

## Select Committee on Constitutional Affairs Fourth Report

### 1 Introduction

1. On 20 September 2004 we announced an inquiry into the operation of the family courts' system. Our decision was prompted by Government moves for reform as set out in its Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*.

1. While examining the Government's own proposals, the inquiry focused on the way in which the courts dealt with child residence and contact cases, covering a number of key issues, namely:

whether the family court system is being run effectively;

whether family court judges have sufficient powers;

court delays caused by the current system;

whether people using family courts are getting the service they deserve.

2. This is an extremely complex subject. Many of the issues raised are the subject of heated debate. In the course of our inquiry, we received a great deal of evidence from witnesses relating to the supposed bias of the courts against non-resident parents (usually fathers). We also were sent many submissions relating to the safety of children and the threat to them represented by one parent or another, as well as the threat of violence between parents. We received a large amount of evidence relating to problems associated with the enforcement of court orders.

3. The problems relating to domestic violence, and in particular the threat to children, produced some of the most difficult evidence during our inquiry. Although we deal with safety issues in Section 8 below, this inquiry is focused on contact and residence applications. For this reason, we have not concentrated closely on this very important subject except to the extent that it is an issue in these disputes.

4. As our inquiry developed, we considered whether the family court system was too adversarial and whether greater use of mediation and out of court services could reduce conflict between parents. A number of submissions pointed out the lack of transparency in the family courts. The primary complaints were that both hearings and judgments were held in private and that media access to the family courts was unreasonably restricted. We deal with all these issues in some detail in this Report.

5. This Report focused on the system of family justice. Inevitably, we concentrate on the minority of cases which require active intervention by the judges or those acting on behalf of the courts. We do not focus on the majority of cases which are dealt with by agreement between the parties on a more or less amicable basis.[

2] Only about 10% of family break-ups involving children result in contested court hearings about those children.[3] We are also aware that the evidence relates only to those who make an application to the courts and that there are many people whose cases do not come before the courts and whose interests are therefore not reflected in the evidence which we received. 6. The interests of children are a vitally important concern. We were unable to take evidence from children for practical reasons. We saw the video prepared by

the Department for Education and Skills: What Do The Children Think? This succinctly set out examples of many of the complex and difficult issues involving the welfare of children and family break-up.

7. We received over 165 submissions in response to our call for evidence. We also received copies of all non-confidential responses to the Government's Green Paper consultation exercise.

8. We took oral evidence from the witnesses listed on page 53. We are grateful to all who contributed oral and written evidence. We also wish to thank our special advisers, Mr Andrew McFarlane QC and Professor Gwynn Davis.

Prepared 2 March 2005