most common arrangements were 'weekly contact' (10 parents), 'fortnightly contact' (11 parents) and 'no contact' (8 parents). The ten contact parents with weekly contact were evenly spread along the continuum 'outcome working very well' to 'outcome working very badly'. The eleven contact parents with fortnightly contact were more pleased with the outcome, with five indicating that the outcome was working well or very well, whereas six said that the outcome was working with mixed success. The contact parents with no contact rated the outcome of the case negatively.

The findings above, relating to the relative satisfaction that contact parents felt over fortnightly contact, perhaps seem to contradict our interview findings that suggest that the parents were unhappy with the courts' use of formulas such as the fortnightly weekend contact formula. This apparent discrepancy can perhaps be partly explained if we disaggregate 'treatment by the courts' and 'satisfaction with current arrangements'. The parents might be relatively happy with the current arrangements, perhaps because the 'standard' contact formula may work well in practice (cf. Ferro, 2004; Smyth, 2004: 128), but nevertheless be unhappy by the perceived formulaic way in which the courts treated them.

The 58 residential parents in our questionnaire sample also indicated that the most common contact arrangements were 'weekly contact', 'fortnightly contact' and 'no contact'. Four of the 12 residential parents with a weekly contact arrangement were pleased with how the outcome was working, three said the outcome was working with mixed success, and one said the arrangements were working very badly. Six of the ten residential parents whose children had fortnightly contact believed that this arrangement was working with mixed success, with two indicating it was working well and two that the outcome was working badly. Of the twelve residential parents whose children had no contact with the other parent, six said this outcome was working very badly or badly. The interviews reflect this unhappiness that residential parents expressed when the contact parent had stopped seeing the children despite having a contact order.

### Indications from the interviews

Of the 61 interviews we conducted, 2 court cases were still ongoing, and 6 had been withdrawn. The remaining 53 had concluded with a court order, but interestingly, parents could not always remember specifically what the order was for. In most cases, the orders granted were 'typical' orders for residence and fortnightly contact, with only 6 for indirect contact, one order for 'no order', and two orders for shared residence.

Those who believed they had 'won' their case were mainly pleased with the outcome as the court's decision was at least roughly in line with what they believed a correct decision should look like. Contact parents indicated that one of the positive aspects of having a contact order was that contact was guaranteed and that the residential parent could not dictate arrangements or change them on a whim.

**Kenneth:** *And I know now that without a defined order I would not be seeing the children. (Contact father, contact every third weekend)*

The residential parents who were pleased with the outcome tended to view contact orders as providing structure and routine in the lives of their children. Tariq felt that the court orders had brought clarity to the situation, and both he and his former wife knew where they stood:

**Tariq:** *But I think when it is an abusive and someone like my ex who is actually using the children for blackmail and so on, you know to get what she wants. Then I thought well you know because basically she would never let me loose would she, I mean one way or the other she would have blackmailed my arse for the rest of my life. So the best thing was to go to court and put it one way or the other. And I think that yes in my circumstances it is great, it has done its job. She does not say 'boo' to me anymore. And I don't have to worry about her and have her accusing me of whatever and I am happy and I think the kids are happy you know. (Residential father; the contact mother has fortnightly staying contact and weekly visiting contact)*

These residential parents felt that the orders 'backed them up' by preventing the contact parent from dictating the arrangements or making unreasonable demands:

**Helena:** *And at least if you have a court order all you have to do is say well it is not that week because it does not say it, you know what I mean? You can just follow the letter of the law. That was the only helpful thing in this case because you are dealing with, the father is quite a chaotic sort of person so at least if you had it all written down. And of course now it is once a month that is also helpful because it is then and then only and you don't have to do anything in-between. He is not ringing up every week to see them, he does not ring them back between one month to the other; he just comes on a Saturday goes away and does not phone in the whole month. So the court*

*order gives it structure. (Residential mother; contact with the father has dwindled to visiting contact once a month)*

The parents who felt that they had 'lost' their case were understandably displeased with the court's decision. The contact parents were in the main dissatisfied with the residence order going to the other parent and/or with the amount of contact they had been granted – this was usually fortnightly contact.

**Interviewer:** *Right, when the agreement happened were you unhappy with it?*

**Udai:** *I was unhappy yes*

**Interviewer:** *And what do you think made the agreement happen the way it did?*

**Udai:** *I was happy either way I come to see my daughter at the weekend but I was expecting my daughter to come to me at least half and half with me like one full week with me and I can spend the time with my daughter. And that is what I was hoping to do, I would be happy if I get that sort of. (Contact father, fortnightly staying contact)*

Those contact fathers who had received an order for indirect contact or no contact were the most dissatisfied with the outcome of their case. They were the ones who reserved the most vitriol towards the courts and mothers in general. These fathers were bitter towards the legal system, which they believed had let them down completely, at huge personal and financial cost. The courts had restricted the amount of contact they had with their children because of allegations of violence and child abduction, or because of the high degree of conflict between the parents. The fathers steadfastly claimed that any allegations laid out against them at court were false, and that it is easy for women to use 'the domestic violence card' effectively to stop a father from seeing his children.

**Henry:** *Women rule the planet, period. There might be men in figure-head positions but women rule the planet and they are the ones that are dictating. They are dictating what is going on, if you know the game, you will see a programme something will flash up on the TV about domestic violence, they use domestic violence to control everything. Cor that sounds like a bit of a way of bloody theory isn't it? But you have got to, nobody likes a wife beater. So. They use it for their advantage. (Contact father, no contact)*

They were the most exasperated with the system, many of them having given up and 'walked away' from the dispute. These fathers had concluded that the costs of attempting to maintain a relationship with their children were too high (cf. Simpson et al, 1995: 32).

**Henry:** *What happened was that I got to the point where I had been beaten I had been brow beaten into the ground. [. . .] And I had never had any fairness from the court and I was spending money like it was going out of fashion. Every time I went to court it was a thousand pounds, five hundred pounds for the barrister to*

*represent me and five hundred pounds for the solicitor to do all the different sort of work that they do. Great people - not! [. . .] I thought [to myself] "Get out of here! I am not spending any more money." I was running out of money desperately I was just about being able to afford to pay the mortgage on the house that I was living in; I had better get on with my life. And that was it, I withdrew my application thing. I tried all sorts of ways to see my children but there was blocks put on it everywhere. (Contact father, no contact)*

Like the fathers in Simpson *et al's* (1995) study who were in a similar position, they expressed a wish and a hope of a future reunion once their children became old enough to 'vote with their feet'.

The residential parents who were dissatisfied with the court outcome were mainly concerned that the courts had left their children unprotected from potentially harmful contact. Elizabeth for example felt she was allowing contact to take place which was detrimental to her children, because she was afraid of being taken back to court by the father:

***Elizabeth:*** *It is just yet another example of how he pulls the strings and we all jump and there is always that threat there, if you don't do as I say you will be back in court and I will take further advice on it. And mentally now, emotionally I am more relaxed and I don't, I'm not taking any antidepressants or anything anymore and I don't want to get back onto that style, so I feel I am regularly betraying my children. I feel like a really bad mother, because I have got a child who is saying "I don't want to go, do something about it mummy protect me" and I am having to say "I can't". I can't do anything, basically I am saying I am scared to do anything. I don't want to get back into that again. (Residential mother; the father has irregular contact)*

What seems to emerge from these accounts is that, as the parents see it, their ex-partners can harness the authority of the courts to use against them. This deployment of legal power does not necessarily work in one direction, or in the favour of one gender. Rather the courts can be seen to both empower and disempower mothers and to empower and disempower fathers depending on the particular constellation of factors in a given case. So fathers often think the courts give mothers an 'unfair' advantage if domestic violence is raised, but mother often think that the courts give fathers an 'unfair' advantage because they are so pro-contact. Thus some parents can feel oppressed by the system because they see their ex-partner wielding an additional weapon against them and they feel powerless to protest.

## Discussion

The picture that emerges from the questionnaire data is one in which contact parents (especially fathers) are unhappy with the way the courts operate and with the outcomes of their cases, while residential parents (usually mothers) appear to be content on both counts. However, the questionnaire data could not go in depth into the experiences of these parents and this is why the interview data becomes significant. Behind the apparent contentment of residential parents (mothers) who might have been relieved about 'outcomes' were important criticisms of 'process' and 'enforcement'.

The main concern expressed by the mothers we interviewed was that the courts had not listened to their concerns relating to contact. It is interesting to note that only one residential mother said she was happy with how the court had handled her case, because her allegations of severe violence by the father were taken seriously from the start. It is unclear why this clear criticism of the courts did not emerge from our questionnaire data.

It is also possible that our questionnaire data were 'skewed' by the impact of the Fathers4Justice campaign and the intensive media coverage of apparent bias against contact fathers that was occurring at the time of data collection. Thus mothers may have under-reported their discontentment, while fathers may have over-reported. We cannot of course be certain about this.

Our data provide some important information on the disputes between the parents and how these are handled by the courts. It would seem that in most cases the courts are unsuccessful in resolving these difficult disputes and the majority of the parents we interviewed had left court dissatisfied with the outcome. In the majority of the cases, the relationship between the parents remained highly conflicted even years after the (initial) court case had ended. Most of the parents we interviewed were critical of the court as an institution and of the legal process as a whole. One of the most common sentiments expressed by the parents was a loss of faith in and disillusionment with the legal system. We need however to keep in mind that the interviews we conducted were with parents who tended to come from the more 'difficult' end of the conflict spectrum and to have therefore experienced extremely high levels of conflict. They are in other words not wholly representative of what goes on at court. However, these are the cases that are currently receiving most media attention and causing concern among policy makers.

One possible reason for the high level of dissatisfaction with the courts is that many of the issues that lead to parents turning to the courts are not considered to be justiciable problems when it comes to decisions over children. It would seem that many parents leave the court feeling that the 'relevant' issues have not been dealt with appropriately. Part of the problem may be that in many cases, a legal forum is used to address non-legal issues (Davis & Pearce, 1999d). Furthermore, the law has its own logic and epistemology, which renders disputes incomprehensible to the parties involved (James, 2003: 140). This in turn leads to the failure of law to deliver what it appears to promise. Disputes that to the parents are about 'fairness' and 'justice' are transformed in the legal system into cases concerned with 'parental responsibility' as defined by the welfare discourse (James, 2003: 143). Within this discourse, parents are encouraged to minimise their differences, which appears not to be what many of the parents want. They want the court to recognise the 'justness' of their argument and to put the other parent in his or her place. The parents we interviewed reflect a consumerist attitude to law: the law should deliver what they want (James, 2003: 140). However, the courts invariably do not work along the 'common sense' expectations of parents and thus the law does not empower them as they would wish. Despite this disappointment, individuals keep returning to law in the hope that eventually the courts will make a 'sensible' decision. James (2003: 14) argues that they do so because they have few other options open to them.

On the basis of these interviews (and a growing body of research elsewhere, e.g., Trinder *et al*, 2002; Buchanan *et al*, 2001) we suggest that parents who are locked into conflict may actually need help with conflict management rather than encouragement to seek 'justice' from the authorities. Although a court order can be a way to contain conflict (and thus may be essential in some cases for a period of time) it seems that parents are doomed to disappointment as long as they hope that courts dispense 'justice' and that only through a victory over the other parent can justice be done. This leads us (along with many others) to speculate on whether the courts are an appropriate forum to resolve highly conflicted family disputes (cf. Trinder *et al*, 2002: 46).

Another question is whether this even is the role of law. According to King (2000), the law is concerned with making 'legal' decisions and not in dispute resolution as such:

If [ . . . ] the law becomes involved in their dispute, they and those who advise them, should be aware of the autopoietic nature of the legal system and in particular that problem solving, conflict resolution and promoting children's welfare are contingent by-products of the legal process and, despite all assertions to the contrary, do not provide it with its motivation and purpose. For this reason alone, going to the courts offers absolutely no guarantee of success in any of these areas. Indeed, there may be grounds for believing that success is no more likely than failure, even where the judge has made the right, that is legally right, decision. (King, 2000: 543).

Hence, according to King what a psychologist might define as 'best for a child' will not necessarily be enforced by the law (King, 2000: 532). He argues that law requires pre-determined formulas on which to base its decisions, which perhaps makes it impossible for the courts ever to take an individualised approach to disputes over residence and contact as the parents wish<sup>7</sup>. Because of this it looks doubtful whether the law can really deliver what parents want from it, that is, 'common sense' decisions tailored to each individual case. This could either be an argument for removing these conflicts from court or for changing the nature of family law. The former alternative is probably the more likely.

## Chapter 4. The parenting contest

Arising from the interviews we conducted with these 61 parents who had been, or still were, involved in disputes, was an insight into the way in which the conflict became a kind of 'parenting contest' in which the consequences of losing were almost too dire for individuals to contemplate. We use the term contest here because we want to differentiate between arguments over 'issues' and struggles over personal qualities. These things often overlap of course but we feel there is an important nuance to be grasped here which helps us understand what is going on for some of these parents. Losing an argument over an 'issue' may be highly significant, but appearing to lose the parenting 'contest' means you are required to redefine yourself as an inadequate person – or accept that the courts have defined you as less adequate than the other parent. Few parents were willing to do this.

In framing the issues in this way we do not mean to undervalue the very real concerns that these parents had, for example, over whether their children were getting the necessary medical treatment, or whether a step parent was smacking or spoiling a child. These issues create genuine concerns. However, leaving aside questions of abuse and violence, it is clear that any divorced or separated parent has to deal with these kinds of difficulties, yet only a minority come to court. So, this research was interested in discovering what happens to such disputes once they enter the full scenario of a court hearing. We were interested in discovering what was different in these cases, and the thing that became most apparent from the interviews was the extent to which these parents were locked into a major competition with each other, either to prove who was the 'best' parent, or to prove themselves most worthy of their children's love and affection.

One of the key points that the parents conveyed through their accounts was that they had always been in the 'right' in the dispute while the other parent had always been 'wrong'. One way in which they constructed this argument was to show that they were better parents than the other parent and this, in turn, lent weight to their claim that they had been 'right' in the dispute. So 'rightness' of (moral, practical and material) judgment and being a 'good' parent became inseparable concepts. In this chapter, we examine how the parents performed this parenting contest in their interview accounts, both by constructing their own parenting as 'good' and contrasting this with the other parent's inferior quality of parenting.



## Constructions of 'good' and 'bad' parenting

Throughout the interviews it became apparent that parents sought to convince the interviewer that their former spouse was a bad or inadequate parent, while demonstrating their own superior parenting capabilities (cf. Bradshaw *et al*, 1999: 119; Day Sclater & Kaganas, 2003: 158).

*Sandra: They are just going to grow up to be, well hopefully the way I bring them up they are not going to be like their dad. But what they have seen and how he has behaved I would not be surprised if they went totally off the rails, you know, if I didn't try and guide them, that is just how I feel. (Residential mother)*

However, as this quotation shows, the other parent may not just be seen to be a bad parent, but also a bad person and a damaging influence. This mother appears to want to remove any possibility that her children may take after their father because, from her point of view, there is nothing merit-worthy at all in the man. Moreover, she predicts that they may 'go off the rails' but she already knows that this will be his fault. Her behaviour would not in any way contribute to such an outcome, in her world view at least, because her actions are designed to cancel the influence of a wrongdoing father, not to 'mess up' her children herself.

These parents rarely had anything positive to say about the other parent's parenting skills. They tended to blame the other parent for any of the negative aspects of their children's lives, while crediting themselves with the positive aspects. It was in these sections where the parents talked of the other parent's parenting that it became clear that many of the parents had not 'let go' of the dispute, but continued to harbour feelings of anger towards the other parent and even a desire for revenge. It is, however, important to keep in mind that the parents we interviewed were a self-selected sample, and that parents who were still preoccupied with their anger and with the ongoing conflict were more likely to agree to be interviewed than those who had managed to 'move on'. But of course, even though these parents may be in the minority, they are the ones who cause the greatest concern to policy makers and practitioners as they occupy so much court time and possibly put their children most at risk.

One of the main issues that preoccupied these parents was the idea that the children should really be living with them or at least spending more time with them. It was therefore necessary for them to show that they were better equipped to provide the

children with a stable environment, better care and more love than the other parent. The following three elements were central in their constructions of 'good' parenting:

- Caring for the children's material needs
- Caring for the children's emotional needs
- Providing a suitable environment in which the children could grow, thrive and meet their maximum potential.

**i. Caring for the children's material needs**

One of the basic aspects of 'good' child care in contemporary British society is to provide for the children's 'basic' physical needs such as nutrition, hygiene and clothing. Thus parents engaged in a contest with one another were keen to suggest that their standards were far superior to those of their former spouse. Of course, we had no way of ascertaining the veracity of these statements and a great deal hangs on whether one parent is indeed neglectful. But often the issue was not one of neglect but of 'preferences' over bedtimes, food, and healthy regimes.

***Alec:** Sometimes the kids are on the internet and at half eight they'll say "We have to go have our tea now". They're having to wait 'til half eight, nine, for their tea. We always have our tea between six and seven, unless we're going out somewhere. (Partner of contact mother)*

In particular, the contact fathers felt it was important to detail their involvement in child care, perhaps because this was one way of showing that they were 'exceptional' fathers who should not be relegated to a secondary role in their children's lives.

***Henry:** I have been involved in the children's lives; I was there when they were born; I was when she was out working, she did a part time job, I would feed them, I would bath them, I would put them to bed, I would take them to school. To be honest I felt that I did too much. My father described this quite well, he said "Those children have got two mothers." I was that much involved in the care of them. (Contact father)*

Unfortunately in some cases the insistence that the other parent was inadequate was visited on the child who had to carry the burden of what might be seen as one parent's obsession.

***Norman:** Apart from the children are scruffy, Ashley has always got nits in her hair. When she comes round here the first thing I do is give her a bath because she stinks of urine and all sorts of things, because the environment she is living in now, is like, it is very difficult to say. (Contact father)*

We found some parents were very keen to involve social services in these cases, although they then reported their disappointment that no action had been taken against the other parent.

**ii. Caring for the children's emotional needs**

Contemporary notions of 'good' child care extend beyond providing for children's basic needs to encompass their emotional and psychological well-being. Thus in their efforts to construct their own parenting as being as 'good' as or 'better' than that of their ex-spouses, the parents provided details of their relationship with their children and their close involvement in their lives. The message this conveyed was that whereas *they* really loved their children, the other parent did not really care for them. The parents almost uniformly described their relationship to their children as a close one characterised by warmth and affection (cf. Bradshaw *et al*, 1999: 97).

**Stuart:** *At the beginning I don't think I was a good father; I think I did everything I was meant to do but I was just going through the motions. It was just as I got to know this little person, I grew to love him and it just doubles up and doubles up and then it gets out of control and you cannot control how you feel about him. (Contact father)*

**Joanna:** *But it is nice when he comes back, because he will always come back, you know if he has been away, and he always comes in and he will say "It's nice to be home." And that's nice, like he phoned me up the other day and he is like "Love you mummy, miss you." And then like he will come in and he will be like really clingy when he comes back and then it is like it is nice to be home and you know he just toddles off and helps himself and does his own thing. (Residential mother)*

It was rare for the parents to describe the relationship that the children had with the other parent as a positive one. Mostly, they described this relationship as poor in quality. The other parent was depicted as not paying enough attention to the children and their needs, and not involved enough in the children's lives.

**Tariq:** *It is not exactly that she is paying any attention to them now either. You know she dumped her son around her brother's house, she will leave her daughter round her mum's house and then she is out having a manicure done and all this and I think to myself "Damn you woman. You get them every other weekend and you are they are just for show, as a showpiece." You know it seems like you know any chance she gets she will just push them aside and just you know and I think to myself, "You only see them every other weekend. I am sure on the other weekend you have got a bit of time to do whatever you like." (Residential father)*

In extreme cases, the children were said to have rejected the other parent:

**Adrienne:** *And when I tell him that it is his daddy he says "No it is Tony. He has to earn to be called Daddy and I am not calling him Daddy." (Residential mother)*

The parents tended to believe that their children had a much better relationship with them than with the other parent. The proof of this superior relationship was the fact that their children not only preferred to come to them for advice but also heeded it. The parents also described how their children confided in them, another sign that the children were closer to them than the other parent:

**Julianne:** *There is things they tell me what they would not dare tell their dad. [. . .] We have got that relaxed atmosphere and they can come home and they can tell me things and yes they have had their first smoke they have had their first cigarette. "What did it taste like?" "Horrible." They would not dream of telling dad which I am quite pleased. (Residential mother)*

Another way that the children were said to express their preference for the parent we interviewed was the way they were more affectionate in their company:

**Gina:** *I have asked them, I don't question them, but you try to establish the kind of relationship that he has with them and there has been time when I have said, I mean I go up to Scot and Otto every night, I give them a kiss and a hug and we have a cuddle and a laugh and I go "I love you" and they go "I love you too mum, I love you loads." And I will say to Scot "So does dad come and tuck you up and say he loves you?" You know kind of bringing that subject [up] and I say "He never says he loves you?" and he goes "No" and I have never seen him hug or kiss those boys, at the front door he just goes "See you lads." It is bizarre. (Residential mother)*

The parents talked of how they provided their children with more emotional support, and of how they were more involved in their children's lives because they put more effort into the relationship. This meant that they listened to and talked with their children and spent quality time with them, whereas the other parent neglected their emotional needs.

**Richard:** *So I mean there's another thing [my daughter] always tells me most of the time her mum and this bloke are in the pub. And she stops on her own in the house when she is there. Alice said "Well I can go with them, but I don't like the smoky atmosphere so I just stop in". She said "I am alright". But the point is, I mean, that is another thing, I can't go to the courts and say "Look she shouldn't be leaving her while they are in the pub". (Contact father)*

Contemporary constructions of 'good' motherhood encompass not only the mother's but also the father's relationship with the children. This has become even more important with the emergence of 'new fatherhood', where the cultural understandings of fathers' role and importance have changed. Thus mothers tend to feel responsible for the quality of the father – child relationship, even after a separation or divorce (Simpson *et al*, 1995: 42, 62; Lewis *et al*, 2002: 32; Day Sclater & Kaganas, 2003; Kaganas, 1999). Some of the residential mothers in our study expressed a feeling of

responsibility over the contact father's relationship with the children. They said that while their children were still young, they were prepared to make efforts to keep the relationship going and to smooth things over. However, they were only prepared to do this until the children were old enough to make their own minds up about the other parent. They were also in effect protecting their own relationship with their children, as they did not want later to be accused of having obstructed the children's relationship with the contact parent.

**Interviewer:** *So you are very much, you are protecting that father-son relationship in a way?*

**Joanna:** *Yes I mean I don't want him to, if he, I just think if he is older, I don't want him when he is older sort of, I don't want his dad saying "Oh well your mum tried to stop me seeing you." Because I have never done that. "Oh your mum did this or your mum did that." I want Samuel to be able to make his own mind up. (Residential mother)*

### **iii. Providing a suitable environment in which the children can grow up**

A third building block in constructions of the 'good parent' emerged in the passages where the parents talked about how they were better able to provide the children with a suitable environment in which to grow up. They acted as a good example to their children, providing them with a more acceptable life style and aspirations:

**Nadeem:** *I expect my children to learn from that and hopefully benefit from my hard work so that they can actually, with my guidance, have a better future for themselves. They go to good schools; they get you know very good professions and end up in good professions. It is for them. The mother who left school when she was thirteen or fourteen and has no academic or professional skills of any type, very precarious existence, come from a broken family herself and yet she can't, when I asked her why she is she putting the children in exactly the same situation that she herself she grew up in and that she didn't like. And she ran away from it. You know her answer is that, to her it is probably the normality. She cannot see the difference; I can. (Contact father)*

Being able to discipline the children appropriately was also seen as an important aspect of 'good' parenting. The parents would complain of the other parent's overly strict or dreadfully lax approach to discipline. Most importantly, however, the parents were satisfied with their own ways of maintaining and imposing discipline (cf. Simpson *et al*, 1995: 56). The following parents depicted their own approach to discipline as child-centred and based on respect and dialogue, as opposed to an authoritarian approach to discipline.

**Stuart:** *And I can lose my temper or shout and be grumpy and we speak about things, he does not like it when I shout. He said it scares him that and I sort of told him that that is not what I want, I do not want to scare him, I don't mean to raise my voice and I don't want to scare him because then the point I am trying to get across is lost. And we talk about things now and I think about*

*the fact that I kind of spoke to him and he knows he will not get hurt or anything like that, this is done now. He is not in a violent house, he is not, me and my girlfriend we do not fight or argue and things, there is nothing like that. (Contact father)*

**Julianne:** *I never had to smack them, I have just punished them by saying you are not using the computer, you are not going out, you are grounded, you will stay in, you will do as I say. Because I am having to play like the mum and dad role do you know while they are all here together. [. . .] You know trying to get it through to them but it is quite difficult playing mum and dad. Well I have got used to it now but it was difficult. You know "Go and sit on them stairs and don't you dare move until I say so." Just sort of gain that respect and I have got that from them now, they will try to push me now and again. [...] but I think I do a brilliant job with them, yes because I am like their friend as well as their mum. (Residential mother)*

The parents who were worried that the other parent was letting the children get away with too much feared for their future behaviour, and preferred a stricter approach to discipline:

**Linda:** *But he didn't tell her off. He can't tell her off, he does not know how to. He is a bit too soft with her. Daddy's girl, you know sort of like, oh whatever she does is funny. She goes out the door and slams the door, "Oh dear" you know, that's funny. Well I don't think it is funny. (Residential mother)*

Next to problems over discipline came the issue of the education of the children as this was seen as crucial as a means of 'getting ahead' in life. Ensuring that the children made the most of their school years emerged as an important part of 'good' parenting. The contact parents would discuss how they had the correct attitude towards school work, which would enable the children to succeed at school, while the residential parent was either too strict or did not show enough interest.

**Sharon:** *I feel that she has to do more homework than is appropriate for her age by way of reason, her father has her reading over an hour every night. That is a lot of reading for that age, I know how tiring it is for me reading. [...] So we have worked out little short cuts for her homework. (Contact mother)*

**Brian:** *I would like to say Matthew would have had a different life if he had lived here. Whether it had been better is a different matter. [. . .] [In what way do you think he would have had a different life?] Well shall we say the past six months when he has not been at school, he would have been at school. He would have been I think he would have had more security, as we say they have moved again recently. (Contact father)*

The residential parents, on the other hand, would decry the other parent's unwillingness to become involved in school matters, which in their view was just another example of the other parent's lack of interest in the children:

**Tina:** *I would ring Lionel and I invited him, I took him down to the school open evening to talk about Malcolm but on other times when things are wrong he will not change things. "Oh I have got a meeting on that afternoon I can't come." Or if I tell him something is happening he does not come back to me, so I have given up telling him now. (Residential mother)*

These parents also described themselves as more reliable than the other parent. They were the ones looking after the children and trying to ensure their children's welfare, while the other parent was unreliable and thus letting the children down:

**Tom:** *And I said "Don't tell her you are coming. Never tell her you are coming and then if you turn up it is a surprise for her. And if you tell her you are coming and then you don't obviously she gets upset." She now knows the days of the week and by my own stupidity I told her that mum should come and see her on a Monday. And she knows that Monday comes after the weekend. "Where is my mum dad? How come my mum is not here?" and I mean you don't know whether she is going to show up at seven o'clock or eight o'clock or not show up at all. (Residential father)*

**Kerrie:** *The youngest one he is only eight and he doted on his father he was besotted by him and he keeps saying "When will I see him again? When will I see him?" and I just keep telling him I don't know if he will and I don't know if he won't. So I said I have tried to ring him I have left messages for him. You know the children have even wrote to him to ask him and nothing. It has been left at that now I just try and make it as easy as I can for the children. But there is nothing I can do; I cannot make him see them. It is his choice. (Residential mother)*

Part of this 'parenting contest' also entails the issue of which parent controls the situation and the child's environment. Sharing control can be very difficult for some people even in intact relationships; however, it becomes much harder after separation. But this problem goes deeper than a desire to control others (e.g. the child or the father) because the behaviour of the other parent (by for example setting later bed times or feeding junk food) actually impinges on the other parent's ability to control *their own* daily lives. Different regimes may not seem particularly significant to an outsider, but children bring back the influence of the other parent with them when they return from visits or overnight stays. Different ways of parenting have an effect which may not be left behind once a visit is over and the residential parent may find that their own lives are 'out of control' because of the behaviour of the contact parent.

## **Gender, parenting and social values**

There were, as might be expected, some gender differences in the parents' constructions of 'good parenting', which can be traced back to cultural understandings of what 'good mothering' and 'good fathering' consist of. While the fathers focused slightly more on the material side, especially financial support and the amount of time spent with children, and on being a 'role model', the mothers tended to focus on the children's emotional needs. This is perhaps also a result of the mothers' and fathers' parental status and their role in their children's lives.

There was also a difference in the concerns of residential mothers when compared with the residential fathers. While the residential mothers mainly focused on their concerns about contact (or the lack of it) and how the courts had dealt with this, the residential fathers tended to focus on how they had managed to gain residence. This is perhaps understandable as residential fathers are still relatively rare. It is perhaps in the more 'unusual' accounts that (gendered) cultural expectations are reflected most clearly, which is why we focus on these here. Just as the contact mothers seemed to feel the need to explain why they did not live with their children, the residential fathers focused on their 'unusual' situation, that is, their status as residential parents. Contact mothers were worried that people would see them as bad mothers, while residential fathers wanted recognition of their exceptional qualities. For example, Tom contrasted his own parenting with that of the contact mother. He described situations where he had taken full responsibility over their daughter while the mother was out drinking. While he was trustworthy, reliable and responsible, the mother was unreliable when it came to contact and showed a clear lack of interest in their daughter. In contrast, Tom showed great pride in his daughter's achievements. The residential fathers also emphasized how they took on the role of main carer that is usually reserved for the mother:

**Marvin:** *At the time she was with her latest fella and the kids had stayed with me throughout all this and when I delivered her clothes and that was the situation, the children were still here, they were going to school every day, and I had to pack up work then because I needed to give them full time attention. And so I became a house husband and life just carried on as normal but without her. (Residential father)*

**Tariq:** *Oh yes I had to prove that I was a good father, and it looks to me like she was just "I am the mother; I should get the children." Even though she did nothing for the children. You know so basically you are the mother and you are sitting in some pub and club with your boyfriend and who is bringing your kids up? It was not you or your boyfriend was it? It was me sitting there you know teaching them, feeding them, bathing them, playing with them studying with them. That was me. You know, a man. And my children I think*



*are doing very well simply because I actually give them some structure in their lives. (Residential father)*

The powerful cultural discourses surrounding motherhood were particularly evident in the nine interviews conducted with non-residential mothers. In the first stages of this study we found that the most common reason for the courts to grant residence to fathers was the mother's inability to look after the children because of mental health problems or substance abuse (Smart *et al*, 2003: 18). Other studies have shown the importance of the role of 'mother' and the need to fulfil the cultural expectations that go with being a 'good' mother (for an overview, see Arendell, 2000). The pressures and expectations that fathers face are different, and they are able to establish 'good' parenting in different ways. This would at least partly explain why the contact fathers in our sample did not go to the same lengths as the contact mothers did to prove their worth as a parent. Mothers, not fathers, are expected to take on the care of their children after separation; a father who does so is considered exceptional. Hence contact fathers do not face the same degree of suspicion and questioning of their 'moral' worth as contact mothers feel they do. It is therefore understandable that the contact mothers appeared to feel the need to defend themselves against these normative imperatives.

For the contact mothers who had been through a court dispute over residence, it seemed important to let the interviewer know that they had not lost the residence of their children because of bad parenting. Sharon for example explained that when the courts decided to grant the father residence, it was not because he was the better parent, but simply in order to avoid disrupting her daughter's life:

**Sharon:** *So sort of things are viewed on both sides, we were both found to be equally good parents, there was not real sort of bad view taken on the fact that we lived in a flat without a garden. The fact that he has got a detached house with a garden in a village location. The only recommendation would be for Michelle not to change schools. Which, by which time we were living here, that was the downfall of things not going quite how we wanted them to go. They could find nothing wrong with either parent. We were both equally capable on the parenting skills that they like to term it as. (Contact mother)*

A contact mother goes against conventional values around motherhood, and so she may feel stigmatised as a bad mother:

**Lorraine:** *But you know I'm branded as this woman that, "Oh you know, that's Lorraine, she lost her son, she lost custody of him" you know. And you get that sort of thing and they don't realise that there's that side to it, which apart from the fact that your son doesn't live with you anymore. (Contact mother)*

The fathers, on the other hand, could express how their fatherhood had changed as a result of the separation or divorce. Whereas before, their fatherhood had been mediated by the mother (see above), some now felt that the nature of their parenting had changed because they had to face it alone. These fathers spoke of their close relationship with their children and of their pride at parenting alone (cf. Bradshaw *et al*, 1999: 114-116; Simpson *et al*, 1995).

**Stuart:** *And I think I am a good father now. Luke thinks I am his friend, I am not his dad, we mess about we have a laugh. If I say no it is no, I don't often have to say that. (Contact father)*

Other contact fathers believed that their parenting had suffered as a result of becoming a non-residential father. Fathers who no longer live with their children can experience a profound sense of loss: loss of intimacy and a day-to-day relationship (cf. Simpson *et al*, 1995: 55-61; Lewis *et al*, 2002: 33). Kenneth told us how after he had intervened in a conflict between two of his children, his relationship with them suffered and he had resigned to the nature of his relationship with his children changing:

**Kenneth:** *But the relationship between me, myself and my eldest daughter diminished after that, we were never the same after that. But I tried to sort of work my way through that, but with only seeing them every third weekend it is difficult to sort of, you know you see them and you just sort of get back to normal again and then of course you don't see them again for three weeks, so it is very difficult. So I mean I made my mind up quite a while ago that I am never going to be what I was to them, you know it is just not going to happen. You know you tell them you love them and you are always there for them and they can pick the phone up, but you know in the real world that that is probably not going to be the case, so you have to build a wall around yourself, be it a small one to start with. And you just have to let go a little bit and just be there as much as you can for them. (Contact father)*

Cultural constructions of fatherhood encompass concepts such as power and control, whereas becoming a non-residential father entails a loss of much control (Simpson *et al*, 2003: 210). Hence, many of the contact fathers we interviewed expressed their concern over this loss of control, especially the fathers who espoused traditional views on marriage and family. As with Jeffrey, one senses that part of their anger is over the fact that they have also lost control over their ex-wife (cf. Arendell, 1995):

**Jeffrey:** *I have no control over them, I have no control over their lives. I cannot protect them, I cannot protect them. She can bring any Tom Dick or Harry into the house she likes, I have got no say over that. She can send them to any school she likes – I have got no say over that. [Though legally, because Jeffrey has parental responsibility, he does have a say in the children's schooling.] (Contact father)*

## **Constructions of children**

Studies on children's experiences of their parents' divorces have indicated that often parents do not inform children of what is going on, and few parents consult with their children about what arrangement will be made (Trinder *et al*, 2002: 48; Butler *et al*, 2003; Dunn & Deater-Deckard, 2001; Gollop, Smith & Taylor, 2000; see O'Quigley, 1999 and Hawthorne *et al*, 2003 for an overview of the research literature). Children are rarely heard in disputes between their parents, even though these disputes can be a major part of their lives (James *et al*, 2004). They can be caught in the middle of a conflict that is not of their making and over which they have little control. In the following, we examine how parents talked about their children. We found that they talked mainly about their children in context of the dispute and as an extension of the parenting contest. It was less usual for these parents to speak about their children as separate beings with their own set of interests and concerns. In the main, these parents spoke of their children as symbolic proof of their own moral worth as parents, or sometimes simply as partisans and allies in the conflict they were pursuing.

### ***i. Children as props***

As we suggest above, the main argument put forward by the parents tended to be that they were the ones who were 'in the right' and so it is perhaps not surprising that they also employed their children as further evidence of this. This was especially the case if the conflict between the parents was still ongoing or not satisfactorily resolved. The parents used indications made by their children (of a desire to spend more time with them, or a reluctance to have contact) as proof that their stance was the correct one. The contact parents mainly talked of how the children enjoyed contact with them and how difficult it could be for the children to return home.

*Hafiz: In the early days when I used to have contact I would sort of bring him home and then when it was time for me to take him back he would not want to go back to the mother. I had to actually convince him "Look let's go there and ask mum whether he could still stay an extra couple of days" and he would actually cry really, really cry and he would not want to go back. (Contact father)*

These parents were not able to step into their children's shoes and imagine how hard it could be for them to have to say goodbye to a loved parent, even for a few days, especially if handovers are fraught situations because of the hostilities between the parents (Smart *et al*, 2001; Bradshaw *et al*, 1999: 96). Rather they saw their children's desire to stay with them as a rejection of the other parent and proof that the children loved them the most. In this way the transitions between parents

became more emotionally loaded and rather than helping their children, the parents 'used' these problems as ammunition in their battle with the other parent.

There were thirteen contact parents who, at the time of the interview, had either drastically reduced contact or had no (direct) contact with (some of) their children. Most of them believed that this state of affairs did not represent the children's wishes and was not in accordance with their children's best interests.

**Henry:** *She [the court welfare officer] is the person that I hold personally responsible, for me and Janina and Amon not growing up and living together like children and fathers are supposed to do. (Contact father, no contact)*

The residential parents gave a very different picture of contact. Twelve of the 28 residential parents said that contact had at some point been unsafe or made the children seriously anxious and unhappy:

**Ellen:** *We ended up as we started. Courtney saw her father from four till seven on a Tuesday, four till seven on a Thursday and from ten till six on a Saturday. And Matt saw him the same and then started, he started on the Sunday for the Tuesday "I can't go to my dad's this Tuesday mum I am not well" and he would not eat, he would not get out of bed, he started picking at himself and making sores, it really started to affect him. (Residential mother)*

Of course, on the basis of our interviews we could not possibly tell whether a child would become sick and anxious about contact because their contact parent was abusive or neglectful, or because the transitions were too traumatic, or because s/he felt so guilty about leaving the residential parent on their own. But the point we wish to make is that, regardless of the cause of the problem, these parents harnessed their children's difficulties to their case against the other parent. Contact parents were just as likely to do this as residential parents – even though current policy attention is focussed mainly on residential parents.

At times the tone of the parents' accounts was slightly jubilant, with the interviewee expressing no small amount of glee when contemplating their children's preference for their company. Other researchers have already noted how parents tend to conceptualise their children partly in terms of ownership (Lewis *et al*, 2002: 38-39; James, 2003: 137). In our interview sample, there was a general belief that because the child had expressed feelings of love toward the interviewee, the other parent was unloved. It was as if some of the parents could not understand that their children could love both parents, and that the children were not taking sides in the dispute (cf. Trinder *et al*, 2002: 30; Butler *et al*, 2003: 99-102). Indeed, children can become experts in diplomacy when their parents are in conflict (Buchanan *et al*, 2001). The

parents talked of the conflict and the hostility that existed, yet showed little insight into how the constant fighting, and the tendency to turn to the children for reassurance, could affect a child and the parent-child relationship. Research on children in divorced families has shown that such behaviour causes the children much upset and anxiety (e.g., Harold & Murch, 2004; Dunne & Deater-Deckard, 2001; Butler *et al*, 2003; Kelly, 2003; Amato, 2000). We gained the impression that probably in many cases the children had been left in a quandary, feeling that both parents were fighting over them and having to be very careful what they said as this would be used as ammunition in the fight between the parents (cf. Simpson *et al*, 1995: 37)). Only a small number of parents acknowledged that the children were probably just saying what they wanted to hear, and were probably saying similar things to the other parent. They were amongst the few who were aware that however much they disliked their ex-spouse, they were still the child's other parent.

**Nathan:** *I mean I don't ask her a direct question "Would you like to see more of us Tessa?" Because the obvious answer is going to be yes, she does not want to hurt you. (Contact father)*

## **ii. Children's involvement in the dispute**

The parents we interviewed tended to deny any responsibility for involving their children in the dispute, or for any negative effect the dispute may have had on their children's wellbeing. But the issue of whether the children's wishes and feelings should have been ascertained by the courts is, of course, a slightly different matter. There is a fine line for parents to tread between informing and consulting with their children, and 'using' or manipulating them in the course of a dispute. The problem was, for many of the parents we interviewed, that they saw the involvement of a Court Welfare Officer (or CAFCASS officer) as an opportunity for the children to express a preference for themselves. They did not see it as an opportunity for neutrality or a space where the children could express ambivalence or even their love for both parents. This meant that the parents who believed that they had 'won' were mainly satisfied with the level of involvement the children had in the court process, while those who felt they had 'lost' said their children had been coached by the other parent or that the court welfare officer had not spent enough time getting to know what the children really wanted.

Thus some parents whose children had spoken to a court welfare officer said that the meeting had been ineffectual because the children had been manipulated by the other parent and had therefore not expressed their own opinions, or the children had

not dared to say what they really felt for fear of being seen as taking sides in the dispute.

**Tina:** *The report came out and Malcolm was asked his opinion and unfortunately because he was a bit bothered about what he said about to both of us, the court report said that he was not that bothered about the weekends that he was away with his dad, about coming back to Northay for activities. And when I questioned him later on he said "I did not want to upset my dad mum." And he got quite bothered having to go and see this particular person. Lovely man, but he said what he thought was best for the situation, he did not stand up for himself and say "This is what I want". He tried to sort it out so that neither of us would be very upset about it; he is pretty good at things like that. (Residential mother, contact dispute)*

The parents' tendency to see the meeting between children and court welfare officers in terms of the ongoing 'parenting contest' also meant that parents who felt they had 'lost' often became very angry with the court welfare officer and blamed them for incompetence or bias if they intimated that a child might prefer to live with the other parent.

**Lorraine:** *But I think this guy who was the welfare officer was something to do with the Church and I think he was a bit boys only – you know – [he] felt that dads should be with sons and not the other way around. ... I got that impression that that's what he thought, that boys should be with their fathers and girls should be with their mothers in an ideal world, making the best out of the situation. So err, I didn't really feel that, right from the start really, that he felt Ricky should stay with us. (Contact mother; in this case the son, Ricky, had said he wanted to live with his father).*

It was clearly just emotionally too painful for some parents to imagine that their child could prefer to live with the other parent which in turn meant that the child's voice could be highly unwelcome:

**Lorraine:** *And as far as I am aware the court welfare officers hadn't spoken to him [the son] prior to that day. He [the judge] just made a decision based on the fact that Ricky has said he wanted to go there and live with his dad. But you know there were words that were put in his mouth a lot of the time by Neville.*

This of course raises important and difficult policy issues. Although there is a strong movement towards giving children the right to express their views and to have a voice (e.g., Kaltenborn, 2001; James *et al*, 2004; Fortin, 1999) in these highly conflicted cases it can rebound painfully on the children because of the emotional impact on the parents. Yet, it is an irony that it is precisely in these most conflictual of cases that the courts strive hardest to involve the children.

### **iii. Children as individuals in their own right**

Only a minority of parents spoke of their children as individuals who had an existence beyond the context of their dispute and who might have mixed or ambivalent feelings about the situation. Some residential parents expressed an acute awareness that their children's attitudes to contact were not constant, but rather changed with their moods and also over time, with older children increasingly wishing for flexibility and autonomy in contact arrangements (Smart *et al*, 2001):

**Susan:** *I know there is going to be times when Nicholas does not want to go to his dad's, there is something going on here that he wants to stay for. Or there is going to be times that he does not want to come home from his dad's. And I know that and I expect that I am anticipating it, but it has not happened very often. He went through a really, really clingy stage when he was about three or four but it did not last long. But I can remember his dad stood at the door saying "Come on Nicholas you are coming to daddy's." "I don't want to go" But I don't think it was long after his brother was born, so maybe he felt a bit left out of it when he went, I don't know. (Residential mother)*

Contact parents with older children discussed the children's impact on and involvement in contact arrangements.

**Tom:** *And like I say she is now using it to her advantage. First time she did not come she never actually said anything to me, she had a party or something to go to with her mates. [. . .] And then apparently on the Sunday afternoon before I got there she said to my mum "Well doesn't my dad mind us not going?" So my mum sort of explained to her again about this flexibility and "Oh well does that mean he does not love me?" You know this is a thirteen year old. "It is not that he does not love you, he does love you, that is why he said if you don't want to go he is not going to force you, he will come and see you during the week whatever." "Alright." And like I say since she has only been over three or four times. (Contact father)*

A few of the contact parents with older children recognized that their children would increasingly want flexible contact arrangements as they became more independent, and seemed to be willing to agree to such changes (cf. Bradshaw *et al*, 1999: 103).

**Max:** *I used to pick them up from school at three thirty on a Friday afternoon and then take them to school on a Monday morning and that is what I wanted to continue. But then Tammy herself expressed a wish [. . .] that she wanted to go back home on a Sunday tea time so then she could get ready for school and I thought that is fair enough. And then it has recently changed because she has started doing Guides on a Friday tea time, so that that does not finish until quarter to nine, nine o'clock, so we both agreed that it is pointless me going to pick her up to basically take her back to my house and put her to bed and have no meaningful contact. So I now pick her up on a Saturday morning and take her back Sunday evening. And that is fine and there is times when she has other things on and that is fine I said to her that as she gets older there will be activities that she wants to be involved in. I also in time want her to feel comfortable to say "Oh can I come and see you on Wednesday," or*

*relaxed and a bit more natural about it rather than it being set down. (Contact father)*

We were left with the impression that parents who were still profoundly conflicted perhaps could not appreciate their children as individuals in their own right because they were either too concerned that the other parent was 'ruining' them in some way, or they were too busy turning their children's feelings and utterances into ammunition. These findings fit closely with how children themselves speak of being used in their parents' conflicts, and how negative an experience it can be to have to live in a war zone (Smart, 2004; Trinder *et al*, 2003: 28-29; Kaltenborn, 2001; Dunn, 2003; Wild & Richards, 2001; Wade & Smart, 2002; Hawthorne *et al*, 2003).

## **Discussion**

The accounts provided by these parents could be interpreted as attempts at constructing the self as the 'good' parent who was 'in the right' in the dispute. Thus the parents mainly talked about parenting and children in connection with the dispute, with the aim of bolstering their own arguments. They seemed to believe that they had been right in the dispute because they were the better parent. Rarely did they express any respect for the other parent's parenting capabilities. This seemed to be one more way of perpetuating the hostilities between the parents, of continuously focusing on the other parent's shortcomings, which in turn fed the disappointment or anger they perhaps felt towards the courts who had failed to acknowledge or recognise this 'fact'.

The parents constructed themselves as responsible and caring parents, who should have been awarded everything they wanted by the courts. The law also promotes an adversarial view of disputes and their outcomes. Because the courts make 'legal' decisions, this means that one parent must be found to be right and the other 'wrong' (King, 2000: 542). This contributes to the sense of losing that we have found in our interviews. Because residence and contact disputes are resolved on the basis of children's welfare, the parents seemed to view that the 'winner' of the case had by the court been seen as the 'good' parent, while the 'loser' had been branded a 'bad' parent. The parents who had 'lost' evinced surprise at the ease with which the other parent had been able to 'dupe' the court into believing that they were capable parents, while the parents who believed they had 'won' seemed to feel no small degree of vindication. These interviews thus give an insight into why these conflicts



can become so entrenched, because the parents have so much invested in the conflict – their own identity and reputation as a ‘good’ parent.

The interviews also made clear that when parenting becomes a contest characterised by mistrust and hostilities, the parents cease to conceptualise their children as individuals in their own right. It is in these situations that the parents tend to frame the issue in terms of their rights and view themselves as victims of ‘the system’, thus sidelining the issue of children’s welfare (cf. Arendell, 1995). This is worrying in light of current attempts to increase the rights of children and the way they are treated in families where parents are in conflict.

## **Chapter 5. The value and the standing of the court**

One issue that is much discussed is to what extent going to court 'helps' or makes things worse when it comes to high conflict cases. In the first stages of this study we found a proportion of 'cut and dried' cases that seemed to come to court with a clear-cut issue that the courts were able to quickly solve. Though the court files gave little indication as to the level of conflict between the parents and whether the court had had any success in alleviating the dispute, the fact that these cases had not returned to court within the three years led us to believe that many of these disputes had most likely been successfully resolved. So, in the first section of this chapter, we explore in greater depth whether going to court 'helps' from the perspective of the parents by examining the shifts in the level of conflict that the interviewees describe<sup>8</sup>. In the second section we turn to the question of the standing of the family court in the eyes of the parents. We were interested to explore whether these parents 'blame' the courts for their predicament, or whether they see the court as having a facilitating role.

### **The value of the Court**

#### The questionnaire data

Only a minority of the questionnaire respondents believed that the courts had managed to improve the situation. The residential parents viewed the effect that going to court had had on the situation more positively than contact parents did. Of the residential parents, 32% believed the court case had made things much better or better, while only 15% of the contact parents believed so. Correspondingly, 45% of the contact parents compared to only 26% of the residential parents thought that things had been made worse or much worse by the court case.

The residential parents were more positive or ambivalent over whether the courts are a suitable place for solving family disputes such as theirs. While over a third (38%) of the residential parents agreed or strongly agreed with this statement, only 20% of contact parents did so. Conversely, just over half (51%) of the contact parents, but only 22% of the residential parents, disagreed or strongly disagreed with the statement.

### The interview data

It is widely accepted that the cases that end up in court are generally high conflict ones. Nevertheless, the interview data indicated that although this was in most cases true, the levels of conflict could fluctuate over time. In some cases, the levels of conflict had decreased, while in others they had remained constant or had increased. Three conflict patterns emerged from the interview data. We identified three groups according to (changes in) the level of conflict:

- **Continuing high degree of conflict:** Cases that had started out with a high degree of conflict and where the conflict had not significantly abated.
- **Abating conflict:** Cases that had started out as highly conflictual ones, but where the relationship between the parents had improved and even become amicable.
- **Low degree of conflict:** Cases that had started out with a low degree of conflict and where the parents had come to a relatively amicable relationship after the court case ended.

Below, we examine the central characteristics of each category.

#### ***i. Continuing high degree of conflict***

This category, the largest, comprises 38 cases (60%) that started out with a high degree of conflict and where the conflict had not abated. Not surprisingly, the cases where the contact parent had been prohibited by court from having direct contact were to be found in this category. In cases of continuing conflict, the parents remained hostile to each other and were usually not on speaking terms (cf. Trinder *et al*, 2002: 6, 14). This meant that communication was mostly handled via text messages, messages left on answer machines, or through the children (cf. Simpson *et al*, 1995: 37).

***Tariq:** I think the only thing that has affected them is the way I suppose maybe the way I carried on and the way she carried on towards each other. I found that I am being aggressive on the phone when she used to phone up and that and I think to myself no that is why these phone calls have got to be stopped. We have no contact - me and her - she will pick them up from school Friday evening after school and drop them off back on Monday morning at school. No contact at all. She will pick them up from school and I told her "Do not come anywhere near the property" because basically it does not help us. (Residential father, residence dispute; the mother has fortnightly staying contact and weekly visiting contact)*

A lack of communication did not necessarily mean that there was therefore little or no conflict between the parents, as even limited communication could be strained and hostile.

**Elizabeth:** *We don't have any verbal contact whatsoever; I mean we are totally beyond that. We have not had any verbal communication in years. He has a mobile phone number for me, I have a mobile phone number for him. He sends me a text message if he wishes to see the children and I send a text message back, saying yes it is ok or no it is not, can you send another date? But if I, but if they don't want, I mean like this weekend they have got a party invitation to go to a party, one of their really good friends in school and so you know, with two weeks' notice, I sent him a text message saying "Can you change the date because they really want to go to this party". And basically got a message back saying "No! I don't care what they want, get it sorted. I am picking them up still, you sort it out". So I mean I just sent him a text message back saying "I will tell them what you said but it is not my job to sort it. You will have to do that when you see them". So I mean it's very limited communication, what communication there is, is limited to text message and it's usually strained but polite. But I mean how much can you communicate in a very brief text message? But I still don't have any contact details for him, other than that mobile telephone number. Which I don't think is satisfactory; I have no idea where my children are going to be this weekend. (Residential mother, contact dispute; the father has irregular contact)*

In the cases of continuing high conflict, any court order for contact tended to be followed to the letter and any changes to contact arrangements were rarely mutual. The court order was closely followed mainly because the parents could not agree on flexible contact or because they wanted to avoid further conflict. The animosity between the parents, however, was still bubbling away underneath. In this sense, going to court had not helped the parents resolve their conflicts (cf. Trinder *et al*, 2002: 43). A high level of conflict can mean that the parents are unable to 'move on', and tends to stifle the possibility of a shared parenting relationship (Simpson *et al*, 1995: 32). In our interview sample, poor communication between the parents also meant that they did not discuss any matters relating to the children such as health and schooling. This could obviously be to the detriment of the children.

**Sandy:** *No she refuses to come to the phone if we need to talk to her; if he is ill when he is here she will refuse to come to the phone. We are not even allowed to have her phone number, so if Theo was in an accident when he was here there is no way we can contact her. (Partner of contact father, contact dispute, fortnightly staying contact)*

**Sharon:** *He has residence only, he thinks he has got everything and in actual fact we have joint custody. So there are a lot of things that he should be in contact with me [about]. He should be consulting me over her state of health and I have to find out through second and third parties, if there has ever been anything wrong. Which that is something that will get brought up at the next court hearing, something that was brought up and he just likes to*

*forget about and ignore. (Contact mother, residence dispute; fortnightly staying contact)*

The interviewees reported situations where their children had been put at risk because vital information about for example medication was not passed on from one parent to the other. The parents did not really have much of an idea of what was going on in their children's lives while they were staying with the other parent. Furthermore, any need for changing the routine set down by the court order meant that the conflict was most probably reignited. One such potentially volatile situation came every year in the guise of holidays, arrangements for which need to be re-negotiated every year:

**Interviewer:** *Yes, let's see, so the last order was for contact every other weekend and holidays and then the Monday?*

**Joseph:** *Yes every other week. Yes.*

**Interviewer:** *How has that gone now?*

**Joseph:** *OK, apart from when it comes round to holidays, you know if holidays come up. [ . . . ] It becomes difficult then. (Contact father, residence dispute; fortnightly staying contact)*

**Max:** *There will be issues during the school holidays and that was one of the things that was at the root of some of the problems before because my ex feels I should be what I would regard as a child minder during the school holidays and I don't believe I should just take time off work just to sit there and do nothing. You know it is fine going away on holiday and doing specific things but not to just sit at home. That is not the rule of the relationship. (Contact father, contact dispute; flexible fortnightly staying contact)*

Because of the lack of communication between the parents, especially older children had a vital role to play in the arranging of contact. Some parents felt that it was unfair to place the responsibility of passing on messages to the children, who could become confused over dates and times, or sometimes forgot to relay a message, leading to added conflict between the parents.

**Tina:** *But sometimes he will not pass messages on or he will not, the other problem is that he does not remember things. Which causes problems between the two of us because he forgets to tell me something that is quite vital to his dad and then it can, we will end up in a bigger row because Lionel will arrive and "Where is this, where is so and so?" "What do you mean where is so and so?" "Well I told him to tell you." "Well he has forgotten." So he is in trouble again for forgetting, I am in trouble because I have not sorted it and Lionel ends up upset because he has arrived and nothing has been organised. (Residential mother, contact dispute; fortnightly staying contact)*

Children can find the responsibility of acting as a go-between extremely stressful (Butler *et al*, 2003: 95, 139-140). The parents indicated that their children were highly aware of and stuck in the middle of their parents' conflict. Some of the parents who

were locked into conflict with the other parent expressed their concern that the children had been somehow damaged or negatively affected by this.

**Interviewer:** *How much do you think it has impacted them as children?*

**Eleanor:** *I think it has ruined their childhood; there is no other way of putting it. It has definitely ruined their childhood.*

**Interviewer:** *Because of the acrimony involved or because of the fact of going to court itself?*

**Eleanor:** *Well the acrimony [...] was there because of the court case. So it is because of that. (Residential mother, residence dispute; the father has weekly staying contact)*

## **ii. Abating conflict**

This category consists of 19 cases (30%) that had started out as (relatively) high conflict ones, but where the relationship between the parents had improved and in some cases even become amicable. The parents had been able to either resolve their conflict or move on, and were now on speaking terms – in one case, the conflict had abated to the point that the parents had remarried. Marianne, for example, described how in the immediate aftermath of the separation, she and the father used to have many arguments over contact arrangements. They had however managed to reach a point where they could be civil with each other, if not overly friendly:

**Marianne:** *Now sort of overtime it is ok really the contact arrangements have been made and there is certainly no animosity between the two of us and in fact it is fine. I do not particularly have any contact with his father; it is quite formal in that if Nate wants something you know it is quite formal, it is not “My god how are you? How is your wife and the children?” sort of relationship; it is very sort of formal in that sense. Because I don’t particularly want to have that type of relationship with him. He does not, when he drops Nate off, he just drops him off at the door. So it is not sort of a, we are not sort of all friendly with each other or anything like that. (Residential mother, contact dispute; the father has fortnightly staying contact)*

The parents in this category fit under what Trinder *et al* (2002: 10-12) have called the ‘tensely committed’ group of parents. As Marianne above indicated, all was not necessarily forgotten or forgiven. This meant that the working relationship between the parents could be on thin ice, with the threat of a new court dispute always looming in the background:

**Julianne:** *But I get the odd times if I disagree with Clark he threatens to take me to court and I just say “Take me, take me.” (Residential mother, residence dispute; the father has weekly staying contact)*

However, in most cases, contact was running smoothly and there was room for flexibility and negotiation in contact arrangements.

**Stuart:** *He is here every weekend and he is here mid-week usually.*

**Interviewer:** *How many times mid-week?*

**Stuart:** *Usually just once, one mid-week and on a Saturday and a Sunday and I will take him to school on a Monday morning depending. And sometimes, like this weekend he stayed Saturday, Sunday, Monday, Tuesday and then his mum will pick him up Tuesday night. So it's not, it is a pattern and it isn't, the weekends are always the same, but the midweek thing changes because of the shifts.*

**Interviewer:** *And you find that it is easy to negotiate this with Isabel?*

**Stuart:** *She is fine, she does not have, I think as far as she is concerned he is off her hands I guess, something like that. (Contact father, contact dispute; weekly staying contact)*

In these cases, parents seemed able to put aside their differences on an everyday basis. Although conflict might be re-ignited it did not seem to dominate their lives. Most importantly, in these situations it was possible for contact arrangements to change as the children grew older, accommodating their wishes and needs.

### **iii. Low level of conflict**

The six cases (10%) in this category<sup>9</sup> had started out with a low degree of conflict, and this relatively cordial relationship had continued after the court case had ended. These cases are similar to the 'consensual committed contact' and 'contact working' categories in the study by Trinder *et al* (2002: 5, 6). These were cases where the interviewees felt that the court case had been unnecessary as they believed an early agreement could have been reached, had the other parent not been so hasty in making an application to court.

**Carolyn:** *There was not a need for my case to go but it did because he wanted it to. It was wasting money. (Residential mother, contact dispute; the father lives elsewhere and has irregular contact)*

This category also consists of cases where the interviewee felt that the dispute was not really one between the parents, but had been caused by the involvement of a third party, such as a new partner or the grandparents. In the low conflict cases, the court process had been relatively quick and painless, and had not opened up wounds that would have led to a permanent conflict between the parents. The court case had largely come to a conclusion that the parents felt was correct, and consequently they were happy to follow any court order or mutual agreement. Contact arrangements were also relatively frequent and flexible, and the parents could easily negotiate any changes to these. Indeed, a study in Australia by Smyth and colleagues (Smyth *et al*, 2004; Smyth, 2004) found a connection between the level of conflict and the amount

of contact, with positive relations between the parents being related to more frequent and extensive contact.

Previous studies have noted that there exists a scale of various types of parenting between separated parents (e.g., Trinder *et al*, 2002; Simpson *et al*, 1995: 23; Maccoby *et al*, 1990). On one end are parents for whom parenting is a joint project characterised by a high degree co-operation and amicable relations. Parents who 'co-exist' are not necessarily in open conflict, but their relationship is characterised by a degree of hostility. This means that there is little scope for the parents to co-operate with each other, with little sharing of information or provision of support. The parents who are in 'contest' are, if not in open conflict, at least engaged in a contest over who is the more 'deserving' parent.

The families in our study tended to be situated in the 'co-existence' and 'contest' categories. Although some divorced and separated parents do inhabit the 'joint project' end of the scale (Smart & Neale, 1999) none emerged from our data. This is perhaps understandable as these parents had been through a considerable amount of conflict, but the significant finding is that so few of these parents seem able to move on from this conflict and build their parenting on a more co-operative basis. It would therefore appear that parents who have been engaged in a high conflict court dispute are less likely to enter into a parenting arrangement that is a joint project. The question of whether this is because of the nature of the conflict or the result of going to court cannot be answered on the basis of our data. We would argue, however, that it is impossible to isolate 'going to court' as a sole causal factor in what is a complex process of human relationships.

### **The Standing of the Court**

We have explored the issues that took these parents to court and have considered their experiences of the court process and their views of the outcome in their cases. However, in the process of analysing the interview data it became apparent to us that in going to court some parents did not treat the court as an arbitrator which would seek to resolve the issues under dispute, but as a third party in an entrenched three cornered battle. For some parents the court was not just a disappointment, or a waste of time; it became one of the enemies towards whom hostility could and should be vented. These parents became as vehement about the dreadfulness of the court (and its officers) as they were about their former spouses. Sometimes it was hard to work out which 'person' was most hated, the spouse or the court. This three-way



relationship can be visualised as a triangle, with the parents occupying two corners and the court occupying the third corner.

The parents' views of the court's role could be placed on a continuum. At one end the courts were understood to be playing a hostile part in the proceedings, and at the other end they were seen as providing a supportive role. In the former, rather than acting as an external arbiter, the court became a third 'person' or party. In the latter the court could be seen as being fair, as offering protection, and as being a catalyst to change, or to a solution. In what follows we shall explore this continuum, starting with the most extreme end where the court became identified as more of a problem than the problem it was supposed to resolve.

***i. The court as enemy***

Many of the disputes at court involved allegations of violence, abuse, or lack of proper care for children, and so there were often entrenched and emotional matters before the court. When these issues were not always resolved to the satisfaction of the parties they would often allege that their side of the story had not been heard. Thus contact fathers often expressed the view that the courts had been too eager to believe allegations of violence, while the residential mothers complained that it had been difficult for them to persuade the court to take their concerns over violence seriously. Thus not being heard was a central theme and this in particular seemed to galvanise a deep sense of resentment against the court and its officials.

***Lorraine:*** *But my biggest problem I had was with the judge. Judge [X]. Because I found out he was a criminal lawyer, not a family lawyer at all, judge rather, at all. So he should never had been allowed in on that case, never mind a delicate case because it was based on violence and control. I mean it was a very sensitive issue and to chuck somebody in like that, at a stage when it had been going on for two years, was just appalling. (Contact mother, residence dispute, granted daily visiting contact)*

***Joseph:*** *It is a weird situation is court because [ . . . ] CAFCASS officers seem to be reluctantly involved in some ways and don't seem to have the right type of training. I mean I don't think they have got any or very little in childhood psychology, development, child welfare. They might have some [basic] child welfare and child protection, but in terms of the effects of the situation and what will happen several years down the line, it worries me that there is nobody involved in the system that has any understanding of cause and effect. (Contact father, residence dispute, granted fortnightly staying contact)*

The perceived lack of training among court welfare officers and judges was thought to lead to gender bias and a reliance on outmoded formulas (as we discuss in

Chapter 3). Some of the contact fathers seemed almost to be locked into a personal conflict with the judge who had presided over their case.

**Philip:** *Every year I go to court asking to progress my case and he does not, and he knows what I think of him and he knows that I know his days are numbered. The man is a dinosaur. I have appealed against him, I have completed my own appeal process up to the High Court in front of [Y] and what he done was he actually stitched me up so tight in his judgments that there was no room for them to overturn them. But they were so one-sided and all the power was with him ... (Contact father, contact dispute ongoing, no contact)*

Part of the process of redefining the court as an enemy was the fact that the judges would simply not impose the 'correct' and/or 'just' solution. Fathers in particular became angry when the courts seemed to imply that parents themselves should be able to find a solution. It was as if they did not go to court to be told to try harder themselves; rather they went to court to have the right solution imposed upon the recalcitrant spouse.

**Michael:** *Yes there was an immediate interim contact order which was less than I wanted, I mean I wanted basically 50:50 but they said without the two parties' agreement then they would not impose that. So I got the lesser of the deal. (Contact father, contact dispute, granted fortnightly staying contact)*

These parents were also disappointed with what they saw as the powerlessness and lack of authority displayed by the courts. It was as if the very inclination of the courts was seen as too permissive, and insufficiently authoritarian for them.

**Steven:** *You can go through a court hearing; it does not mean anything, does it realistically? I mean they are not going to jail a woman that has got the custody of two children. If she continually does it and there is other reasons to, for the father generally to, have more access that might happen, but as a rule no. I think generally they are not worth the paper they are written on. I mean I know people that have got court agreements and they don't see their children. (Contact father, contact dispute, granted fortnightly staying contact)*

Residential mothers could also be unhappy, describing how their concerns over the safety and the appropriateness of contact with an inadequate or violent father had never been taken seriously by the courts:

**Elizabeth:** *And the feeling that nobody really listened to these things that I was concerned about, the total attitude was you know, that he was a adult and had right to see his children and that my concerns were just neurotic. But I have never known of any other children who had had so many accidents. (Residential mother, contact dispute; the father has irregular contact)*

Previous research has also found that many women who raise the issue of domestic violence or risk of harm to children are met with scepticism by the courts (e.g., Hester *et al*, 1994; Kaganas, 1999), though there are indications that this is changing for the

better (Kaganas & Day Sclater, 2000). As a result of their allegations of violence not being taken seriously, the mothers we interviewed had felt pressured by the court to allow contact that they believed was unsafe or inappropriate:

**Lily:** *No one listened. I mean I even told the court welfare officer that I would go in contempt of court to keep my kids safe away from him but they weren't having it. They said "Oh well. Do you realise that you can get sent to prison for contempt of court?" And it was just the courts pushing us all the while, to me. (Residential mother, residence dispute followed by a dispute over contact; the father lived elsewhere and was granted staying contact over the holidays)*

The residential mothers who were unwilling facilitators of contact were left feeling disappointed and let down by the courts. They believed that the interests of their children had not been looked after. They also felt that as mothers they should be able to protect their children, but had been left in a situation of utter powerlessness by the courts. They felt forced to comply with court orders they could not accept as just in a way that reversed the fathers' views that the courts were not sufficiently authoritative or compelling. As a result, these mothers too took a dim view of the courts and the legal system<sup>10</sup>:

**Elizabeth:** *I just think it [the legal system] is a joke. It is not there to protect me; it is not there to protect my children.*

**Interviewer:** *If you knew a woman who was in the same situation as you would you say to her it is worth going through the courts?*

**Elizabeth:** *No, no it just brings more heartache. I mean you have already gone through a bad time without having to go to court and have even more [of a] bad time. (Residential mother, contact dispute; the father lives elsewhere and has irregular contact)*

The contact fathers interviewed in London were particularly prominent in the category of parents who came to see the court as part of, or even the main problem. We have attributed this to what we call 'the Spiderman effect'. In the months preceding the interviews, various fathers' rights groups had staged protests against the legal system. These protests invariably attracted a great deal of publicity and media attention. Perhaps the most memorable protest at the time was that by a father who, dressed up in a Spiderman costume, climbed up a crane and caused considerable traffic disruption in the area for days. These fathers spontaneously mentioned fathers' rights groups, some even saying that they were activists in these groups. These fathers offered the most trenchant criticism of the courts and expressed a belief that the legal system is biased against men and hence privileges women. Amongst their complaints were claims that women are offered too much protection by society and the courts, that women can use false allegations of violence to get their

way, and that the legal system is staffed by unprofessional judges and poorly trained court welfare officers. It seems likely that the Fathers' Movements have helped to crystallise these men's discontentment and also to focus it more sharply on the courts. Blaming the courts absolves parents of any responsibility they may have for creating intractable disputes. It also allows them to retain their world view that the other parent is 'all wrong' while they are 'all right'.

**Russell:** *The way she was going on in court, making packs and packs of lies up and I used to sit there and I just could not believe that she used to come out with it and the thing that really disgusted me in the court was, she used to say all these things in court and tell packs of lies and when the court welfare officer was assigned to the case, when it was found out not to be true it did not seem to make any difference. And it absolutely disgusted me that she was just being given this ticket to just tell lies and so what if you were found out that it is a lie, so what. And then this just gave her more of an incentive to go and tell more and more lies and that I could not come to terms with that all. (Contact father, contact dispute, granted fortnightly staying contact)*

These men seemed perplexed at the court's unwillingness to share their world view and apparent inability to understand what was best for their children. It was as if they expected an affinity with judges who they assumed would share their views on the proper structure of the family. Nadeem had been ordered by the court to return the children to their mother, but had initially refused to do so and was for a time imprisoned.

**Nadeem:** *I was not expecting that kind of response, or reaction to what I had done for my children. [ . . . ] I kept saying to myself I am not doing anything wrong. I am the father of these children; I have every right to stand up for their rights because they are too young to stand up for themselves. And therefore I expect the authorities, the judges, everybody to listen to me. (Contact father, ongoing contact dispute, no contact)*

Nadeem and Richard even expressed an understanding of why certain fathers end up killing their ex-partners and/or their children:

**Nadeem:** *But the legal system I feel has made me very impotent and very, I mean I can understand people who end up committing various crimes under these circumstances. I mean you are only human, it is very easy to me to become imbalanced if you like, in your emotional state of mind. You know to make wrong judgments and wrong decisions. It is very easy and I can understand fully, although I can't condone the actions of people in those circumstances where they can probably go and hurt themselves or their children or their ex partners. I believe that the you know the judiciary has somehow, it is kind of enforcing that kind of situation, although the actions of an individual are their own, but then they are being prompted in some way. I find it very difficult to control myself, to not turn up at this house and say look they are my children and I demand to see them. (Contact father, ongoing contact dispute, no contact)*

**Richard:** *And I really can understand why when you see things on television when a man after his wife leaves him, you know he kidnaps the children, or there is violence, or he murders his wife and I see things like that and I think “Well I can really understand somebody doing that”, because they push you into it, the legal system pushes you into something like that. And they make people who are really, really nice people become somebody who they are not. And as I say I can understand it with the legal system. (Contact father, residence dispute, granted weekly staying contact)*

These worrying sentiments perhaps stem from the lack of fit between their values and those that guide the work of the courts. While these fathers believed in old-fashioned patriarchal codes according to which wives do not leave their husbands and fathers remain in control of the family no matter what, the courts now operate on a different set of principles. These fathers were extremely frustrated with the courts for not accepting their interpretation of the situation, and they could thus understand how this experience would in some cases lead to violence.

Indeed some of the fathers who were most furious with the courts were angry precisely because the courts would not uphold patriarchal values. Some fathers, for example, felt the children rightly belonged to them or felt that wives who left marriages automatically forfeited the children. They were quite simply stunned to find that other values prevailed.

**Jeffrey:** *The simple truth was as the judge said in his own words “It is normal for the children to live with their mother so that is where they will live.” Frankly I think that is a load of rubbish. It is not normal for the children to live with their mother. It is normal for the children to live with their father; that is the normal thing. The family follows the father, where the father has work the family goes with the father. That is the normal, that is normality, however I lost the children who were forced to go back home. (Contact father, residence contact; the children live in another town and have staying contact over the holidays)*

Some of these fathers were completely against divorce per se, except in what they described as the most extreme circumstances. As we have discussed in Chapter 2, their views would have fitted well with English Family Law in the 1950s when a mother who ‘committed adultery’ was deemed guilty of a matrimonial offence, and where her behaviour would have branded her a ‘bad’ or ‘immoral’ woman incapable of raising children. However, these views did not find resonance with the judges in the twenty first century nor with English divorce law since 1969. Given that these fathers desired that their ex-wives be punished, it is hardly surprising that the judges were seen as too lenient, or as a waste of time, or as having succumbed to the feminist revolution. It is hard to imagine what the judges in these cases could do to

assuage these fathers. Their demands to have residence and contact might, at first glance, appear much the same as the demands made by a father who has lived in a very egalitarian household; however the value system on which these former demands are made are quite at variance. The former were demanding their rights as the head of household, while the latter may wish to continue a shared parenting role that is based on the principles of equality and the welfare of children. The really angry fathers we interviewed seemed to fit more into the first category.

**ii. *But the court can be benevolent – or even useful too***

Toward the middle and opposite end of this continuum on the standing of the court were parents who had managed to put many of their old conflicts and grievances behind them. What united the parents along this end of the continuum was that they tended to focus little time and energy describing the court process, either because the court case had run smoothly and painlessly, or because the issues that were under dispute at that time had since lost much of their salience. Often these parents seemed to ‘end up’ in court for undramatic reasons. They did not go there hoping to vindicate themselves, nor to punish the other parent, they just seemed to end up there because of a process that had been started that inevitably led to court. Their low key descriptions of going to court and their experiences there, suggest that they may have had less invested in achieving ‘justice’ and more of an interest in finding a solution or compromise.

These court cases tended to be described in uneventful terms. This did not mean that the parents were wholly positive about the courts however. One common criticisms was that it had taken too long to reach a conclusion and parents were often dismayed that cases could take 6 or 9 months from start to finish. These criticisms notwithstanding, the parents at this end of the continuum were overall pleased with the outcome of their court case. They believed that the court had reached the correct conclusion (sometimes even when they ‘lost’). This is perhaps why these parents presented relatively positive overall evaluations of the courts:

*Liz: Yes I do, I think [court] is a good place to resolve things and the welfare officer was very good there. Very good, sometimes you need somebody, don't you, to iron things out or give another side of, you know, a bit of saying, you know. "She has got a right to see her children, so..." (Contact mother, contact dispute, almost daily visiting contact and weekly staying contact)*

When asked what advice they would give to a friend who was faced with a similar situation to theirs, these parents’ positive views of court were reflected in their

answers. They said they would advise a friend to go to court to get the matter sorted out. This was perhaps because in their case, they felt the courts had succeeded in resolving the dispute and putting a stop to further conflict.

***Brian:** And my advice with him was seeing a solicitor and get it in court. Because once you have got that bit of paper that says you will see her, shall we say same as me every weekend or for holidays, she cannot do a thing. She can turn round and dispute it, but it has already been looked at once. And you know where you are. You know what is happening. That was my advice to him. (Contact father, residence dispute, weekly staying contact)*

These parents did not concentrate on the dispute or on the events at court. Rather, the focus of these interviews was very much on the present, possibly discussing new problems that had arisen or suggesting that their conflict had settled down and communication had started again.

It was also in these interview accounts that the children had a chance of emerging as individuals in their own right. As already noted in Chapter 4, in the accounts that focused on the court as enemy and where the level of conflict between the parents remained high, the children 'disappeared' from the accounts. The interviews that were more focused on the present arrangements were more child focused. Perhaps because the interviewees' focus was already directed towards the issue of family relationships, rather than towards the court process, the children had more of a chance to figure in their accounts.

## **Discussion**

This chapter has focused on the part the court plays in the parents' narrative accounts of the conflicts they have experienced. Some interviewees directed almost as much venom at the court and its officers as at their former spouses, and some fathers clearly came to see the court as itself an enemy that must be overcome. The court became a main player in these accounts, and the interviewees highlighted the court's role in the dispute. Moreover the current situation facing these parents was mainly seen to have arisen as a result of what happened at court (or as a result of what a judge had done), and was thus interpreted as the court's responsibility. The family court had a powerful effect on family life in these accounts. The expectation these parents seemed to have was the court should have put things right and solved the dispute – yet it failed and made matters even worse.

The findings of this study *tentatively* support earlier research that has established that fathers and mothers have different expectations of the law and use different

types of language when they talk about post-divorce and separation parenting. While many fathers used the language of 'justice' and 'rights', the mothers tended to talk more in terms of the care of their children (Day Sclater & Kaganas, 2003; Smart & Neale, 1999). However, it would be rash to offer a simple dichotomy in which fathers are said to demand 'rights' while mothers seek the welfare principle. Certainly the very angry fathers expressed themselves in terms of rights while the mothers who were disappointed with the courts expressed themselves in terms of their, or their children's, vulnerability and the need for better protection. The question is whether the sorts of terms that mothers and fathers use are two sides of the same coin (i.e. they both want the same things but demand them differently) or whether they express a totally different set of needs. Our study cannot answer this question but we suggest that it is important to research this further. If, as some might suggest, fathers want clear rights which can be enforced in law it may be that they will remain frustrated. However, if this 'rights talk' is a way of expressing pain and a sense of loss, then the response by the courts and family policy might become more attentive.



## Chapter 6. Adhering to court orders

There has been, over the last decade, a growing concern that the courts either lack authority to make parents comply with contact orders and/or that the range of measures available to the courts to deal with recalcitrant parents is inadequate. As Ruth Kelly, The Minister for Education, states in the Foreword to the Draft Children (Contact) and Adoption Bill (2005),

It is also essential that, if a court has made a contact order with the best interests of the child as its paramount consideration, that contact should actually take place. If it doesn't, the courts need realistic and usable powers to take action. The current position, where they have access only to fines or imprisonment, which will often be to the detriment of children, is untenable, and parents and children deserve better. (2005: 5)

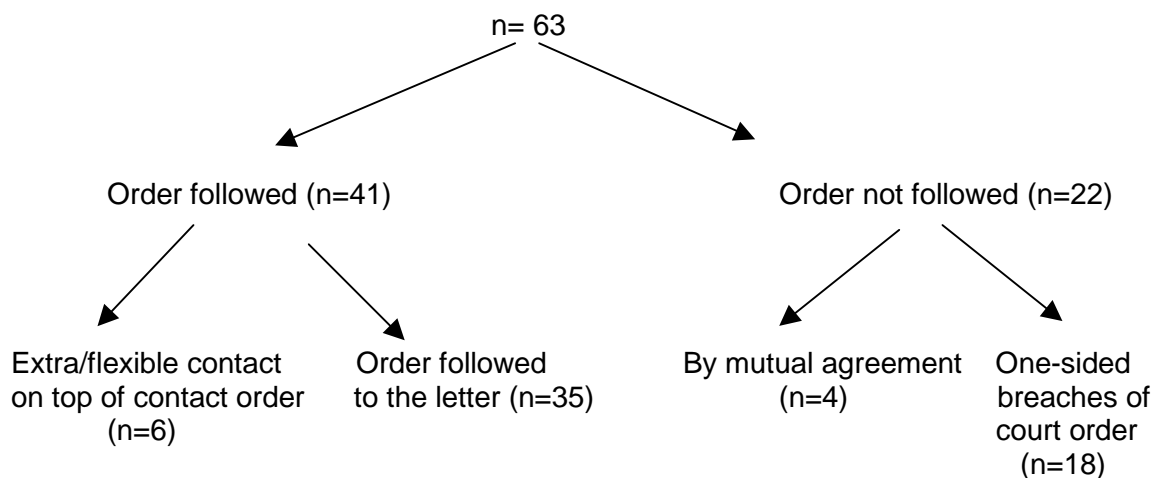
Not only has this been a focus of policy concern, but it has been a recurring theme in the demands of fathers' rights activists who want the courts to take a stronger stance against (resident) mothers who are seen to evade or ignore court orders for contact. Naturally parents' grievances about the failure of the courts to enforce orders did emerge in our interviews but it is important to recognise, before we go on to discuss these findings, that a lack of compliance does not always or automatically indicate a problem, while rigid compliance may not always be indicative of an ideal situation.

A rather complex picture emerged from our interview data in which we found that some of the most conflictual parents followed their court order rigidly, while a few parents mutually agreed to 'flout' the orders as their needs, or the needs of their children, changed. Moreover, we found more residential mothers who complained that fathers failed to exercise the contact they had been awarded, than contact fathers who complained about mothers thwarting contact. Below, we present these accounts and demonstrate the kinds of cases where the court orders were followed and where the orders were circumvented. We discuss briefly the implications of this more complex picture.

One surprising finding from our interviews was that we did not uncover as many instances where court orders were being flouted as might have been expected from such highly conflicted disputes. Figure 6.1 shows that the majority of the interviewees (2 out of 3) indicated that the current arrangements did follow the final court order or agreement. A majority of these parents said that the court order was followed to the letter while a minority explained that although the court order was in principle followed, there was room for extra contact and flexibility when required. In 1 in 3

cases the court order was not followed, and in most of these, one parent blamed the other for ‘breaking’ the order. In only four cases did the interviewee say that arrangements no longer corresponded to those set out in the order as a result of a mutual agreement between the parents. In all of these cases the level of conflict had either abated or had always been low. The remaining 18 interviewees complained that it was the other parent who had unilaterally ‘broken’ the court order by either not allowing or obstructing contact, by having contact when they were not supposed to, or by cutting down on the amount of contact they had with their children. There were more residential parents than contact parents who complained of these breaches against court orders (12 and 6 respectively). This is perhaps surprising given that it is assumed that the problems associated with contact are caused by residential mothers obstructing contact. But we found more complaints about contact fathers failing to turn up to see their children, than we found complaints about mothers obstructing contact (note that we interviewed almost exactly the same number of residential mothers and contact fathers, 25 and 22 respectively).

**Figure 6.1** The following of orders



**Orders that were followed**

In two thirds of the cases, we found that court orders were being followed by the parents even years after they were originally imposed. In particular we found that in the cases where the level of conflict between the parents remained high and their level of communication was low or non-existent, the court order tended to be followed to the letter. With these parents, prescription and rigidity could be vital. Indeed in only six of these cases did the parent whom we interviewed indicate that the prescribed level of contact was supplemented with extra contact or that the arrangements were

in principle open to flexibility. An order for contact could apparently ease the conflictual situation by putting in place an arrangement that both parties felt they had to follow. There was thus less need for the parents to communicate over contact arrangements, and contact seemed to run on 'auto-pilot'. However this could also mean that the underlying reasons for the dispute remained unaddressed and certainly unresolved, and that the parents never moved on from their hostility. Yet from the parents' perspective this may have been the most workable solution since we cannot assume that all or many of them could realistically have overcome their problems.

But while this inflexibility may have helped parents it also meant that the pattern of contact established by the court did not evolve as the children grew older and, arguably, it disempowered the children as they could not influence the pattern and shape of their relationships with their parents for fear of destabilising the situation. This kind of rigidity can be a negative experience for children (Smart, 2004). This raises a thorny issue of a possible conflict of interests between parents and children, where parents need a rigid structure and children need flexibility and informality. Thus we suggest that following an order rigidly may look like a good thing when in fact it disguises underlying problems (for children) and, by the same token, not following an order is not necessarily a bad thing as at times parents can come to an agreement over changing contact or residence arrangements that better suit their children and the family as a whole. As with so many issues involving family life, it is important to look behind the statistics on things like compliance with court orders to understand the significance of the quality of relationships.

### **Orders that were flouted**

As we note above, the issue of flouting court orders has mainly been presented from the point of view of contact fathers who claim to have been thwarted in their attempts to sustain a relationship with their children by obstructive mothers. The quote below seems to tell a typical story:

**Interviewer:** *And did you actually get the contact?*

**Michael:** *Yes most of the time but even now if things don't suit her she will just ignore the court order. I mean there was a time when she used to turn up at school early to take them out of school so I could not get them, even though I was supposed to be collecting them on that day. So you know every now and again things still flare up. (Contact father, granted fortnightly staying contact)*

The contact fathers who complained of mothers flouting orders presented various ways in which their contact with the children had been obstructed, or where the mother had attempted to obstruct contact. At one extreme, contact fathers spoke of being denied contact despite a court order, as Norman said had happened to him. He said that the mother had denied him contact on the very first occasion after the court hearing:

**Norman:** *The judge also said every Wednesday I have to pick them up from school and have them for tea. Well this was on the Tuesday, so she picked them up from school Tuesday night, off they went. So Wednesday I turns up at school, picks the children up. Just about to take their coats off, she comes flying round in the car, effing and blinding: "You are not having the children, you have to have my permission now!" And I was going "Just a minute, have I missed a page here? The judge says... We went through it all!" "No," she says "You don't get the children unless you ask my permission." I said: "Well here is the children, away you go. See you, kids."*

Residential mothers were also said to deny contact by not co-operating with arrangements at a contact centre. Darrell, a contact father who had been granted contact at a contact centre, said that the mother had been allowed to get away with rarely bringing the children to the centre:

**Darrell:** *I could sit there [at the contact centre] for two hours which I have done; I have sat there for two hours. She is due at ten o'clock or eleven o'clock and you sit there for two hours and you say "Well is she coming?" "Well we don't know". "Well can you ring her?" "Well no we will leave it a bit longer". And then they ring up and they say "She is not coming." "Well what are you going to do about it?" "Well there is nothing we can do, you will have to go to court and tell them she has not come".*

Another way in which residential mothers were said to complicate contact arrangements was by making changes or cancellations at the last minute. This, however, did not appear to have been successful in all cases:

**Interviewer:** *You mentioned in the questionnaire that whenever there is sort of a family holiday or family occasion this happens, your contact [is cancelled by the mother].*

**Kenneth:** *Yes I mean on one occasion I had a phone call ten minutes before I was due to leave to pick them up. And from my ex's husband just to say that the children were not coming this weekend; they had got a family do on. And I said "No way! That is not going to happen". I said "How long have you known about this party?" I said "You know maybe if you had come to me a week ago then maybe." But I said "There is no way you are treating me or the children like this." I said "I will be there and if necessary with the court order and if necessary I will have the police there and we will take it from there." And there has been various... That has happened quite a few occasions when I have had to say "Look hold on, you know. I don't mind but you must try and talk to me and at least ask, you know."*

At the less extreme end of the scale, contact fathers spoke about residential mothers using tactics in order to make contact as difficult as possible, apparently with an eye to discouraging the father from pursuing contact on that occasion. Russell and Sandy said that when the residential mother had moved house, she had done everything possible to stop them finding the proper address:

**Sandy:** *She did not even tell us they were moving, she did not even tell us until the weekend we picked him up.*

**Russel:** *No when she moved she moved and the house that they had did not have a number it was called [House Name].*

**Sandy:** *It had a name plaque.*

**Russel:** *And they took the name plaque down*

**Sandy:** *The day that we were going to pick him up.*

**Russel:** *And it was on [X] Road [House Name], [X] Road. Now [X] Road probably is about fifteen miles long. But they give us the name of the village and I had to go down in this village and I actually was riding up and down looking, you were with me looking, and I actually saw him [the mother's partner] unloading the van. Otherwise I would not have known which house it was. And I was due to pick him, this was the night before that I was due to pick him up. And then I knew which house it was and when I went the next day Theo said "How did you find it?" and I said "I saw Tommy unloading the van last night."*

This point of view reflects, to a large extent, how the issue has been framed in the courts because, of course, courts are faced with this version of the problem and almost never with the converse problem of fathers who fail to take up contact (Wallbank, 1998; Kaganas, 1999; Sawyer, 2000). This is because the law provides an avenue for contact parents to complain about obstruction, but in practice provides no recourse to law for residential parents to complain about unreliable contact parents. This means that one problem is highly visible, while the other is rendered invisible. Our data suggest that this means that public perceptions about policy concerns may have become distorted and so here we shall focus on this less visible problem, namely that of fathers who refuse or fail to exercise contact (cf. Moorhead *et al*, 2004). It is also interesting to note that a recent Office of National Statistics Omnibus Survey on contact after divorce/separation also found that more residential parents than contact parents expressed concerns that their children were having insufficient contact (Blackwell & Dawe, 2003). Our qualitative data is therefore supported by survey data and both point to an issue which is significant for children's welfare which is at risk of being overlooked.

Nine of the twelve residential mothers who complained about breaches against contact orders indicated that they had been perfectly content with the court order

they received but were very unhappy that subsequently the fathers had arbitrarily reduced the amount of contact they were willing to exercise, or had ceased to exercise contact at all. As a result, these mothers felt that the court case had been a waste of time as the courts were not really ensuring their children's welfare. These mothers were also critical of the lack of monitoring or 'enforcement' of contact orders, which left them feeling helpless in the face of the father's unwillingness to sustain meaningful contact.

**Valery:** *I just think that since the court case is over it is like there is just everything has just gone through the window. He does exactly what he wants to do. It is not like to say, well they should have said well if this does not happen we will go back to court again or if you don't do this we will go back to court again. It is not like that the court case is finished and it's like everybody just leaves everything. No one just, it is like you finish a book and you just don't turn back to look at it again. (Residential mother; the father does not take up the fortnightly contact he was granted)*

They were however not so much critical of the court's lack of involvement as critical of the fathers and their lack of commitment to the children. These residential mothers described the contact father as selfish and unreliable because he was not prioritising the children or thinking of their best interests. For example, Beatrice said that the father's relocation abroad had been "a bit selfish on his part." Susan also implied that the father was selfish because contact was organised largely to suit him, and he was liable to renege on arrangements. In these cases mothers felt that although fathers played a part in their children's lives, they were in fact left with the full responsibility of managing and safeguarding their children's lives. They felt that the fathers' commitment was 'optional' that they could just as easily 'opt out of' as 'opt into'.

**Interviewer:** *And do you think that the contact arrangements, that they work generally?*

**Susan:** *Generally yes.*

**Interviewer:** *Except for the times that his dad says he will not have him?*

**Susan:** *Yes, I mean he will say "I am not having him such and such." But there was one occasion where I got invited away for the weekend [ . . . ] so I asked Daniel to have him although it was not his weekend, he said "Well I will have him [ . . . ] but I won't have him the following weekend." And I was like "Ok, whatever you say".*

**Interviewer:** *Does he do the corresponding week, if he does not have Nicholas one weekend does he then say "But could I have him on another?"*

**Susan:** *No, he does not make that time up. [ . . . ] He had him on the weekend that he was not supposed to have him but he did not have him the following weekend. Which I did not think was fair on Nicholas, you know if he says he is not having him I have Nicholas anyway and I don't mind one bit, unless I have made plans to like go away for the weekend or something. But it is not a case of "Do you mind if I don't have him?"; it's "Oh by the way I*

*won't be having him". (Residential mother; the father was granted fortnightly staying contact and visiting contact one weekday a month)*

These fathers were presented as unreliable in relation to contact, for example wanting to change contact arrangements whenever it suited them, while not offering good enough reasons for cancelling contact. This the mothers interpreted as a sign that the fathers were not prioritising their children as they should:

**Tina:** *And he would do things like "Oh I cannot come this weekend I will swap you next weekend." And I would say "Well I am sorry you cannot ring up at the last minute you know if it is to swap things, I have got things booked for next week, we are doing things." "Well why can't you? Why can't you do this? I want to swap." "Well no. It says there that is your weekend." "Well I am busy; I am going away in my caravan." "Well I am sorry but if you are going away take Malcolm with you." (Residential mother; the father was granted fortnightly visiting contact)*

Furthermore, these mothers complained that the fathers made no effort to arrange extra contact such as phone calls or weekday visits to sustain a proper relationship with the child. This the mothers interpreted as a further sign of how casual fathers could be about their responsibilities:

**Susan:** *And his dad actually went on holiday on the weekend he should have had Nicholas, so he did not see him that weekend and he did not see him a fortnight later because that was when he was coming home. So it was like a fortnight after that and eventually Nicholas said "Am I going to Daddy's this weekend?" And he said "Yippee! I have not seen him for ages." And I thought well that is typical really. If he had just rung up and said "I'll nip down and see him for an hour" or "Can I take him out for an hour?" – Nicholas would have been really pleased with that and it would have given me a break for an hour, but he did not do that. He had him, I think the Wednesday tea time before he went but he did not see him for like nearly a month. Which is a long time in Nicholas's eyes, it is nothing to us but it is a long time in Nicholas's eyes. (Residential mother; the father was granted fortnightly staying contact and visiting contact one weekday a month)*

**Tina:** *And I think if his dad got a chance to spend a little bit more time with him independently you know, I don't have a problem if his dad rings up and says "Well do you mind during the week could I take him to so and so?" But he does not ring him, the only time he has the contact is every other weekend so Malcolm does not get to speak to him until the Friday when he comes to collect him. He does not ring up. You know I will never understand this but he will not ring up during the week and say "Can I talk to Malcolm?" He rang me the other day about something and then said goodbye, he put the phone down. He did not say "How is Malcolm? Could I speak to him?" He just rang me for something and said goodbye. And that is the way he is. I don't honestly think he knows that he is doing it to some degree. Because he has a great time with Malcolm and they have a good time when they are together and he enjoys his company and he loves him to bits, but I don't think he knows how to spend the time with him. (Residential mother; the father was granted fortnightly staying contact)*

These mothers described themselves as helpless in this situation: they had no way of convincing the father to keep in touch with the children, and they had no legal recourse (cf. Sawyer, 2000; Pearce *et al*, 1999). Katrina had even sought legal advice to see whether there was anything she could do to get the father to have contact with the children, but was told that there were no avenues open to her:

**Interviewer:** *Did you ever want to go back to court to see if his father would be more willing to see the children after?*

**Katrina:** *Yes I did see another solicitor about it and basically she said there was nothing she could do as they cannot force him to turn up. So they said all I had to do was wait for the kids to get old enough and they take that decision. But it is not a fair decision to put on their heads so I just left it and when he turns up he turns up and if he does not he does not. But it is not fair on them. But I cannot force the issue. (Residential mother; the father does not take up the fortnightly staying contact and weekly visiting contact that he was granted)*

## Discussion

The relative lack of policy concern over whether fathers maintain contact raises the question of whether the courts have the balance right. There is a major concern about those children who do not get the contact they may want or need because mothers obstruct contact, yet an apparent indifference to the plight of children who do not have contact because their fathers are unreliable or disinterested. The argument has been put forward that courts should be just as ready to pursue absent contact fathers as they are resident mothers who are reluctant to allow contact (Poussin & Martin-Lebrun, 2002: 323; Maclean & Mueller-Johnson, 2003: 119; Bainham, 2003a: 74-75; Sawyer, 2000). Section 1(c) of the Children (Scotland) Act 1995 states that 'a parent has in relation to his child the responsibility, if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis'. So some jurisdictions are prepared to impose a duty on non-residential parents although it is not clear how successful or how enforceable this really is (cf. Eekelaar, 2002). The question is, however, whether enforcement should take a punitive turn, or whether contact fathers (and some mothers) who do not exercise contact need support to do so.

We should not underestimate the difficulties that some parents face in trying to establish a post-separation relationship with a child they no longer live with. Moreover, we know that when (typically) a father re-partners, his new partner can be a key actor in whether contact is sustained or reduced. Equally, paternal grandparents can be an important support in sustaining these relationships. We agree with Herring (2003) who has argued that, rather than treating the enforcement



of orders as if defaulting on contact were the same as defaulting on a fine, the courts should be more concerned with improving parenting skills and, where possible, post-separation parental relationships (cf. Maclean & Mueller-Johnson, 2003). This may become possible if the Draft Children (Contact) and Adoption Bill (2005) becomes legislation but, as it stands, it is not clear that the measures envisaged will apply to parents who fail to exercise contact as well as to parents who obstruct contact. If the new legislation applies to contact and residential parents equally then those parents who fail to turn up for their children may find that they too are required to attend parenting classes, have to engage in unpaid work for the community, face a curfew, or have to pay compensation. This would, of course, increase hugely the work (and costs) of the courts and affiliated services but if the goal of legislation is to ensure that contact orders (based on the best interests of children) are enforced then this may be a nettle that needs to be grasped.

## **Chapter 7. Do courts work for parents?**

The key question that guides much of the current debate over family law is whether going to court is helpful in resolving conflicts between parents over residence and contact. In other words ‘Do courts work?’ Based on our analysis of the court files and of parents’ views, we have come to the conclusion that this might not be the right question to ask. Rather than framing the question in this way we suggest that we need to understand what people expect from the courts and the judges, and what their motivations for going to court are. Just because some people are unhappy with their experiences at court it does not automatically mean that the courts are failing and that some other system would inevitably work better. Some parents view the courts as unhelpful because they are seeking revenge and want the other parent to be punished. Others believe that courts do not work because they want them to establish a link between child support and the amount of contact allowed. These parents will not be happy before central elements and guiding principles of the family law system are changed. Yet other parents are perfectly happy with the principles, but unhappy with their application – either in general or in relation to their own case. This means that we need to understand whether criticisms are based on a clash of principles, or whether they indicate an inadequate or insensitive application of principles in the legal process, or whether parents are simply aggrieved at an outcome which they cannot accept as the best one.

### **Whose principles should prevail?**

Going to court for some of the parents we interviewed turned out to be a profoundly shocking experience because they went with the assumption that family law and the judiciary would uphold their personal moral values. This meant that some fathers were outraged when they discovered that the courts no longer sought to punish adulterous wives, or were shocked when the judges did not uphold simple equality principles and did not seem to appreciate that modern fathers were capable of looking after children and babies. Mothers tended to be appalled to find that the courts did not care whether or not a father was supporting his children financially and they could not understand why this did not matter.

In order for these parents to be satisfied it would be necessary to offer a root and branch reform of the family law system. For example the principle of parental rights might have to prevail rather than the paramountcy of the welfare of the child; the

doctrine of matrimonial offences might have to be (re)introduced; and the link between child support and contact would have to be re-established, possibly returning the work of determining child support to the courts. While these reforms (taken individually) might satisfy some of the parents we interviewed, taken together they obviously do not offer a coherent basis for reform. Nor do we suggest that this should be the way to reform family law. Public policy cannot really reflect and satisfy all the heterogeneous and contradictory views of individual parents and so it is inevitable that some will be discontented with what the courts have to offer them. But it is also important to be mindful that, while the needs of highly conflictual parents should be one priority for family law, it would alter the system not just for them, but also for the 90 per cent who do not go to court and whose concerns and views are less likely to be recruited. We would need to give careful consideration to whether reforming the core values of the system to suit the hardest cases is a wise thing to do.

### **The principles are fine; the legal process is wrong**

Not all parents were in dispute with the core principles of modern family law, but they were nonetheless very critical of the process they endured, even when they achieved the order they wanted. These parents wanted a more humane system that was more attentive to the emotional needs of parents in distress. We found that many of the parents we interviewed might have benefited from help in managing their sense of loss and grief. Through our interviews we came to appreciate how a father who is granted a contact order for a few hours every other week can find this demeaning as well as emotionally painful. The order may be the 'right' outcome, but there may be more sensitive ways in which the courts can impart such devastating news. Equally, the parent who is told that they have 'lost' residence may need active support in order to deal with the judgment without turning to rage or intense depression. At present fathers may be able to turn to campaigning or pressure groups, and there are smaller, less well known support groups for mothers who are living without their children. But, while the courts and CAF/CASS may not be able to replace these 'self help' groups, a recognition of the effect of handing down such painful orders might make some parents feel better. In addition a supportive environment both in court and in a follow-up service may help parents make the necessary transitions, or at least give them a sense that their problem is recognised.

We also discovered that many parents were shocked to find that the solutions provided by courts were apparently based on formulas with little room for calibrating

orders to meet the needs of individual families. Although the courts may strive to reach individualised solutions, the parents often felt that they got the 'standard package' which did not suit their needs or the needs of their children. As a result, they experienced the courts as an inhuman conveyor belt where they were not treated as individuals. We were not in a position to know from this study whether, and to what extent, courts operate to a formula (e.g. staying contact on alternate weekends and Wednesday evenings). However, where parents perceived this to be the case it merely seemed to increase their sense of alienation and injustice.

It may be that the legal process is ill designed to address sensitively the profound emotions involved in disputes over children (Day Sclater & Kaganas, 2003: 157) and it is therefore not clear whether the courts can actually provide truly individualised solutions. However, it may be that there are ways in which the court process can be changed to become more attentive to parents who turn to the authorities for solutions to their family problems.

### **Is it best to avoid the courts?**

We have come to the conclusion that framing the current problem over contact and residence disputes in terms of substituting 'harmful' courts with 'helpful' alternatives slightly misses the point. If the alternatives to court are based on the same principles that underpin judicial decisions (e.g. disregarding matrimonial fault) then some parents will simply not accept the outcome and will still be critical and unhappy. Equally, if the alternatives use (or appear to use) standard formulas or do not provide adequate support to help parents deal with difficult decisions, then they will be experienced as just as alienating as the courts. Moreover, switching to alternatives to court will rob some parents of the protection they feel they get from getting a speedy residence order, or the certainty they get from a prescribed order which allows them to stop arguing over hours and minutes. It is also important to recognise that there may always (possibly will always) be a minority of highly entrenched conflicts that cannot be satisfactorily resolved because they seek an externally imposed solution at a point when too much damage has already been done in the relationship between the parents.

The Government has, in its Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*, and in the follow-up response to the consultation, *Parental Separation: Children's Needs and Parents' Responsibilities: Next Steps* announced a

range of initiatives that it hopes will reduce the numbers of parents going to court cases and the severity of the conflict they experience. Among these are:

- Improving the information and advice available to divorced and separated parents, in the hope that this will reduce the amount of conflict. One form of information will be 'parenting plans' which will provide examples of various contact arrangements for parents to choose from. The Government also aims to make available general legal advice through a telephone helpline service.
- The legal aid system will be restructured with the goal of encouraging early settlement and speeding up court processes.
- The use of in-court conciliation (as in Essex) as problem-solving sessions. (At the time of writing research into whether in-court conciliation helps is being conducted, funded by the Department for Constitutional Affairs.)
- The launch of The Family Resolutions Pilot Project (September 2004). The aim of this is to raise parents' awareness of their children's needs (by for example showing videos depicting children's experiences) and to help them agree on suitable parenting arrangements.
- A change in role is envisaged for CAFCASS, with less emphasis on the time-consuming writing of reports and more on active problem-solving. The new emphasis will be on providing a conciliation and support service. The new Draft Children (Contact) and Adoption Bill, launched in February 2005, would give the courts the power to ask CAFCASS officers to facilitate and monitor compliance with a contact order.
- Better case management, leading to fewer delays.
- Better monitoring and enforcement of contact orders. Parents can be directed to counselling or parenting classes. These measures are included in the new Draft Children (Contact) and Adoption Bill. In addition, in cases of breach of contact, the Bill aims to give the courts the powers to impose enforcement orders in the form of unpaid work or a curfew, and to order compensation for financial loss.
- A wider use of Family Assistance Orders to provide support for parents for up to six months after a court hearing.

These proposals address several of the issues that we have raised above, as they do involve a greater focus on working with parents to help them manage interpersonal conflict. Moreover, these measures may operate at a greater level of attentiveness to parents and allow them to feel that they are treated as individuals. Of course, how

these services are received will depend on whether parents perceive them to be supportive rather than patronising or diversionary. By this we mean that if parents feel that 'their' problem is ignored or glossed over, or is seen as inappropriate, they are likely to remain angry. One such problem that it seems will still be ignored or glossed over is the problem of the relationship between contact and child support. In previous chapters we have indicated that the parents we interviewed (as well as parents whose attitudes have been captured by large scale surveys) feel that there is an obligation on fathers to pay child support which is matched by an obligation on mothers to allow or facilitate contact. This is a problem that CAFCASS officers will undoubtedly have to confront more openly when, for example, an 'obstructing' mother is required to attend parenting classes, but her former partner is allowed to escape child support payments because of the bureaucratic failings of the Child Support Agency.

In addition, some have expressed concern over whether proposals such as those for more mediation will really help because so many of the cases that go to court are not only intractable but involve allegations of domestic violence or sexual abuse (Herring, 2003: 101). This is a powerful point and it does suggest that more thought needs to be given to how to make the court system better specifically for these parents and their children. The Green Paper makes it clear that such issues as domestic violence must be treated seriously and that contact should only be arranged where it is safe. Systems of tracking and monitoring will be put in place and in this area too further research is being commissioned to establish whether the new system is adequately safeguarding parents and children in this situation. But if all the emphasis is placed on diverting parents before they get to a court hearing, then the service for those who still need the security of the full court process may be overlooked.

Putting aside the question of violence and abuse it is also necessary to recognise, as the first report in this study indicated (Smart *et al*, 2003), that many of the parents who use the courts have multiple problems, including drug and alcohol dependency, and they have already had contact with Social Services and other support systems. It will not be clear for some time whether the proposed new, additional layer of professional support (e.g. Family Assistance Orders) will succeed where others agencies encountered en route may have failed. This is not to argue that breathing life into these Orders is not necessary, but for families where there has been a considerable amount of professional involvement already this may seem like more of the same.

At its core the Green Paper outlines a range of potential methods aimed at reducing conflict between parents. It seeks to create a framework in which divorce and separation can become a calm and civilised transition from an unsuccessful spousal relationship to a successful post-separation parenting relationship. It has to strike a difficult balance between encouraging parents to behave in approved ways on, and after, divorce or separation, and seeking to intervene and control the situation where parents refuse to comply with the new post-divorce ethos embraced in the Green Paper. We have indicated the ways in which the findings from our qualitative interviews with parents engaged in a high degree of conflict chime with some of the proposals. For example, we would strongly support the use of Family Assistance Orders for parents who have been denied contact or who have 'lost' residence – and not just for the parents who are struggling with on-going conflict. But the Green Paper adopts a tone in which it appears that divorcing parents encounter 'difficulties' or single issue problems which can be resolved if solicitors get together with their clients, or if parenting plans are pursued. Our interviews have revealed much more deep-seated issues. Parents may have had difficult relationships throughout their marriages (or cohabitation) and, of course, the courts are now dealing with more cases in which parents have little or no relationship anyway – never having lived together in the first place. Moreover parents can be pathologically hostile, obsessively controlling, manipulative, negligent and spiteful. They can pursue the other parent relentlessly, or they can seek to deny their child any contact with or knowledge of their other parent. For some parents this may be a 'phase' but for others it appears to become a long term commitment. This means that the measures proposed in the Green Paper will not solve all the problems that the courts are currently dealing with, nor will they assuage the criticisms of all the parents who seek judicial intervention. This does not mean that the measures are (or will be) inadequate but it does mean that, in policy terms, we need to be mature enough to recognise that for every family problem there may not be a (publicly funded) solution.

## Endnotes

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<sup>1</sup> Smart *et al* (2003) *Residence and contact disputes in court – Volume 1* ((Research Series 6/03) London: Department for Constitutional Affairs

<sup>2</sup> One court was in a large city in the North of England (referred to as Northay), a second was in a market town in the middle of England (referred to as Minster) and the third was in a London borough with a high representation of minority ethnic families (referred to as London).

<sup>3</sup> In fact it may be misleading to assume that this 90% are entirely conflict free, some may be highly conflicted but do not choose to take their conflicts to the authorities. But the point still stands that we know very little about parents who do not go to court and how they negotiate post-divorce parenthood because we are so focused on the 10% who seek legal help with (or solutions to) their problems.

<sup>4</sup> Two of the parents had been involved in two separate disputes over different children.

<sup>5</sup> Although the Children Act 1989 treats these issues as separate, it is actually confusing for parents that the Child Support Agency, when calculating child support payments, *does* take the amount of contact into consideration (Pirrie, 2000).

<sup>6</sup> Note that the questionnaire respondents consisted of both applicants and respondents

<sup>7</sup> Indeed, this is perhaps one of the reasons why the courts try to encourage parents to reach a mutual agreement, as such an agreement is believed to be more likely to reflect the needs of that particular family.

<sup>8</sup> It is important to note, however, that when we compare the characteristics of the cases in the questionnaire and interview data with the information that we gathered from the court files, it would appear that the questionnaire and interview data comprise a disproportionately large number of high conflict cases (see Chapter 2).

<sup>9</sup> Note, that when added together, the cases in these three categories add up to 63. This is because two of the 61 parents we interviewed had been involved in a dispute over different children with different mothers/fathers.

<sup>10</sup> It is important to keep in mind, though, that the cases the interviewees referred to were mainly conducted in 2000 before the Government endorsed *The Guidelines for Good Practice on Parental Contact in Cases where there is Domestic Violence* in 2001 and we do not yet fully know to what extent these guidelines have changed court practice. The amendments to the Children Act in s120 of the Adoption and Children Act 2002 were implemented in January 2005, and the C1 application forms have been changed to alert the courts to the issue of violence at the stage of application.





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## **Appendix A: Cover letter from the court**

### **From Northay Court:**

We are sending this letter on behalf of a group of researchers at the University of Leeds who are conducting a study on disagreements over children at court. The researchers do not have access to your name or address, which is why we are writing on their behalf.

We wish to make it clear that the study is **not** conducted by the court. None of the information gathered by the researchers will be seen by the Court. We also wish to point out that you are under no obligation to take part. Any possible future court applications/court involvement by you will not be affected by whether or not you take part in this study.

Care section manager

### **From Minster Court:**

Enclosed herewith is a letter and accompanying papers on behalf of researchers from the Centre for Research on Family, Kinship & Childhood at Leeds University. The Centre is undertaking a study on disagreements over children at court.

The study is not conducted by the court and any information gathered by the researchers will not be seen by court officials. However, the researchers do not have access to your name or address and it is therefore the court that must send this letter to you.

Whilst you are under no obligation to take part in the study, I do hope you will understand the value of such research and assist if you feel you can. If it assists I n your decision, I can confirm that any future court applications/involvement by you will not be affected by whether or not you take part in the study.

Contact details can be found on the letter attached.

Court Manager

### **From London Court:**

I am sending this letter on behalf of a group of researchers at the University of Leeds who are conducting a study on cases which have come to court about disagreement over children. I am writing on behalf of the researchers to assure that at no time will they have access to your name or address.

I would like to make it clear that the study is NOT being conducted by the Court. I also would like to point out that you are under no obligation to take part. Any possible future court applications/court involvement by you will not be affected by this study, whether or not you reply to the survey.

Thank you for your co-operation

Court Manager





## **Appendix B: Cover letter to parents – questionnaire only (Mothers and Fathers)**

Dear parent,

We are writing to you because we hope you may be willing to help us with our research. We are carrying out a project on what happens when parents go to court because they have disagreements over arrangements for their children. Your name has been randomly picked from the court files at ---X--- County Court. The court has agreed to send this letter on our behalf because we cannot access your contact details without your permission.

As you know divorce and separation are quite common these days but we don't really understand whether going to solicitors or to court actually *helps* parents resolve their disagreements over arrangements for their children. Would you mind helping us to find out more about this? We are particularly concerned to hear the views of mothers regarding disagreements over which parent a child should live with or how often a child should see the other parent. At the moment, women's views on these issues do not receive much attention in the public eye. We are interested in hearing how you experienced going to court and whether you feel that the involvement of the court has helped solve your disagreement. All the information we gather is confidential and will be used for research purposes only.

We have attached a questionnaire on the yellow paper. We would be grateful if you could fill it in and return it to us in the Freepost envelope provided.

None of the information you provide us with will be sent back to the court.

Many thanks for your help. Please phone Vanessa May on (0113) xxx xxxx if you have any queries.

Yours faithfully

Dear parent,

We are writing to you because we hope you may be willing to help us with our research. We are carrying out a project on what happens when parents go to court because they have disagreements over arrangements for their children. Your name has been randomly picked from the court files at ---X--- County Court. The court has agreed to send this letter on our behalf because we cannot access your contact details without your permission.

As you know divorce and separation are quite common these days but we don't really understand whether going to solicitors or to court actually *helps* parents resolve their disagreements over arrangements for their children. Would you mind helping us to find out more about this? We are particularly concerned to hear the views of fathers regarding disagreements over which parent a child should live with or how often a child should see the other parent. Fathers are increasingly playing a more involved role in the lives of their children and we want to know whether this is reflected in their experiences of the courts. We are also interested in knowing whether you feel that the involvement of the court has helped solve your disagreement. All the information we gather is confidential and will be used for research purposes only.

We have attached a questionnaire on the yellow paper. We would be grateful if you could fill it in and return it to us in the Freepost envelope provided.

None of the information you provide us with will be sent back to the court.

Many thanks for your help. Please phone Vanessa May on (0113) xxx xxxx if you have any queries.

Yours faithfully

## **Appendix C: Cover letter – with invitation to take part in an interview (Mothers and Fathers)**

Dear parent,

We are writing to you because we hope you may be willing to help us with our research. We are carrying out a project on what happens when parents go to court because they have disagreements over arrangements for their children. Your name has been randomly picked from the court files at ---X--- County Court. The court has agreed to send this letter on our behalf because we cannot access your contact details without your permission.

As you know divorce and separation are quite common these days but we don't really understand whether going to solicitors or to court actually *helps* parents resolve their disagreements over arrangements for their children. Would your mind helping us to find out more about this? We are particularly concerned to hear the views of mothers regarding disagreements over which parent a child should live with or how often a child should see the other parent. At the moment, women's views on these issues do not receive much attention in the public eye. We are interested in hearing how you experienced going to court and whether you feel that the involvement of the court has helped solve your disagreement. All the information we gather is confidential and will be used for research purposes only.

We have attached a questionnaire on the yellow paper. This can be filled in anonymously without us knowing your contact details. We would be grateful if you could fill it in and return it to us in the Freepost envelope provided. We would also really like to have the opportunity to speak to you in more detail about these things. We are particularly keen to talk to parents whose court case has ended. If you would be willing to take part in a confidential interview then just send us your contact details on the blue paper. If you would prefer to not fill in the questionnaire, it is also possible for us to just interview you. We will contact you about arranging a convenient time and place to meet with you. The interview will last between half an hour and an hour.

None of the information you provide us with will be sent back to the court.

Many thanks for your help. Please phone Vanessa May on (0113) xxx xxxx if you have any queries.

Yours faithfully

Dear parent,

We are writing to you because we hope you may be willing to help us with our research. We are carrying out a project on what happens when parents go to court because they have disagreements over arrangements for their children. Your name has been randomly picked from the court files at ---X--- County Court. The court has agreed to send this letter on our behalf because we cannot access your contact details without your permission.

As you know divorce and separation are quite common these days but we don't really understand whether going to solicitors or to court actually *helps* parents resolve their disagreements over arrangements for their children. Would you mind helping us to find out more about this? We are particularly concerned to hear the views of fathers regarding disagreements over which parent a child should live with or how often a child should see the other parent. Fathers are increasingly playing a more involved role in the lives of their children and we want to know whether this is reflected in their experiences of the courts. We are also interested in knowing whether you feel that the involvement of the court has helped solve your disagreement. All the information we gather is confidential and will be used for research purposes only.

We have attached a questionnaire on the yellow paper. This can be filled in anonymously without us knowing your contact details. We would be grateful if you could fill it in and return it to us in the Freepost envelope provided. We would also really like to have the opportunity to speak to you in more detail about these things. We are particularly keen to talk to parents whose court case has ended. If you would be willing to take part in a confidential interview then just send us your contact details on the blue paper. If you would prefer to not fill in the questionnaire, it is also possible for us to just interview you. We will contact you about arranging a convenient time and place to meet with you. The interview will last between half an hour and an hour.

None of the information you provide us with will be sent back to the court.

Many thanks for your help. Please phone Vanessa May on (0113) xxx xxxx if you have any queries.

Yours faithfully

**Yes, I would be willing to take part in a confidential interview about my experiences at court.**

**Name** \_\_\_\_\_

**Address** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone**

**Work/daytime:** \_\_\_\_\_

**Evenings:** \_\_\_\_\_

We may be able to interview you in a language other than English. If this is essential, please indicate which language: \_\_\_\_\_



## Appendix D: Questionnaire

### Your experiences of going to court over your children

#### 1) Information about you

Date of birth \_\_\_\_\_

Male/Female (*please circle*)

#### 2) Information on your children

	Date of birth	Male/Female
Child 1		
Child 2		
Child 3		
Child 4		
Child 5		
Child 6		

---

#### 3) Who decided to use the court?

parent

- Me
- The other parent
- My solicitor
- Solicitor of the other

- Other
- Not sure

#### 4) Did you want to go to court?

- Yes
- No
- Didn't mind

---

#### 5a) In your view, what was the disagreement between you and the other parent over?



**5b) Are you still arguing over these issues?**  Yes  
 No

**5c) Are there new problems?**  Yes  
 No

---

**6) What happened at the end of the court case?**  Case dismissed  
 Application withdrawn  
 Order for 'no order'  
 Order for 'contact'/'residence'/other  
 Some other outcome  
 Not sure  
 Court case has not ended yet

---

**7a) If you agreed between yourselves, what did you decide?**

**7b) Did someone else help you reach an agreement, for example a solicitor, a court welfare officer or a relative?**

**7c) How did you feel about this agreement?**

Very satisfied       Satisfied       Mixed feelings       Unsatisfied       Very unsatisfied       Neutral

---

**8a) If the court made an order, what did the order say?**

**8b) How did you feel about this order?**

Very satisfied       Satisfied       Mixed feelings       Unsatisfied       Very unsatisfied       Neutral

Didn't understand the order

---

**9a) How has this order/agreement been working in general?**

Very well       Well       Mixed success       Badly       Very badly

**9b) Whatever the outcome of the case, was this the right outcome in your view?**

Yes  
 No  
 Don't know

**9c) In your view, was this the right outcome for your children?**

Yes  
 No  
 Don't know

**9d) Can you explain briefly why you think this?**

---

**10) Have there been any particular problems since the end of the court case?**

**11a) What was the effect of going to court? Were things made...**

Much better     
  Better     
  Both better and worse     
  Worse     
  Much worse     
  No change

**11b) Was the court a suitable place to solve your family problem?**

Strongly Agree     
  Agree     
  Mixed views     
  Disagree     
  Strongly disagree

---

**12a) During the court process, did you talk to a Court Welfare Officer? (These are now called Children and Family Reporters or CAFCASS Officers.)**

Yes  
 No  
 Don't remember

**12b) During the court process, did your children talk to a Court Welfare Officer?**

Yes  
 No  
 Don't remember

**12c) How helpful do you think the Court Welfare Officer was in your case?**

Very helpful     
  Helpful     
  A bit of both     
  Unhelpful     
  Very unhelpful

---

**13a) Who do the children live with now?**

(If the children live with different people, tick as many boxes as necessary)

Me  
 Other parent  
 Grandparent(s)  
 Other

**13b) If the children live elsewhere how often do you see them?**

**13c) If the children live with you how often does the other parent see them?**

**14) Is there anything you would like to add, either something we have not asked about or something you would like to explain in more depth? (Please feel free to continue on another piece of paper)**

***Thank you for taking the time and trouble to complete our questionnaire.***



## Appendix E: Interview schedule

### 1) Background information

- Base data
- Names of people involved
- I would now like to run through the various arrangements you have had over your children before, during and after the court case.

### 2) Before court

- **The disagreement and why it was taken to court**
  - The issues that triggered the court case
  - How did the children come into this?
  - Why did the disagreement end up in court?
  - Did you want to go to court?
- **Expectations of going to court**
  - What did you hope to get from going to court?
  - Did you know what it would be like at court or what would happen once the court case started? (e.g. information leaflets)

### 3) Children

- **Effect of court case on children/children's effect on court case**
  - Did/do they know about the disagreement between you? About going to court?
  - How did your children feel about you going to court?
  - Do you think it had an effect on the children?
  - Did they have an effect on the disagreement or the court case? (e.g. voting with their feet, expressing an opinion)
  - Were their wishes taken into account? In what way and by whom?

### 4) At court

- **What felt of court process**
  - What was it like going to court? How did you feel?
  - How was your relationship with the other parent affected during the court process?
- **Solicitors, CWO/CFR, mediation & contact centres**
  - Did you have a solicitor?
    - How affected case
    - Happy with how solicitor handled case?
  - In connection with the court case, who did you see? (CWO, social worker?)
  - Was a CWO report prepared?
    - Do you remember seeing the report?

- How did you feel about the report?
- Did you attend mediation?
  - What did you think of it?
- Was a contact centre used?
  - What did you think of it? (safety, appropriateness, moving on)

### **5) Outcome of court process**

- Can you remember how the case finished? Agreement, order, dismissed, etc?
- If agreement,
  - What did you agree?
  - How did you reach this agreement?
  - Were you ok with the agreement/how did you feel about the agreement?
    - How safe do you feel you and your children are?
- If order
  - What was the order for/what did the order say?
  - Were you ok with the order/how did you feel about the order?
    - How safe do you feel you and your children are?
- All in all, was this the right outcome?
  - And how was it for the children?
- How long did the court case take?
  - How did you feel about that? Was it ok, too quick, too long?
- **Is the court/legal system sensitive to cultural/religious differences?**
- **Were you able to voice your views/Were your views heard?**
  - Did you get to voice your views?/ Do you think your side of the case came out?
  - Were your views or wishes taken into account? By your solicitor, the judge, the CWO/CFR?
- **Overall effect of going to court**
  - on you?
  - on the dispute?
  - the hostilities between you and the other parent resolved or made worse?

### **6) After court**

- **Since the court case came to an end, how have the arrangements been working?**
  - Have the arrangements been changed? By mutual consent?
  - Are there ongoing problems?

- If yes, have you returned to court?
- If no, why is that?
- **What has happened since?**
  - Central family events (repartnering, new children; effect on relations with other parent)
  - Has the conflict flared up again?
- **Overall view of court process**
  - With hindsight, would you go to court again?
  - What were the good/bad / best/worst bits of going to court?
  - Is this the best way to deal with problems over arrangements for children?  
What would be the best way?
  - Would you recommend a friend take their dispute to court?
  - Would there have been another way of resolving your dispute?

## 7) Other family members

- **Have other family members become involved in dispute/court case?**
  - Has the court case affected your relationship with your partner?
  - How does your new partner feel about all this?
    - Going to court
    - Outcome of case
  - How do the grandparents feel about all this?



## DCA Research Series No. 4/05

### Residence and contact disputes in court - Volume 2

This is the second report from a study, contracted January 2002, which aimed to provide baseline data on contact and residence orders. Residence and Contact Disputes in Court Volume 1, released in 2003, provided feedback from the first stage of the research - a survey of 430 court cases in three different County Courts in England.

This report is based on the outcomes from the second stage of the study - qualitative in-depth interviews with 61 parents who had taken their dispute to court in one of the three areas, seeks to address questions such as:

- why parents go to court;
- what their expectations were;
- whether these were met;
- whether they were satisfied with the outcomes (and if not why not);
- how the arrangements for children were working; and
- what the effect of going to court was on them and their children.

For further copies of this publication or information about the Research Series please contact the following address:

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