

EARLY INTERVENTIONS

- Proposal for a Pilot Project -

The Best Interests of Children in Divorce Cases

Section 8 The Children Act 1989

A 2004 re-submission of the 2003 NATC EI papers
Reformulated for the DfES after the DfES's disposal of the 2003 submission
Re-approved by Lord Filkin on date of issue and receipt
Re-adopted at that same meeting by DfES officials in prelude to an immediate re-disposal

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This document is the 15 July 2004 re-submission of the original NATC EI proposal, as cited at page 2, para 4 of the NATC ConAffCom papers.

The circumstances of the re-submission are set out in the Appendices of the ConAffCom papers at pp 42-44, paras 28-31.

The EI project outlined in these pages, which is the opposite of Fam Res, is variously said to be the opposite of, and on all fours with, the current Fam Res project. The Minister's view, as at 5 October 2004, is that the EI project of these specifications will be the project finally produced; and is the basis of the Green Paper.

Note added 28 November 2004

1. Summary

1.1 PROJECT AIM: Protecting Children's Post-Divorce Family Ties

The project's objective is greatly improved outcomes for children and parents caught up in divorce and separation, in particular the children of 130,000 parents involved in litigation over "access" each year.

The aim is to help children see their parents, and help parents see their children, with minimum diversion into the adversarial court system where protracted legal battles exacerbate the parents' conflict - long accepted as a primary factor undermining the needs of the children. ¹

The pilot project will aim to reduce the number of families litigating in Court by 75 per cent. It also aims to:

- (i) ensure an ordinary level of contact is attained
- (ii) deliver this ordinary level more quickly
- (iii) make this ordinary level more widely available
- (iv) diminish the number of disputes that end in no-contact

It is central to the pilot that these aims are achieved with no loss of child safety.

The EI project fulfils the intentions of the Children Act 1989:

"to encourage both parents to continue to share in their children's upbringing, even after separation or divorce." ²

¹ E.g. Cummings, E.M., Davies, P. (1994), "Children and Marital Conflict: the Impact of Family Dispute and Resolution", New York: Guilford. Emery, R.E., Billings, L.L., Waldron, M.C., Sbarra, D.A. and Dillon, P (2001). "Child custody mediation and litigation: Custody, contact and co-parenting 12 years after initial dispute resolution", *Journal of Consulting and Clinical Psychology*. 69 (2), 323-3

² Lord Chancellor's Department, March 1998, Consultation Document, Parental Responsibility

1.2 THE METHOD: modifying Family Court processes

The Family Courts are the key to the sector. Policy formulated outside the court system, which is not backed inside the Courts, is unenforceable.

The motive-force driving the project is a simple modification to the way the Family Courts process Children Act “contact” cases.

It is not necessary to enshrine new presumptions in law; the requisite effect can be achieved by modifying Family Court procedures.

In a ground-breaking partnership, a Family Court will work in tandem with specialist Early Interventions (“EI”) parent educators and mediators to steer families away from damaging litigation.

Within the EI project, potential litigants are channelled towards child-focused resolutions before the case. This method involves more than just mediation or ‘alternative dispute resolution’.

The core difference is not whether these processes are voluntary or obligatory.

The distinction is the understanding that litigation can be stopped by predictability; that is, by knowledge of what order is liable to be made by the Court. There is less point in litigating when the probable outcome is known in advance.

After a million Children Act cases, the Family Courts and their child development experts are well placed to deliver a consensual, child-focused view on what sort of orders are in the child’s best interests.³ The existing consensus can be written down. Rather than - as at present - litigating every

³ E.g. Bauserman, Robert (2002). “Child Adjustment in Joint-Custody versus Sole-Custody Arrangements: A Meta-Analytic Review”, *Journal of Family Psychology*, Vol 16, No 1. Research confirms the link between the amount of contact and the child’s adjustment: Dunn, J., Cheng, H., O’Connor, T.G. and Bridges, L. (2004). “Children’s perspectives on their relationships with their non-resident fathers: influences, outcomes and implications”. *Journal of Child Psychology and Psychiatry and Allied Disciplines* 45(3):553-566

time from first principles to find out the best interests of the child, the Court's expectations can be conveyed in advance.

This pre-emptive process requires the support of the Court and a court-backed view, rooted in a child development perspective, on what the child's "best interests" are in contact disputes. The project supplies these elements in its key innovation: 'Parenting Plans'.

The designated pilot Court will have a portfolio of pre-prepared "model" plans outlining how co-parenting can work in different circumstances – different ages of children, different relative geographical locations of parents, different working patterns and so on. Together these plans provide parents with a wide range of clearly understandable options, from which they can pick-and-mix to create their own arrangements. But, subject to the usual caveats, the child has "frequent and continuous contact" with both parents. The Plans clarify whether this is liable to mean two hours a fortnight or substantial overnight stays.

Foreknowledge of what sort of contact the Courts are likely to order, as illustrated by the Plans, is conveyed to parents *before* the first hearing by three procedural innovations:

- Step 1:** Court-issued information (leaflets etc.) to all applicants
- Step 2:** single parent Orientation Classes for potential litigants
- Step 3:** one-off mediation for those still struggling to agree

Put simply, parents receive guidance on what to do for the best in three pre-court stages: first, indirectly; second, in groups; third, individually.

In this way, all professionals advising the parents relay the same calming and constructive information. On the parents' route through the interlocutory steps before the first hearing, the message emerges with increasing clarity:

- parents should not try to exclude each other from their children's lives
- proper provision is to be made for access
- the Courts will not accept unwarranted restrictions on contact

- litigation is bad for families and their children

The changes are procedural.⁴ This new approach confers no rights or responsibilities beyond those already deemed to be in place:

“The underlying philosophy of the Children Act is that parents have a shared responsibility for the upbringing of their children even after the parents’ relationship has broken down. This reflects the Government’s belief that children generally benefit from a continuing relationship with both parents.”

Rt Hon The Lord Irvine of Lairg, 8 May 1999, ref MC/99/10/1

As to cases that do not settle, and traverse Steps 1-3 to reach the first hearing, these are likely to be one of the following:

- (i) vexatious litigants where no issue of substance is involved
- (ii) serious and / or difficult cases

The first category should yield to summary resolution with the appropriate order.

The second category - which constitutes the type of case which it was historically envisaged would comprise the Courts’ throughput - can be processed in traditional fashion by a full and proper investigation.

1.3 CHILD SAFETY

The EI procedure does not diminish attention to child safety. Case streaming diverts allegations of child abuse and domestic violence to an early alternative process for preliminary assessment. Because these cases are heard as single-issue cases, they are susceptible to readier elucidation. Meanwhile, removing standard cases from the legal arena frees up court time for serious disputes.

⁴ The unacknowledged determinant of cases brought under the Children Act has not been the Act itself, but the procedural machinery processing cases brought under the Act.

1.4 KEY DIFFERENCES: Present Procedure and Proposed New Procedure

Existing Procedure: extended sequence of litigation *after* the first hearing, to establish if contact that has been stopped should be gradually re-started:

- the first hearing is the gateway to its successors
- negotiations are complicated by the maxim that 'every case is different'

Existing Premise:

Parents litigate to find out what the result should be

Proposed Procedure: normal contact is restarted *before* the first hearing, unless it can be established that normal contact should be stopped:

- the first hearing marks the end of the dispute
- negotiations are conducted in "the shadow of the Court"

Proposed Premise:

Parents who find out what the result should be do not have to litigate

EXISTING	PROPOSED
No Order principle, family ties not protected.	Temporary Order, and early settlement; both protect the child's welfare within his/her family.
Judicial detachment, laissez-faire.	Judicial guidance safeguards the child's family ties.
Reactive, responds only when broken.	Proactive - prevention is better than cure.
'Every case is different' litigation. (No blueprint supporting family ties.)	State's expectation that each child should, if possible, keep two parents and both families.

Extract: Parenting Plans, Dr Hamish C Cameron FRCP FRCPSych DPM
'Early Interventions - Towards a Pilot Project', ppd NATC 2003

1.5 SUMMARY OF BENEFITS

The Interests of the Child:

- litigation / negotiations conducted within a child-welfare framework
- outcomes tailored to individual child's needs
- increased incentive for parents to negotiate and plan
- rapid reduction of conflict over contact (by ending the contact dispute)
- reassessment of rights and responsibilities
- children gain rights, parents gain responsibilities
- delivery on the intentions of the Children Act

The Interests of the State and Law:

- identifiable policy on the 'Children of Divorce' - clarification of family law
- enforcement problems relegated - a secondary problem
- express sanction of High Court judiciary
- benign structural reconfiguration - Family Division private law cases
- middle-ground consensus accentuated
- radical proposals for change of the Children Act marginalized
- 'gender war' positions undermined
- Legal Aid budget freed

1.6 A PILOT PROJECT

This proposal is not for a wholesale reform of the Family Courts system. Rather it aims to pilot in a single Family Court methods that have been demonstrated to be successful in other jurisdictions, adapted as required to Family Courts in England and Wales. This will provide vital input into the national discussion about the Family Court system as a whole.

The management of the pilot project will be local, independent and highly experienced, given the considerable politicisation of this issue.

The project originators will be part of the project team.

The project will last 24 months and will cover a large cohort of cases dependant upon the designated Court's throughput.

Project activities will include:

- Training and employment of 4 part-time EI 'parenting educators'
- Training and employment of 6-8 part-time EI 'contact mediators'
- Preparation and production of materials for use in the court process
- The organisation of new administrative procedures within the Family Court
- Explaining new procedures to professionals working with the Court

The project will be independently evaluated.

The project's cost can be set against one case-gone-wrong in the Family Courts.

2. The Need

2.1 IMPACTS OF CONFLICT: The Needs of Children post-separation

Research demonstrates that ongoing parental conflict is bad for children.⁵ It also shows that where both parents spend significant amounts of time with their children after separation, the children are better adjusted.⁶ The general run of research findings is that when both parents play a significant role in upbringing, children tend to be better adjusted, do better at school, form stable relationships and stay out of trouble.⁷

2.2 SCALE OF THE PROBLEM

A total of 146,914 children in England and Wales experienced parental divorce in 2001, 68% of them aged under 10. Considerable uplift must be added for the children of unmarried parents. One in three children will experience parental separation before the age of 16.⁸

65,192 parents issued contact applications in 2002 to see their children or to see more of their children. Thus the rough preliminary figures (residence applications may not be included) based on two parents / two children per application are 130,000 parents and 130,000 children entering the court system.

Although many of these contact applications are settled before the main hearing, it is a question whether these settlements are in the child's best interests. Agreements may, on occasion, represent no more than the recognition of the disparity in bargaining power of the resident and the non-resident parent.

⁵ E.g. Cummings, E.M., and Davies, P. (1994), "Children and marital conflict: the impact of family dispute and resolution". *New Work: Guildford*; Emery, R.E., Billings, L.L., Waldron, M.C., Sbarra, D.A. and Dillon, P (2001). "Child custody mediation and litigation: Custody, contact and co-parenting 12 years after initial dispute resolution". *Journal of Consulting and Clinical Psychology*. 69 (2), 323-3

⁶ Dunn, J., Cheng, H., O'Connor, T.G., and Bridges, L. (2004) "Children's perspectives on their relationships with their non-resident fathers: influences, outcomes and implications". *Journal of Child Psychology and Psychiatry and Allied Disciplines*, 45(3):553-566

⁷ See Appendix, "Early Interventions - A Framework for Contact: International Perspectives" ppd NATC 2002 for a listing of selected research

⁸ Joseph Rowntree Trust 'Foundations' Ref 314: "Together and apart: children and parents experiencing separation and divorce". March 2004

A hard indicator of how many families are wedged in the court system is the 30,000-plus “welfare reports” written by CAF/CASS per annum (03/04: 32,489). CAF/CASS reports are only prepared after various preliminary procedural hurdles are surmounted, that is, when parties are entangled in “high-conflict” legal dispute. Such reports are unlikely to be available until the litigation has been running for five or six months from first issue of proceedings.

Each welfare report is about all the children in an individual application. Thus the broad figure is that some 65,000 children a year are embroiled in high-conflict litigation. It is central to the EI project that, under the present dispensation, high-conflict litigation can be triggered, and can continue for years, in the absence of an issue of substance.

75 per cent of non-resident fathers would like to have more contact.⁹

In one study, 47 per cent of the fathers had either been their children’s primary carer or had taken substantial responsibility for their care before separation, yet none had been awarded, or had felt able to take, primary care of their children after separation.¹⁰

A 2004 survey¹¹ found the following levels of contact with non-resident fathers:

Contact every few days, at least weekly	33.0%
At least monthly	16.0%
More than half yearly	6.5%
Less than half yearly	7.7%
Once in 12 months	3.0%
Telephone contact only	1.2%
No contact, but knowledge of father	10.2%
No contact, no knowledge of father	12.5%

⁹ Smyth, B., Ferro A., (2002), When the difference is night and day: parent-child contact after separation, *Family Matters* Vol 63, pp 54-59

¹⁰ Lewis C., Papcosta, A. and Warin J., (2002), *Cohabitation, separation and fatherhood*. York: Joseph Rowntree Foundation

¹¹ Smith, M., (2004), Relationships of children in stepfamilies with their non-resident fathers, *Family Matters* Val 67, pp 28-35

These figures are for all non-resident parents; the subset of non-resident parents who reach litigated settlements will show significant differences. For instance, it is unusual for Courts to order contact on a weekly cycle. A two-weekly cycle is the norm. Court-ordered contact by the Court will tend to be of short duration. To attain staying contact may take some years; a 'starter' level of contact is often in the region of two hours a fortnight.

2.3 THE PROBLEM: Real versus Perceived

Concern about Britain's system of family justice is now a media commonplace. The grievances voiced by parents, in ever-more militant fashion, are reflected by concerns raised by academic researchers - and by the scale of the problem itself. But the heart of the problem is often misconstrued.

The Actual Problem

It takes ordinary parents far too long to secure far too little contact through the Courts. The most ordinary of human aspirations - to have a child stay overnight - can take several years of litigation to attain even under perfect circumstances. Applications can fail at any time for any reason. Common outcomes include children subsisting for years on niggardly contact; and parents obliged to abandon their children altogether after protracted rebuff.

The actual problem is the extreme difficulty in obtaining reasonable contact.

The Perceived Problem

(i) *Attention is deflected to the argument that contact is almost always ordered*

It is commonly objected that 'no contact' orders are made in less than 1% of cases; and that contact is ordered in more than 99% of cases.

This statistic does not bear on the key issue: how much contact is ordered in the 99% of cases where contact is ordered. Records have never been

kept on this topic. Overwhelming anecdotal evidence points to a general withholding of overnight contact in contested cases, with orders of a few hours a fortnight a commonplace.

(ii) *Attention is deflected to the secondary question of enforcement*

The primary difficulty is not in enforcing orders; it is in obtaining an order worth enforcing. It can take years to obtain an order for reasonable contact.

Enforcement largely settles itself under a properly constructed system.

Of course court orders must be taken seriously. But the problem of disregarded orders is a secondary manifestation of a primary problem. The priority is not to have a system that does not work, coupled with punishments for not being allowed to see the children; the priority is to have a legal system which enables parents to see their children in the first place

(iii) *Attention is deflected to gender issues*

This is not a gender-issue. It is a parent-issue, that clusters around not men and women but the legal balance of power between 'resident parents' and 'non-resident parents' irrespective of gender.

(iv) *Attention is deflected to primary legislation*

The objective is to change the outcomes of cases processed under the Act. This does not require primary legislation. It requires adjustments to procedure.

The enactment of the presumption of reasonable contact, if accomplished, would still necessitate construction (i) of a consensus on what reasonable contact means (ii) of the ancillary procedural machinery for delivering that type of contact in appropriate cases, i.e. the processes already in hand under the EI pilot.

It is nonetheless desirable for the presumption to be enacted; this will prove easier as a 'tidying up' exercise on the back of the EI project.

(v) Attention is deflected to demands for a 50/50 presumption of contact

This sort of approach, which would be negotiated down in practice, has the disadvantage of seeming to derive more from a pursuit of parental rights than consideration of the child's best interests.

Parenting Plans for various categories of case, based upon the child's needs, may represent a less confrontational approach.

2.4 THE COURTS as the DRIVER OF CHANGE

The Family Courts are the key. As in other areas of life, the writ of the Court does not affect only those caught up in the legal process. The writ of the Court runs throughout society. With the co-operation of the Family Courts, assured in this project, family policy can - in addition to being formulated - be applied.

The Courts' interpretation of Children Act disputes represents the law in the most direct way imaginable. To clarify what stance the Court takes on Children Act issues, and hence what orders the Court will make, is to create a context where all ancillary agencies must fall in line.

Once the posture of the Court is known, there is no real need to indulge in a process of exhortation in order to persuade barristers, or solicitors, or mediators, or CAFCASS, or marriage counsellors, to sing from the appropriate song-sheet.

As professionals, they are duty-bound to advise clients of the view the Court will eventually take. A professional failing to do so manifestly fails the client - with the usual consequences for career and income. This insight, whereby the Courts are correctly perceived and deployed as the ultimate authority, vastly simplifies the task of ensuring that the agencies feeding into this sector take the appropriate line.

3. Method

Summary

“Foreknowledge of what sort of contact the Courts are likely to order, as illustrated by the Parenting Plans, is conveyed to parents before the first hearing by three procedural innovations:

Step 1: *Court-issued information (leaflets etc.) to all applicants*

Step 2: *parent Orientation Classes for potential litigants*

Step 3: *one-off mediation for those still struggling to agree*

Put simply, parents receive guidance on what to do for the best in three pre-court stages: first, indirectly; second, in groups; third, individually.”

3.1 BASIC PROCEDURE

Three new procedural processes are engendered by the Parenting Plans.

On first application, parents or their legal representatives will receive information from the Court, which, in essence, conveys the following:

- (i) a date for the first hearing (e.g. 60 days hence)
- (ii) an enjoinder to maintain normal contact wherever possible
- (iii) an indication of what normal contact is
- (iv) the information that parents who do not file an agreed Plan must:
 - (a) attend a Single Parent Orientation Class
 - (b) attend contact-focused mediation
- (v) the Court’s hope that the issue will be settled without litigation

Each of the three procedural steps is now considered in more detail, together with their ‘enabler’: the time-linked parenting plans.

Reform: The First Generation

The EI pilot described here, although capable of refinement, incorporates the essentials. It crosses a fundamental line rightly regarded by lawyers as a matter of prime doctrinal significance. The project represents an agreed shift from one

genus to another. The burden of proof is reversed. Procedure is reversed. A new presumptive framework embodying social expectations is brought into being and applied - along the lines of “normal children, normal parents, normal contact”. The pilot makes a start on what is likely to be a continuing train of development.¹²

3.2.1 PARENTING PLANS

The Plans are the engine driving the EI system. They are documents a few lines long that suggest answers to the three fundamental questions which otherwise protract the dispute:

Q: should reasonable provision be made for contact? **Yes**

Q: what is, roughly speaking, reasonable contact? **As per the Plans**

Q: can almost-no-contact be offered for almost no reason? **No**

A typical Parenting Plan might look like this:

Age Band: child Aged 3 years to 5 years

2 night weekends on alternating weekends - moving to three-night weekends with return-to-school where practicable.

1 midweek visit, say three hours.

Holidays 2 x 1 week, 1 x 2 weeks, one-night half-terms.

Assumptions include: prior continuity of contact with NRP - suitability of NRP's accommodation - NRP's support for existing schedules of diet and sleep etc -- manageable travelling - attention to communication and restraint between the parents

¹² Other factors to consider include: whether a two-stage ‘parenting class’ is better than one; whether the contact-focused mediation should be privileged or non-privileged; the form, if any, of a Temporary Standing Order to maintain proper contact before the first hearing; the provision for emergency applications; the provision if any for orders made *ex parte*; the establishment of specialist high-conflict parenting classes; recirculation of ‘defaulters’ through Steps 2 and 3; the provision of a ‘facilitator’ attached to the Court as an alternative to penal enforcement; the implications for legal aid; utilisation of the preliminary hurdles as a source of general ‘separation advice’ on non-contact issues; and the ultimate prospect of an integrated Early Interventions system to embrace the financials.

Parents in the appropriate category are invited to make some such agreement. The Plans are a starting point for negotiation according to the circumstances of the parents' case. Parents reach their own agreement. A range of Plans will be available to cover the common categories of case. The Plans do not tie parents to a particular pattern of contact; they merely make a general point about the scale and frequency of contact involved.

There is nothing unusual in the idea of a benchmark for what reasonable contact means.¹³ What is unusual is imbuing it with the Court's authority - so that the principle 'carries-through' in practice.

Parenting Plans, which counter the idea of almost-no-contact for almost-no-reason, introduce the concept of proportionality to Children Act litigation and to pre-court settlements. Proportionality is innate to natural justice. Once the Plans are in place, serious departure from the principle of reasonable contact requires a serious reason; this renders the EI legal process compliant with European Law.¹⁴

The Plans, which are directional rather than prescriptive, match the nature of family law. Since the matter-in-hand is a legal system, there must be a framework; since this is a family law system, the framework must have an element of flexibility. The Plans meet both requirements.

The Plans put discussions between parents (which are often conducted under extreme conditions of polarised enmity, where what seems generous to one parent is perceived as barbarous by the other) into the appropriate ballpark.

¹³ E.g. The Solicitors Family Law Association document, Practical Steps to Co-parenting (June 2004):

"Parents should have a clear idea of what the Court is likely to order in a typical dispute about Parenting Time... An ideal arrangement is for children to feel comfortable in two homes... A typical division of parenting time post-separation might be for children to be based at one parent's home and to spend alternate weekends, a midweek visit, alternating festive occasions and extended time during the school holidays (including an opportunity to take the child away) with the other parent. In the absence of unusual factors, it is difficult to envisage less than this amount of time being appropriate... Such an arrangement may be unsuitable for very young children, teenagers and for parents who live a distance from one another."
p 2, paras 5, 6 and 7

¹⁴ The Explanatory Report to the Draft Convention on Contact Concerning Children, now open for signature, reads at Paragraph 41: "The possible restriction or exclusion [of contact] shall be proportional... The more the right of contact is to be restricted, the more serious the reasons for justifying such restriction must be".

The Plans focus on Time out of necessity - because that is the issue the Court has to determine.

The question before the Court is: "What apportionment of the child's time with each parent represents the child's best interest?" Court orders are expressed in units of time (x hours a month / y nights per month etc). Time is the commodity in dispute. The resident parent seeks to withhold time. The non-resident parent seeks to gain time. The child needs parenting time with both.

Once a satisfactory level of parenting-time is attained, the impetus driving the dispute - lack of time - is reduced or eliminated. By and large, the dispute ends.

If no reference to a desirable level of time is made in the Parenting Plans, two consequences flow as a matter of inevitability:

- (i) parents cannot be advised on what sort of level of contact is appropriate
- (ii) almost-no-contact can be justified for any reason

Existing Approach: Procedure

If reasonable contact is opposed, the applicant 'issues proceedings' by obtaining a form from the relevant Court, filling it in and sending it back. The Court responds by setting the matter down for a first hearing: the Summons for Directions. This is a brief appointment some five-to-eight weeks after the request was received.

The function of this preliminary hearing, which typically lasts about thirty minutes, is to ascertain if the parties will settle and, if not, to set the matter down for a hearing. The Summons for Directions is not to assess if the parties should settle; or to outline what they should settle on. That is an issue reserved for the main hearing once all the facts are known. Hence if one of the parties will not compromise:

- the matter is set down for a hearing (several months later)
- the preparation of statements and reports for that hearing is set in motion

Existing Approach: Framework

- Parents approaching the legal system currently learn that 'every case is different'.
- Case law establishes only that there should not be no-contact-at-all without good reason
- Case law does not prevent there being almost-no-contact in the absence of good reason
- The Courts' advisors (CAFCASS) do not have guidelines on how much contact to recommend
- An exemplary parent has no presumptive entitlement other than almost-no-contact
- Bargaining can start at one hour a month (in a Contact Centre)
- Proportional reasons do not have to be put forward to justify disproportionately low contact
- The existing level of contact is treated as a given
- Reasons are sought on why this level of contact creates difficulties preventing its enlargement
- If the child is well, there is no *prima facie* welfare issue; and no real reason to intervene
- To bring a case takes about a year
- Cases tend to add cautious increments to the level of existing contact
- Overnight contact can take years to obtain; it may never be obtained

Under Section 1.(5) of the Act the onus is on the party seeking more contact to prove why more contact would be "better" for the child. There is no general principle to support the argument that contact should be raised or that more contact would be better. No generalizations are currently available on how much contact to allow, or on how often to allow it, in any category of case. The effect of increased contact cannot be evaluated before the main hearing because the increase can only be ordered at the main hearing. Conflict is eroded by attrition of the possibility of meaningful change. Contested applications tend towards failure.

3.2.2 PARENTING PLANS: Centrality

Once the Parenting Plans are in place, a presumptive framework is in place on what sort of settlement is likely to be best for the child. This means that there is information to give to parents, before they reach Court, to help them to resolve their differences. This information is conveyed to the parents by the three new preliminary hurdles.

3.3 NEW HURDLE 1: Court-issued Information

Every application to the Court involves an applicant in an approach to the Court giving his/her name and address; this approach discloses the name and the address of the respondent.

This initial approach will trigger the dispatch of information by the Court to both parents.

In addition, parents or their legal advisors contemplating going to law can be provided with this same information by the Court - prior to issue of proceedings.

Services offered by the Court could include a website, leaflets, brochures and information packs. These 'suites' of information will work together as an integrated package.

All information released by the Court bears on common themes that are largely self-explanatory from the preceding exposition:

- the undesirability of litigation
- the type of contact arrangements the Court expects
- specimen Parenting Plans
- the duty to agree a reasonable Parenting Plan before the hearing
- the distinction between adult/adult issues and adult/children issues
- admissible and non-admissible issues
- the effect of emotional upset
- the intention of the Children Act
- the meaning of the 'benefit of the child' in contact disputes
- doing the best for children
- common courtesies
- how to settle out of Court
- how best to manage the separation for the child
- the nature of the new Court procedure before the first hearing
- the timescale of these preliminary procedures
- the importance of complying with those procedures
- the role of the Single Parent Orientation Class (Hurdle 2, see below)
- the role of Contact-focused Mediation (Hurdle 3, see below)
- the nature of court procedure if the matter goes beyond the first hearing
- sources of further information and help

- prospects for life-after-separation
- the availability of a new future not focused around the Court

A default or 'Temporary Standing Order' may be included to maintain contact intact. All information is properly presented in readable form showing due sensitivity to its readership; many readers may be in a process of extreme transition and in a state of emotional turmoil.

This Court-issued information is embedded in an overall surround giving full weight to child safety and child protection issues; and to the full readiness of the Court to hear those same issues, and to determine them promptly.

Information is supplied on the provision for emergency applications and the type of cases that are suitable.

Parents are advised to 'exit the system' by filing their agreed Parenting Plan.

At the date this information is issued to applicants, both parents are logged into the Court system. They are under an obligation to undergo (in default of the preferred option of settlement) two hurdles prior to the first Court hearing - which, it is stressed, should be the last.

Existing Approach:

- An application to Court results in the release of a two-sided C1 court-form
- This form requests outline details (names, addresses, nature of the order sought)
- This is the only 'information document' issued by the Court.
- Subsequent documents consist of court orders specifying the duration of contact

Return of the C1 form results in a response giving the time and date of the Summons for Directions. There is no filter to regulate access to the court system. As long as the stoppage of contact continues, and as long as the applicant does not give up, the matter must end in a full hearing. Anything can get into the legal system; it is not so easy to get out.

3.4 NEW HURDLE 2: Single Parent Orientation Classes

Parents who do not file their agreed Parenting Plan are obligated to attend a group Orientation Class.

These classes are not about teaching parents how to change nappies; or other basic parenting skills. Their function is:

- to help parents deal with their new circumstances
- to help parents negotiate with each other
- to guide parents towards appropriate child contact arrangements
- to suggest what appropriate contact arrangements are
- to remind parents that bringing the child into the parents' conflict is wrong
- to outline the Court's expectations of post-separation parenting time

To find oneself suddenly a single parent is to make an abrupt transition to an alien experience at a time of emotional upheaval. Unfamiliar problems abound; the nature of parenting switches from a collaborative enterprise to a sole burden (within each household) calling for added devotion and restraint - in a context where the former partner can be seen as an enemy. Each parent faces different problems. It is a world of new limitations and new responsibilities.

Although the children are vulnerable, the bulk of this vulnerability arises from their parents' vulnerability to opportunistic inter-adult disputes.

The Orientation Class is predicated on the basis that there are no legal issues. Parents are reminded that the feelings of outrage, bitterness, disappointment and resentment directed at a former partner are not the basis for a court battle over access; they are psychological manifestations of a life-changing emotional debacle. Parents are reminded not use these feelings to perpetuate an interpersonal wrangle in the Courts. Instead, the parents' duty is to reach a working accommodation over the children; and to do so in the knowledge that the best parent is both parents; and that children love and need both their parents; and that adults should not attempt to co-opt their children as allies.

There is no need to dumb down or talk down to parents who might be misperceived as 'mixed-ability'; parents undergoing divorce or separation are imbued with a devouring interest in their new circumstance.

The portal throughout is: "Consider what effect your divorce will have on your children" and "How can that damage be minimised?" The children of divorce have already lost through the process of the adults' separation; the object is to ensure that this damage is not compounded by losing one of their parents as well.

Parents are reminded that there is life-after-separation. This is an issue of cultural significance. The current assumption is that there is litigation-after-separation.

Underpinning the emotional content of the Orientation Class is hard information on what sort of provision the parents should make for contact. Parents are introduced to the concept that this is not only what society expects and what is good for the child; it is what the Court will expect. Parents are urged to make appropriate settlement out of Court.

The class takes about three hours and will include information on the nature of grieving and the parents' duty to one another and to the children. There will be a video emphasizing the consequences of getting it right and the consequences of getting it wrong. The course is skill-based; it deals with time-and-again problems like 'the new boyfriend / girlfriend'; it flags up some ground-rules; it demonstrates how the trap of internecine recrimination can be avoided.

The EI project creates a new infrastructure and a new (part-time) profession. Parents attend in mixed-sex groups of 10-30. The classes take place in acceptable surroundings. The class is led by two high-grade facilitators, one male, one female. A likely qualification is a separation involving children and experience of the court system as a court-user. The courses are non-patronising and high-participation; they are closer to a group discussion led by enablers than to a lecture. Literature, leaflets, handouts and the like will be available. In excess of 1,500 different courses of this nature are running in other countries; precedents abound for adaptation here.

3.5 NEW HURDLE 3: Contact-focused Mediation

Parents who do not settle at either of the two preceding hurdles attend a one-off mediation session as a pre-condition of attending court. The session will probably last 90-minutes.

This is mediation with a difference.

The session incorporates the traditional element of a forum where parents can express their views; and try to reach a better understanding of their own and their former partner's motives.

In addition, the mediator (and 'mediator' may not be the right term) will focus the parents' attention on contact; and on contact arrangements; and the fact that, in the absence of good reason to the contrary, the Court expects parents to negotiate reasonable contact.

A clear distinction is drawn between issues of substance (which include practical issues) which might unseat the notion of reasonable contact; and issues which do not meet the 'good reason' principle; but which, instead, represent the adults' intention to continue a personal dispute.

The likely views of the Court, and the nature of the Court process, are outlined.

Parents who cannot show a good reason to dispute the principle of reasonable contact will be urged to settle at the mediation; if they do not, they will be urged to reach a settlement in the days remaining - in preference to finding that the Court imposes a settlement not of the parents' making.

This is mediation conducted "in the shadow of the Court".¹⁵

Conclusion:

¹⁵ Mediation is unlikely to work to optimal effect in the absence of an understanding either of what sort of settlement is reasonable or of what sort of settlement the Courts are liable to impose.

The filters, directional signposts and governing framework set out in Section 3 have no counterpart in the present legal system.

Through their adoption, as noted at Section 1.1, the project “*aims to reduce the number of families litigating in Court by 75 per cent. It also aims to:*

- (i) ensure an ordinary level of contact is attained*
- (ii) deliver this ordinary level more quickly*
- (iii) make this ordinary level more widely available*
- (iv) diminish the number of disputes that end in no-contact”*

Further Reading

‘Early Interventions - A Framework for Contact: International Perspectives’ 27 May 2002
Conference Report, Chair: Dame Margaret Booth DBE, ppd NATC, 162 pp

‘Contact Dispute Resolution: Early Interventions - Towards a Pilot Project’ 10 April 2003
Seminar Report, Chair: The Honourable Mrs Justice Bracewell DBE, ppd NATC, 60 pp

These documents, and this specification, are available in electronic form from the NATC (020 8748 1081)

