

Evidence submitted by Celia Conrad, Freelance Legal Consultant

MY BACKGROUND

1. I qualified as a solicitor in October 1994 and practised exclusively as a family law practitioner until March 2001 when I left full-time private practice. I continued to work part-time in private practice until April 2003 while I researched and wrote *Fathers Matter—A guide to contact on separation and divorce* (Creative Communications October 2003). I no longer work in private practice but continue to research and write and to work as a Freelance Legal Consultant on Family law matters. I have appeared on BBC 1 and Channel 4 as a direct consequence of my work. I am interested in all areas of Family law reform, but have a particular interest in the field of Child law.

BASIS OF MY SUBMISSIONS

2. I am making these submissions in my capacity as a family solicitor and from my experience of dealing with the family courts in the course of my work and from my research on the subject.

3. I note that the Committee welcomes additional submissions from interested parties on the Government's own proposals ((Green Paper—Parental Separation: Children's Needs and Parents' Responsibilities (Cm 6273)) and that this inquiry is limited to the area of responsibility retained by the Department of Constitutional Affairs DCA), namely the operation of the family courts system. However, since the Department for Education & Skills (DfES) is now co-ordinating a Family Resolutions Pilot Project to run in the Brighton County Court, Sunderland County Court and Inner London family Court which is to be evaluated to enable the Government to decide whether or not to roll out the project nationally in the Spring of 2006, an analysis of the Family Resolutions Pilot Project (FRPP) is required when considering reforms to be made to the operation of the family courts system.

4. Additionally such an analysis is relevant to any investigation the Committee will make in relation to key areas such as whether the family court system is being run effectively; whether the family court judges have sufficient powers; issues surrounding delays caused by the current system, and whether people using family courts are getting the service they deserve. This is because the FRPP contains elements which bear directly upon those key areas.

THE CURRENT GOVERNMENT PROPOSALS FOR CHANGE TO THE OPERATION OF THE FAMILY COURT SYSTEM

5. I am not of the opinion that these proposals are satisfactory. It is disappointing to note that although the Green Paper highlights many of the problems with the current court system namely:

— That the current way in which courts intervene in disputed contact cases does not work well.

— That major changes are needed so that where it is necessary for the state and the courts to intervene, they are much more effective in helping to secure to effective resolutions which are in the interests of the child.

— It is in the interests of the child to have a meaningful ongoing relationship with both parents and so the system needs to be much better at securing this outcome, it does not advance the proposals of the Early Interventions Reform Project, which are infinitely better geared to achieving those goals.

THE EARLY INTERVENTIONS PILOT PROJECT (EEIP)

6. The EEIP is based on the Florida Early Interventions model which was designed to resolve contact disputes before they reach court through pre-emptive and pre-hearing parenting plans, parent education and contact-focused compulsory mediation. It has proved to be a success in reducing costs, delay and in producing enhanced outcomes with enforcement being a rarity. These are all areas the Green Paper seeks to address (Executive Summary, paragraph 4; Chapter 2, paragraphs. 16 and 20-29; Chapter 3, paragraphs. 53-55, 58-85) which reinforce the need for such a model to be piloted in our courts. Yet it has been rejected by the DfES. With Early Interventions in Florida Judges demand minimum written contact orders, contact is rarely litigated and their time is freed up to deal with intransigent cases and cases involving domestic violence and abuse. There is also a triage programme where cases are evaluated so that cases which are high priority are dealt with first. It therefore addresses those areas of concern as well.

7. In April 2003 New Approaches to Contact (NATC) held a seminar Contact Dispute Resolution: Early Interventions—Towards a Pilot Project chaired by Bracewell J. who gave a pilot scheme her strong support. NATC proposed a system whereby:

— On issue of the proceedings the parents will be diverted into a non-court process involving court issued information, parent education and contact-focused mandatory mediation.

— In residual cases where agreement has not been reached the parents re-enter the court system and are streamed into one of two categories—either non-serious cases which can be dealt with rapidly or serious cases which need earlier attention. In this ways the cases requiring significant judicial input will be reduced and more time can be given to those cases which require it.

8. The NATC Early Interventions—Proposal for a Pilot Project (The Best Interests of Children in Divorce Cases. Section 8, The Children Act 1989) was submitted to the DfES and DCA in final form on 8 October 2003 after eight years development. This was fully specified, properly designed and costed, and fully endorsed by the President of the Family Division, the High Court Judiciary, child development specialists, the parenting groups, the Family Law Bar Association and the Solicitors Family Law Association. These proposals received ministerial support from Lord Filkin on Newsnight on 21 October 2003 and Margaret Hodge in Parliament on 23 October 2003. These proposals then disappeared.

9. The Pilot Project's aim is to reduce the number of families litigating in Court by 75%. Having clearly defined contact guidelines, to be implemented in the event that the parents cannot agree a schedule of contact, and procedures for resolving most normal contact disputes months before they reach court would help achieve this. This is because if the parties know what order is liable to be made by the Court there is less point in litigating. These are all major plus points for such a system.

WHAT HAS HAPPENED TO NATC'S EARLY INTERVENTION PILOT PROJECT?

10. Paragraph 68 of the Green Paper States that "the development of the Family Resolutions Pilot Project [FRPP] has been informed by the earlier work of an ad hoc group which presented its early intervention proposals to the government in Autumn 2003." However, FRPP is not the same as the NATC EIPP. See Mr Justice Munby's comments in the matter of D, [2004] EWCH 727 (Fam) in Open Court on 1 April 2004 where he referred to the Early Interventions Pilot Project which Whitehall is now refusing to implement; The Times Law Section page 7, 22 June 2004 "Contact: A question of time by Oliver Cyriax, former solicitor and founder of NATC; Article in The Guardian, Monday 19 July 2004 by Clare Dyer, Legal Correspondent "Warring Parents to be taught conflict management" refers to the disappearance of the EI PP, The Folly of a Law that puts children last." by Deborah Orr, Independent, 29 June 2004.

11. It has come to light that CAFCASS advised those at Whitehall that the EIPP was broadly similar to a project of theirs called Family Resolution. It is not the same. In November 2003 funding was then obtained for an EI/FR project on the basis that the two were the same. Lord Filkin proceeded with a proper evaluation of the original EI project after meetings on 3 November 2003, 4 December 2003 and 9 February 2004 and forwarded the EI project to the DfES for implementation. But it has not been implemented. The EIPP has been replaced with the FR project, a CAFCASS inspired FR project with no judicial support.

12. It is a major cause of concern to anyone within the legal profession and not least for all those families that will be affected by these reforms that what has now been recommended was not what was approved. An article by Mavis Maclean in the September issue of Family Law September 2004 confirms that the FRPP is:

- the opposite of the project announced by the Government in the Green Paper;
- the opposite of the project announced last year in Family law;
- the opposite of the project submitted to Government; and
- the opposite of the project which had across-the-board professional support.

13. An article in the November issue of Family Law by family law barrister Caroline Willbourne entitled Family Resolutions v Early Initiatives confirms that what was recommended is not what has been approved.

14. Mr Justice Munby refers in his judgment (see paragraph 10 above) to the fact that "Children's Minister Hodge has opposed these reforms from the start, refusing to heed the advice of Britain's highest ranking judges, politicians and child-therapists." In my view there are no justifiable grounds for her stance. It is also equally a matter of great concern that CAFCASS could have such an influence or be considered to have the requisite skills to advise on reforms of this import in the first place.

HOW FAR DOES THE GREEN PAPER TAKE US IN TERMS OF PROGRESS?

15. Paragraph 4, Chapter 1 of the Green Paper reads "in the event of parental separation, a child's welfare is best promoted by a continuing relationship with both parents, as long as it is safe to do so." At paragraph 6, Chapter 1 it reads that "both parents have a responsibility to ensure their child has meaningful contact with the other parent." The question is whether the proposals fully support those statements. I do not believe they do

for the reasons set out below.

16. FRPP is based upon a well-rehearsed mantra that "every case is different" which is the antithesis of EI. The DfES has decided that "quality" rather than "time" should be the defining factor when considering how much "contact" a child should have with a non-resident parent. Paragraph 25, Chapter 2 of the Green Paper reads "most parents who turn to courts for contact with their children are given it. . . less than 1% of applications for contact are rejected." The fact is that in 99% of the cases that come to court contact is ordered but the statistic does not quantify specifically how much contact is ordered.

QUANTITY V QUALITY

17. The Government's model rejects the idea that children should have the right to spend "time" with a non-resident parent and instead suggests that it is the quality of contact rather than the simple quantum that is the more important issue. The aim is to make parents step back from the adult conflict and to focus on quality ahead of quantity. This will feature in the Planning sessions. What seems to have been overlooked or ignored is that contact cases are about quantum. It is not productive for a father who has two hours contact per week, and who wants more, to be sent off to Planning Sessions where he will be told that quantum does not matter and that he should focus on the quality of the contact he has. How is "quality contact" to be defined?

18. Since mediation will be voluntary in practice this will mean that those implacably opposed to ensuring their child has meaningful contact with the other parent (the meaningful contact advocated by Paragraph 6, Chapter 1 of the Green Paper) can go straight to court and make the other parent's contact as difficult as possible. How therefore is the child's welfare to be best promoted if it is next to impossible for that child to have a continuing relationship with both parents? Ironically these are disputes that end up in court and where mediation was necessary but where voluntary participation is most unlikely.

RECOMMENDATIONS

19. I am disappointed that the FRPP has not only lost the positive proposals contained in the EEIP but also appears inconsistent with the Green Paper proposals. The EIPP should be reinstated for all the reasons stated above.

20. It has already been confirmed that the court and associated professional services could each play their part in a revised procedure, where professional services solve most cases before they reach court, guiding parents towards timely parenting plans. The parenting courses in Florida provide families with the information regarding the process by which the courts make decisions on issues affecting their children and this does not relate to how to bring them up, but to teach parents about the process of restructuring their families after separation and re-educating them as to what the courts expect from them. That is what is important and should be the aim of policy reform in this area.

Celia Conrad

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