

3 The Green Paper

The Government's proposals

25. In its Green Paper Parental Separation: Children's Needs and Parents' Responsibilities the Government has acknowledged that "the current way in which the courts intervene in disputed contact cases does not work well". In particular, it has provided evidence to demonstrate that resident and non-resident parents are satisfied or very satisfied with informal arrangements in over 80% of cases, but that when the court becomes involved the picture is very different. In such circumstances resident parents are satisfied or very satisfied in 61% of cases; however, non-resident parents are only satisfied or very satisfied in 35% of cases.

26. A number of key concerns were highlighted in the Green Paper and these include claims that:

The current law, or its interpretation in practice, does not give non-resident parents the relationship with their child that they should have;
The process for identifying and verifying safety issues is ineffective and slow;
The Legal Aid structure rewards litigation rather than settlement;
Adversarial court proceedings exacerbate acrimony between separating couples;
Delay in court proceedings can be so protracted that it undermines the relationship with the non-resident parent to the extent that, by the time a decision is made, the court may take the view that it is no longer in the child's interests to grant contact;
Relatives in the wider family context, particularly grandparents, lose contact following separation;
Some resident parents feel that the courts allow contact in a way that puts their, or their children's safety at risk;
Court-ordered contact is poorly enforced and in some instances the courts are unable to resolve this problem;
The effect of these features is to create, in the words of some witnesses, a 'bias against fathers' (or non-resident parents).

27. The Green Paper describes the current legal position about contact in the following way:

The broad effect of the current case law is that the general principle to be applied by the courts is that both parents have equal status as parents and that the court's expectation is that both parents should continue to have a meaningful relationship with their children following separation, as long as it is safe and in the child's best interest.

Access to legal advice

28. The Government believes that on average parents who are eligible for public funding through legal aid use courts more often and for longer periods than those parents who fund their own legal representation. The paper concludes that "the availability of legal aid should not provide an incentive to go to the courts or to defy court orders".

29. The Government has made a number of proposals to address this problem. These include:

Introducing a system of accreditation for solicitors who provide advice on family matters concerning children;
A review of relevant rules and Practice Directions so that the strongest possible encouragement is given to parties to agree to mediation or other forms of dispute resolution;
Ensuring that publicly funded parents demonstrate that they have "at least explored the option of mediation" as an alternative before turning to litigation, in order to be able to access continued

funding.

A changing role for CAFCASS

30. The Children and Family Court Advisory and Support Service (CAFCASS) provides the full range of services that support and represent children and family law proceedings. It brings together work previously undertaken in three separate services: the Family Court Welfare Service; Guardians ad Litem and Reporting Officers; and the Children's Division of the Official Solicitor. We discuss the Government's plans for CAFCASS below (Section 7). The Green Paper also proposes a major change to the role of CAFCASS, towards a "more active problem solving approach". The Paper acknowledges that in order for this to occur the judiciary will need to reduce substantially the frequency with which CAFCASS is commissioned to write reports.

Improving case management by the courts

31. The Government has indicated that the judiciary is "keen to promote better case management practices in order that cases are managed as effectively as possible to deliver best outcomes". The Green Paper lists a number of improvements which could be made, including:

Earlier listing of cases;

Cases to be heard as quickly and effectively as possible;

Greater judicial continuity, the aim being that wherever possible the same judge is used throughout a case;

Rapid return to court where necessary.

32. The Green Paper recognises that court orders are of no value if the contact which has been agreed or ordered does not take place. The Government has stated that it wishes to develop several new ways to promote compliance with court orders noting that "CAFCASS and the courts will ensure the early and prompt return of relevant cases to the courts". The Green Paper suggests a number of initiatives which could make agreements work. These are:

Post-Order follow up by a CAFCASS officer to ensure that it is being implemented in practice;

The use of Family Assistance Orders;

Extending current powers under s 11(7) of the Children Act 1989. The Government is seeking views as to whether the powers to impose conditions on parties could be used more vigorously or creatively;

The establishment of child Contact Centres, in particular where safeguarding children from harm is an issue;

Better enforcement by the courts.

33. In February 2005 the Government published the Draft Children (Contact) and Adoption Bill which aimed to implement some of the main recommendations set out in the Green Paper.