

10 Conclusion

149. The evidence which we took during the course of our inquiry showed that the court system was not best suited to deal with many of the complex and difficult matters relating to the break-up of families. This is not a criticism of the judges or of the many dedicated public servants who work within the courts' system. There are limitations to the court process itself. A clear example of the difficulties associated with a traditional court approach to these problems is shown by the frequent failure of the current enforcement system of court orders.

150. We support the Government's proposals contained in the Draft Children (Contact) and Adoption Bill (Cm 6462) relating to extension of the courts' powers of enforcement. On the wider issue of use of the courts, the Government's plans rely heavily on a new role for CAFCASS and would involve a completely new approach for the agency. Case workers would no longer simply prepare long reports but would have a much closer continuing relationship with these families. This ambitious change may well require considerable extra resources in terms of numbers of officials and the development of new skills. Without the provision of extra resources, this potentially revolutionary initiative is unlikely to succeed.

151. There is a widespread perception that non-resident parents (often fathers) are not treated fairly. We conclude that, although the courts rigorously avoid conscious bias, there are considerable grounds for accepting that non-resident parents are frequently disadvantaged by the system as it is administered at present. Delay is a major factor. The resident parent who is involved in the contact dispute will be advantaged by any delay, even if the resident parent is behaving unreasonably.

152. This situation will continue until solutions are found to the following problems:

delay;

lack of judicial continuity;

inability to come back to the judge promptly;

ability of the courts to make orders that are obeyed.

The combination of these factors have produced a situation that allows a new 'status quo' arrangement for the children to become established by default.

153. One of our key recommendations is an amendment of the 'welfare checklist' in the Children Act 1989 to ensure that the courts have regard to the importance of sustaining a relationship between the children and a non-resident parent. Such an amendment would send a clear message to the courts, to parents and to their professional advisers about the importance of maintaining links between both parents and their children. Although this will not satisfy those who believe that there should be an absolute rule about the extent to which parents share responsibility for their children, it will reassert the rights of non-resident parents to contact with their children, as well as the rights of children to contact with both their parents, while maintaining sufficient flexibility to cope with issues of safety.

154. Lack of transparency has been a major factor in creating dissatisfaction with the current Family Justice system on the part of those involved in cases. In our view, the current rules relating to communication of the details of particular cases are too strict. The

restrictions on communicating details of family cases to those not involved (which may apply to Members of Parliament handling constituency cases) have served to fuel the perception of bias and unfairness. Some of the evidence we received was that the lack of openness prevented proper scrutiny of the work done by family judges or court officials, and made it impossible to prove or disprove perceived unfairness.

155. While there is disagreement as to whether all the criticism of the system of Family Justice is justified, it is widely agreed that reform is needed. There is some divergence of opinion about whether the proposals contained in the Government's Green Paper are an evolution of previous policy rather than a major change. We welcome the Government's acceptance of the general need to remove as many cases as possible from the court system. It is not clear that the Green Paper proposals will by themselves achieve this. A coherent statement of the Government's overall strategy is needed combining established initiatives, such as mediation, with experimental approaches. The system at present is focused on the resolution of disputes between adults: the interests of children should be paramount.