

## 2 Background

### The family court system

9. The family courts deal with matrimonial proceedings and proceedings relating to children including Children Act 1989 matters (in particular inter-parental 'private law' disputes and 'public law' care proceedings), domestic violence and adoption applications. The Act introduced the Children (Allocation of Proceedings) Order, which came into force in October 1991, establishing for the first time movement of cases within the family jurisdiction across all tiers of court. The change towards a single system will be consolidated by the unified court structure to be introduced in April 2005.

10. The Family Division of the High Court has jurisdiction to hear all cases relating to children and exercises an exclusive jurisdiction in wardship and matters relating to the Hague Convention on child abduction. The High Court also hears applications for declarations in relation to children and vulnerable adults. The High Court hears appeals from family proceedings courts and cases transferred from the county courts or family proceedings courts. The Family Division is based at the Royal Courts of Justice in London and consists of the President of the Family Division and 18 High Court judges. High Court work is also dealt with at the Principal Registry of the Family Division (PRFD) in London and, outside London, by those district registries which have divorce jurisdiction.

11. Family county courts are a distinct group of county courts that have been designated by the Lord Chancellor to determine any matrimonial cause (i.e. divorce proceedings or matters concerning the annulment of a marriage). These courts can issue all private law family proceedings. In addition to this general jurisdiction in matrimonial matters, a number of these family county courts also have more specialised jurisdiction in other aspects of family business. For example, a Family Hearing Centre can issue and hear all private law family matters, whether or not they are contested, and a Care Centre has full jurisdiction in private and public family law proceedings (both contested and uncontested). The President of the Family Division has also developed the concept of specialised adoption centres with jurisdiction to issue, process and hear applications to free a child for adoption and make an adoption order.

12. Family proceedings courts' work is dealt with by lay magistrates and sometimes by district judges (magistrates' courts)[4] who occasionally sit with lay colleagues. The lay magistrates sitting at these courts are drawn from a specially selected family panel and have to undergo specialist, continuing training. The district judges (magistrates' courts) are also specially trained. There is currently only one district judge of this type sitting full time in family work (Mr Nicholas Crichton). Family proceedings courts have full private and public law jurisdiction as well as jurisdiction to hear and determine adoption proceedings. These courts are not able to hear divorce proceedings, but are able to make various orders related to separation (such as maintenance).

13. In order to hear family matters, particularly those under the Children Act, district and circuit judges in county courts must receive special family work training and guidance and be nominated for such work by the President of the Family Division. This is sometimes referred to as 'family ticketing' of judges. Training of judges is undertaken by the Judicial Studies Board (JSB). Judges who have not been nominated may still hear matrimonial and domestic violence injunctions. Despite the fact that judges are 'ticketed', this does not mean that they will work full time conducting family court business. Many judges, such as deputy district judges, deputy High Court judges and recorders, only sit part time in any

event, which can lead to problems in respect of judicial continuity.

## **The Current Legal Position in England and Wales**

14. Where parents are married each will have full parental responsibility for their child. All unmarried mothers and many unmarried fathers will also have full parental responsibility. Those unmarried fathers without parental responsibility may apply to the court for an order granting them parental responsibility if the mother declines to enter into a formal agreement to that effect.

15. The range of orders available to the court under the Children Act 1989 (s.8 orders) is designed not to give or remove parental responsibility from one parent or the other, but to vary the arrangements for the child when parents fall out over what is best for their child.

16. The orders which can be made are:

Residence;

Contact;

Specific issue orders (e.g. orders determining education or medical treatment); and  
Prohibited steps orders (i.e. orders that prohibit a parent from exercising his/her parental responsibility in a particular manner).

17. A court may make a contact order and may enforce it through contempt proceedings, which can lead to a fine or imprisonment (which may be suspended). Where it is in a child's interests to do so, a court may vary the residence arrangements for the child in order to achieve appropriate contact. In an extreme case, the court may order that the child be taken into care where there is evidence that the contact dispute, or the lack of contact, is causing the child significant harm.

18. Over the past few years, wide concern has been expressed about the ability of the current system to meet the needs of children where parental contact and residence are disputed. A good deal of the evidence which we received reflected the views of those representing fathers' groups (such as Fathers 4 Justice and Equal Parenting Council), who argued that the current system discriminated against non-resident parents, and evidence from groups which emphasised the threat of violence to children or parents in cases of disputed custody.

## **Departmental responsibilities**

19. The Department for Constitutional Affairs' prime responsibilities in family justice are the administration of the courts, the appointment of the judiciary and sponsorship of the Legal Services Commission, which is responsible for the administration of the Community Legal Service (Legal Aid). The Department has joint responsibility for a number of key legislative policy areas, and in partnership with the Department for Education and Skills and the Department for Trade and Industry issued the Parental Separation Green Paper<sup>[5]</sup> in July 2004.

## **The Making Contact Work Consultation**

20. In March 2001 a consultation paper was issued entitled Making Contact Work: a consultation paper from the Children Act Sub-Committee of the Lord Chancellor's Advisory Board on Family Law (CASC) on the facilitation and enforcement of contact. A report was

subsequently made to the Lord Chancellor's Department (as it then was) and a response was issued by the Department in August 2002.[6]

21. Amongst the recommendations made by the CASC were the following:

The Lord Chancellor's Department should fund additional facilities for resolving contact disputes by negotiation, conciliation and mediation. Whilst there is plainly a role for the court in resolving contact disputes, there is a widespread perception that such disputes are better addressed outside the court system. There is also a widespread feeling that an application to the court should be the last resort;

The judiciary and the court service need to promote a culture of judicial continuity avoiding time-wasting and inconsistency, by a more proactive management of judges' calendars and itineraries;

Legislation must provide the powers the courts need. These are, essentially, the following: the power to refer a parent who disobeys an order for contact to a variety of resources including information meetings or meetings with a counsellor; parenting programmes; the power to refer to a psychiatrist or psychologist (publicly funded in the first instance); the power to refer a non-resident parent to an education or perpetrator programme; the power to place on probation with a condition of treatment or attendance at a given class; the power to award financial compensation from one parent to the other; and the power to impose a Community Service Order;

A recommendation that judges and magistrates should be given the power to refer parties to mediation.

Many of these recommendations were accepted in whole or in part by the Department at the time. Lord Justice Wall has observed that many of these themes have found their way into the Government's Parental Separation Green Paper, although a number of the more radical options appear to have been dropped.[7]

22. In evidence to us, Mr Justice Ryder also raised the implementation of the CASC recommendations, noting that:

This has been a constant theme of the judiciary for a number of years. The commitment is welcomed but concern remains as to the timescale, the commitment of Parliamentary time (i.e. the priority of that commitment, the lack of engagement of the NHS... and the funding of the options which should be made available).[8]

23. Given the limited nature of the current consultation, many of these proposals could have been adopted much earlier. We regret that there has been such delay on the part of the Department in following up this previous initiative. One consequence of the Government's delay is that the clamour for change and reform has greatly increased in the intervening four years.

24. All of the Government's proposals now contained in the Draft Children (Contact) and Adoption Bill must be considered in the light of the five outcomes set out for children's services[9] and the policies designed to achieve those aims.